

May 19, 2023

RE: A Better Denver “He’s Lying” Ad – Cease and Desist Demand

To whom it may concern:

It has come to the attention of my client, Mike Johnston for Mayor, that the 527 group A Better Denver has purchased time for a negative political advertisement airing on your network and titled “He’s Lying.” The ad makes several false and untrue statements about Mike, who is a candidate in the runoff election for Denver mayor. Given that Denver voters are already in receipt of their ballots for the June 6 election, I am writing to demand that you immediately stop running this intentionally misleading ad.

The ad states Mike “is lying” about his leadership in taking on the gun lobby and building COVIDCheck. The truth is that Mike has never lied about his accomplishments and it is A Better Denver’s ad that is untrue. The ad makes several false claims about Mike that are clearly and objectively disprovable.

First and foremost, the ad incorrectly states that Mike added his name to gun control legislation “after they [the bills] were already passed.” It is impossible for any state legislator to be added as a sponsor of a bill after the bill has been passed into law. According to the procedures of the Colorado General Assembly, a bill is passed into law if it receives approval from both chambers of the legislature and the Governor signs the bill or allows it to become law without the Governor’s signature. See Colorado Office of Legislative Legal Services, “How a Bill Becomes a Law in Colorado” (timestamp at 9:39), available at: <https://leg.colorado.gov/agencies/office-legislative-legal-services/how-bill-becomes-law-colorado-video> (last visited May 19, 2023).

It is common for legislators to add their names as a sponsor or cosponsor of a bill as the bill moves through the various stages of the legislative process, and “[t]he level of sponsorship [whether sponsor or cosponsor] is identical, the terms merely indicate whether the legislator’s name was added before or after introduction.” Colorado Office of Legislative Legal Services, “Colorado LegiSource: A Quick Reminder on Some Bill Basics” (Dec. 12, 2019), available at: <https://legisource.net/2019/12/12/a-quick-reminder-on-some-bill-basics/> (last visited May 19, 2023).

Contrary to the ad’s untrue statements, Mike was one of the sponsors of legislation in 2013 that enacted universal background checks and banned high-capacity magazines, and Mike “led with the most forceful arguments in favor of the gun-magazine limit.” Denver Post, “Colorado Senate passes raft of gun bills; House Democrat now wavers” (Mar. 11, 2013), available at: <https://www.denverpost.com/2013/03/11/colorado-senate-passes-raft-of-gun-bills-house-democrat-now-wavers/> (last visited May 19, 2023); see also Denver Post, “Where 9 Colorado candidates for governor stand on gun laws” (Oct. 22, 2017), available at: <https://www.denverpost.com/2017/10/22/colorado-governor-race-2018-gun-control/> (last visited May 19, 2023).

Further, the ad falsely claims Mike was lying when he said, “We beat the NRA.” In 2018, 9News rated the claim that Mike “took on the NRA twice and won” as “true.” 9News, “Truth Test: Mike Johnston Gets Boost from Michael Bloomberg Funded PAC” (Apr. 29, 2018), available at: <https://www.9news.com/article/news/politics/truth-tests/truth-test-mike-johnston-gets-boost-from-michael-bloomberg-funded-pac/73-547094054> (last visited May 19, 2023).

Last, the ad falsely states that “Johnston says he built COVIDCheck? . . . The truth? . . . [Sarah Tuneberg speaking] Mike Johnston is taking credit for a thing that my team should be taking credit for.” In fact, COVIDCheck was founded and developed by Gary Community Ventures under Mike’s leadership in the summer of 2020. Colorado Secretary of State, Articles of Organization COVID Check Colorado, Inc. (Jun. 6, 2020), available at: <https://www.sos.state.co.us/biz/ViewImage.do?masterFileId=20201518727&fileId=20201518727> (last visited May 19, 2023). The purpose of COVIDCheck was to provide COVID testing for teachers and students, well before the state partnered with them and expanded COVID testing as the ad falsely implies. See Colorado Sun, “A Colorado school is taking coronavirus testing beyond its students and teachers” (Sept. 18, 2020), available at: <https://coloradosun.com/2020/09/18/colorado-clayton-early-learning-preschool-early-childhood-education-center-students-teachers-parents-covid-19-coronavirus/> (last visited May 19, 2023).

As FCC licensees, broadcasting networks such as yours have a legal responsibility to review false, misleading, and deceptive statements contained in the advertising they air, particularly when it is brought to their attention:

Broadcasters are responsible for selecting the broadcast material that airs on their stations, including advertisements. The FCC expects broadcasters to be responsible to the community they serve and act with reasonable care to ensure that advertisements aired on their stations are not false or misleading.

