

Holtzman Vogel

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

June 7, 2022

Via Email

Re: Response to Fetterman for PA's Attempt to Silence Truthful Advertising

Dear Station Manager:

It has come to my attention that you received a letter from counsel to the Fetterman for PA campaign (the "Campaign") requesting that you discontinue airing a certain advertisement regarding John Fetterman (the "Advertisement") produced by the National Republican Senatorial Committee ("NRSC"). This letter is a misleading attempt to deny Pennsylvanians the opportunity to consider the significant implications of views and positions held by an individual vying to represent their interests in the U.S. Senate. Every factual statement made in the NRSC Advertisement is plainly and indisputably accurate and documented. In an attempt to censor this message, the Campaign resorts to reckless accusations and threats of legal recourse, with the sole objective of frightening your station into pulling the Advertisement from the airwaves. I trust you will not accede to this transparent attempt to silence speech the Campaign would simply rather the public not hear.

The Campaign first takes issue with the Advertisement's accurate claims relative to Mr. Fetterman's stance on the Green New Deal and its anticipated costs. The Campaign's letter, however, not only mischaracterizes the claims made in the Advertisement, but offers little support aside from accusatory language and distractions to refute them. The Advertisement explicitly states that Mr. Fetterman has "embraced parts of the Green New Deal," and proceeds to convey an estimate that such legislation would cost American households \$50,000 per year. The costs referenced are attributed to the Green New Deal generally, and not, as Counsel would have you believe, to those climate policies Mr. Fetterman only embraces during election season.

First, Counsel does not refute the claim that Mr. Fetterman does, in fact, support parts of the Green New Deal, as stated in the Advertisement, but rather asserts more broadly that he has "never supported" and "has not embraced" the Green New Deal *as a whole*. Despite Counsel's attempt to confuse the issue, nowhere in the Advertisement does the NRSC claim that Mr. Fetterman currently champions the Green New Deal in its entirety. Rather, the language actually contained in the Advertisement merely references Mr. Fetterman's support for certain aspects of the Green New Deal, such as transitioning away from fossil fuels, as conceded in the Campaign's own letter and publicly touted on numerous occasions.¹ Indeed, Counsel curiously

¹ Holly Otterbein, *John Fetterman launches Senate bid in Pennsylvania*, Politico (Feb. 8, 2021), <https://www.politico.com/news/2021/02/08/fetterman-senate-pennsylvania-466932>; John Fetterman, Remarks at Warren County Pride Day, Warren, PA, Minute 8:00-8:59 (Jun. 21, 2021) (stating, "I think it's critical that we recognize that we want to transition away from fossil fuels . . ."); Hallie Jackson, Interview with John Fetterman,

quotes from and cites four different times a *Politico* article that states unequivocally: “Fetterman said he agrees with parts of the Green New Deal.”² Counsel’s argument as to this point, therefore, is moot. Assuming *arguendo* that the Advertisement did make such a claim, however, the Campaign would be hard-pressed to argue with a straight face that Mr. Fetterman has “never supported” the Green New Deal when he embraces the climate theories that underlie it and supports the policies at its very core. Any claims to the contrary would seem to be born out of political convenience when, in reality, he prioritizes the concept of a “green ideal”³ and would support the legislation if elected and faced with a vote.⁴

The Campaign then proceeds to grossly misrepresent the meaning of the statement at issue. The Advertisement states that Fetterman “embraced parts of the Green New Deal that’d cost you fifty thousand bucks a year.” While Counsel would have you equate the stated language to “Mr. Fetterman’s [current climate] plan ‘would cost you fifty thousand bucks a year,’” **this, again, is simply not the claim contained in the Advertisement.** Rather, the reference to cost qualifies and directly relates to the Green New Deal generally, asserting that Mr. Fetterman has long supported parts of *a larger plan that would cost Pennsylvania households \$50,000 annually*. For this claim there is extensive substantiation contained in the research document provided.

As for the “whopping” \$50,000 per year figure, the NRSC agrees that it is outrageous. Unfortunately for the Campaign (and the millions of hardworking Americans that would have to foot the bill), however, the estimate is well-substantiated, based on sound research tactics, and consistent with numerous studies on the topic. In fact, the estimate used is a conservative one. The figure stems from the 2019 Conservative Enterprise Institute (“CEI”) study referenced in the Campaign’s letter and cited in the Advertisement and related substantiation, which analyzes the costs associated with only four aspects of the larger Green New Deal in five different states.⁵ This study addresses and builds upon three previous, independently conducted studies on Green New Deal costs. With respect to Pennsylvania specifically, the CEI study estimates that implementing just this limited set of Green New Deal measures alone would cost \$72,439 per household the first year, \$45,026 the second through fifth years, and \$38,506 each year thereafter. **Taking the simple average of these three numbers, the annual cost amounts to \$51,990.33 – roughly \$50,000 per year.**

Far from “sloppy math,” therefore, the estimates contained in the Advertisement are sound and reasonable, if not on the low end. Indeed, a 2019 study spearheaded by a former Congressional Budget Office Director concluded that the Green New Deal’s energy-only

MSNBC (Feb. 8, 2021), <https://www.msnbc.com/hallie-jackson/watch/full-interview-pa-lt-gov-fetterman-on-his-senate-run-i-will-fight-raging-inequality-if-elected-100689989936>.

