



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

James Matlock

FEB 26 2019

Lenoir City, TN 37771

RE: MUR 7428
James Matlock, *et al.*

Dear Mr. Matlock:

On July 20, 2018, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On February 21, 2019, the Commission found, on the basis of the information in the complaint, that there is no reason to believe that you violated Section 30118(a) of the Act. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Nicholas Bamman, the attorney assigned to this matter, at (202) 694-1628.

Sincerely,

Lynn Y. Tran
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Matlock for Congress and Mark Hackney
in his official capacity as treasurer
Matlock Tire Service, Inc.
James Matlock
Bingham Group, Inc.
Lisa Bingham
Mark Hackney

MUR: 7428

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by

14 Andrew Davis. *See* 52 U.S.C. § 30109(a)(1). The Complaint alleges that James Matlock, an
15 unsuccessful 2018 Republican primary candidate for Tennessee’s Second Congressional District,
16 violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by coordinating
17 communications with his business, Matlock Tire Service, Inc. (“Matlock Tire”). Specifically, the
18 Complaint alleges that Matlock and Matlock Tire coordinated a television ad promoting
19 Matlock’s candidacy through a common media vendor, the Bingham Group, Inc., resulting in a
20 prohibited in-kind corporate contribution from Matlock Tire to Matlock’s campaign committee,
21 Matlock for Congress and Mark Hackney in his official capacity as treasurer (“Committee”).¹
22 However, the ad falls within the commercial transaction safe harbor of the coordinated
23 communication regulations because it is consistent with ads Matlock Tire ran prior to Matlock’s
24 candidacy, and the ad does not promote, attack, support, or oppose Matlock or any other federal
25 candidate. Accordingly, the Commission finds no reason to believe that Respondents violated
26 52 U.S.C. § 30118(a).

¹ Lisa Bingham, the principal of the Bingham Group, and Mark Hackney, Matlock for Congress's treasurer, were both named in their personal capacities; however, the Complaint does not allege cognizable violations against either of them in their personal capacities.

1 **II. FACTUAL BACKGROUND**

2 Matlock declared his candidacy on August 3, 2017, and designated Matlock for Congress
3 as his principal campaign committee.² Matlock lost the Republican primary election on August
4 2, 2018. Matlock owns Matlock Tire, a Tennessee corporation specializing in tire service and
5 repair.³ According to its website, Matlock Tire has been in business for over 60 years and has
6 four locations in eastern Tennessee, three of which are located within Tennessee's Second
7 District.⁴

8 The Complaint alleges that Matlock Tire made a prohibited corporate contribution to the
9 Committee by airing television ads in the Second District "for the sole purpose of" promoting
10 Matlock's candidacy.⁵ The Complaint specifically identifies only one such ad, "Matlock 2018
11 Family," which purportedly ran during the week of June 18, 2018.⁶ The ad begins by displaying
12 the words "MATLOCK serious about service" for several seconds, after which Matlock and
13 members of his family say:

14 MATLOCK: Hi, I'm Jimmy Matlock of Matlock Tire Service and
15 for over 65 years we have been serving east Tennessee and we just
16 wanted to say thank you.

17 MATLOCK's MOTHER: We have [inaudible] good service and
18 they come back again and again.

² See Matlock for Congress, Statement of Organization (Aug. 3, 2017).

³ See Resp. at 2 (Aug. 6, 2018).

⁴ MATLOCK TIRE SERVICE & AUTO REPAIR, <https://matlocktireservice.com/> (last visited Dec. 11, 2018). The four locations are in Farragut, Athens, Maryville, and Lenoir City. Although Athens, Tennessee, is not within Tennessee's Second Congressional District, it is only approximately 30 miles to the southwest.

⁵ Compl. at 2 (July 17, 2018); The Bingham Group, *Matlock 2018 Family*, VIMEO, <https://vimeo.com/262852627> (last visited Dec. 11, 2018) (uploaded Apr. 2, 2018).

⁶ Compl. at 2.

1 REAGAN MATLOCK (3rd Generation Manager): Because our
2 employees have been here for many years I think of them as family
3 because these people have been here before I was born.

