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In the Matter of)
 Ryan Zinke; Zinke for Congress;)
 and Paul Kilgore,)
 in his official capacity as Treasurer.)

MUR 8320

INTRODUCTION

This matter arises from a Complaint by the Montana Democratic Party alleging that Ryan Zinke, his authorized campaign committee Zinke for Congress, and Paul Kilgore in his official capacity as Treasurer (together, “Respondents”) violated 11 C.F.R. § 110.11(c)(3)(ii)’s stand-by-your-ad disclaimer provision when they broadcast a TV ad titled “Public Lands” (the “Ad”).¹ The Ad supported Ryan Zinke 2024’s candidacy for re-election to represent Montana’s First Congressional District.

The Commission should dismiss the Complaint because (1) the Ad complies with the regulation’s text; and, (2) even if the Ad did not comply with the regulation’s text, the Complaint alleges—at the very most—a technical, de minimis violation of one component of that regulation, and the Commission’s historical practice has been to dismiss complaints that make similar allegations.

APPLICABLE LAW

Commission regulations require that broadcast ads sponsored by a candidate’s authorized committee show the candidate and contain a verbal disclaimer spoken by the candidate. Specifically, under 11 CFR § 110.11(c)(3)(ii)

A communication transmitted through television or through any broadcast, cable, or satellite transmission, must include a statement that identifies the candidate and states that he or she has approved the communication. The candidate shall convey the statement either:

¹ The Complaint alleges that the Ad at issue can be viewed at the following link: <https://drive.google.com/drive/folders/1tsUA1fZiY9uVJv0fiPKtAGXWnOCRhPPq?usp=sharing>. Respondents’ counsel cannot access any content at that link. Based on the description in the Complaint, however, Respondent believes that the Ad at issue is the one available here: <https://www.youtube.com/watch?v=tzb0yVewVrM>.

(A) Through an unobscured, full-screen view of himself or herself making the statement, or

(B) Through a voice-over by himself or herself, accompanied by a clearly identifiable photographic or similar image of the candidate. A photographic or similar image of the candidate shall be considered clearly identified if it is at least eighty (80) percent of the vertical screen height.²

The Commission's website also provides guidance on this stand-by-your-ad requirement, which it describes as follows:

[R]adio and television communications (or any broadcast, cable or satellite transmission) that are authorized or paid for by a campaign require [that] the candidate must deliver an audio statement identifying themselves and stating that the candidate has approved of the communication. For example, "I am [candidate's name], a candidate for [federal office sought], and I approved this advertisement."

In a television ad, the disclaimer must be conveyed by:

- A full-screen view of the candidate making the statement; or
- A voiceover by the candidate with an image of the candidate occupying no less than 80 percent of the vertical screen height.³

There are additional disclaimer requirements for such ads, but the Complaint does not allege that Respondents violated any statute or regulation besides 11 C.F.R. § 110.11(c)(3)(ii). Accordingly, this response does not address any other requirements.

FACTUAL BACKGROUND

The facts are straightforward and generally undisputed. Respondents do not dispute that Zinke for Congress paid for the Ad, that Congressman Zinke approved the Ad, or that the Ad aired on broadcast television in the lead-up to the November 5, 2024 general election.

