

**FEDERAL ELECTION COMMISSION**  
**FIRST GENERAL COUNSEL'S REPORT**

**MUR 7978**

DATE COMPLAINT FILED: Apr. 13, 2022

DATES OF NOTIFICATIONS: Apr. 19, 2022;  
Sept. 7, 2022

DATE OF LAST RESPONSE: June 6, 2022

DATE OF ACTIVATION: Oct. 19, 2022

## ELECTION CYCLE: 2022

SOL EXPIRATION: Apr. 4 - June 26, 2027

12 COMPLAINANT: Al Lindley

13 **RESPONDENTS:** Mullin for America and Lisa Lisker in her official  
14 capacity as treasurer  
15 Markwayne Mullin  
16 Mullin Plumbing, Inc.

17 **RELEVANT STATUTES**  
18 **AND REGULATIONS:** 52 U.S.C. § 30104(f)  
19 52 U.S.C. § 30101(8)(A)(1)  
20 52 U.S.C. § 30116  
21 52 U.S.C. § 30118(a)  
22 11 C.F.R. § 100.29  
23 11 C.F.R. § 100.52(d)(1)  
24 11 C.F.R. § 109.21

## 25 INTERNAL REPORTS CHECKED: Disclosure Reports

26 FEDERAL AGENCIES CHECKED: None

## 27 I. INTRODUCTION

28 The Complaint in this matter alleges that Markwayne Mullin and Mullin for America and  
29 Lisa Lisker in her official capacity as treasurer (the “Committee”) violated the Federal Election  
30 Campaign Act of 1971, as amended (the “Act”) when the Committee disseminated at least one  
31 campaign advertisement showing a Mullin Plumbing, Inc. (“Mullin Plumbing”) vehicle with the  
32 business name, company employees, and logo clearly visible. The Complaint also alleges that

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1 Mullin Plumbing also violated the Act when it disseminated a television advertisement that used  
 2 Mullin's voice while Mullin was a candidate for the U.S. Senate.

3 As explained below, we recommend that the Commission exercise its prosecutorial  
 4 discretion and dismiss the allegations that (1) Mullin Plumbing made, and Markwayne Mullin  
 5 and the Committee knowingly accepted, prohibited in-kind corporate contributions in violation  
 6 of 52 U.S.C. § 30118(a) by using Mullin Plumbing's name, logo, and vehicles in the  
 7 Committee's advertisements; (2) Mullin Plumbing made, and Markwayne Mullin and the  
 8 Committee knowingly accepted, prohibited in-kind corporate contributions under 52 U.S.C.  
 9 § 30118(a) in the form of Mullin Plumbing's advertisements; and (3) Mullin Plumbing violated  
 10 52 U.S.C. § 30104(f) by failing to report electioneering communications.<sup>1</sup>

11 **II. FACTUAL BACKGROUND**

12 Mullin was a candidate for the U.S. Senate in the 2022 election cycle, and Mullin for  
 13 America was his principal campaign committee.<sup>2</sup> Mullin won the June 28, 2022 Special  
 14 Primary, August 23, 2022 Special Runoff, and November 8, 2022 General Elections.<sup>3</sup> Prior to  
 15 that, he represented Oklahoma's Second Congressional District from 2013 to 2023.

16 Mullin Plumbing is a domestic, for-profit business corporation registered in Oklahoma.<sup>4</sup>  
 17 Mullin is a stockholder of Mullin Plumbing but contends that he has not had day-to-day

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<sup>1</sup> *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

<sup>2</sup> See Mullin for America, Amended Statement of Organization (Mar. 1, 2022), <https://docquery.fec.gov/pdf/865/202203019493728865/202203019493728865.pdf>.

<sup>3</sup> See June 28, 2022 Oklahoma State Election Board Official Results, OK ELECTION RESULTS (July 13, 2022), <https://results.okelections.us/OKER/?elecDate=20220628>; August 23, 2022 Oklahoma State Election Board Official Results, OK ELECTION RESULTS (Aug. 26, 2022), <https://results.okelections.us/OKER/?elecDate=20220823>; November 8, 2022 Oklahoma State Election Board Official Results, OK ELECTION RESULTS (Dec. 5, 2022), <https://results.okelections.us/OKER/?elecDate=20221108>.

<sup>4</sup> See Entity Summary Information: Mullin Plumbing New Construction, Inc., OKLA. SEC'Y OF STATE, <https://www.sos.ok.gov/corp/corpInformation.aspx?id=1912072710> (last visited Mar. 5, 2025).

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1 operational control of the entity since first being sworn into his congressional office in 2013.<sup>5</sup>

2 He reportedly stated that he sold 90 percent of his family's interest in Mullin Plumbing to

3 CenterOak Partners of Dallas, Texas, in 2021.<sup>6</sup>

4 **A. Campaign Ads**

5 The Complaint alleges that, during Mullin's U.S. Senate run, "each advertisement"

6 showed "his company vehicles with the business name and logo."<sup>7</sup> Mullin and the Committee

7 concede that a "brief, partial, image of a Mullin Plumbing truck is seen in the background as a

8 voiceover of Markwayne Mullin makes reference to how he 'fought to keep our business

9 alive.'"<sup>8</sup> The Response provides the hyperlink for an X post by Mullin that contains a campaign

10 ad displaying, for two seconds during the 30-second ad, two images of a Mullin Plumbing van

11 and what appear to be three Mullin Plumbing employees, reproduced below.<sup>9</sup>

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<sup>5</sup> Resp. at 2 (June 3, 2022).

<sup>6</sup> Rick Maranon, *You Decide 2022: Mullin Discusses Sale of Family Business, Opponent Claims Post-Sale Ethics Issue*, 102.3 KRMG (Nov. 2, 2022) ("Fox23 News Article"), <https://www.krmg.com/news/you-decide-2022-mullin-discusses-sale-family-business-opponent-claims-post-sale-ethics-issue/KU6OTALYBZHQ3G2WGCJ3BPBFHI/> [REDACTED]

<sup>7</sup> Compl. at 2 (Apr. 13, 2022). These allegations are like those made in March 2012 regarding Mullin, Mullin Plumbing, and Mullin for Congress and Debbie Dooley in her official capacity as treasurer. *See* Compl. (Mar. 27, 2012), MUR 6542 (Mullin for Congress, *et al.*). In that matter, the Commission stated it was "undisputed that the [c]ommittee used in its campaign ads images of and footage of the Mullin Plumbing name, employees, and facilities" but exercised its prosecutorial discretion and dismissed the allegations. Factual & Legal Analysis ("F&LA") at 6-10, MUR 6542 (Mullin for Congress, *et al.*). The Commission did, however, vote to remind the committee, Mullin, and Mullin Plumbing of the requirements of the Act's corporate contribution prohibition. *See* Certification ("Cert.") ¶¶ 1-2 (Mar. 13, 2013), MUR 6542; Letter to Jason Torchinsky, Esq., *et al.*, counsel for Mullin for Congress & Markwayne Mullin, from Peter G. Blumberg, Ass't Gen. Counsel, FEC (Mar. 22, 2013), MUR 6542 ("remind[ing]" Mullin and the committee "pursuant to 2 U.S.C. § 441b(a) [now 52 U.S.C. § 30118(a)] concerning the prohibition on corporate contributions, to take steps to ensure that their conduct is in compliance with the Act and Commission regulations"); Letter to Markwayne Mullin, Mullin Plumbing, Inc., from Peter G. Blumberg, Ass't Gen. Counsel, FEC (March 22, 2013), MUR 6542 ("remind[ing] Mullin Plumbing, pursuant to 2 U.S.C. § 441b(a) [now 52 U.S.C. § 30118(a)] concerning the prohibition on corporate contributions, to take steps to ensure that its conduct is in compliance with the Act and Commission regulations").

