

BEFORE THE FEDERAL ELECTION COMMISSION
ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT

MUR 7806

Respondents: Cory Gardner for Senate and Lisa Lisker in her official capacity as treasurer
Cory Gardner

Complaint Receipt Date: Sept. 28, 2020

Response Date: Oct. 20, 2020

**Alleged Statutory
Regulatory Violations:**

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

The Complaint alleges that Cory Gardner for Senate aired two television advertisements in which the images of U.S. Senate candidate Cory Gardner that accompany his statement of approval do not comply with the disclaimer requirements of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations.¹ Specifically, the Complaint alleges that “Major Victories,” which began airing June 2, 2020, and “Both Parties,” which began airing August 13, 2020, include verbal statements by Gardner approving the communication, but the image of Gardner that accompanies the statements occupied less than 80 percent of the screen height, and thus was not a “clearly identifiable image” of the candidate as required by Commission regulations.² The Response asserts that both advertisements fully complied with the requirements of the Act and Commission regulations, noting that Gardner is plainly and obviously “clearly identifiable in each photographic image in the ads,” and that the Complaint mistakes the 80% safe harbor for a requirement.³

¹ Compl. at 1, 4 (Sept. 28, 2020).

² *Id.* at 2-4 (citing 11 C.F.R. § 110.11(c)(3)(ii)(B)).

³ Resp. at 1-2 (Oct. 20, 2020). The Response further states that the Explanation and Justification accompanying the Commission’s final rule expressly refers to the 80% standard as a “safe harbor provision.” *Id.* at 3 (citing Final Rule

1 Based on its experience and expertise, the Commission has established an Enforcement
 2 Priority System using formal, pre-determined scoring criteria to allocate agency resources and
 3 assess whether particular matters warrant further administrative enforcement proceedings. These
 4 criteria include (1) the gravity of the alleged violation, taking into account both the type of activity
 5 and the amount in violation; (2) the apparent impact the alleged violation may have had on the
 6 electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in
 7 potential violations and other developments in the law. This matter is rated as low priority for
 8 Commission action after application of these pre-established criteria. Given that low rating, the
 9 technical nature of the violation, and the unlikelihood the general public would have been confused
 10 as to whether the television ad was authorized by Gardner, we recommend that the Commission
 11 dismiss the Complaint consistent with the Commission's prosecutorial discretion to determine the
 12 proper ordering of its priorities and use of agency resources.⁴ We also recommend that the
 13 Commission close the file and send the appropriate letters.

14 Lisa J. Stevenson
 15 Acting General Counsel

16 Charles Kitcher
 17 Associate General Counsel

18 1/21/2022

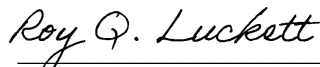
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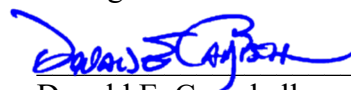
22 Claudio J. Pavia

23 Acting Deputy Associate General Counsel
 24 for Enforcement

25 

26 Roy Q. Luckett

27 Acting Assistant General Counsel

28 

29 Donald E. Campbell

30 Attorney

31 _____

32 on Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962,
 76,966 (Dec. 13, 2002)).

⁴ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).