4 JOE MATLOCK (3rd Generation Manager): We hope that is
5 something unique to us small businesses that we are a third
6 generation and can provide a family atmosphere that people don't
7 get other places.

8
9 The ad concludes with displays of the Matlock Tire logo and pictures of four coupons.⁷

10 The Complaint argues that Matlock Tire coordinated the ads with Matlock using a
11 common vendor, the Bingham Group, and that Matlock Tire changed the content of the ads that
12 it previously ran from promoting the business to exclusively promoting Matlock.⁸ As additional
13 evidence of the alleged coordination, the Complaint argues that the Committee did not buy any
14 broadcast airtime during the two weeks that the ad ran in late June, although it continued to buy
15 cable time.⁹ By comparison, the Committee spent anywhere between approximately \$12,000 to
16 \$38,000 per week for broadcast airtime in June and July of 2018.¹⁰ Moreover, the Complaint
17 alleges that the ad described the decades Matlock Tire has been in business in eastern Tennessee,
18 a theme present in one of the Committee's ads, and Matlock Tire made its ad buys on the same
19 channels as the Committee.¹¹

⁷ *Matlock 2018 Family*, *supra* note 5. The Complaint includes an example of a prior Matlock Tire ad in an effort to demonstrate the change in marketing entitled "Prime Match Month," which highlights a price match program that Matlock Tire offered. *See* The Bingham Group, *Matlock Tire - Price Match Month*, YOUTUBE, <https://www.youtube.com/watch?v=IRyYRGE3ld4> (last visited Dec. 11, 2018) (published Sept. 18, 2015).

⁸ *See* Compl. 2-3.

⁹ *Id.* at 3, Ex. A (circled portion).

¹⁰ *Id.* at Ex. B.

¹¹ *See id.* at 2, 3, Exs. A-B. The Committee's ad the Complaint refers to is entitled "The Tire Guy," in which Matlock states that he had "spent the last 47 years changing your family's tires." Jimmy Matlock, *Matlock for Congress | The Tire Guy*, YOUTUBE, <https://youtu.be/TK-CBoLAZ9w> (last visited Dec. 11, 2018) (published June 4, 2018). The chart in Exhibit B reports ad buys week-to-week. The chart reveals that the Committee spent nothing prior to June, had ad buys for the first two weeks of June, spent nothing in the last two weeks of June, and then continued buying ads for the month of July.

1 Respondents submitted a joint response denying the allegations.¹² Respondents argue
2 that the commercial transaction safe harbor applies because Matlock Tire has consistently run
3 television ads featuring Matlock as the company's spokesperson.¹³ The Response identifies five
4 Matlock Tire ads in which Matlock and his family feature prominently both before and after
5 Matlock declared his candidacy.¹⁴ The Response also denies that Matlock Tire subsidized the
6 campaign's advertising needs and attaches a chart indicating that Matlock Tire spent relatively
7 consistently on advertising during 2018.¹⁵ Matlock Tire spent \$15,610 in May, \$10,610 in June,
8 and \$8,585 in July for television, excluding cable.¹⁶ These amounts represent a fraction of what
9 Matlock Tire spent on other mediums, including cable television, "ViaMedia," radio, and print.¹⁷

10 Respondents further assert that the Complaint's common vendor argument is factually
11 erroneous. While Matlock Tire has used the Bingham Group to produce its ads for many years,
12 the Committee used Southpaw Content, Inc. and Flexpoint Media as its media vendors.¹⁸ The
13 Committee's reports with the Commission disclose expenditures of \$223,970 to Flexpoint
14 Media, \$15,000 to Southpaw Content, and only \$4,500 to the Bingham Group for a "Magazine
15 Spread."¹⁹

12 Resp. at 1.

13 . . . *Id.* at 2.

14 *Id. at Ex. B.*

15 *Id.* at Ex. A.

16

Id.

17

Id.

18

Id. at 2.

¹⁹ See Matlock for Congress FEC Disclosure reports, <https://www.fec.gov/data/committee/C00652396/>. The Committee reported an additional in-kind expenditure of \$1,800 to Lisa Bingham, the principal of the Bingham Group, for “video production and event balloons.” Matlock for Congress, Second Amended Year-End 2017 Report at 9 (Mar. 19, 2018).