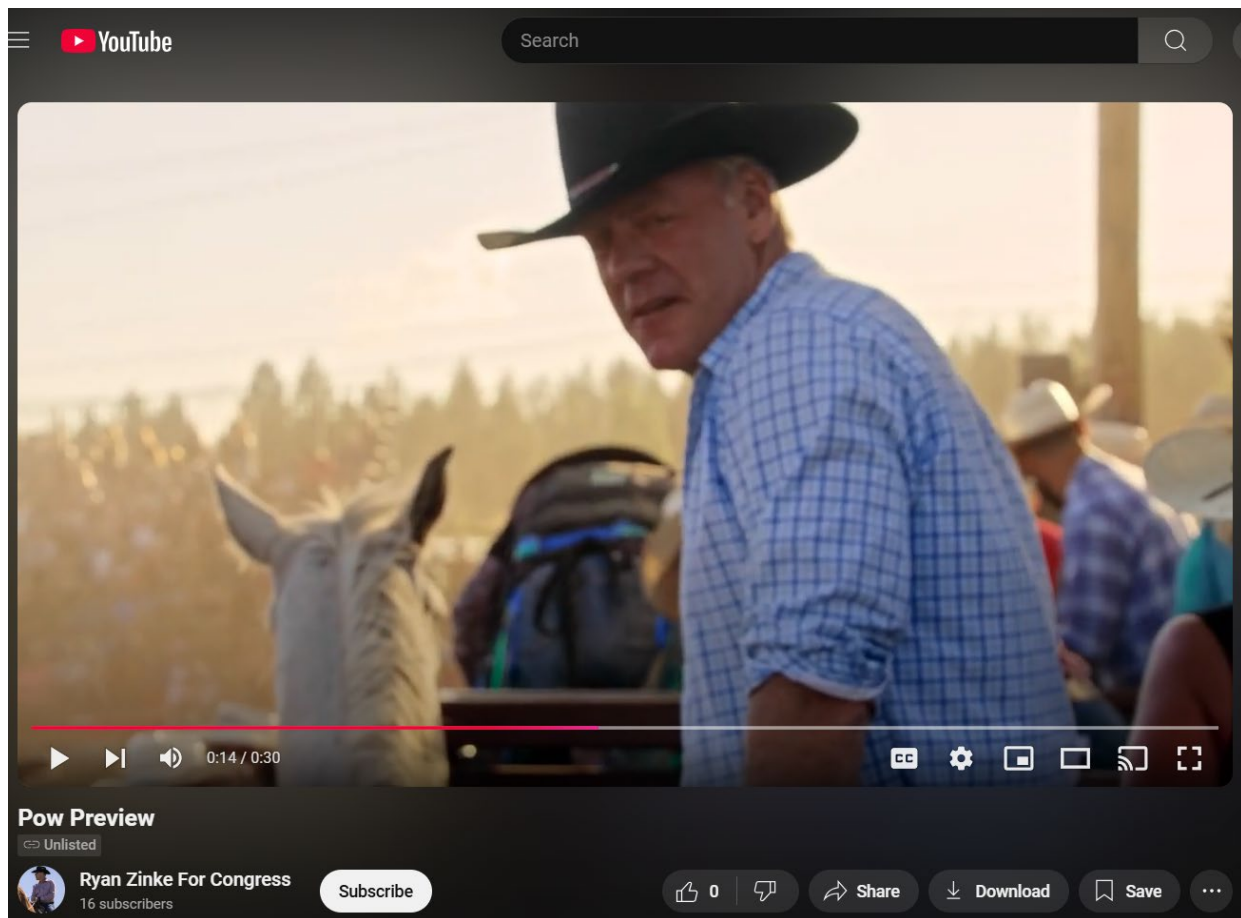
² 11 CFR § 110.11(c)(3)(ii); *see also* 52 U.S.C. § 30120(a).

³ *Advertising and Disclaimers*, Federal Election Comm'n, <https://www.fec.gov/help-candidates-and-committees/advertising-and-disclaimers/> (accessed 19 Nov. 2024).

The Complaint (at 2) admits that the Ad “includes a verbal statement by Mr. Zinke approving of the communication (‘I’m Ryan Zinke and I approve this message’),” in fulfillment of the first component of the stand-by-your-ad requirement.

The Complaint does not argue that Congressman Zinke is not shown in the thirty-second Ad. Nor could it. The ad heavily features Zinke’s image, as the four examples below show.

