



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 18, 2022

VIA ELECTRONIC MAIL

Lacey Keys
Keys Law Corporation
770 L Street, Suite 950
Sacramento, CA 95814
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RE: MUR 7954

Dear Ms. Keys:

On January 13, 2022, the Federal Election Commission notified your clients, Kevin Mullin, Kevin Mullin for Assembly 2022, and Kevin Mullin for Congress and Stacy Owens in her official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time. On November 16, 2022, the Commission voted to: (1) find no reason to believe that Kevin Mullin, Kevin Mullin for Congress and Stacy Owens in her official capacity as treasurer, and Kevin Mullin for Assembly 2022 violated 52 U.S.C. § 30125(e), (f)(1) and 11 C.F.R. §§ 110.3(d), 300.61, and 300.71 by spending or transferring non-federal funds in connection with an election; (2) find no reason to believe that Kevin Mullin for Congress and Stacy Owens in her official capacity as treasurer violated 52 U.S.C. § 30104(b) and 11 C.F.R. §§ 104.3(a) and 104.13(a) by failing to report an in-kind contribution from Kevin Mullin for Assembly 2022; and (3) close the file. The Factual and Legal Analysis, which more fully explains the basis for the Commission's decision, is enclosed.

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).

If you have any questions, please contact Aaron Rabinowitz, the attorney assigned to this matter, at (202) 694-1476 or arabinowitz@fec.gov.

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Sincerely,
Lisa J. Stevenson
Acting General Counsel

Peter G. Blumberg

BY: Peter G. Blumberg
Assistant General Counsel

Enclosure:

Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Kevin Mullin MUR 7954
Kevin Mullin for Congress and Stacy Owens
in her official capacity as treasurer
Kevin Mullin for Assembly 2022

I. INTRODUCTION

12 This matter was generated by a complaint filed with the Federal Election Commission
13 (the “Commission”), which alleges violations of the Federal Election Campaign Act of 1971, as
14 amended (the “Act”), relating to allegations that California State Assembly member and federal
15 candidate Kevin Mullin, his federal campaign committee, Kevin Mullin for Congress and Stacy
16 Owens in her official capacity as treasurer, and his state committee, Kevin Mullin for Assembly
17 2022, used funds that were not raised subject to the limitations, prohibitions, and reporting
18 requirements of Act — also known as soft money — in connection with an election for Federal
19 office and made prohibited transfers when the state committee paid for two mass mailers that
20 were sent out in December, 2021. The Joint Response on behalf of all respondents contends that
21 the mailers were not in connection with a federal election and, alternatively, that the mailers fit
22 within the exception for individuals concurrently running as state and federal candidates.

23 Because the mailers appear to have been directed at constituents of Mullin’s state
24 assembly district, discuss Mullin’s state assembly record, and do not appear to be “in connection
25 with” an election, the mailers do not implicate the Act’s prohibition on the use or transfer of soft
26 money. The Commission therefore finds no reason to believe that that Kevin Mullin, Kevin
27 Mullin for Congress and Stacy Owens as treasurer, and Kevin Mullin for Assembly 2022
28 violated 52 U.S.C. § 30125(e) and 11 C.F.R. §§ 110.3(d), 300.61, and 300.71 by spending or
29 transferring non-federal funds in connection with an election. The Commission similarly finds

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1 no reason to believe that Kevin Mullin for Congress and Stacy Owens as treasurer violated 52
2 U.S.C. § 30104(b) and 11 C.F.R. §§ 104.3(a) and 104.13(a)(1) by failing to report an in-kind
3 contribution from Kevin Mullin for Assembly 2022.

