

RECEIVED
FEDERAL ELECTION
COMMISSION**BEFORE THE
FEDERAL ELECTION COMMISSION**

AUGUST 28 PM 1:13

Susan Glass

CELA

Evergreen, Colorado 80439

Complainant,

v.

Senator Cory Gardner
9227 E. Lincoln Ave. #200-234
Lone Tree, CO 80124Cory Gardner for Senate and Lisa Lisker, Treasurer
9227 E. Lincoln Ave. #200-234
Lone Tree, CO 80124

Respondents.

COMPLAINT

This complaint is filed under 52 U.S.C. § 30109(a)(1) against Senator Cory Gardner, Cory Gardner for Senate, and Lisa Lisker in her official capacity as treasurer of Cory Gardner for Senate (collectively, "Respondents") for violating the Federal Election Campaign Act of 1971, as amended (the "Act"), and Federal Election Commission (the "Commission" or "FEC") regulations. Respondents violated federal law and regulations when they authorized and made disbursements for the purpose of financing two different television advertisements that failed to comply with the FEC's disclaimer requirements. These requirements are straightforward and easy to follow for even first-time candidates, much less Senator Gardner who first ran for U.S. Senate six years ago. Breaking the FEC's disclaimer requirements may be a technical violation, but it is a serious one. The disclaimer requirements exist to ensure that Americans are always clearly and conspicuously informed of who paid for and authorized the electoral advertisements that attempt to influence their vote. Consequently, the Commission should immediately

investigate this pattern of repeated violations and take appropriate remedial action against Respondents.

FACTS

Cory Gardner is a current U.S. Senator from the State of Colorado. Senator Gardner is a candidate for re-election in 2020.¹ Cory Gardner for Senate is Senator Gardner's principal campaign committee and Lisa Lisker is its treasurer.²

Cory Gardner for Senate paid for, and Senator Cory Gardner authorized, a thirty (30) second television advertisement, entitled "Major Victories," that began airing on Tuesday, June 2, 2020.³ The advertisement included a verbal statement by Senator Gardner approving the communication ("I'm Cory Gardner and I approve this message").⁴ However, the image of Senator Gardner that accompanied this statement clearly occupied less than 80 percent of the vertical screen height, as shown below.⁵



¹ Cory Gardner, FEC Form 2, Statement of Candidacy (amended Jan. 27, 2015), <https://docquery.fec.gov/pdf/070/15020035070/15020035070.pdf>.

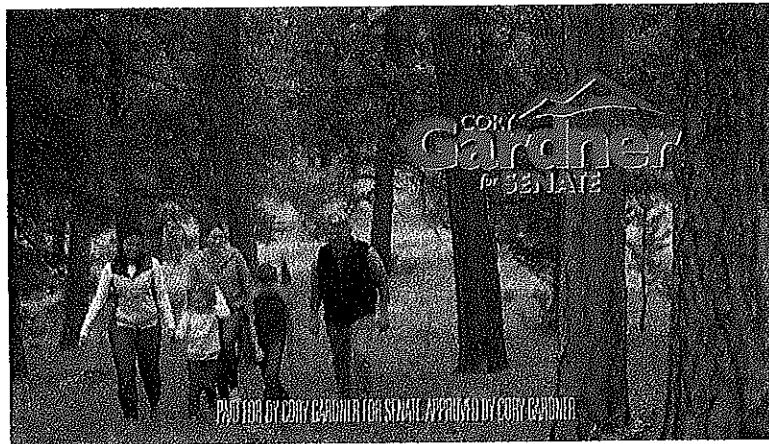
² Cory Gardner for Senate, FEC Form 1, Statement of Organization (amended July 24, 2020), <https://docquery.fec.gov/pdf/554/202007249260813554/202007249260813554.pdf>.

³ **PRESS RELEASE: New Gardner Ad Highlights Major Victories for Colorado**, CORY GARDNER FOR SENATE, <https://www.corygardnerforsenate.com/2020/06/02/press-release-new-gardner-ad-highlights-major-victories-for-colorado/> (published June 2, 2020).

