



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

NOV 19 2012

Jerry R. Hilderbrand, Treasurer
Blaha for Congress
1155 Kelly Johnson Blvd., Suite 110
Colorado Springs, CO 80920

RE: MUR 6565

Dear Mr. Hilderbrand:

On May 3, 2012, the Federal Election Commission notified Robert B. Blaha and Blaha for Congress and you in your official capacity as treasurer (the "Committee") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("Act"). On November 8, 2012, based upon the information contained in the complaint and information provided by you, the Commission decided to dismiss the complaint and closed its file in this matter.

The Commission encourages the Committee and Mr. Blaha to review the Factual & Legal Analysis which sets forth the statutory and regulatory provisions considered by the Commission in this matter, a copy of which is enclosed for your information and future reference. In particular, the Commission reminds you and Mr. Blaha, pursuant to 2 U.S.C. § 441d(d)(1)(B)(ii) and 11 C.F.R. § 110.11(c)(3)(iii), to include a written statement of the candidate's approval in televised campaign advertisements. For further information on the Act, please refer to the Commission's website at www.fec.gov or contact the Commission's Public Information Division at (202) 694-1100.

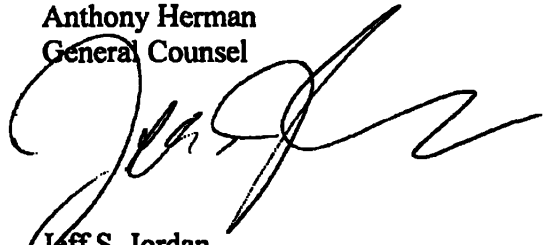
Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

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If you have any questions, please contact Kim Collins, the paralegal assigned to this matter, at (202) 694-1650.

Sincerely,

Anthony Herman
General Counsel

A handwritten signature in black ink, appearing to read "Jeff S. Jordan", is written over the typed name and title.

BY: Jeff S. Jordan
Supervisory Attorney
Complaints Examination &
Legal Administration

Enclosure
Factual & Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Blaha for Congress and Jerry R.
Hilderbrand, as treasurer
Robert B. Blaha

MUR 6565

I. INTRODUCTION

This matter was generated by a Complaint filed by Gary Chacon alleging violations of the Federal Election Campaign Act of 1971, as amended ("Act") by Blaha for Congress and Jerry R. Hilderbrand in his official capacity as treasurer (the "Committee") and Robert B. Blaha. It was scored as a low-rated matter under the Enforcement Priority System, a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

In this matter, the Complainant, Gary Chacon, asserts that Robert B. Blaha, an unsuccessful candidate for Congress in Colorado's Fifth Congressional District, and the Committee violated the disclaimer provisions for televised communications under 2 U.S.C. § 441d(d)(1)(B)(ii) and 11 C.F.R. § 110.11(c)(3)(iii). According to the Complainant, the advertisement at issue contains a disclaimer that is defective in two ways: "1) The disclaimer does not run until the end of the ad because his logo fills up the screen in the final second or two; and 2) . . . the FEC law and rules state that in addition to the written 'paid for' disclaimer . . . television ads must include written 'authorization' line [sic] similar to what the candidate says." Compl. at 2. Specifically, the Complainant alleges that the written portion of the disclaimer included in the aired television advertisement merely states "Paid for and approved by Blaha for

1 Congress," when it should also have included language stating that the message had been
2 "approved by X person." *Id.*

3 The Committee, which also responds on behalf of Blaha, maintains that its televised
4 campaign advertisements complied with the Act and Commission regulations. Resp. at 1.
5 Specifically, the Committee takes the position that its advertisements contain oral statements of
6 approval by Blaha. *Id.* With respect to its written disclaimer, the Committee asserts that the
7 written statements at the end of the commercials are "clearly readable," last at least four
8 seconds, and include a "reasonable degree of color contrast" between the background and the
9 disclaimer statements. *Id.* Finally, the Committee disputes that the Act and Commission
10 regulations specifically require the disclaimer to include a written statement of approval by the
11 candidate. *Id.*

12 **B. Legal Analysis**

13 The Act requires that whenever a public communication is authorized and financed by a
14 candidate or his or her committee, the communication must include a disclaimer notice that
15 clearly states the communication has been paid for by the authorized political committee.
16 2 U.S.C. § 441d(a)(1); 11 C.F.R. § 110.11(b)(1). Furthermore, under the Act's "stand by your
17 ad" provisions,¹ a television communication paid for or authorized by a candidate's principal
18 campaign committee must include an oral statement by the candidate that identifies the candidate
19 and states that the candidate approved the communication. 2 U.S.C. § 441d(d)(1)(B); 11 C.F.R.
20 § 110.11(c)(3)(ii). A "similar" statement must also appear in writing at the end of the
21 communication in a clearly readable manner with a reasonable degree of color contrast between
22 the background and the printed statement, for a period of at least four seconds. 2 U.S.C.

¹ This is "colloquially known as a 'stand by your ad' requirement because it directly associates the candidate with the message he or she has authorized." Advisory Op. 2004-10 (Metro Networks).

§ 441d(d)(1)(B)(ii); 11 C.F.R. § 110.11(c)(3)(iii). The Commission has concluded that television advertisements did not meet requirements for a written candidate approval statement where the ads included only a written statement that the committee paid and a verbal statement of approval by the candidate. *See* MUR 5629 (Newberry) (the Commission found reason to believe that the Committee violated 2 U.S.C. § 441d where there was no written statement of candidate approval in the communication). *See also* MUR 6070 (Lyle Larson); MUR 5834 (Darcy Burner).

Here, based on the information supplied in the complaint and response, it appears that the advertisement contained sufficient information to clearly identify who paid for it, as well as an adequate spoken message of approval by the candidate. In prior matters involving written candidate approval statements where the communications appear to have contained sufficient identifying information to prevent the public from being misled as to who paid for them, the Commission has on occasion dismissed the matter as an exercise of prosecutorial discretion. *See* MUR 5834 (Darcy Burner) (the Commission exercised prosecutorial discretion and dismissed the case when a candidate failed to include a written statement of approval in televised campaign commercials but included a verbal statement of approval and a written statement of who paid); *but see* MUR 5629 (Newbury) (the Commission found reason to believe but took no further action).

Based on the facts presented and in consideration of Commission resources, the Commission exercised its prosecutorial discretion and dismissed this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Additionally, the Commission reminded Robert B. Blaha and Blaha for Congress and Jerry R. Hilderbrand, in his official capacity as treasurer, of the requirements under 2 U.S.C. § 441d(d)(1)(B)(ii) and 11 C.F.R. § 110.11(c)(3)(iii) regarding

- 1 written candidate approval statements. Finally, the Commission approved the Factual & Legal
- 2 Analysis, closed the file and approved the appropriate letters.
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