4 **II. FACTUAL BACKGROUND**

5 Kevin Mullin is a member of the California State Assembly and a candidate for the U.S.
6 House of Representatives for California District 15 in 2022.¹ Kevin Mullin for Congress is
7 Mullin's authorized committee for his 2022 congressional campaign; its treasurer is Stacy
8 Owens.² Kevin Mullin for Assembly 2022 (the "State Committee") is Mullin's state campaign
9 committee.³

10 The Complaint attaches two mailers that it alleges the State Committee distributed with
11 the aim of supporting Mullin's federal campaign.⁴ The first, received by the complainant on
12 approximately December 22, 2021, is a holiday card from Mullin that states:

13 In this season of gratitude, I want you to know how honored I've been to serve you and
14 your family in Sacramento over the past nine years. We have accomplished much for San
15 Mateo County together. I look forward to working with you to keep our county and our
16 state moving forward to a brighter future as we come through this pandemic. Best wishes
17 to you and your family for a holiday season filled with peace and joy, and for a happy
18 and healthy New Year.⁵

¹ Compl. at 2 (Jan. 7, 2022); Kevin Mullin, Statement of Candidacy (Jan. 6 , 2021).

² Kevin Mullin for Congress, Statement of Organization (Feb. 7, 2022).

³ Compl. at 2 (citing Kevin Mullin for Assembly 2022, Recipient Committee Campaign Statement Form 460).

⁴ Compl. Exs. A, B.

⁵ *Id.* at 2-3 & Ex. A.

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1 The card is signed “Assemblymember Kevin Mullin.”⁶ The second mailer is a postcard titled
2 “Our Accomplishments Together” in which Mullin lists his claimed accomplishments while in
3 the state assembly, including: “Over 60 bills passed into law;” “Expanded voting access and
4 made elections fairer and more equitable;” “Bolstered public safety, protected consumers, and
5 improved transportation;” “Delivered solutions to the housing crisis;” and “Passed landmark
6 legislation to shine a light on dark campaign money.”⁷ The card describes Mullin as “your
7 California State Assemblymember District 22.”⁸

8 According to the Complaint, these mailers were received by at least one resident of the
9 district in which Mullin is running for Congress.⁹ Both mailers include a disclaimer that that
10 they are paid for by the State Committee.¹⁰ The Complaint argues that these mailers were a
11 means for Mullin to promote his federal candidacy with leftover funds from his state campaign
12 account and thereby impermissibly transferred funds or assets from a state to a federal campaign
13 account and made public communications in support of his federal candidacy with nonfederal
14 funds.¹¹

15 The Response contends that Mullin registered and intended to run as a 2022 candidate for
16 the California State Assembly at the start of the election cycle; at that time he also transferred the

⁶ *Id.* at Ex. A.

⁷ *Id.* at 3 & Ex. B.

⁸ *Id.* at Ex. B.

⁹ *Id.* at 3.

¹⁰ *Id.* at Exs. A, B.

¹¹ *Id.* at 4-5.

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1 remaining funds from his prior state campaign committee to the State Committee.¹² The
 2 Response argues that the mailers were not “in connection” with an election because “[t]he
 3 mailers do not solicit funds, contain express advocacy, or otherwise promote or support
 4 Assemblymember Mullin as those terms are defined and interpreted by regulations and advisory
 5 opinions adopted by the Federal Election Commission”¹³ Alternatively, the Response argues
 6 that the mailers “fit squarely within the exception for payments made by a candidate ‘who is or
 7 was also a candidate for a State or local office solely in connection with such election for State or
 8 local office if the solicitation, receipt, or spending of funds is permitted under State law and
 9 refers only to such State or local candidate.”¹⁴ The Response also represents that the mailers
 10 were only mailed to “addresses located within State Assembly District 22.”¹⁵

11 **III. LEGAL ANALYSIS**

12 The Act and Commission regulations prohibit federal candidates, their agents, and
 13 entities directly or indirectly established, financed, maintained, or controlled (“EFMC’d”) by
 14 federal candidates from soliciting, receiving, directing, transferring or spending funds in
 15 connection with an election for Federal office unless the funds are in amounts and from sources

¹² Resp. at 2 (Jan. 28, 2022) (citing among others FPPC Form 460, Recipient Committee Campaign Statement covering the period 01/01/2020 to 12/31/2020, <https://cal-access.sos.ca.gov/PDFGen/pdfgen.prg?filngid=2554810&amendid=0>).

¹³ *Id.* at 3.

¹⁴ *Id.* (quoting 52 U.S.C. § 30125(e)(2)).