<sup>8</sup> Resp. at 3.

<sup>9</sup> *Id.*; *see* Markwayne Mullin (@MarkwayneMullin), X (Apr. 1, 2022, 11:14 AM) at 0:04-0:05, <https://x.com/MarkwayneMullin/status/1509912193348870145>.

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Markwayne Mullin  @MarkwayneMullin

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New ad alert! 

To take America back, I'm going to take the fight to the Socialist Democrats. Watch our latest Senate campaign video here and join the fight at [MullinForAmerica.com](http://MullinForAmerica.com).



11:14 AM · Apr 1, 2022

12 Retweets 3 Quotes 28 Likes 1 Bookmark

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11:14 AM · Apr 1, 2022

12 Retweets 3 Quotes 28 Likes 1 Bookmark

2

3 The Committee sponsored three additional ads on Facebook that featured Mullin standing  
 4 with three apparent Mullin Plumbing employees in front of a Mullin Plumbing van.<sup>10</sup> While the

<sup>10</sup> *Markwayne Mullin*, META AD LIBRARY, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=all&country=US&view\\_all\\_page\\_id=150763151677363&search\\_type=page&media\\_type=all](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=150763151677363&search_type=page&media_type=all) (last visited Mar. 5, 2025).

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1 text above each ad varied, the embedded videos were identical.<sup>11</sup> The ads were launched on  
 2 Facebook on June 19, 2022 and became inactive on June 27, 2022.<sup>12</sup> The first of the three ads  
 3 reached an estimated audience of 10,000 to 50,000, cost between \$1,500 and \$2,000, and  
 4 generated between 60,000 to 70,000 impressions.<sup>13</sup> The second of the three ads reached an  
 5 estimated audience of 10,000 to 50,000, cost between \$700 and \$799, and generated between  
 6 25,000 to 30,000 impressions.<sup>14</sup> And the third ad reached an estimated audience of 10,000 to  
 7 50,000, cost between \$1,000 and \$1,500, and generated between 45,000 to 50,000 impressions.<sup>15</sup>  
 8 The three Facebook ads are each 30 seconds long and depict the same two seconds of  
 9 Markwayne Mullin standing with three men wearing red shirts and blue jeans, who appear to be  
 10 Mullin Plumbing employees, and a red Mullin Plumbing truck directly behind them.<sup>16</sup> Two of  
 11 the three men wearing red shirts have illegible logos on their shirts' breast pockets.<sup>17</sup> Below is  
 12 an example of one of the three Facebook ads with the embedded video:

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See *Link to Ad: Library ID 1202121530535685*, META AD LIBRARY, <https://www.facebook.com/ads/library/?id=1202121530535685> (last visited Mar. 5, 2025) ("First Facebook Ad") (showing statistics relating to first Facebook ad and First Facebook ad with text beginning "Inflation is OUT OF CONTROL").

<sup>14</sup> See *Link to Ad: Library ID 588261419397329*, META AD LIBRARY, <https://www.facebook.com/ads/library/?id=588261419397329> (last visited Mar. 5, 2025) ("Second Facebook Ad") (showing statistics relating to and content of Second Facebook ad with text beginning "I'm running for Senate").

<sup>15</sup> See *Link to Ad: Library ID 791329032250761*, META AD LIBRARY, <https://www.facebook.com/ads/library/?id=791329032250761> (last visited Mar. 5, 2025) ("Third Facebook Ad") (showing statistics relating to and content of Third Facebook ad with text beginning "Under Joe Biden . . .").

<sup>16</sup> See First Facebook Ad at 0:13-0:14; Second Facebook Ad at 0:13-0:14; Third Facebook Ad at 0:13-0:14.

<sup>17</sup> First Facebook Ad at 0:13-0:14; Second Facebook Ad at 0:13-0:14; Third Facebook Ad at 0:13-0:14. Previously, Mullin used Mullin Plumbing vans and staff in a 2020 Facebook ad when he ran for Congress. See *Link to Ad: Library ID 356890158758891*, META AD LIBRARY, <https://www.facebook.com/ads/library/?id=356890158758891> (last visited Mar. 5, 2025) (showing prior Facebook ad).

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1           Mullin and the Committee assert that the Committee's use of "biographical images in its  
 2 advertising is not an in-kind contribution from Mullin Plumbing to Mullin for America" or a  
 3 violation of the Act because the "Commission has consistently allowed the use of corporations to  
 4 identify individuals appearing in campaign advertisements when no fundraising occurs," and  
 5 because Mullin "is a stockholder of Mullin Plumbing, and any value of Mullin Plumbing  
 6 facilities and employees in such advertising is [*de minimis*]."<sup>18</sup>

7           **B.     Mullin Plumbing Ads**

8           The Complaint also alleges that Mullin used a Mullin voiceover in a "television  
 9 advertisement" regarding "his plumbing company" "while he [wa]s running for office."<sup>19</sup>  
 10 Moreover, the Complaint alleges that one can "hear [Mullin's] voice requesting that we call his  
 11 plumbing company for service."<sup>20</sup> Although the Complaint does not provide a link to the  
 12 advertisements, a November 2022 *Fox23 News* report interviewing Mullin and his general

<sup>18</sup>        Resp. at 2-3.

<sup>19</sup>        Compl. at 1.

<sup>20</sup>        *Id.*

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1 election opponent includes a voiceover ad that reportedly aired in the spring of 2022,<sup>21</sup> after  
 2 Mullin had declared his candidacy for the Senate on March 2, 2022.<sup>22</sup> That ad features Mullin's  
 3 voice requesting viewers to call Mullin Plumbing for service.<sup>23</sup>

4 At least two Mullin Plumbing ads reportedly aired in the Tulsa and Oklahoma City  
 5 television markets in the months leading up to the June 28, 2022 Primary Election — 524 times  
 6 in May and 440 times in April.<sup>24</sup> Those ads reportedly “aired with increasing frequency [after]  
 7 Mullin announced his candidacy.”<sup>25</sup> One of those ads is reportedly five seconds long and  
 8 another is reportedly 15 seconds long.<sup>26</sup> The ads reportedly begin with “Hi, I’m Markwayne  
 9 Mullin of Mullin Plumbing.”<sup>27</sup> Federal Communications Commission (“FCC”) records indicate  
 10 that Mullin Plumbing spent at least \$42,745 on television ads in the Tulsa and Oklahoma City,  
 11 Oklahoma markets between April 4 and June 26, 2022.<sup>28</sup>

12 Mullin ran for Senate in two 2022 special elections. The June 28, 2022 Special Primary  
 13 and August 23, 2022 Special Runoff were special elections in which candidates were subject to

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<sup>21</sup> *Supra* note 6, *Fox23 News Article* (including internal video of news report showing Mullin Plumbing ad at 1:59-2:17 featuring an apparent plumber with Mullin’s voice narrating: “Hi, I’m Markwayne Mullin with Mullin Plumbing, the Red Rooter,” before the news reporter speaks over Mullin’s voice with further reporting).

