

**BEFORE THE UNITED STATES
FEDERAL ELECTION COMMISSION**

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FEC MAIL CENTER

Campaign Legal Center
215 E Street, NE
Washington, DC 20002
(202) 736-2200

Democracy 21
2000 Massachusetts Avenue, NW
Washington, DC 20036
(202) 355-9600

v:

MUR No.

6789

Special Operations for America
2460 RT. 9
MALTA, NY 12020

Zinke for Congress
PO Box 1596
Helena, MT 59624-1596

Ryan K. Zinke
409 2nd Street W
Whitefish, MT 59937

COMPLAINT

1. This complaint is filed pursuant to 2 U.S.C. § 437g(a)(1) and is based on information and belief that Special Operations for America ("SOFA") (ID# C00523241), an independent expenditure-only committee, made an in-kind contribution to Zinke for Congress (ID # C00550871), the principal campaign committee of Ryan K. Zinke, a candidate for the U.S. House of Representatives, in violation of provisions of the Federal Election Campaign Act ("FECA"), 2 U.S.C. § 431, *et seq.*, and Commission regulations.
2. Further, this complaint is based on information and belief that Zinke for Congress (ID # C00550871), the principal campaign committee of Ryan K. Zinke, may have received

and accepted in-kind contributions from SOFA in the form of coordinated communications in violation of provisions of the Federal Election Campaign Act ("FECA"), 2 U.S.C. § 431, *et seq.*, and Commission regulations.

3. Specifically, based on published reports, complainants have reason to believe that SOFA financed the dissemination, distribution, or republication of campaign materials prepared by candidate Ryan Zinke, Zinke for Congress, and/or agent(s) of Ryan Zinke and/or Zinke for Congress. Under 11 CFR § 109.23(a), such financing "shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure"—*i.e.*, shall be considered a contribution by SOFA. Under 11 CFR § 109.23(a), such financing shall also be considered an in-kind contribution received and accepted by the candidate if the "dissemination, distribution, or republication of campaign materials is a coordinated communication under 11 CFR 109.21." Based on published reports, complainants have reason to believe that SOFA's dissemination, distribution, or republication of campaign materials prepared by candidate Ryan Zinke, Zinke for Congress, and/or agent(s) of Ryan Zinke and/or Zinke for Congress is a coordinated communication under 11 CFR § 109.21.
4. As an independent expenditure-only committee, SOFA is prohibited from contributing to congressional candidate Ryan Zinke and the Zinke for Congress committee. *See* Ad. Op. 2010-11 (Commonsense Ten).

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5. Federal law prohibits any person, including a non-multi-candidate political committee, from making contributions exceeding \$2,600 to a candidate's authorized political committee. *See* 2 U.S.C. § 441a(a)(1)(A); 11 CFR § 110.1(b).¹
 6. Federal law prohibits candidates and political committees from knowingly accepting any contribution or making any expenditure in violation of federal law and, further, prohibits any officer or employee of a political committee from knowingly accepting any contribution made for the benefit or use of any candidate, or making any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures. *See* 11 CFR § 110.9.
 7. "If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [the FECA] . . . [t]he Commission shall make an investigation of such alleged violation" 2 U.S.C. § 437g(a)(2); *see also* 11 CFR § 111.4(a) (emphasis added).

BACKGROUND

8. On June 14, 2012, SOFA filed with the Commission a Form 1 Statement of Organization, accompanied by a letter stating:

This committee intends to make independent expenditures, and consistent with the U.S. Court of Appeals for the District of Columbia Circuit decision in *SpeechNow v. FEC*, it therefore intends to raise funds in unlimited amounts. This committee will not use those funds to make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates or committees.

¹ *See also* FEC, *Contribution Limits 2013-14* (consumer price index adjustments to statutory limits), available at <http://www.fec.gov/pages/brochures/contriblimits.shtml>.

9. SOFA "was founded in July 2012 by CDR USN SEAL (retired) Ryan Zinke."²
10. On September 30, 2013, SOFA announced that Ryan Zinke was stepping down as chairman of SOFA.³ Announcing its new chairman several weeks later, SOFA explained: "Just recently, former SOFA Chairman Ryan Zinke stepped down to run for Congress in Montana."⁴
11. On October 21, 2013, less than one month after Ryan Zinke relinquished his title as chairman of SOFA, Zinke for Congress filed a Statement of Organization establishing itself as the principal campaign committee of Ryan Zinke's campaign for the U.S. House of Representatives seat for Montana's First District.
12. Since forming in June 2012, SOFA has followed through on its intention to accept funds in excess of the \$5,000 per-year limit applicable to non-candidate and non-party committees under 2 U.S.C. § 441a(a)(1)(C). SOFA has also seemingly accepted contributions of corporate treasury funds. In its October 2012 Quarterly Report, for example, SOFA reported receiving a total of \$10,000 in August 2012 from Mr. Kenneth A. Cohen and a \$10,000 contribution from Mr. Edwin Hagerty in September 2012. Also in its October 2012 Quarterly Report, SOFA reported accepting a \$15,000 contribution from Clyton Williams Energy, Inc. in September 2012 and a \$500 contribution from Cutten Animal Health Center, which is likely a corporation, in July 2012.