Federal Communications Commission, “Consumer Guide: Complaints about Broadcast Advertising” (Dec. 20, 2019), available at: <https://www.fcc.gov/sites/default/files/complaints-about-broadcast-advertising.pdf> (last visited May 19, 2023); see also “Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising,” 74 FCC 2d 623 (1961) & Federal Trade Commission, “Truth in Advertising,” available at: <https://www.ftc.gov/news-events/topics/truth-advertising> (last visited May 19, 2023). Further, A Better Denver is not a protected candidate and, thus, is not guaranteed rights of access to air their ads on your network. See *CBS v. DNC*, 412 U.S. 94 (1973) & *Nat’l Conservative PAC*, 89 FCC 2d 626 (1982).

Thank you for your prompt consideration of this demand to immediately stop running this ad so that its false, untrue, and intentionally misleading content is no longer broadcast to the voting public. For a full background on the many falsehoods contained in the ad please see the attached fact check document that was prepared by my client, and please do not hesitate to contact me with any questions.

Sincerely,



Sarah Mercer
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FACT CHECK: Kelly Brough's Super PAC Ad Intentionally Lies About Mike Johnston's Record

In an attempt to distract voters from Kelly Brough's record of putting business interests ahead of Denver families, a super PAC with close ties to Brough's campaign released a new TV ad that intentionally lies about Mike Johnston's records and accomplishments.

The truth:

Under Mike Johnston's leadership, Gary Community Ventures built COVIDCheck Colorado, the award-winning program that provided free COVID-19 testing to teachers and students across the state.

- Gary Community Ventures filed [articles of organization](#) for COVIDCheck Colorado in June 2020.
- According to the [Colorado Sun](#), COVIDCheck Colorado was “developed by Gary Community Investment Company ,” – the organization Mike Johnston led.
- COVIDCheck Colorado [won an award](#) from the Denver Downtown Partnership for administering “**the most proactive and equitable response to COVID-19 in the state.**”
- Daniel Aschkinasi, the former Program Manager for COVID-19 Rapid Testing, CDPHE applauded Mike's leadership through COVIDCheck Colorado:
 - Daniel Aschkinasi: “Colorado's response to the COVID-19 pandemic was successful because of the partnerships between state agencies and organizations like COVIDCheck Colorado. **Mike stepped up at a time when Coloradans needed resources, he helped lay the groundwork for thousands of Coloradans to receive free PCR testing and COVID-19 vaccines.** I trust Mike to lead Denver through the next emergency crisis, and that's why I'm supporting him for Mayor.”
- Eric Parrie, the CEO of COVIDCheck Colorado confirmed Mike's role in building the organization:
 - Eric Parrie: “**Mike built a powerful mission-driven organization from scratch;** the Governor committed to, leveraged state and federal funding for, and saw through a sound testing policy; together, the state and CCC took care of hundreds of thousands of people through the most trying circumstances in ways other states across the country envied.”

Mike Johnston played a key role in passing historic gun legislation in 2013.

- In 2013, Mike was [part of the coalition](#) that fought the NRA and successfully passed legislation that enacted universal background checks and banned high-capacity magazines. Two State Senators were recalled as a result, but Mike was proud to stand by them and take a public stand because it was the right thing to do.
- The [Denver Post](#) reported that Mike “led the most forceful arguments in favor of the gun-magazine limit.”
- In 2018, 9News rated Mike's claim that he took on the NRA as “[True](#)”
- Sen. Tom Sullivan, whose son was killed in the Aurora Theater Shooting just months before these bills passed, commended Mike for his leadership on this issue.
 - Sen. Tom Sullivan: “After my son Alex was murdered in the Aurora Movie Theater, Coloradans stood together to pass the most significant gun safety legislation in decades. Helping to lead that charge was Mike Johnston. I remember watching Mike from the gallery as gun rights groups yelled on bullhorns and some even threatened legislators. It took real courage to stand up for change, but Mike's words and conviction were clear, they were compelling, and they helped us carry the day. It's shameful his opponent would try to downplay his role in that victory against the gun lobby. For us to win and

continue to make real progress, we must stand together. I'm proud to stand with Mike Johnston just as he always stood with me. Mike has always been, and always will be, a true champion in the fight to get deadly weapons off our streets."