<sup>22</sup> See Markwayne Mullin, Statement of Candidacy (Mar. 2, 2022), <https://docquery.fec.gov/pdf/502/202203029493730502/202203029493730502.pdf>.

<sup>23</sup> *Fox23 News Article*.

<sup>24</sup> Chris Casteel, *Mullin Promoting Plumbing Company Despite Ethics Committee Guidance*, OKLAHOMAN (June 10, 2022) (“Oklahoman Article”), <https://www.oklahoman.com/story/news/2022/06/10/markwayne-mullin-promoting-plumbing-business-despite-house-ethics-ruling/7567474001/> [REDACTED]

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Contract Agreement between KOTV-TV and Mullin Plumbing (Apr. 12, 2022) (“KOTV Contract”) (showing Mullin Plumbing contracted to air ads on KOTV-TV from April 4 to June 26, 2022) [REDACTED]  
 Contract Agreement between KWTV-TV and Mullin Plumbing (Apr. 1, 2022) (showing Mullin Plumbing contracted to air ads on KWTV-TV from April 4 to June 26, 2022) (“KWTV Contract”) [REDACTED]  
 Contract Agreement between KOKI-TV and Mullin Plumbing (May 2, 2022) (“KOKI Contract”) (showing Mullin Plumbing contracted to air ads on KOKI-TV from May 9 to June 26, 2022) [REDACTED]

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1 30-day reporting periods, as was the case with the November 8, 2022 Special General Election.<sup>29</sup>

2 In their Response, Mullin and the Committee contend that the Mullin Plumbing ads at issue

3 could not be electioneering communications because they were not alleged to have been made

4 within 30 days of the June 28, 2022 Special Senate Primary.<sup>30</sup> The two letters that formed the

5 Complaint, dated March 16 and April 1, 2022, were notarized on April 7, 2022, and received by

6 the Commission on April 13, 2022.<sup>31</sup> However, publicly available information indicates that the

7 Mullin Plumbing ads aired as late as June 26, 2022, and thus appear to have aired within 30 days

8 of the June 28, 2022 Special Primary Election.<sup>32</sup> According to FCC records, Mullin Plumbing

9 paid a total of \$15,115 for ads that ran within 30 days of the June 28, 2022 Special Primary

10 Election.<sup>33</sup> In fact, Mullin Plumbing appears to have contracted with three television stations on

11 April 1, April 12, and May 2, 2022, respectively, to air the Mullin Plumbing ads for which

12 Mullin Plumbing paid a combined \$15,115.<sup>34</sup> Additionally, publicly available FCC records do

13 not show any Mullin Plumbing ads airing on television after June 26, 2022.<sup>35</sup> Below is a table

14 listing the three stations on which the Mullin Plumbing ads aired, when Mullin Plumbing

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<sup>29</sup> See *Oklahoma Special Election Reporting: Senate* (2022), FEC.GOV (Mar. 17, 2022), <https://www.fec.gov/updates/oklahoma-special-election-reporting-senate-2022/>.

<sup>30</sup> Resp. at 2.

<sup>31</sup> Compl. at 1.

<sup>32</sup> See *supra* note 28.

<sup>33</sup> Between May 30 and June 26, 2022, Mullin Plumbing paid KOKI-TV \$6,515; KWTW-TV \$5,100; and KOTV-TV \$3,500 to air its ads. *See id.*

<sup>34</sup> *Id.*

<sup>35</sup> The Commission notified Mullin and the Committee of the Complaint on April 19, 2022, nearly two weeks before Mullin Plumbing entered the contract with KOKI-TV on May 2, 2022. *See* Compl. Notif. Letter (Apr. 19, 2022) (Mullin for Am.); Compl. Notif. Letter (Apr. 19, 2022) (Mullin); *see supra* note 28. The Commission notified Mullin Plumbing of the Complaint on September 7, 2022. Compl. Notif. Letter (Sept. 7, 2022) (Mullin Plumbing, Inc.).

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1 contracted for the ads, the periods in which the ads aired, and the amount Mullin Plumbing paid  
 2 to air them.

Stations Airing Ads	Contract Date	Dates Aired	Amount Paid
KOTV-TV, Tulsa, OK	4/12/2022	4/4/2022-6/26/2022	\$3,500
KWTV-TV, Oklahoma City, OK	4/1/2022	4/4/2022-6/26/2022	\$5,100
KOKI-TV, Tulsa, OK	5/2/2022	5/9/2022-6/26/2022	\$6,515

3 Mullin and the Committee contend that they “are not aware of any television  
 4 advertisements made by Mullin Plumbing that include any depiction, including voiceovers, of  
 5 [then-]Congressman Mullin, nor [do they] have any control over, or approval of, Mullin  
 6 Plumbing television advertisements.”<sup>36</sup> The Response further notes that, in 2012, Mullin, then a  
 7 candidate for U.S. Congress, sought Commission guidance through an Advisory Opinion  
 8 Request regarding Mullin Plumbing television ads, but the Commission did not issue an  
 9 Advisory Opinion.<sup>37</sup>

10 In November 2012, then-Congressman-elect Mullin requested guidance from the U.S.  
 11 House Committee on Ethics (“House Ethics Committee”) regarding his future participation in  
 12 Mullin Plumbing ads.<sup>38</sup> The House Ethics Committee stated that “a Member should not be

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<sup>36</sup> Resp. at 1.

<sup>37</sup> See Cert. (May 31, 2012), Advisory Opinion Request at 1-2, Advisory Opinion 2012-20 (Markwayne Mullin); Letter from Kevin Deeley, Acting Assoc. Gen. Counsel, FEC, to Jason Torchinsky & Shawn Sheehy, Counsel to Mullin (May 30, 2012), Advisory Opinion 2012-20 (“[T]his letter is to inform you that the Commission has concluded its consideration of your advisory opinion request without issuing an advisory opinion.”).

<sup>38</sup> See U.S. House Comm. on Ethics, *In the Matter of Allegations Relating to Representative Markwayne Mullin*, H. Rep. 115-898, 115th Cong., 2d Sess. at 9-10, 82-83 (Aug. 10, 2018), <https://www.congress.gov/congressional-report/115th-congress/house-report/898/1?outputFormat=pdf> (“House Ethics Rpt.”).

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1 actively involved in personally selling or endorsing goods or services in which the Member has a  
 2 financial interest.”<sup>39</sup> The House Ethics Committee concluded that:

3 Mullin should now understand that, going forward, he cannot  
 4 participate in the weekly radio program or the advertisements for  
 5 radio, television, and the web. This restriction only applies to the  
 6 active participation in selling or endorsing goods or services.  
 7 Thus, it does not require Representative Mullin to remove his  
 8 name from the Mullin Companies, nor does it require the Mullin  
 9 Companies to scour the Internet to take down old videos of  
 10 advertisements featuring Representative Mullin. Instead, the  
 11 Mullin Companies can no longer take active steps to promote  
 12 Representative Mullin’s endorsement of the companies. Thus, the  
 13 Mullin Companies cannot film any new advertisements featuring  
 14 Representative Mullin, and old advertisements featuring  
 15 Representative Mullin should be removed from the Mullin  
 16 Companies’ website.<sup>40</sup>

17 **III. LEGAL ANALYSIS**

18 **A. Mullin for America Advertisements**

19 A contribution’ is defined as “any gift . . . of money or anything of value made by any  
 20 person for the purpose of influencing any election for Federal office.”<sup>41</sup> “Anything of value”  
 21 includes in-kind contributions, such as the provision of goods or services without charge or at a  
 22 charge that is less than the usual and normal charge.<sup>42</sup> The Commission has previously  
 23 determined that a corporation’s name, trade name, trademarks, and service marks are things of  
 24 value owned by the corporation, and that allowing a committee to use them in a manner  
 25 suggesting the corporation’s support or endorsement of a candidate may constitute an in-kind

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<sup>39</sup> House Ethics Rpt. at 9-10, 82-83 (noting that House Ethics Committee staff initially provided informal advice to Mullin that prior-recorded Mullin Plumbing ads featuring Mullin’s endorsement of his company could remain on the air provided that certain conditions were met).