² SOFA, *About*, <http://www.soforamerica.org/about/> (last visited March 5, 2014).

³ See SOFA, *A message from Ryan Zinke*, Sept. 30, 2013, <http://www.soforamerica.org/news/page/2/>.

⁴ SOFA, *Special Operations for America Announces New Chairman*, Oct. 23, 2013, <http://www.soforamerica.org/news/page/2/>.

13. On January 8, 2014, the *Flint Report* reported:

Here's an exclusive first look at TV ads that will be hitting cable TV in Montana supporting US House candidate Ryan Zinke, a former state senator and commander at SEAL Team 6. The ads are being run by the Special Operations for America PAC.

When asked about the size of the buy, especially at such an early stage in the 2014 election cycle, SOFA Chairman Gary Stubblefield offered up this statement:

Special Operations for America (SOFA) launched a TV advertising campaign in support of former Navy SEAL Ryan Zinke's campaign for Montana's congressional seat. The campaign is running on statewide cable TV starting Wednesday, January 8. Gary Stubblefield, SOFA's chairman, described the ad buy as "significant" and "in keeping with SOFA's mission to elect individuals to Congress who will fight for individual freedom, limited government and free enterprise." The TV campaign consists of two 15 second spots that highlight Zinke's military service and his deep roots as a third-generation Montanan. Concurrently, a radio advertising campaign is running that emphasizes Zinke's military background as well as his support for the Second Amendment, Energy Independence and opposition to Obamacare.⁵

14. The January 8, 2014, *Flint Report* article includes both of SOFA's ads as embedded videos linked to SOFA's YouTube page.⁶ Complainants reviewed both videos. Each video has a run-time of 15 seconds; each video contains two still photos of Ryan Zinke. In the video labeled "Television Ad," a photo of Ryan Zinke wearing a blue blazer with a lapel pin and a blue plaid dress shirt, with a green tree in the background, appears at the 3-second mark for approximately 1 second, followed by a photo of Ryan Zinke with his family that appears at the 6-second mark and remains on screen for the final 9 seconds of

⁵ Aaron Flint, *VIDEO: SOFA Hits Airwaves for Zinke in Montana*, *The Flint Report* (Jan. 8, 2014) at <http://www.northernbroadcasting.com/Talk/FlintReportHeadlines/tabid/519/ID/10500/VIDEO-SOFA-Hits-Airwaves-for-Zinke-in-Montana.aspx#.Us1gwumEfwg.twitter> (last visited March 5, 2014).

⁶ *Id.*; see also <http://www.youtube.com/user/SOforAmerica?feature=watch> (last visited March 5, 2014).

the ad. Photos of Ryan Zinke are on screen for 10 seconds of the 15-second "Television Ad."⁷

15. In the video labeled "Television Ad 2," the same photo of Ryan Zinke wearing a blue blazer appears at the 3-second mark for approximately 1 second, followed by the same photo of Ryan Zinke with his family, which appears at the 8-second mark and remains on screen for the final 7 seconds of the ad. Photos of Ryan Zinke are on screen for 8 seconds of the 15-second "Television Ad 2."⁸
16. Two photos similar, but not identical, to the photos used in SOFA's "Television Ad" and "Television Ad 2" appear on the Ryan Zinke for Congress Facebook page. A close-up of Ryan Zinke in a blue blazer with a lapel pin and blue plaid dress shirt, with a green tree in the background can be found on the Ryan Zinke for Congress Facebook page here: <https://www.facebook.com/photo.php?fbid=445948598859018&set=pb.437061983081013.-2207520000.1389393699.&type=3&theater>. And a photo of Ryan Zinke with his family—with the same background as, but in different poses than, the photo used in SOFA's "Television Ad" and "Television Ad 2"—can be found on the Ryan Zinke for Congress Facebook page here: <https://www.facebook.com/photo.php?fbid=485543641566180&set=pb.437061983081013.-2207520000.1389393694.&type=3&theater>.
17. Complainants were unable to find any of these photos, or any photos like them, on the Zinke for Congress website (<http://www.ryanzinke.com/home>).