⁴ *Id.*

⁵ *See id.*

On August 13, 2020, Respondents began airing another thirty (30) second television commercial, entitled “Both Parties,” with the same flaw.⁶ As Senator Gardner speaks the words, “I’m Cory Gardner and I approve this message,” his image on the screen takes up only a small percentage of the vertical screen height.⁷ As shown below, his image is much less than 80 percent of the screen.⁸



LEGAL DISCUSSION

Under the Act, a political committee must include a “paid for by” disclaimer on all public communications that it finances.⁹ Perhaps recognizing the outsized impact that television advertisements have in our elections, the Act and FEC regulations impose additional disclaimer requirements on television advertisements beyond the standard “paid for by” disclaimer. Any television advertisement paid for and authorized by a candidate and/or an authorized committee of the candidate must include specific disclaimers.¹⁰ First, during the television advertisement,

⁶ *New Ad: Gardner’s Commonsense Approach to Protecting the Environment*, CORY GARDNER FOR SENATE, <https://www.corygardnerforsenate.com/2020/08/13/new-ad-gardners-commonsense-approach-to-protecting-the-environment/> (published Aug. 13, 2020).

⁷ *See id.*

⁸ *See id.*

⁹ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a). A “public communication” is defined as “any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.” 11 C.F.R. § 100.26.

¹⁰ *See* 52 U.S.C. § 30120(d)(1)(B); 11 C.F.R. § 110.11(c)(3).

the candidate must make a statement (1) identifying him or herself and (2) stating that he or she approves of the advertisement.¹¹ The candidate may make this statement in two ways:

- (1) “[t]hrough an unobscured, full-screen view of himself or herself making the statement;” or
- (2) “[t]hrough a voice-over by himself or herself, accompanied by a clearly identifiable photographic or similar image of the candidate.”¹² *The candidate is “clearly identifiable” only if the photograph or similar image is “at least eighty (80) percent of the vertical screen height.”*¹³

Additionally, there must be a similar written disclaimer at the end of a television advertisement stating that the candidate approves the communication.¹⁴

Here, Respondents’ television advertisements do not comply with the Act and Commission’s regulations because there is no “clearly identifiable” image of Senator Gardner during the Senator’s voiced-over “stand-by-your-ad” statements. Neither image of Senator Gardner that appears on the screen during the two ads is 80 percent of the vertical screen height. Rather, one of the images is a video clip of Senator Gardner, which is playing within a small box on the screen, and Senator Gardner does not even take up the whole height of that box. The other advertisement has a video of Senator Gardner walking in the woods, in which Senator Gardner plainly takes up less than 50 percent of the screen and is shown from a distance that makes him even more difficult to identify. Therefore, Respondents have violated federal law at 52 U.S.C. § 30120(d)(1)(B)(i)(II) and the Commission’s regulations at 11 C.F.R. § 110.11(c)(3)(ii)(B) by failing to include a clearly identifiable image of Senator Gardner in multiple of its television ads.

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

¹² 11 C.F.R. § 110.11(c)(3)(ii); *see also* 52 U.S.C. § 30120(d)(1)(B)(i).

¹³ 11 C.F.R. § 110.11(c)(3)(ii)(B) (*emphasis added*).

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

There is no valid excuse or justification for Respondents' failure to comply with these disclaimer requirements. As an incumbent Member of the Senate, Senator Gardner has previously run for office and has experience producing, paying for, and authorizing political advertisements. Moreover, as an incumbent candidate, he is well-aware of the importance of disclaimers and the legal requirements that make them effective. Yet, Senator Gardner has repeatedly chosen to ignore these rules and run ads that make it difficult for the public to discern his identity from the screen. Respondents' repeated violations of the law undermine the very purpose of disclaimers: to ensure that all Americans know who pays for and sponsors political advertisements.

REQUESTED ACTION

As we have shown, Respondents appear to have violated the Act and Commission's regulations by twice failing to include a clearly identifiable image of Senator Gardner during the "stand-by-your-ad" disclaimer in Respondents' television advertisements. As such, we respectfully request that the Commission immediately investigate these violations and that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

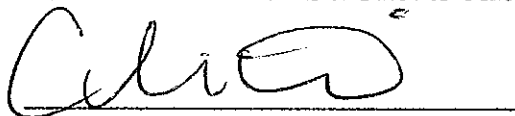
Sincerely,



Susan Glass

Evergreen, Colorado 80439

SUBSCRIBED AND SWORN to before me this 14 day of September 2020.

A handwritten signature in cursive script, appearing to read 'Christina Vasquez', written over a horizontal line.

Notary Public

My Commission Expires: 06/23/2024

**CHRISTINA VASQUEZ
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20204021806
MY COMMISSION EXPIRES 06/23/2024**