<sup>40</sup> *Id.* at 10 (internal citations omitted).

<sup>41</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>42</sup> See 11 C.F.R. § 100.52(d)(1).

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1 contribution.<sup>43</sup> The Act prohibits a corporation from making contributions to federal candidates  
 2 and their authorized committees.<sup>44</sup> Moreover, the Act “prohibits corporate officers and directors  
 3 from consenting to such contributions, and prohibits candidates and political committees from  
 4 knowingly accepting such contributions.”<sup>45</sup>

5 The Commission has dismissed allegations regarding the use of corporate logos or  
 6 images in campaign advertisements where the advertisements did not involve fundraising  
 7 solicitations or were *de minimis*.<sup>46</sup> Despite Respondents’ demonstrated history of using  
 8 corporate logos and images in campaign advertisements, a dismissal is warranted here because

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<sup>43</sup> See, e.g., Advisory Opinion 2007-10 at 2-3 (Reyes Committee, Inc.) (concluding that recognizing corporate employers of individual contributors’ names, trademarks, or service marks on golf holes at a golf fundraising event to encourage contributions to the requesting committee would result in prohibited in-kind contributions); F&LA at 5-6, MUR 7302 (Tom Campbell for N.D., *et al.*) (holding that the appearance of corporate name and logo in campaign ad may have provided something of value to committee as an in-kind contribution, but dismissing because of likely *de minimis* value); F&LA at 7-8, MUR 6542 (Mullin for Congress, *et al.*) (dismissing allegations that the Committee used in its campaign ads images and footage of the Mullin Plumbing name, employees, and facilities because “the amounts at issue appear likely to be *de minimis*”); F&LA at 12-13, MUR 6110 (Democratic Nat'l Comm., *et al.*) (holding that inclusion of business entity names and logos in committee fundraiser promotional materials may have constituted a corporate contribution); *see also supra* note 7 (citing letters to Mullin, Mullin Plumbing, and Mullin for Congress noting the Act’s prohibition on corporate contributions and reminding them “to take steps to ensure that its conduct is in compliance with the Act and Commission regulations”). *But see* F&LA at 6-7, MUR 7508 (Friends of Sherrod Brown) (finding that there was no prohibited corporate contribution when a campaign advertisement featured corporate employees appearing voluntarily, wearing corporate logos and on public property with the corporate building and logos visible, when the campaign paid all expenses and the corporation attempted to make clear that it had not endorsed the advertisement).

<sup>44</sup> 52 U.S.C. § 30118(a).

<sup>45</sup> *Id.*; *see* F&LA at 8, MUR 8056 (Bob Healy for Congress, *et al.*) (finding that although committee’s use of corporate facility and logo in an advertisement was an in-kind corporate contribution to committee, the value was *de minimis* and warranted dismissal).

<sup>46</sup> F&LA at 9, MUR 8056 (Bob Healy for Congress, *et al.*); F&LA at 5-6, MUR 7302 (Tom Campbell for N.D.) (dismissing allegations that the use of a truck bearing a “Campbell Farms” logo in the background of the candidate’s advertisement in a \$250,000 statewide television ad campaign constituted a prohibited in-kind contribution because its value was likely *de minimis*); F&LA at 8-13, MUR 6110 (Democratic Nat'l Comm., *et al.*) (dismissing allegations of use of corporate names and logos to solicit contributions for a local concert to benefit a joint fundraising committee, with the Commission noting the businesses did not contribute money directly to the committee or pay for the costs of the event, the event was modest and raised only \$13,500, and the value of the company names and logos was not substantial); F&LA at 4-6, MUR 6322 (Tommy Sowers for Congress, *et al.*) (examining use of a corporate logo on a fundraising invitation for an event that served as both a campaign event and a product launch for a corporation that was unrelated to the candidate and dismissing allegations as a matter of prosecutorial discretion).

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1 the value of the Mullin Plumbing logo and resources remains *de minimis*.<sup>47</sup> Similar to  
 2 MUR 8056 (Bob Healy for Congress, *et al.*), where a committee's ad using a corporate facility  
 3 and logo was an in-kind corporate contribution but merited dismissal because of the *de minimis*  
 4 value, the Committee's use of three apparent Mullin Plumbing employees and a Mullin  
 5 Plumbing-branded vehicle, displayed for two seconds of the 30-second ad, is of *de minimis*  
 6 value.<sup>48</sup> Accordingly, we conclude that it would not be an efficient use of Commission resources  
 7 to pursue these allegations and recommend that the Commission exercise its prosecutorial  
 8 discretion and dismiss the allegation that Mullin Plumbing made, and Markwayne Mullin and the  
 9 Committee knowingly accepted, prohibited in-kind corporate contributions in violation of  
 10 52 U.S.C. § 30118(a).

## 11           B.     Mullin Plumbing Advertisements

### 12           1.     Coordinated Communications

13       The Act prohibits corporations from making contributions to federal candidates or their  
 14 committees, and it prohibits federal candidates or their committees from knowingly accepting  
 15 corporate contributions.<sup>49</sup> Expenditures made by any person “in cooperation, consultation, or  
 16 concert with, or at the request or suggestion of” a candidate or his authorized committee or agent

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<sup>47</sup> As discussed above, OGC is mindful that the Commission considered in MUR 6542 (Mullin for Congress, *et al.*) allegations of prohibited in-kind corporate contributions regarding Mullin, Mullin for Congress, which was Mullin's principal campaign committee at the time, and Mullin Plumbing, concerning the use of Mullin Plumbing's corporate logos and employees in campaign ads, and exercised its prosecutorial discretion to dismiss the allegations. F&LA at 6-10, MUR 6542 (Mullin for Congress, *et al.*). In that matter, the Commission issued reminder letters to Mullin, Mullin's campaign committee and Mullin Plumbing regarding the Act's prohibition on corporate contributions. *Id.* at 10; *supra* note 7.

<sup>48</sup> F&LA at 8-9, MUR 8056 (Bob Healy for Congress, *et al.*); see Markwayne Mullin (@MarkwayneMullin), X (Apr. 1, 2022, 11:14 AM) at 0:04-0:05, <https://x.com/MarkwayneMullin/status/1509912193348870145>.

<sup>49</sup> 52 U.S.C. § 30118(a).