¹⁵ *Id.* at 5; *see also id.* at Ex. D (containing a screenshot of the search query used to prepare the mailing list).

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1 permitted by the Act.¹⁶ A federal candidate is also prohibited from transferring funds or assets
 2 from the candidate's nonfederal campaign committee to their federal campaign committee.¹⁷

3 Moreover, federal law specifically prohibits individuals holding state office and their
 4 agents from spending "any funds for a public communication that refers to a clearly identified
 5 candidate for Federal office . . . and that promotes or supports any candidate for that Federal
 6 office . . . unless the funds consist of Federal funds that are subject to the limitations
 7 prohibitions, and reporting requirements of the Act."¹⁸ However, a federal candidate who
 8 concurrently runs for state or local office may solicit, receive and spend funds outside of the
 9 Act's amount and source limitations, when the solicitations, receipts, and expenditures are solely
 10 in connection with his own state or local race.¹⁹

11 The Commission has provided guidance on the types of activities that are "in
 12 connection" with an election under section 30125(e). Such activities include, but are not limited
 13 to: (1) contributing to a candidate committee; (2) contributing to a political party organization;
 14 (3) soliciting funds for a candidate committee; (4) expending funds to obtain information that
 15 will be shared with a candidate committee; (5) expressly advocating the election or defeat of a
 16 candidate; and (6) "federal election activity," as defined by the Act, which includes public
 17 communications referring to a clearly identified federal candidate and that promote, support,

¹⁶ 52 USC § 30125(e)(1)(A)-(B); 11 CFR § 300.61-62.

¹⁷ 11 C.F.R. § 110.3(d).

¹⁸ 52 U.S.C. § 30125(f)(l); 11 C.F.R. § 300.71. The term "public communication" includes mass mailings. 11 C.F.R. § 100.26.

¹⁹ 52 U.S.C. § 30125(e)(2).

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1 attack, or oppose (“PASO”) a candidate for that office.²⁰ The Commission has explained that
 2 “the mere identification of an individual who is a Federal candidate does not, in and of itself,
 3 promote, support, attack or oppose that candidate.”²¹ And it has stated that “a statement of a
 4 federal candidate’s previous or ongoing legislative efforts does not PASO that candidate.”²²

5 In MUR 7106 (Citizens for Maria Chappelle-Nadal, *et al.*), the Commission found no
 6 reason to believe a newspaper advertisement paid for by a state committee was in connection
 7 with an election to Federal office because the advertisement: (1) did not constitute federal
 8 election activity because it did not PASO a federal candidate but merely identified such
 9 candidate and discussed the candidate’s previous and ongoing efforts as a state senator to address
 10 toxic waste in the region; (2) “did not solicit money, gather information about potential voters, or
 11 expressly advocate the election or defeat of any candidate;” and (3) “was directed to the
 12 constituents of [the candidate’s] state senatorial district.”²³ The Commission noted that “the
 13 advertisement was akin to the type of communications commonly produced by state
 14 officeholders.”²⁴

²⁰ Factual and Legal Analysis (“F&LA”) at 3, MUR 7106 (Citizens for Maria Chappelle-Nadal.) (citing among others Advisory Opinion 2009-26 at 5 (Coulson) (“AO 2009-26”)).

²¹ AO 2009-26 at 7.

²² F&LA at 9, MUR 7106 (Citizens for Maria Chappelle-Nadal) (citing AO 2009-26 at 9).

²³ F&LA at 8-9, MUR 7106 (Citizens for Maria Chappelle-Nadal, *et al.*).

²⁴ *Id.* In MUR 7106, the Commission ultimately conciliated with the respondents for unrelated violations having to do with the receipt of soft money into the candidate’s state committee account after she became a candidate that were transferred to other nonfederal candidates. Conciliation Agreement ¶¶ IV-V, MUR 7106 (Citizens for Maria Chappelle-Nadal, *et al.*).

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1 The Commission has previously determined that a federal candidate’s state committee is
 2 an entity EFMC’d by the federal candidate.²⁵ Accordingly, when Mullin became a federal
 3 candidate, the state committee became subject to the soft money provisions of the Act.