Ex. 1: Timestamps 0:13-0:15 feature Congressman Zinke

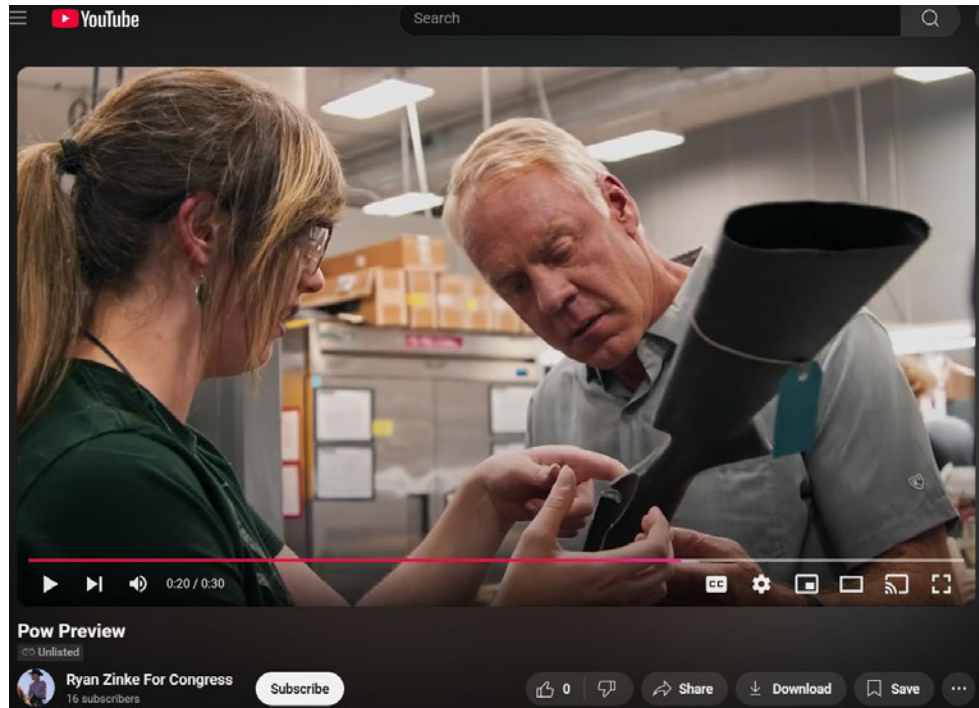
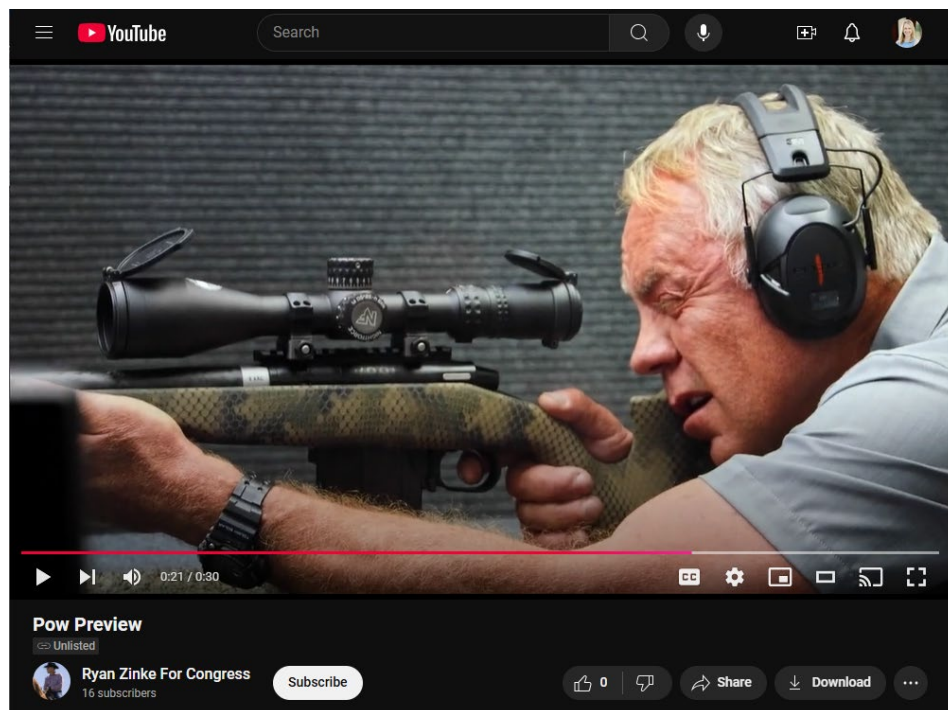