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1 qualify as an in-kind contribution to the candidate and must be reported as expenditures made by  
 2 the candidate's authorized committee.<sup>50</sup>

3       A communication that is coordinated with a candidate or his authorized committee is  
 4 considered an in-kind contribution and is subject to the limits, prohibitions, and reporting  
 5 requirements of the Act.<sup>51</sup> The Commission's regulations provide that a communication is  
 6 coordinated with a candidate, his authorized committee, or agent of either, if it meets a three-  
 7 prong test set forth in the Commission's regulations: (1) it is paid for, in whole or in part, by a  
 8 person other than the candidate or authorized committee; (2) it satisfies a content standard in  
 9 11 C.F.R. § 109.21(c);<sup>52</sup> and (3) it satisfies a conduct standard in 11 C.F.R. § 109.21(d).<sup>53</sup> All  
 10 three prongs must be satisfied for a communication to be considered coordinated under these  
 11 regulations.<sup>54</sup>

12       The coordination regulations provide a safe harbor that excludes from the definition of a  
 13 coordinated communication any public communication in which a federal candidate is clearly  
 14 identified only in his or her capacity as the owner or operator of a business that existed prior to  
 15 the candidacy, so long as the public communication does not promote, attack, support, or oppose

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<sup>50</sup> 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. §§ 109.20(a), (b).

<sup>51</sup> 52 U.S.C. § 30116; 11 C.F.R. § 109.21(b).

<sup>52</sup> 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).

<sup>53</sup> 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).

<sup>54</sup> 11 C.F.R. § 109.21(a); *see also* Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 453 (Jan. 3, 2003) ("Coordinated and Independent Expenditures E&J").

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1 ("PASO") that candidate or another candidate who seeks the same office, and so long as the  
 2 communication is consistent with other public communications made by the business prior to the  
 3 candidacy in terms of the medium, timing, content, and geographic distribution.<sup>55</sup> The  
 4 Commission has explained that the safe harbor was specifically designed to exempt *bona fide*  
 5 business communications from the coordination regulations.<sup>56</sup>

6         Even assuming *arguendo* that the communication satisfies all three prongs, the ad  
 7 appears to satisfy most, if not all, of the criteria within the commercial transaction safe harbor.<sup>57</sup>  
 8 First, the Mullin Plumbing ads that begin with "Hi, I'm Markwayne Mullin of Mullin Plumbing"  
 9 do not PASO Mullin's or another's candidacy for Senate; no language in the Mullin Plumbing  
 10 ads appears to build up or tear down Mullin's candidacy or that of his opponents. Thus, the  
 11 commercial transaction safe harbor provision of 11 C.F.R. § 109.21(i) applies.

12         Second, the Mullin Plumbing advertisements appear to use the same medium, content,  
 13 and geographic distribution as other Mullin Plumbing ads. Specifically, the advertisements  
 14 appear to be similar to those for which Mullin, in connection with a 2012 Advisory Opinion  
 15 request during his candidacy for Congress in 2012, represented were Mullin Plumbing's standard

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<sup>55</sup> 11 C.F.R. § 109.21(i).

<sup>56</sup> Coordinated Communications, 75 Fed. Reg. 55,947, 55,959 (Sept. 15, 2010) ("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* F&LA at 2-5, MUR 5410 (Oberweis Dairy, Inc., *et al.*); F&LA at 3-7, MUR 5517 (James R. Stork, *et al.*). The Coordinated Communications E&J refers to a third similar matter, MUR 6013 (Friends of Peter Teahan, *et al.*), in which the Commission dismissed the matter pursuant to its prosecutorial discretion. *See* Cert. at 1 (Mar. 12, 2009), MUR 6013. "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.

<sup>57</sup> *See* F&LA at 6-8, MUR 7428 (Matlock for Congress, *et al.*) (finding no reason to believe that a 2018 candidate for Congress coordinated communications with his tire business by appearing in their ads and "explain[ing] that the safe harbor was specifically designed to exempt *bona fide* business communications from the coordination regulations").

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1 advertisements.<sup>58</sup> The 2012 ads were on television and aired in Oklahoma television markets.<sup>59</sup>  
 2 Overall, the Mullin Plumbing ads that reportedly ran during Mullin's Senatorial campaign appear  
 3 to be "consistent with [Mullin Plumbing ads] made prior to the [Senate] candidacy."<sup>60</sup>

4 Whether the timing of the ads is consistent with Mullin Plumbing's prior advertising is a  
 5 closer call. While FCC records suggest an increase in advertisements aired during 2012 in the  
 6 lead up to the June Special Election,<sup>61</sup> as well as a lack of advertisements aired after the June  
 7 Special Election,<sup>62</sup> and these facts could suggest that the ads were timed for the election, further  
 8 investigation of Mullin Plumbing's advertising spending would not be an efficient use of  
 9 Commission resources given the amount in violation.

10 Accordingly, we recommend that the Commission exercise its prosecutorial discretion  
 11 and dismiss the allegation that Mullin Plumbing, Markwayne Mullin, and the Committee  
 12 violated 52 U.S.C. § 30118(a) by making, and knowingly accepting, prohibited in-kind corporate  
 13 contributions. We further recommend that the Commission issue a caution letter reminding  
 14 Respondents to refrain from making communications that would violate the Act or Commission  
 15 regulations.

16                   2.        Electioneering Communications

17               Although the commercial transaction safe harbor provision of 11 C.F.R. § 109.21(i)  
 18 exempts the Mullin Plumbing ad from being a prohibited coordinated communication, the safe

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<sup>58</sup>               Advisory Opinion Request at 2 & Ex. C, Advisory Opinion 2012-20 (Markwayne Mullin). The available information indicates that, based on the Advisory Opinion Request's description of the ads, the content of the Mullin Plumbing ads at issue in this matter is substantially similar to the content of the ads for which Mullin Plumbing requested the Advisory Opinion in 2012. *See supra* Part II; *supra* note 37 and accompanying text.

<sup>59</sup>               Advisory Opinion Request at 2 & Ex. C, Advisory Opinion 2012-20 (Markwayne Mullin).

<sup>60</sup>               11 C.F.R. § 109.21(i)(1).

<sup>61</sup>               *See supra* notes 24-28 and accompanying text.

<sup>62</sup>               *See supra* note 35 and accompanying text.

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1 harbor provision does not shield the ad from being an electioneering communication.<sup>63</sup> “An  
 2 electioneering communication is ‘any broadcast, cable, or satellite communication’ that refers to  
 3 a ‘clearly identified candidate for Federal office,’ is publicly distributed within a certain time  
 4 before the election, depending on the office, and meets certain requirements regarding the  
 5 audience, depending on the office.”<sup>64</sup> Although the statute establishes a 60-day cut-off period  
 6 for electioneering communications “before a general, special, or runoff election for the office  
 7 sought by the candidate,”<sup>65</sup> 11 C.F.R. § 100.29(b)(4) states: “[a] special election or a runoff  
 8 election is a primary election if held to nominate a candidate,” and a “special election or a runoff  
 9 election is a general election if held to elect a candidate.”<sup>66</sup> Under § 100.29(b)(4), the June  
 10 Special Primary and August Runoff Elections were primary elections because they were held to  
 11 nominate a candidate, and thus had the 30-day reporting period.<sup>67</sup>

12 The Act requires “[e]very person who makes a disbursement for the direct costs of  
 13 producing and airing electioneering communications” that aggregate more than \$10,000 in a  
 14 calendar year to file a statement with the Commission disclosing such communications within 24  
 15 hours of each disclosure date.<sup>68</sup> In 2022, Mullin Plumbing spent over \$15,000 to air the Mullin

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<sup>63</sup> 52 U.S.C. §§ 30104(f)(3), 30116(a)(7)(B)(i), 30116(a)(7)(C); 11 C.F.R. §§ 100.29, 109.21(c)(1); Electioneering Communications, 67 Fed. Reg. 65,190 (Oct. 23, 2002).