Kelly's IE's Claim	Fact Check
<p>"Mike Johnston is lying about his leadership."</p>	
<p>"Johnston says he built COVID check? I built the organization called COVID Check The truth? Mike Johnston is taking credit for a thing that my team should be taking credit for"</p>	<p>CO Secretary of State: Gary Community Ventures filed articles of organization for COVIDCheck Colorado in June 2020. [Secretary of State website, 6/16/20]</p> <p>Colorado Sun: COVIDCheck Colorado was "developed by Gary Community Investment Company and The Piton Foundation," the organization led by Mike Johnston. "COVIDCheck Colorado, a network developed by Gary Community Investment Company and The Piton Foundation, is partnering with Clayton Early Learning to provide free tests to more than 300 children along with their families — all of whom are low income — and their teachers." [Colorado Sun, 9/18/20]</p> <p>Axios: "Most Importantly, [Johnston's] Organization Helped Launch COVIDCheck Colorado To Provide Free Testing And Vaccines At Community Sites During The Pandemic In Collaboration With State Leaders." "His time as president and CEO for Gary Community Ventures, named for oil and gas leader Sam Gary, allowed him to work in the private and nonprofit sectors and gave him a fresh look, he believes. Most importantly, his organization helped launch COVIDCheck Colorado to provide free testing and vaccines at community sites during the pandemic in collaboration with state leaders." [Axios, 2/13/23]</p> <p>Denverite: "Under [Johnston's] leadership, Gary ran COVID Check..." "The foundation is focused on student readiness and family economic mobility. Johnston took over the foundation in 2020. He left Gary to run for mayor. That recent experience, he said, has prepared him to run a massive city government. Under his leadership, Gary ran COVID Check, 'that was 1,500 employees, it was 50 sites around the state,' said Johnston. 'I think people universally saw it as the best customer service experience they had during COVID, because we tested and vaccinated more than a million Coloradans and did it in a way that was easy to use, easy to access, and incredibly user friendly.'" [Denverite, 11/16/22]</p> <p>CovidCheck Won A 2020 Downtown Denver Award From The Downtown Denver Partnership For "The Most Proactive and Equitable Response to COVID-19 in the State." "COVIDCheck Colorado is a social benefit enterprise started in the wake of the COVID-19 pandemic by Gary Community Ventures, an organization dedicated to increasing opportunity for low-income kids and families in Colorado. Through free, fast, and reliable testing and vaccination services, COVIDCheck Colorado administered the most proactive and equitable response to COVID-19 in the state." [Downtown Denver Partnership, 2020 Downtown Denver Award Winners, 10/28/21]</p>

	<p>Gary Community Ventures: “Under Mike’s Leadership, Gary Created CovidCheck Colorado, An Emergency Response To The Pandemic That Delivered 1.9 Million Free COVID-19 Tests And 300,000 Vaccines To Folks Across Colorado.” “Under Mike’s leadership, Gary created COVIDCheck Colorado, an emergency response to the pandemic that delivered 1.9 million free COVID-19 tests and 300,000 vaccines to folks across Colorado.” [Gary Community Ventures, Press Release, 11/17/22]</p> <p>Eric Parrie, Director of COVIDCheck Colorado: Mike founded COVIDCheck in the summer of 2020 to help kids and teachers get safely back to the place where learning happens best - in the classroom. Together we built from scratch an operation that served dozens of school districts, colleges, and small businesses and administered over 100,000 tests across Colorado and other parts of the country in just the first few months of operation. This robust evidence of success made a public-private partnership with the state a clear win for Coloradans. We scaled even more aggressively once we had contracted with the state in November 2020, opening our existing network of sites to the public and operating dozens of new locations around the state. Mike built a powerful mission-driven organization from scratch; the Governor committed to, leveraged state and federal funding for, and saw through a sound testing policy; together, the state and CCC took care of hundreds of thousands of people through the most trying circumstances in ways other states across the country envied. Everyone involved in the effort from the Polis Administration, COVIDCheck, and Gary has much to be proud of.</p> <p>Daniel Aschkinasi, Former Program Manager for COVID-19 Rapid Testing, CDPHE: Colorado’s response to the COVID-19 pandemic was successful because of the partnerships between state agencies and organizations like COVIDCheck Colorado. Mike stepped up at a time when Coloradans needed resources, he helped lay the groundwork for thousands of Coloradans to receive free PCR testing and COVID-19 vaccines. I trust Mike to lead Denver through the next emergency crisis, and that’s why I’m supporting him for Mayor.”</p>
<p>“Johnston says he took on the gun lobby.</p> <p>We beat the NRA and we did</p> <p>The facts?</p> <p>About those gun control bills. He added his name to a few of them as a co sponsor after they already passed.”</p>	<p>Denver Post: Mike Johnston “led the most forceful arguments in favor of the gun-magazine limit.” “Sen. Michael Johnston, D-Denver, led the most forceful arguments in favor of the gun-magazine limit. He said that while it wouldn’t bring back children who were killed in mass shootings with high-capacity magazines, it was a starting place. ‘And if that prevents coffins for children, then it’s worth it,’ said Johnston, alluding to the mass shooting in Newtown, Conn., where 20 first-graders and six staffers were killed in December by a gunman using a weapon equipped with a large-capacity magazine.” [Denver Post, 3/11/13]</p> <p>KDVR: Democrats “Said Little Throughout This [Gun Bill] Debate” Before Sending Johnston To The Dais To Defend The Legislation. “But Democrats, who have said little throughout this debate, responded Monday. ‘Any society that holds more than one value, holds no value</p>