⁷ *Id.*

⁸ *Id.*

18. The fact that the two photos used by SOFA in its "Television Ad" and "Television Ad 2" are nearly identical to those found on the Ryan Zinke for Congress Facebook page, and appear to be professionally-taken portrait photos, strongly suggests that both the photos in the SOFA ads and the photos on the Ryan Zinke for Congress Facebook page are from photo shoots arranged and paid for by Ryan Zinke and/or the Zinke for Congress committee.
19. The fact that the two photos used by SOFA in its "Television Ad" and "Television Ad 2" are very similar to but not identical to any photos found on the Ryan Zinke for Congress Facebook page and are not found on the Zinke for Congress website strongly suggests that the photos were not obtained by SOFA from the public domain and, instead, strongly suggests that Ryan Zinke and/or the Zinke for Congress committee directly provided these photos to SOFA.

"DISSEMINATION, DISTRIBUTION, OR REPUBLICATION OF CANDIDATE CAMPAIGN MATERIALS"
UNDER FEDERAL LAW

20. Commission regulation 109.23 provides:

The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, the candidate's authorized committee, or an agent of either of the foregoing shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure. The candidate who prepared the campaign material does not receive or accept an in-kind contribution, and is not required to report an expenditure, unless the dissemination, distribution, or republication of campaign materials is a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37.

11 CFR § 109.23(a) (emphasis added).

21. Subsection (b) of section 109.23 provides five exceptions to the general rule treating the financing of republication of campaign materials as a contribution by the republisher—

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(1) republication by the candidate who prepared the material, (2) republication of material by an opponent of the candidate who prepared the material, (3) press exemption, (4) brief quote of material by a person expressing her own views, and (5) republication by a party committee as a coordinated expenditure. None of these exceptions apply to SOFA's republication of Ryan Zinke's photos at issue here. See 11 CFR § 109.23(b).

22. The Commission explained this rule as follows:

[W]hether or not the dissemination, distribution, or republication qualifies as a coordinated communication under 11 CFR 109.21, paragraph (a) of section 109.23, like former section 109.1(d)(1), requires the person financing such dissemination, distribution, or republication always to treat that financing, for the purposes of that person's contribution limits and reporting requirements, as an in-kind contribution made to the candidate who initially prepared the campaign material. In other words, the person financing the communication must report the payment for that communication if that person is a political committee or is otherwise required to report contributions. Furthermore, that person must count the amount of the payment towards that person's contribution limits with respect to that candidate under 11 CFR 110.1 (persons other than political committees) or 11 CFR 110.2 (multicandidate political committees), and with respect to the aggregate biannual contribution limitations for individuals set forth in 11 CFR 110.5.

Coordinated and Independent Expenditures, Final Rules & Explanation & Justification, 68 Fed. Reg. 421, 442 (Jan. 3, 2003) (emphasis added).

23. The Commission went on to explain that a commenter in the rulemaking proceeding had proposed an exception from the rule "to cover republication and distribution of original campaign material that already exists in the public domain, such as presentations made by candidates, biographies, positions on issues or voting records." *Id.* The Commission, however, "decline[d] to promulgate a 'public domain' exception because such an exception could 'swallow the rule,' given that virtually all campaign material that could be republished could be considered to be 'in the public domain.'" *Id.*

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24. The Commission elaborated on the intersection between this “dissemination, distribution, or republication” rule and the rule on coordinated communications at 11 CFR § 109.21, explaining: “In the event that a campaign retains the copyright to its campaign materials, and the campaign materials are thus not in the public domain as a matter of law, this means that the republisher would presumably have to obtain permission from the campaign to republish the campaign materials, raising issues of authorization or coordination.” 68 Fed. Reg. at 442–43.
25. Based on published reports regarding SOFA’s “Television Ad” and “Television Ad 2,” complainants have reason to believe that SOFA has financed the republication of campaign materials—namely two photos—“prepared by” Ryan Zinke or his agent(s). The photos appear on screen for half of the 15-second ads and, therefore, do not qualify for the “brief quote” exception at 11 CFR 109.23(b)(4). This financing by SOFA, therefore, “shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities” of SOFA under 11 CFR § 109.23(a) (emphasis added).