<sup>64</sup> F&LA at 8, MUR 7742 (Twitter, Inc.) (citing 52 U.S.C. § 30104(f)(3) and 11 C.F.R. § 100.29).

<sup>65</sup> 52 U.S.C. § 30104(f)(3)(A)(i)(II)(a).

<sup>66</sup> 11 C.F.R. § 100.29(b)(4) (emphases omitted).

<sup>67</sup> *Id.*

<sup>68</sup> 52 U.S.C. § 30104(f)(1).

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1 Plumbing ads that appear to be electioneering communications, but the Respondents apparently  
 2 did not file the required disclosure reports.<sup>69</sup>

3 As reflected in the Mullin Plumbing ad included in the *Fox23 News* article,<sup>70</sup> the Mullin  
 4 Plumbing ad appears to be an electioneering communication because it (1) referred to Mullin, a  
 5 clearly identified candidate for Federal office,<sup>71</sup> (2) aired within 30 days of the June 28, 2022  
 6 Primary Election, and (3) was targeted to Oklahoma voters where Mullin was running for  
 7 Senate.<sup>72</sup> Moreover, the ad reportedly beginning with the announcer stating “Hi, I’m  
 8 Markwayne Mullin of Mullin Plumbing” is reported to have aired 130 times in February, 218  
 9 times in March, 440 times in April, and 524 times in May, all in 2022, and approximately two-  
 10 thirds of the time in the Tulsa market.<sup>73</sup> Though the initial letter that formed the Complaint is  
 11 dated March 16, 2022, the available information indicates that the ads also aired in the month  
 12 leading up to the June 28, 2022 Special Primary Election.<sup>74</sup>

13 Nonetheless, because Mullin Plumbing appears to have spent only \$15,115 for these ads  
 14 in 2022,<sup>75</sup> during which time it appears to have disseminated at least one Mullin Plumbing ad  
 15 within the electioneering communications window, we recommend that the Commission exercise

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<sup>69</sup> During the period May 30 to June 26, 2022, Mullin Plumbing paid KOKI-TV \$6,515; KWTV-TV \$5,100; and KOTV-TV \$3,500 to air its ads. *See supra* note 28.

<sup>70</sup> *Fox23 News* Article.

<sup>71</sup> *See, e.g., Brown v. FEC*, 386 F. Supp. 3d 16, 26 (D.D.C. 2019) (stating that the statutory definition of electioneering communications “does not require that the ads refer to the candidate *as a* candidate, or even that they reference an election”) (emphasis in original).

<sup>72</sup> 52 U.S.C. § 30104(f)(3)(A); 11 C.F.R. § 100.29(a). A communication is “targeted to the relevant electorate” if it can be received by 50,000 or more persons in the district or state in which the candidate is running. 52 U.S.C. § 30104(f)(3)(C).

<sup>73</sup> *Oklahoman* Article.

<sup>74</sup> *See supra* note 28.

<sup>75</sup> *See supra* notes 33-34 and accompanying text.

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1 its prosecutorial discretion and dismiss the allegation that Mullin Plumbing violated 52 U.S.C.

2 § 30104(f) by failing to report electioneering communications.

3 **IV. RECOMMENDATIONS**

- 4 1. Dismiss the allegation that Mullin Plumbing, Inc., Markwayne Mullin, and Mullin  
5 for America and Lisa Lisker in her official capacity as treasurer violated  
6 52 U.S.C. § 30118(a) by making, and knowingly accepting, prohibited in-kind  
7 corporate contributions in the form of Mullin Plumbing's name, logo, vehicles,  
8 and employees appearing in Mullin for America advertisements;
- 9 2. Dismiss the allegation that Mullin Plumbing, Inc., Markwayne Mullin, and Mullin  
10 for America and Lisa Lisker in her official capacity as treasurer violated  
11 52 U.S.C. § 30118(a) by making, and knowingly accepting, prohibited in-kind  
12 corporate contributions in the form of Mullin Plumbing's advertisements;
- 13 3. Issue a letter cautioning Mullin Plumbing, Inc., Markwayne Mullin, and Mullin  
14 for America and Lisa Lisker in her official capacity as treasurer regarding the  
15 prohibition on corporate contributions in the Act and Commission regulations;
- 16 4. Dismiss the allegation that Mullin Plumbing, Inc., violated 52 U.S.C. § 30104(f)  
17 by failing to report electioneering communications;
- 18 5. Approve the attached Factual and Legal Analysis;
- 19 6. Approve the appropriate letters; and

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7. Close the file effective 30 days from the date the certification of this vote is signed (or on the next business day after the 30th day, if the 30th day falls on a weekend or holiday).

Lisa J. Stevenson  
Acting General Counsel

3/7/2025

Date

Adrienne C. Baranowicz

Adrienne C. Baranowicz  
Deputy Associate General Counsel for  
Enforcement

Ans. L.

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Anne B. Robinson  
Assistant General Counsel

Kenneth E. Sealls

Kenneth E. Sealls  
Attorney

## Attachment:

## Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Mullin for America and Lisa Lisker in her official capacity as treasurer  
Markwayne Mullin  
Mullin Plumbing, Inc.

MUR 7978

## I. INTRODUCTION

8 The Complaint in this matter alleges that Markwayne Mullin and Mullin for America and  
9 Lisa Lisker in her official capacity as treasurer (the “Committee”) violated the Federal Election  
10 Campaign Act of 1971, as amended (the “Act”) when the Committee disseminated at least one  
11 campaign advertisement showing a Mullin Plumbing, Inc. (“Mullin Plumbing”) vehicle with the  
12 business name, company employees, and logo clearly visible. The Complaint also alleges that  
13 Mullin Plumbing also violated the Act when it disseminated a television advertisement that used  
14 Mullin’s voice while Mullin was a candidate for the U.S. Senate.

15 As explained below, the Commission exercises its prosecutorial discretion and dismisses  
16 the allegations that (1) Mullin Plumbing made, and Markwayne Mullin and the Committee  
17 knowingly accepted, prohibited in-kind corporate contributions in violation of 52 U.S.C.  
18 § 30118(a) by using Mullin Plumbing’s name, logo, and vehicles in the Committee’s  
19 advertisements; (2) Mullin Plumbing made, and Markwayne Mullin and the Committee  
20 knowingly accepted, prohibited in-kind corporate contributions under 52 U.S.C. § 30118(a) in  
21 the form of Mullin Plumbing’s advertisements; and (3) Mullin Plumbing violated 52 U.S.C.  
22 § 30104(f) by failing to report electioneering communications.<sup>1</sup>

<sup>1</sup> *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

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1     **II. FACTUAL BACKGROUND**

2           Mullin was a candidate for the U.S. Senate in the 2022 election cycle, and Mullin for  
 3     America was his principal campaign committee.<sup>2</sup> Mullin won the June 28, 2022 Special  
 4     Primary, August 23, 2022 Special Runoff, and November 8, 2022 General Elections.<sup>3</sup> Prior to  
 5     that, he represented Oklahoma's Second Congressional District from 2013 to 2023.