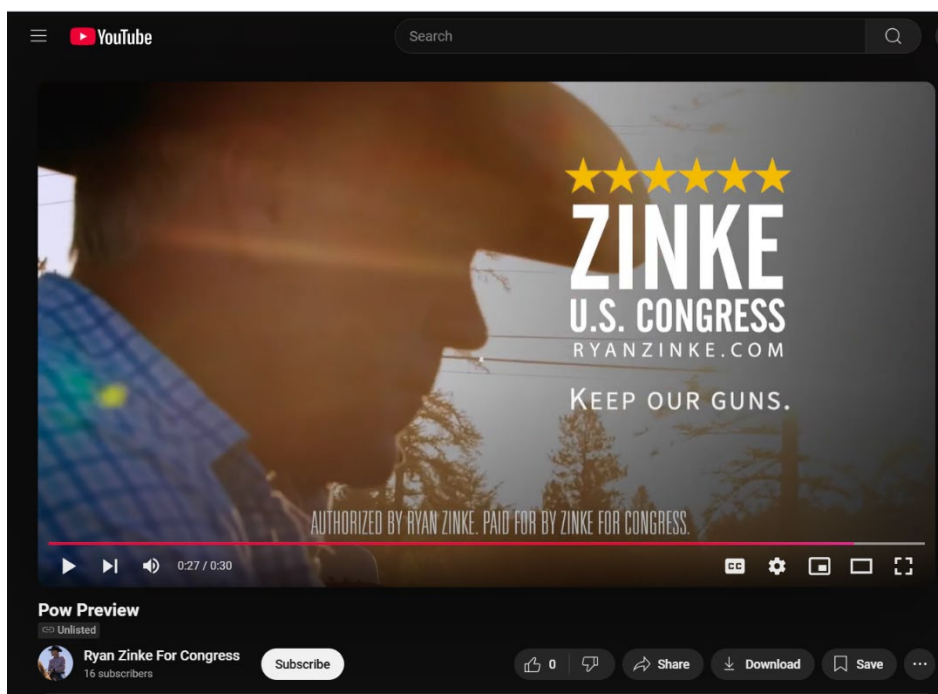
[continued on next page]

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Ex. 2: Timestamps 0:20-0:21 feature Congressman ZinkeEx. 3: Timestamps 0:21-0:22 feature Congressman Zinke

Ex. 4: Timestamps 0:26-0:30 feature Congressman Zinke

The Montana Democratic Party’s quarrel is with the final time Congressman Zinke is featured (Ex. 4 above), when he speaks the required vocal disclaimer, “I’m Ryan Zinke, and I approve this message.” The Complaint contends (at 3) that “while Mr. Zinke is making that [required] statement, the ad shows a blurry, shaky image of the side-profile of a man who may or may not be Ryan Zinke.”

ANALYSIS

The image component of the stand-by-your-ad requirement states that “A photographic or similar image of the candidate *shall be considered clearly identified* if it is at least eighty (80) percent of the vertical screen height.”⁴ The Complaint does not dispute that the Ad meets this 80-percent threshold. Accordingly, under the regulation’s plain text, Congressman Zinke “shall be considered clearly identified.”

But even under a looser interpretation of the regulation, the Complaint should still be dismissed. Its entire theory is that the “photographic or similar image” shown in the last four seconds of the Ad, during the verbal disclaimer, “may or may not be Ryan Zinke.” The Ad speaks for itself in this respect. Moreover, Zinke also appears three other times in the Ad

⁴ 11 CFR § 110.11(c)(3)(ii)(B) (emphasis added).