**PROHIBITION ON CONTRIBUTIONS BY INDEPENDENT EXPENDITURE-ONLY COMMITTEES TO
CANDIDATE COMMITTEES**

26. In Advisory Opinion 2010-11 (Commonsense Ten), the Commission interpreted and applied court decisions in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*) and *Citizens United v. FEC*, 130 S. Ct. 876 (2010), and opined that a committee that “intends to make only independent expenditures” and that “will not make any monetary or in-kind contributions (including coordinated communications) to any other political committee or organization” is permitted to solicit and accept unlimited

contributions from individuals, corporations, labor organizations and other political committees. Ad. Op. 2010-11 at 2-3.

27. The Commission included as "Attachment A" to Advisory Opinion 2010-11 a form letter to be used by such newly-sanctioned "independent expenditure-only" committees when registering with the Commission. The form letter indicates the committee's intention to raise unlimited funds and states: "This committee will not use those funds to make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates or committees."
28. As noted in ¶8, above, SOFA registered with the Commission as an independent expenditure-only committee on June 14, 2012 and included with its Statement of Organization a letter indicating that it would not use its funds "to make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates or committees."
29. Based on published reports, complainants have reason to believe that SOFA violated the requirement that it not "make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates" by financing republication of campaign materials prepared by Ryan Zinke or his agent(s), which "shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities" of SOFA under 11 CFR § 109.23.

IN-KIND CONTRIBUTIONS IN THE FORM OF PAYMENTS FOR COORDINATED COMMUNICATION

30. The Commission's coordinated communication regulation provides:

A payment for a coordinated communication . . . is an in-kind contribution . . . to the candidate, authorized committee, or political party committee with whom or which it is coordinated, . . . and must be reported as an

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expenditure made by that candidate, authorized committee, or political party committee

11 CFR § 109.21(b)(1).

31. The Commission's regulations further make clear that a candidate who prepares campaign material that is that is disseminated, distributed, or republished by another receives and accepts an in-kind contribution, and is required to report an expenditure, if the dissemination, distribution, or republication of campaign materials is a coordinated communication under 11 CFR § 109.21. See 11 CFR § 109.23.
32. Under the coordinated communication regulation, a communication is coordinated with a candidate and/or that candidate's authorized committee when the communication (1) is paid for, in whole or in part, by a person other than the candidate or committee; (2) satisfies at least one of the "content standards" in the regulation; and (3) satisfies at least one of the "conduct standards" in the regulation. 11 CFR § 109.21(a).
33. The "content standard" of the regulation are met if the communication "disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate's authorized committee" 11 CFR § 109.21(c)(2).
34. The "content standard" of the regulation are also met if the communication "expressly advocates . . . the election or defeat of a clearly identified candidate for Federal office." 11 CFR § 109.21(c)(3).
35. The "conduct standard" of the regulation is met if the candidate or authorized committee is materially involved in decisions regarding, for example, the content of the communication, so long as the information material to the creation of the communication was not obtained from a publicly available source. 11 CFR § 109.21(d)(2).

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36. The "conduct standard" of the regulation is also met if the communication is produced after one or more substantial discussions about the communication between the person paying for the communication and the candidate who is clearly identified in the communication and/or that candidate's authorized committee. 11 CFR § 109.21(d)(3).
37. With respect to the dissemination, distribution, or republication of campaign material, the conduct standards of the coordinated communication regulation shall only be satisfied on the basis of conduct by the candidate or candidate's authorizing committee that occurs after the original preparation of the campaign materials. 11 CFR 109.21(d)(6).
38. Based on published reports, complainants have reason to believe that SOFA's "Television Ad" and "Television Ad 2" constitute coordinated communications under 11 CFR § 109.21. SOFA paid to produce and distribute the ads. Both ads meet the "content standards" at section 109.21(c)(2) (dissemination of campaign materials) and section 109.21(c)(3) (express advocacy). Both ads meet the "conduct standard" at section 109.21(d)(2) (material involvement); Ryan Zinke's and/or his authorized committee's provision of not-publicly-available photos to SOFA constitutes material involvement in decisions regarding the content of SOFA's communications. The ads may likewise meet one or more of the other conduct standards.