6           Mullin Plumbing is a domestic, for-profit business corporation registered in Oklahoma.<sup>4</sup>  
 7     Mullin is a stockholder of Mullin Plumbing but contends that he has not had day-to-day  
 8     operational control of the entity since first being sworn into his congressional office in 2013.<sup>5</sup>  
 9     He reportedly stated that he sold 90 percent of his family's interest in Mullin Plumbing to  
 10    CenterOak Partners of Dallas, Texas, in 2021.<sup>6</sup>

11           **A. Campaign Ads**

12           The Complaint alleges that, during Mullin's U.S. Senate run, "each advertisement"  
 13    showed "his company vehicles with the business name and logo."<sup>7</sup> Mullin and the Committee

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<sup>2</sup> See Mullin for America, Amended Statement of Organization (Mar. 1, 2022), <https://docquery.fec.gov/pdf/865/202203019493728865/202203019493728865.pdf>.

<sup>3</sup> See June 28, 2022 Oklahoma State Election Board Official Results, OK ELECTION RESULTS (July 13, 2022), <https://results.okelections.us/OKER/?elecDate=20220628>; August 23, 2022 Oklahoma State Election Board Official Results, OK ELECTION RESULTS (Aug. 26, 2022), <https://results.okelections.us/OKER/?elecDate=20220823>; November 8, 2022 Oklahoma State Election Board Official Results, OK ELECTION RESULTS (Dec. 5, 2022), <https://results.okelections.us/OKER/?elecDate=20221108>.

<sup>4</sup> See Entity Summary Information: Mullin Plumbing New Construction, Inc., OKLA. SEC'Y OF STATE, <https://www.sos.ok.gov/corp/corpInformation.aspx?id=1912072710> (last visited Mar. 5, 2025).

<sup>5</sup> Resp. at 2 (June 3, 2022).

<sup>6</sup> Rick Maranon, *You Decide 2022: Mullin Discusses Sale of Family Business, Opponent Claims Post-Sale Ethics Issue*, 102.3 KRMG (Nov. 2, 2022) ("Fox23 News Article"), [https://www.krmg.com/news/you-decide-2022-mullin-discusses-sale-family-business-opponent-claims-post-sale-ethics-issue/KU60TALYBZHQ3G2WGCJ3B\\_PBFHI/](https://www.krmg.com/news/you-decide-2022-mullin-discusses-sale-family-business-opponent-claims-post-sale-ethics-issue/KU60TALYBZHQ3G2WGCJ3B_PBFHI/).

<sup>7</sup> Compl. at 2 (Apr. 13, 2022). These allegations are like those made in March 2012 regarding Mullin, Mullin Plumbing, and Mullin for Congress and Debbie Dooley in her official capacity as treasurer. See Compl. (Mar. 27, 2012), MUR 6542 (Mullin for Congress, *et al.*). In that matter, the Commission stated it was "undisputed that the [c]ommittee used in its campaign ads images of and footage of the Mullin Plumbing name, employees, and facilities" but exercised its prosecutorial discretion and dismissed the allegations. Factual & Legal Analysis

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1 concede that a “brief, partial, image of a Mullin Plumbing truck is seen in the background as a  
 2 voiceover of Markwayne Mullin makes reference to how he ‘fought to keep our business  
 3 alive.’”<sup>8</sup> The Response provides the hyperlink for an X post by Mullin that contains a campaign  
 4 ad displaying, for two seconds during the 30-second ad, two images of a Mullin Plumbing van  
 5 and what appear to be three Mullin Plumbing employees, reproduced below.<sup>9</sup>



6

(“F&LA”) at 6-10, MUR 6542 (Mullin for Congress, *et al.*). The Commission did, however, vote to remind the committee, Mullin, and Mullin Plumbing of the requirements of the Act’s corporate contribution prohibition. *See* Certification (“Cert.”) ¶¶ 1-2 (Mar. 13, 2013), MUR 6542; Letter to Jason Torchinsky, Esq., *et al.*, counsel for Mullin for Congress & Markwayne Mullin, from Peter G. Blumberg, Ass’t Gen. Counsel, FEC (Mar. 22, 2013), MUR 6542 (“remind[ing]” Mullin and the committee “pursuant to 2 U.S.C. § 441b(a) [now 52 U.S.C. § 30118(a)] concerning the prohibition on corporate contributions, to take steps to ensure that their conduct is in compliance with the Act and Commission regulations”); Letter to Markwayne Mullin, Mullin Plumbing, Inc., from Peter G. Blumberg, Ass’t Gen. Counsel, FEC (March 22, 2013), MUR 6542 (“remind[ing] Mullin Plumbing, pursuant to 2 U.S.C. § 441b(a) [now 52 U.S.C. § 30118(a)] concerning the prohibition on corporate contributions, to take steps to ensure that its conduct is in compliance with the Act and Commission regulations”).

<sup>8</sup> Resp. at 3.

<sup>9</sup> *Id.*; *see* Markwayne Mullin (@MarkwayneMullin), X (Apr. 1, 2022, 11:14 AM) at 0:04-0:05, <https://x.com/MarkwayneMullin/status/1509912193348870145>.

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1  
2 The Committee sponsored three additional ads on Facebook that featured Mullin standing  
3 with three apparent Mullin Plumbing employees in front of a Mullin Plumbing van.<sup>10</sup> While the  
4 text above each ad varied, the embedded videos were identical.<sup>11</sup> The ads were launched on  
5 Facebook on June 19, 2022 and became inactive on June 27, 2022.<sup>12</sup> The first of the three ads  
6 reached an estimated audience of 10,000 to 50,000, cost between \$1,500 and \$2,000, and  
7 generated between 60,000 to 70,000 impressions.<sup>13</sup> The second of the three ads reached an  
8 estimated audience of 10,000 to 50,000, cost between \$700 and \$799, and generated between

<sup>10</sup> Markwayne Mullin, META AD LIBRARY, [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=all&country=US&view\\_all\\_page\\_id=150763151677363&search\\_type=page&media\\_type=all](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=150763151677363&search_type=page&media_type=all) (last visited Mar. 5, 2025).

11 *Id.*

12 *Id.*

<sup>13</sup> See Link to Ad: Library ID 1202121530535685, META AD LIBRARY, <https://www.facebook.com/ads/library/?id=1202121530535685> (last visited Mar. 5, 2023) (“First Facebook Ad”) (showing statistics relating to first Facebook ad and First Facebook ad with text beginning “Inflation is OUT OF CONTROL”).

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1 25,000 to 30,000 impressions.<sup>14</sup> And the third ad reached an estimated audience of 10,000 to  
 2 50,000, cost between \$1,000 and \$1,500, and generated between 45,000 to 50,000 impressions.<sup>15</sup>  
 3 The three Facebook ads are each 30 seconds long and depict the same two seconds of  
 4 Markwayne Mullin standing with three men wearing red shirts and blue jeans, who appear to be  
 5 Mullin Plumbing employees, and a red Mullin Plumbing truck directly behind them.<sup>16</sup> Two of  
 6 the three men wearing red shirts have illegible logos on their shirts' breast pockets.<sup>17</sup> Below is  
 7 an example of one of the three Facebook ads with the embedded video:



8 Mullin and the Committee assert that the Committee's use of "biographical images in its  
 9 advertising is not an in-kind contribution from Mullin Plumbing to Mullin for America" or a  
 10 violation of the Act because the "Commission has consistently allowed the use of corporations to

<sup>14</sup> See *Link to Ad: Library ID 588261419397329*, META AD LIBRARY, <https://www.facebook.com/ads/library/?id=588261419397329> (last visited Mar. 5, 2025) ("Second Facebook Ad") (showing statistics relating to and content of Second Facebook ad with text beginning "I'm running for Senate").