1 **III. LEGAL ANALYSIS**
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4 The Act prohibits corporations from making contributions to federal candidates or their
5 committees, and it prohibits federal candidates or their committees from knowingly accepting
6 corporate contributions.²⁰ Expenditures made by any person "in cooperation, consultation, or
7 concert with, or at the request or suggestion of" a candidate or his authorized committee or agent
8 qualify as an in-kind contribution to the candidate and must be reported as expenditures made by
the candidate's authorized committee.²¹

9 A communication that is coordinated with a candidate or his authorized committee is
10 considered an in-kind contribution and is subject to the limits, prohibitions, and reporting
11 requirements of the Act.²² The Commission's regulations provide that a communication is
12 coordinated with a candidate, his authorized committee, or agent of either, if it meets a three-
13 prong test set forth in the Commission's regulations: (1) it is paid for, in whole or in part, by a
14 person other than the candidate or authorized committee; (2) it satisfies a content standard in
15 11 C.F.R. § 109.21(c);²³ and (3) it satisfies a conduct standard in 11 C.F.R. § 109.21(d).²⁴ All

²⁰ 52 U.S.C. § 30118(a).

²¹ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. §§ 109.20(a), (b).

²² 52 U.S.C. § 30116; 11 C.F.R. § 109.21(b).

²³ The content standards include: (1) a communication that is an electioneering communication under 11 C.F.R. § 100.29(a); (2) a public communication that disseminates, distributes, or republishes campaign materials; (3) a public communication containing express advocacy; or (4) a public communication that, in relevant part, refers to a clearly identified House or Senate candidate, is publicly distributed or disseminated 90 days or fewer before a primary or general election, and is directed to voters in the jurisdiction of the clearly identified candidate, and (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c).

²⁴ The six types of conduct between the payor and the candidate's committee, whether or not there is formal agreement or collaboration, which can satisfy the conduct prong, includes: (1) a request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee or independent contractor; and (6) dissemination, distribution, or republication of campaign material. 11 C.F.R. § 109.21(d).

1 three prongs must be satisfied for a communication to be considered coordinated under these
2 regulations.²⁵

3 The coordination regulations provide a safe harbor that excludes from the definition of a
4 coordinated communication any public communication in which a federal candidate is clearly
5 identified only in his or her capacity as the owner or operator of a business that existed prior to
6 the candidacy, so long as the public communication does not promote, attack, support, or oppose
7 ("PASO") that candidate or another candidate who seeks the same office, and so long as the
8 communication is consistent with other public communications made by the business prior to the
9 candidacy in terms of the medium, timing, content, and geographic distribution.²⁶ The
10 Commission has explained that the safe harbor was specifically designed to exempt *bona fide*
11 business communications from the coordination regulations.²⁷

12 Assuming arguendo that the communication satisfies all three prongs, the ad falls within
13 the commercial transaction safe harbor.²⁸ First, as discussed in the ad, Matlock Tire has been in

²⁵ 11 C.F.R. § 109.21(a); *see also* Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 453 (Jan. 3, 2003) (Explanation and Justification) ("Coordinated and Independent Expenditures E&J").

²⁶ 11 C.F.R. § 109.21(i).

²⁷ Coordinated Communications, 75 Fed. Reg. 55,947, 55,959 (Sept. 15, 2010) (Explanation and Justification) ("Coordinated Communications E&J"). The Commission explained that the safe harbor resulted from coordinated communications in MURs 5410 (Oberweis) and 5517 (Stork for Congress), where the Commission found reason to believe that a candidate and his business coordinated communications by the business running ads that featured the candidate within the relevant time windows prior to the election. *See* Factual & Legal Analysis at 5, MUR 5410 (Oberweis Dairy, Inc.) ("F&LA"); F&LA at 7, MUR 5517 (Stork for Congress). The Coordinated Communications E&J refers to a third similar matter, MUR 6013 (Friends of Peter Teahan), in which the Commission dismissed the matter pursuant to its prosecutorial discretion. *See* Cert. at 1, MUR 6013 (Friends of Peter Teahan). "To avoid capturing such advertising in the future in the coordinated communications rules, the Commission proposed a new safe harbor for *bona fide* business communications." Coordinated Communications E&J, 75 Fed. Reg. at 55,959.

