

BEFORE THE FEDERAL ELECTION COMMISSION

**ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT**

MUR: 7198

Complaint Receipt Date: Nov. 10, 2016

Response Date(s): Dec. 1, 2016

EPS Rating:

Respondents: Ronald Harold Johnson

Ron Johnson for Senate, Inc.

James J. Malczewski, as treasurer
(collectively the "Committee")

**Alleged Statutory/
Regulatory Violations:**

52 U.S.C. § 30120(d)(1)(B)

11 C.F.R. § 110.11(c)(3)(ii)-(iii)

The Complaint alleges that Johnson, a 2016 candidate for U.S. Senate in Wisconsin, and the Committee, violated the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations by airing a television ad critical of Johnson's opponent that failed to include a written "stand by your ad" disclaimer at the end of the ad.¹ Instead, the Complaint alleges that a written disclaimer was placed at the beginning of the ad.² The Committee acknowledges the error.³

The Act and Commission regulations require that television communications by candidates contain disclaimers, which include, among other things, a "stand by your ad" statement that identifies the candidate and states that the candidate approved the communication.⁴ The required statement must be spoken by the candidate, and must also appear

¹ Compl. at 2.

² *Id.* See also Resp. at 1. The ad, titled "In It For Himself" is available at <https://www.youtube.com/watch?v=iPuHYv1qyVg>.

³ Resp. at 1. The Committee acknowledges that it failed to include a disclaimer at the end of the ad, but responds that there was little risk that voters would be misled by the ad because the written disclaimer appeared at the ad's beginning, and Johnson's picture and spoken disclaimer appeared at the end.

⁴ 52 U.S.C. § 30120(d)(1)(B); 11 C.F.R. § 110.11(c)(3)(ii).

in clearly readable writing at the end of the communication.⁵ Although the Committee included both a written disclaimer at the beginning of the ad and a statement of approval from the candidate, the ad was technically noncompliant because the written disclaimer was not placed at the end of the ad.

Based on its experience and expertise, the Commission has established an Enforcement Priority System using formal, pre-determined scoring criteria to allocate agency resources and assess whether particular matters warrant further administrative enforcement proceedings. These criteria include (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations and other developments in the law. This matter is rated as low priority for Commission action after application of these pre-established criteria. Given that low rating, the technical nature of the violation, and the likelihood that the general public would not have been confused as to who sponsored and paid for the ad, we recommend that the Commission dismiss the allegations consistent with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources.⁶ We also recommend that the Commission close the file as to all Respondents and send the appropriate letters.

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⁵ 11 C.F.R. § 110.11(c)(3)(ii)-(iii).

⁶ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

7.11.17
Date

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