² Otterbein, *supra* note 1.

³ *Id.*

⁴ John Fetterman, Remarks, The East Penn Democratic Club Music Night Fundraiser, Emmaus, PA, Minute 19:04-19:14 (Oct. 15, 2021) (stating that, if elected, Democrats “will always have [his] vote.”); John Fetterman, Virtual Conversation at The Texas Tribune Festival (Sept. 20, 2021) (stating that his priority “would be to be a reliable Democratic vote.”).

⁵ What the Green New Deal Could Cost a Typical Family, Competitive Enterprise Institute & Power the Future, https://cei.org/sites/default/files/Daniel_Turner_and_Kent_Lassman_-_What_the_Green_New_Deal_Could_Cost_a_Typical_Family.pdf (Jul. 29, 2019).

components would cost each household as much as \$67,101 annually over a 10-year period.⁶ Further, the costs of the *non-energy* components of the Green New Deal “might dwarf these energy-related costs by an order of magnitude.”⁷ While \$50,000 per household may (and should) sound shocking to the casual observer, it is an entirely reasonable and sound accounting of potential Green New Deal costs. What may be more shocking, however, is Mr. Fetterman’s support of *any* aspect of such legislation and his association with the politicians that champion it, but that is for the voters to decide.

Finally, the Campaign closes its letter with the inexplicable assertion that, based on the depiction of an “END FRACKING NO MORE OIL” sign on-screen, the Advertisement claims that “Mr. Fetterman supports a ban on fracking.” At the risk of sounding redundant, **this claim is contained nowhere in the Advertisement.** Rather, the Advertisement is accurately referencing the fact that Mr. Fetterman has supported an end to fracking, the timeline of which, however, is in no way specified. Although Counsel accuses the NRSC of having “ignored Mr. Fetterman’s public statements,” such statements actually form the basis of the Advertisement’s claim regarding his stance on fracking. Indeed, in response to the question of whether he sees a future without fracking, Mr. Fetterman definitively replied, “I do . . . [t]hat’s what I want.”⁸ Further, contrary to the Campaign’s blatantly false assertion that “Mr. Fetterman consistently and publicly opposes a fracking ban,” Mr. Fetterman has “consistently and publicly” spoken in favor of fracking moratoriums and/or bans on countless occasions, as thoroughly cited in the research substantiation document provided. Although that policy stance may no longer suit Mr. Fetterman in this most recent political endeavor, his prior statements and positions do not suddenly become untrue. Accordingly, although “a ban on fracking” is referenced nowhere in the Advertisement and is therefore a non-issue, Mr. Fetterman’s record unequivocally reflects support for such a measure, regardless of how many times the Campaign may state otherwise.

The Campaign’s letter amounts to nothing more than a politically-motivated attempt to remove an unfavorable advertisement from the airwaves, and is itself riddled with the falsehoods it claims are contained in the Advertisement. Despite Counsel’s inflammatory and unfounded claim that the NRSC is “peddling lies,” each claim in the Advertisement is accurate, truthful, and properly substantiated. Indeed, we can only assume that the Campaign is attempting to make issue of these truthful claims because it understands how damaging such positions can be in the eyes of Pennsylvania voters. The NRSC, however, is exercising its First Amendment right to shed light on an important issue central to the concerns of that electorate: the potential for skyrocketing household costs amidst already-soaring inflation, record gas prices, and critical supply shortages. The fact that the Advertisement casts an unflattering light on Mr. Fetterman is no justifiable basis to deprive the public of information critical to its decision this November.

If the Campaign would like to take to the public square to defend Mr. Fetterman’s ever-evolving policy positions, it is free to do so. It cannot, however, be permitted to clarify the record by intentionally misinterpreting advertisements from other speakers and feigning injury from

⁶ The Green New Deal: Scope, Scale, and Implications, American Action Fund (Feb. 25, 2019), <https://www.americanactionforum.org/research/the-green-new-deal-scope-scale-and-implications/>.

⁷ Conservative Enterprise Institute & Power the Future at 2.

⁸ Molly Taft, *John Fetterman Gets Real On Fossil Fuel Money, Fracking, and a Just Transition*, Gizmodo (Feb. 23, 2021), <https://gizmodo.com/john-fetterman-gets-real-on-fossil-fuel-money-fracking-1846333957>.

claims based on not-so-“obvious implication[s].” The Advertisement speaks for itself – and is *completely true* in every respect. Removing factual political speech from the airwaves would most certainly not be in the public interest. The rightful final arbiter on the merits of the NRSC Advertisement is the viewing public of Pennsylvania, and not your television station. Accordingly, we strongly urge you not to accede to the Campaign’s threats and demands, and continue to run the Advertisement as scheduled.

Please do not hesitate to contact me should you have any additional questions. I can be reached at 540-341-8808, or by email at cfort@holtzmanvogel.com.

Sincerely,

A handwritten signature in cursive script that reads "Christine Fort".

Christine Fort
Counsel to the NRSC