4 Here, the mailers at issue are comparable to the newspaper advertisement the
 5 Commission considered in MUR 7106 as they are public communications that identify, but do
 6 not appear to PASO, Mullin, a federal candidate in that the mailers address Mullin’s past and
 7 ongoing legislative actions as a State Assemblymember.²⁶ In addition, the mailers do not “solicit
 8 money, gather information about potential voters, or expressly advocate the election or defeat of
 9 any candidate.”²⁷ The Response further asserts that the mailers, which include a holiday greeting
 10 card, are consistent with the type of mailers that state officeholders “routinely” send to their
 11 constituents²⁸ and were only sent to constituents of Mullin’s State Assembly district²⁹ There is
 12 no information in the record that contradicts that representation.³⁰ Accordingly, the mailers do
 13 not appear to be “in connection with” an election.

²⁵ F&LA at 9, MUR 6601 (Oelrich for Congress) (same); AO 2009-26 at 5 (Coulson) (“Representative Coulson is a Federal candidate, and her State Campaign Committee is an entity that is directly established, financed, maintained, or controlled by her and is acting on her behalf.”).

²⁶ See AO 2009-26 at 9 (determining that a mailing to members of a state representative’s district describing health care legislation was not in connection with an election because it “addressed [the candidate’s] past and ongoing legislative actions as a State officeholder,” the letter represented it was being sent as “your State Representative,” and the letter would not be sent beyond the State district).

²⁷ *Id.*

²⁸ Resp. at 4.

²⁹ *Id.* at 5.

³⁰ In addition, the available information also does not indicate that the Respondents violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d) by impermissibly transferring nonfederal funds to Mullin’s federal campaign committee, as alleged in the Complaint.

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1 The Response argues in the alternative that the mailers satisfy the exception for
 2 concurrent state candidate solicitations.³¹ A federal candidate who concurrently runs for state or
 3 local office may solicit, receive and spend funds outside of the Act's amount and source
 4 limitations when the solicitation, receipt, or expenditures are "solely in connection with such
 5 election for State or local office" and the solicitation, receipt, or expenditure "refers only to such
 6 State or local candidate, or to any other candidate for the State or local office sought by such
 7 candidate, or both."³² The available information indicates that, under California law, Mullin
 8 remained a state candidate through December of 2021, and that Mullin did not file nomination
 9 papers with the California Secretary of State — which would require him to decide whether to
 10 seek federal or state office — until February of 2022.³³ As noted above, the mailers only
 11 referred to Mullin in his capacity as a state officeholder. It thus appears that the dual candidate
 12 exception would apply here.

13 Additionally, because the State Committee's payments for the mailers in question do not
 14 appear to be in connection with an election and also satisfy the dual candidate exception at
 15 section 30125(e)(2), Kevin Mullin for Congress did not fail to report a contribution from the
 16 State Committee under 52 U.S.C. § 30104(b)(3) and 11 C.F.R. §§ 104.3(a) and 104.13(a).³⁴

³¹ Resp. at 5-7.

³² 52 U.S.C. § 30125(e)(2).

³³ Resp. at 5-6 & Ex. C (citing *inter alia* 9 CAL. GOV. CODE § 82007(a)).

³⁴ The Act requires political committees to report contributions received, including in-kind contributions, from each contributor who in the aggregate contributes in excess of \$200 per election cycle. 52 U.S.C. § 30104(b)(3); 11 C.F.R. § 104.3(a)-(b); 11 C.F.R. § 104.13(a)(1).

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1 Accordingly, the Commission finds no reason to believe that Kevin Mullin, Kevin Mullin
2 for Congress and Stacy Owens as Treasurer, and Kevin Mullin for Assembly 2022 violated 52
3 U.S.C. § 30125(e), (f)(1) and 11 C.F.R. §§ 110.3(d), 300.61, and 300.71. The Commission
4 further finds no reason to believe that Kevin Mullin for Congress and Stacy Owens as Treasurer
5 violated 52 U.S.C. § 30104(b) and 11 C.F.R. §§ 104.3(a) and 104.13(a) by failing to report an in-
6 kind contribution from Kevin Mullin for Assembly 2022.