²⁸ Cf. F&LA at 5, MUR 6807 (Erin McClelland for Congress Committee) (dismissing matter but also stating that a non-profit's ad that featured the candidate would likely fall within the commercial transaction safe harbor).

1 business for decades, and Matlock was identified in the ad as owner of Matlock Tire, not as a
2 candidate. Second, the advertisement does not PASO Matlock or any other federal candidate.

3 Third, the available record suggests that the ad was consistent with prior ads that Matlock
4 Tire ran based on the four relevant criteria.²⁹ They all appeared on the same medium –
5 television. The timing appears to be consistent because Matlock Tire spent money on broadcast
6 advertising every month throughout 2018. There was no spike in spending shortly before the
7 primary, nor during June 2018 when the Committee did not spend anything on broadcast
8 television ads.³⁰ In fact, Matlock Tire spent less each month leading up to the primary election
9 on August 2: \$15,610 in May, \$10,610 in June, and \$8,585 in July.³¹ Moreover, Matlock Tire's
10 monthly spending on broadcast ads was far less than the Committee's average weekly broadcast
11 ad spending, suggesting that Matlock Tire did not replace the Committee's advertising needs.³²
12 The content of the ads was consistent because they all prominently featured Matlock and
13 emphasized either the family-owned/managed nature of the business or its decades of service in
14 the eastern Tennessee region.³³ Although the Complaint alleges that since Matlock's candidacy,
15 Matlock Tire's ads promoted Matlock rather than the business itself, and one of the Committee's

²⁹ See The Bingham Group, *Matlock – Trade in Event*, YOUTUBE, <https://www.youtube.com/watch?v=hn3YbkVeP3s> (last visited Dec. 11, 2018) (published Aug. 1, 2018). Although the YouTube publication date is August 1, 2018, the caption states that the ad aired in March 2017, prior to Matlock's candidacy. The Response likewise states that the ad "[r]an Spring 2017." Resp., Ex. B.

³⁰ Resp., Ex. A. Although Matlock Tire appears to have increased its advertising purchases by \$4,000 in both April and May for "PRIME TIME," the timing does not correlate to the late June broadcast date of the advertisement in question, nor does it correlate to the Committee's late June gap in advertisement spending. Moreover, \$4,000 represents only a fraction of the advertising spend for either Matlock Tire or the Committee in any given month, controverting the Complaint's argument that the Committee used Matlock Tire to fund its advertising needs in late June.

³¹ *Id.*

³² The Response, however, does not attempt to explain the two week gap in the Committee's broadcast ad spending.

1 ads promoted Matlock as “the tire guy,” Matlock and his family have featured prominently in ads
2 prior to and during Matlock’s candidacy.³⁴ There is no information in the available record
3 concerning the geographic location of the advertising, but given that Matlock Tire’s physical
4 locations are all located in eastern Tennessee and three of the locations are within Tennessee’s
5 Second Congressional District, this element is likely satisfied as well.

6 The Complaint relies on MUR 5410 (Oberweis for US Senate 2004, Inc.) and MUR 5517
7 (Stork for Congress) to argue that Matlock Tire coordinated its ads with the Committee.³⁵
8 However, both of these MURs were resolved prior to the adoption of the commercial transaction
9 safe harbor, which was adopted specifically to prevent the coordinated communications rules
10 from capturing ads like those in MURs 5410 and 5517 in the future.³⁶ Accordingly, the
11 Commission finds no reason to believe that Respondents made or accepted prohibited corporate
12 in-kind contributions in violation of 52 U.S.C. § 30118(a).

³³ See Resp., Ex. B.

³⁴ *Id.*; see also Matlock Tire - Price Match Month, *supra* note 7; Matlock for Congress | The Tire Guy, *supra* note 11.

³⁵ Compl. at 6.

³⁶ See Coordinated Communications E&J, 75 Fed. Reg. at 55,959.