(including at 0:13-0:15, wearing the same distinctive hat and blue checkered shirt that he wears during the verbal disclaimer). Zinke is clearly identifiable throughout the ad.

But even if he were not, dismissal would still be appropriate under *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985), because the Complaint alleges—at most—a technical violation and the Commission’s historical practice has been to dismiss similar matters.

For example, in MUR 6042 (Pat Roberts), a complaint alleged that a TV ad violated the stand-by-your-ad requirement because, among other things, the candidate’s image was “purposely obscured.”⁵ The Commission’s Office of General Counsel (“OGC”) recommended that, “[d]ue to the technical nature of the alleged disclaimer violations and the apparent substantial compliance by respondents, and in furtherance of the Commission’s priorities and resources . . . the Commission should exercise its prosecutorial discretion and dismiss the matter [under] *Heckler v. Chaney*, 470 U.S. 821 (1985).”⁶ The Commission voted 6-0 to adopt the OGC’s recommendation.⁷

Similarly, in MUR 7162 (Mica for Congress), the complaint alleged that, “[w]hile the advertisement [at issue in Mica] includes an audio disclaimer spoken by John Mica and a written disclaimer at the beginning of the advertisement, it does not include a written disclaimer at the end of the advertisement. In addition, the written disclaimer fails to include a statement indicating that John Mica has approved the communication.”⁸ The Commission voted 5-0 to dismiss the matter under *Heckler*.⁹

The Commission also took this path in MUR 6416 (Scott Rigell for Congress). There, the complaint alleged that Rigell did not include a stand-by-your-ad disclaimer in a TV ad supporting his candidacy for Virginia’s Second Congressional District due to a broadcast error. OGC noted that the ad “contained sufficient identifying information to prevent the

⁵ General Counsel’s Report at 2, MUR 6042 (Pat Roberts), *available at* <https://www.fec.gov/files/legal/murs/6042/29044230727.pdf>.

⁶ *Id.*

⁷ Certification, MUR 6042 (Pat Roberts), *available at* <https://www.fec.gov/files/legal/murs/6042/29044230731.pdf>.

⁸ Complaint at 2, MUR 7162 (Mica for Congress), *available at* <https://www.fec.gov/files/legal/murs/7162/17044423527.pdf>.

⁹ Certification, MUR 7162 (Mica for Congress), *available at* <https://www.fec.gov/files/legal/murs/7162/17044423544.pdf>.

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public from being misled as to who paid for it,”¹⁰ and the Commission voted 4-0 to dismiss the matter under *Heckler*.¹¹

If the Commission were to find that the artistic filming style used in the Ad at issue here prevents Zinke from being “clearly identified” when he speaks the required disclaimer, it should dismiss this matter under *Heckler*. Indeed, the other disclaimer requirements are undisputedly met, the Ad is no longer airing, and enforcement against Respondents is not an optimal use of the Commission’s time and resources. This is particularly so where, as here, there is no indication that Respondents knowingly or deliberately failed to meet the requirements of stand-by-your-ad, and the Ad contains sufficient identifying information—both through written and spoken disclaimers, and images of Zinke throughout—to prevent the public from being misled as to who paid for it.

Accordingly, the Commission should dismiss the complaint in this Matter.

Respectfully Submitted,



Anne Marie Mackin
Counsel to Ryan Zinke, Zinke for Congress, and
Paul Kilgore, in his official capacity as Treasurer

¹⁰ Dismissal and Case Closure Under EPS, General Counsel’s Report at 4, MUR 6416 (Scott Rigell for Congress), available at <https://www.fec.gov/files/legal/murs/6416/11044301208.pdf>.

¹¹ Certification, MUR 6416 (Scott Rigell for Congress), available at <https://www.fec.gov/files/legal/murs/6416/11044301213.pdf>.