absolutely.' Their best orator, Mike Johnston of Denver arguing that the Second Amendment is not absolute and speaking stirringly about Newtown. 'Every single bullet mattered because he put the gun to the head of a five-year-old, execution style one after another and made sure he never missed.' Those who escaped with their lives, Johnston notes, did so only when the shooter stopped to reload. 'In that 11 seconds that he reloaded, 11 kids got away. What if that were a 15 round mag? We could have picked 11 of those little five-foot coffins and chosen not to fill them.' The magazine ban squeaking by on an 18-17 vote after four hours of debate." [KDVR, 00:00:20, [3/11/13](#)] (video)

Colorado Independent: "In 2013, When He Was Then A State Senator In His 30s, He Helped The Democratically Controlled State Legislature Pass A Package Of Gun Laws, The Most Controversial Of Which Limited To 15 The Number Of Bullets A Gun Magazine Could Hold." "In 2013, when he was then a state senator in his 30s, he helped the Democratically controlled state legislature pass a package of gun laws, the most controversial of which limited to 15 the number of bullets a gun magazine could hold. The measures came in the wake of the Aurora theater shooting. On the night the new laws passed, Johnston's fellow Democrats were heading out for celebratory beers. Some of his Republican friends, who had led the fight against the measures, were furious." [Colorado Independent, [3/15/18](#)]

Denver Post: "[Johnston] Co Sponsored The Bill That Expanded Background Checks To Include Private Gun Sales..." "Former state Sen. Mike Johnston knows better than most the 2013 debate over gun control in Colorado. He co sponsored the bill that expanded background checks to include private gun sales, and he voted in favor of the measure that imposed a 15 round limit on magazines both of which were signed into law by Gov. John Hickenlooper. 'Here in Colorado, we actually took action,' Johnston said. 'We knew it was going to be controversial. We knew folks were going to fight it.' But he said both measures can have an impact on gun violence, one by deterring criminals from buying guns and the other by making mass shootings harder to commit with the use of legally purchased magazines. 'It's not a lot, but it gives you three, four, five seconds to get away' Johnston said of the potential reload time. He argues the restrictions do not infringe on the Second Amendment and that Congress should follow Colorado's lead. 'I think those are common sense,' he added." [Denver Post, [10/22/17](#)]

9News Rating: "True" — Mike Took on the NRA and Won.
In 2018, 9News rated the claim that Mike "took on the NRA and won" as "[True](#)."

Colorado State Senator Tom Sullivan: "After Alex was murdered in the Aurora Theater, Mike helped lead the charge to pass significant gun legislation. It took real courage to stand up for change, but Mike's conviction helped us carry the day. I'm proud to stand with Mike just as he always stood with me." [[Twitter](#), 5/16/2023]

Former Colorado Senate President John Morse: "In 2013, I was recalled by an NRA-backed effort after passing universal background checks and magazine limits. Although I lost my seat, I will never forget

those who stood with me as we successfully fought against the gun lobby. Even as our caucus endured constant protests and death threats, Mike not only voted for the bills, but he was a leading voice in their passage. What's remarkable about Mike is that his work didn't stop when the bills were passed. When the gun lobby tried to recall me, he came to Colorado Springs and personally knocked on doors to fight back. The truth is that when Kelly Brough ran the Denver Metro Chamber of Commerce, they never once championed gun safety. Not before Kelly Brough ran it, not while she ran it, and not after. Mike's shown what true leadership looks like when it comes to fighting gun violence and I'll never forget what he's done for our community."

Former Colorado Senate President Morgan Carroll: "As the Majority Leader of the Colorado Senate, I saw first hand the teamwork it took to pass all of the gun safety reforms following the movie theater massacre in Aurora. As we researched, prepared, and debated on the floor, Mike Johnston was a critical part of our team to ensure passage of these key measures. He deserves credit for his willingness to lead on this issue, whether or not he was listed as a prime sponsor of legislation."