PROHIBITION ON CANDIDATE RECEIPT OF IN-KIND CONTRIBUTIONS EXCEEDING \$2,600 FROM NON-MULTICANDIDATE POLITICAL COMMITTEE

39. Contributions by a non-multicandidate political committee to any candidate and his authorized committees may not exceed, in the aggregate, \$2,600 per election in the 2013-

14 election cycle. *See* 2 U.S.C. § 441a(a)(1) (adjusted for changes in the Consumer Price Index pursuant to 2 U.S.C. § 441a(c)).⁹

40. Contributions to a candidate include any expenditures made by any person in cooperation, consultation, or concert with a candidate—i.e., payments for coordinated communications. *See* 2 U.S.C. § 441a(a)(7)(B); *see also* 11 CFR § 109.21(b).
41. Based on published reports, complainants have reason to believe that SOFA has made, and the Zinke for Congress committee has accepted, in-kind contributions exceeding \$2,600 in connection with the 2014 primary election, in the form of payments for coordinated communications in violation of the contribution limit established by 2 U.S.C. § 441a(a)(1)(A).

POLITICAL COMMITTEE REPORTING AND DISCLOSURE REQUIREMENTS

42. Federal law requires political committees to report and disclose contributions made to other political committees, as well as contributions received from other political committees. *See* 2 U.S.C. § 434(b).
43. The Commission's coordinated communication regulation provides that a payment for a coordinated communication is an in-kind contribution to the candidate with whom it is coordinated and "must be reported as an expenditure made by that candidate" 11 CFR § 109.21(b)(1); *see also* 11 CFR § 109.23.
44. Based on published reports, and the status of SOFA as an independent expenditure-only political committee, complainants have reason to believe that SOFA and the Zinke for Congress committee will not properly report SOFA's payments to produce and

⁹ *See Contribution Limits 2013-14 at*
<http://www.fec.gov/pages/brochures/contriblimits.shtml>.

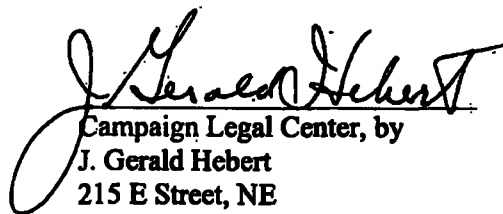
disseminate "Television Ad" and "Television Ad 2" as in-kind contributions from SOFA to the Zinke for Congress committee and as expenditures by the Zinke for Congress committee.


PRAYER FOR RELIEF

45. Wherefore, the Commission should find reason to believe that SOFA, Ryan Zinke and the Zinke for Congress committee have violated 2 U.S.C. § 431 *et seq.*, including 2 U.S.C. § 441a as applied by 11 CFR §§ 109.21 and 109.23, and the reporting and disclosure requirements of 2 U.S.C. § 434, and conduct an immediate investigation under 2 U.S.C. § 437g(a)(2). Further, the Commission should determine and impose appropriate sanctions for any and all violations, should enjoin the respondents from any and all violations in the future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

March 5, 2014

Respectfully submitted,


Campaign Legal Center, by
J. Gerald Hebert
215 E Street, NE
Washington, DC 20002
(202) 736-2200


Democracy 21, by
Fred Wertheimer
2000 Massachusetts Avenue, NW
Washington, DC 20036
(202) 355-9600

Paul S. Ryan
The Campaign Legal Center
215 E Street, NE
Washington, DC 20002

Counsel to the Campaign Legal Center

Donald J. Simon
Sonosky, Chambers, Sachse
Endreson & Perry LLP
1425 K Street, NW—Suite 600
Washington, DC 20005

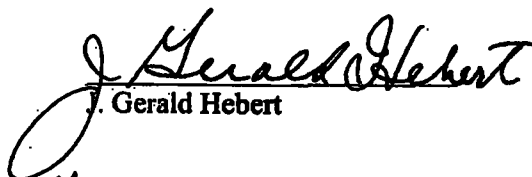
Counsel to Democracy 21

VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn to pursuant to 18 U.S.C. § 1001.

For Complainant Campaign Legal Center

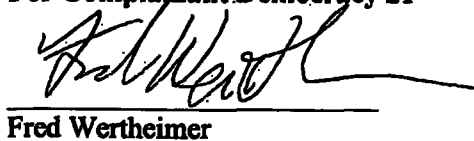

J. Gerald Hebert

Sworn to and subscribed before me this 31 day of March, 2014.

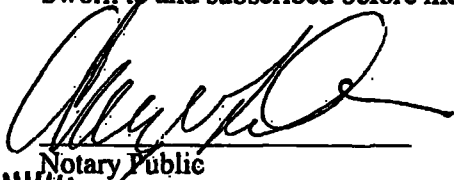

Notary Public

CHERYL L. OLSON
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires October 31, 2014

For Complainant Democracy 21


Fred Wertheimer

Sworn to and subscribed before me this 31 day of March, 2014.


Notary Public

CHERYL L. OLSON
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires October 31, 2014