

ELECTIONS, LLC

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June 3, 2022

Roy Q. Luckett
 Acting Assistant General Counsel
 Complaints Examination & Legal Administration
 Federal Election Commission
 1050 First Street, NE
 Washington, DC 20463

VIA EMAIL ONLY: cela@fec.gov

RE: MUR 7978 (Markwayne Mullin)

Dear Mr. Luckett:

We write on behalf of Markwayne Mullin, Mullin for America, and Lisa Lisker in her capacity as Treasurer of Mullin for America (collectively, hereinafter the “Respondents”) in response to recent complaints filed by former Oklahoma State Representative Al Lindley, dated March 16, 2022 and April 1, 2022, alleging the Respondents violated the Federal Election Campaign Act of 1974, as amended (“FECA” or the “Act”). The complaints filed by Mr. Lindley appear to represent stream of conscience questions presented to the Commission more than legitimate complaints. Irregardless of the lack of facts and legal analysis in the complaints by Mr. Lindley, they appear to allege Mr. Mullin has violated the Act by (i) being the voice for Mullin Plumbing radio advertisements (transcripts of, or links to, such advertisements were not provided) and (ii) Mullin for America’s use of Mullin Plumbing imagery in its advertising.

The Commission may find “reason to believe” only if a Complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Act. Mr. Lindley has failed to meet such standard with his Complaint. Nevertheless, Respondents have not violated the Act and have fully complied with the Act and Commission regulations. Therefore, we ask the Commission to dismiss the Complaint and close the file consistent with Commission precedent.

I. Mullin Plumbing Television Advertisements

The portion of this Complaint relating to Mullin Plumbing television advertisements is from Mr. Lindley’s letter to the Commission dated March 16, 2022. In his letter, Mr. Lindley writes, in its entirety, “Why does Congressman Markwayne Mullin run television advertisements on television while he is running for office. We hear his voice requesting that we call his plumbing company for service.” Respondents (i) are not aware of any television advertisements made by Mullin Plumbing that include any depiction, including voiceovers, of Congressman Mullin nor (ii) have any control over, or approval of, Mullin Plumbing television advertisements.

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Congressman Mullin is a stockholder of Mullin Plumbing but has not had day-to-day operational control of the entity since first being elected and sworn into office in 2013. Even if Mullin Plumbing ran a television advertisement using a voiceover of Congressman Mullin at the time at issue, such action would not violate the Act of Commission regulations.

Congressman Mullin has historically proactively sought and complied with regulatory guidance related to television advertisements. On May 1, 2012, when he was first a candidate, Congressman Mullin requested an advisory opinion relating to his appearance in television advertisements for Mullin Plumbing.¹ The Commission failed to issue an advisory opinion. Irregardless, an electioneering communication is defined as any broadcast, cable, or satellite communication that: (i) refers to a clearly identified candidate for Federal office; (ii) is publicly distributed . . . within 30 days before a primary or preference election . . .”² The Oklahoma Special Senate primary election is scheduled to occur on Tuesday, June 28, 2022. Mr. Lindley’s Complaint relating to Mullin Plumbing television advertisements was dated March 16, 2022 – well outside the electioneering communication period.

Complainant has failed to provide sufficient specific facts, which proven true, would constitute a violation of the Act for the Commission to find reason to believe. Additionally, Respondents are unaware of any Mullin Plumbing advertisements in which Congressman Mullin appears, either personally or as a voiceover. Even if such advertisements exist, the advertisement occurred outside the electioneering communication window. Accordingly, the Commission should dismiss the Complaint and close the file consistent with Commission precedent.

II. Appearance of Mullin Plumbing in Campaign Advertising Did Not Result in an In-Kind Contribution

The portion of this Complaint relating to Mullin Plumbing appearing in Respondents’ campaign advertising is from Mr. Lindley’s letter to the Commission dated April 1, 2022. In his letter, Mr. Lindley writes, in its entirety, “Congressman Markwayne Mullin is running for the U.S[.] Senate in Oklahoma. In each advertisement his company vehicles with the business name and logo is clearly visable [sic]. Is this a violation of federal campaign laws?”³ Although it is unclear exactly what law the Respondents are being accused of violating, Respondents have not violated the Act, any other laws, or Commission regulations by including biographical images of Mullin’s company in its advertising.

Respondent’s use of biographical images in its advertising is not an in-kind contribution from Mullin Plumbing to Mullin for America, or any other violation of law or Commission

¹ See AOR 2012-20 (Mullin).

² 11 CFR § 100.29(a).

³ Complaint at 2, MUR 7978.

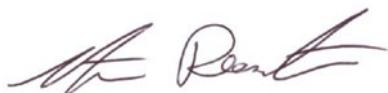
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regulations. The Commission has consistently allowed the use of corporations to identify individuals appearing in campaign advertisements when no fundraising occurs, which is exactly what happened here.⁴ Additionally, Mr. Mullin is a stockholder of Mullin Plumbing, and any value of Mullin Plumbing facilities and employees in such advertising is de minimis.⁵

In the Mullin for America advertisement, a brief, partial, image of a Mullin Plumbing truck is seen in the background as a voiceover of Markwayne Mullin makes reference to how he “fought to keep our business alive.”⁶ Nowhere in the advertisement was there an implication of a corporate endorsement or a solicitation of funds. In accordance with Commission precedent – including MUR 6542 in which the Commission dismissed a similar complaint against Markwayne Mullin, Mullin for Congress, and Mullin Plumbing – the use of Mullin Plumbing to provide constituents with biographical information about Markwayne Mullin should not be treated as an in-kind contribution to Mullin for America.

Accordingly, the appearance of Mullin Plumbing facilities and employees did not result in a violation of the Act or Commission regulations and the Commission should dismiss the Complaint and close the file consistent with Commission precedent.

Respectfully submitted,



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⁴ Advisory Opinion 2007-10 (Reyes) at 3 (citing Advisory Opinions 1984-43 and 1978-77); see also First General Counsel's Report at 17-18, MUR 6110 (Obama VictoryFund) (Aug. 26, 2009) (discussing AO 2007-10 (Reyes), noting that "the Commission distinguished AO 1984-43 ... and AO 1978-77..., in which the Commission concluded that a candidate's endorsers may be identified with their corporate positions in campaign-funded advertisements, noting that neither involved the use of corporate resources to facilitate contributions...").

⁵ 11 CFR § 114.9(a)(1); see also, MUR 6542 (Mullin for Congress).

⁶ See Mullin for America Political Advertisement, Twitter, available at

<https://twitter.com/MarkwayneMullin/status/1509912193348870145?ext=HHwWgoC56frIpPQpAAAA>.