<sup>15</sup> See *Link to Ad: Library ID 791329032250761*, META AD LIBRARY, <https://www.facebook.com/ads/library/?id=791329032250761> (last visited Mar. 5, 2025) ("Third Facebook Ad") (showing statistics relating to and content of Third Facebook ad with text beginning "Under Joe Biden . . .").

<sup>16</sup> See First Facebook Ad at 0:13-0:14; Second Facebook Ad at 0:13-0:14; Third Facebook Ad at 0:13-0:14.

<sup>17</sup> First Facebook Ad at 0:13-0:14; Second Facebook Ad at 0:13-0:14; Third Facebook Ad at 0:13-0:14. Previously, Mullin used Mullin Plumbing vans and staff in a 2020 Facebook ad when he ran for Congress. See *Link to Ad: Library ID 356890158758891*, META AD LIBRARY, <https://www.facebook.com/ads/library/?id=356890158758891> (last visited Mar. 5, 2025) (showing prior Facebook ad).

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1 identify individuals appearing in campaign advertisements when no fundraising occurs,” and  
 2 because Mullin “is a stockholder of Mullin Plumbing, and any value of Mullin Plumbing  
 3 facilities and employees in such advertising is [*de minimis*].”<sup>18</sup>

4 **B. Mullin Plumbing Ads**

5 The Complaint also alleges that Mullin used a Mullin voiceover in a “television  
 6 advertisement” regarding “his plumbing company” “while he [wa]s running for office.”<sup>19</sup>  
 7 Moreover, the Complaint alleges that one can “hear [Mullin’s] voice requesting that we call his  
 8 plumbing company for service.”<sup>20</sup> Although the Complaint does not provide a link to the  
 9 advertisements, a November 2022 *Fox23 News* report interviewing Mullin and his general  
 10 election opponent includes a voiceover ad that reportedly aired in the spring of 2022,<sup>21</sup> after  
 11 Mullin had declared his candidacy for the Senate on March 2, 2022.<sup>22</sup> That ad features Mullin’s  
 12 voice requesting viewers to call Mullin Plumbing for service.<sup>23</sup>

13 At least two Mullin Plumbing ads reportedly aired in the Tulsa and Oklahoma City  
 14 television markets in the months leading up to the June 28, 2022 Primary Election — 524 times  
 15 in May and 440 times in April.<sup>24</sup> Those ads reportedly “aired with increasing frequency [after]

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<sup>18</sup> Resp. at 2-3.

<sup>19</sup> Compl. at 1.

<sup>20</sup> *Id.*

<sup>21</sup> *Supra* note 6, *Fox23 News* Article (including internal video of news report showing Mullin Plumbing ad at 1:59-2:17 featuring an apparent plumber with Mullin’s voice narrating: “Hi, I’m Markwayne Mullin with Mullin Plumbing, the Red Rooter,” before the news reporter speaks over Mullin’s voice with further reporting).

<sup>22</sup> See Markwayne Mullin, Statement of Candidacy (Mar. 2, 2022), <https://docquery.fec.gov/pdf/502/202203029493730502.pdf>.

<sup>23</sup> *Fox23 News* Article.

<sup>24</sup> Chris Casteel, *Mullin Promoting Plumbing Company Despite Ethics Committee Guidance*, OKLAHOMAN (June 10, 2022) (“Oklahoman Article”), <https://www.oklahoman.com/story/news/2022/06/10/markwayne-mullin-promoting-plumbing-business-despite-house-ethics-ruling/7567474001/>.

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1 Mullin announced his candidacy.”<sup>25</sup> One of those ads is reportedly five seconds long and  
 2 another is reportedly 15 seconds long.<sup>26</sup> The ads reportedly begin with “Hi, I’m Markwayne  
 3 Mullin of Mullin Plumbing.”<sup>27</sup> Federal Communications Commission (“FCC”) records indicate  
 4 that Mullin Plumbing spent at least \$42,745 on television ads in the Tulsa and Oklahoma City,  
 5 Oklahoma markets between April 4 and June 26, 2022.

6 Mullin ran for Senate in two 2022 special elections. The June 28, 2022 Special Primary  
 7 and August 23, 2022 Special Runoff were special elections in which candidates were subject to  
 8 30-day reporting periods, as was the case with the November 8, 2022 Special General Election.<sup>28</sup>  
 9 In their Response, Mullin and the Committee contend that the Mullin Plumbing ads at issue  
 10 could not be electioneering communications because they were not alleged to have been made  
 11 within 30 days of the June 28, 2022 Special Senate Primary.<sup>29</sup> The two letters that formed the  
 12 Complaint, dated March 16 and April 1, 2022, were notarized on April 7, 2022, and received by  
 13 the Commission on April 13, 2022.<sup>30</sup> However, publicly available information indicates that the  
 14 Mullin Plumbing ads aired as late as June 26, 2022, and thus appear to have aired within 30 days  
 15 of the June 28, 2022 Special Primary Election. According to FCC records, Mullin Plumbing  
 16 paid a total of \$15,115 for ads that ran within 30 days of the June 28, 2022 Special Primary  
 17 Election.<sup>31</sup> In fact, Mullin Plumbing appears to have contracted with three television stations on

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> See *Oklahoma Special Election Reporting: Senate (2022)*, FEC.GOV (Mar. 17, 2022), <https://www.fec.gov/updates/oklahoma-special-election-reporting-senate-2022/>.

<sup>29</sup> Resp. at 2.

<sup>30</sup> Compl. at 1.

<sup>31</sup> Between May 30 and June 26, 2022, Mullin Plumbing paid KOKI-TV \$6,515; KWTW-TV \$5,100; and KOTV-TV \$3,500 to air its ads.

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1 April 1, April 12, and May 2, 2022, respectively, to air the Mullin Plumbing ads for which  
 2 Mullin Plumbing paid a combined \$15,115. Additionally, publicly available FCC records do not  
 3 show any Mullin Plumbing ads airing on television after June 26, 2022.<sup>32</sup> Below is a table  
 4 listing the three stations on which the Mullin Plumbing ads aired, when Mullin Plumbing  
 5 contracted for the ads, the periods in which the ads aired, and the amount Mullin Plumbing paid  
 6 to air them.

Stations Airing Ads	Contract Date	Dates Aired	Amount Paid
KOTV-TV, Tulsa, OK	4/12/2022	4/4/2022-6/26/2022	\$3,500
KWTV-TV, Oklahoma City, OK	4/1/2022	4/4/2022-6/26/2022	\$5,100
KOKI-TV, Tulsa, OK	5/2/2022	5/9/2022-6/26/2022	\$6,515

7 Mullin and the Committee contend that they “are not aware of any television  
 8 advertisements made by Mullin Plumbing that include any depiction, including voiceovers, of  
 9 [then-]Congressman Mullin, nor [do they] have any control over, or approval of, Mullin  
 10 Plumbing television advertisements.”<sup>33</sup> The Response further notes that, in 2012, Mullin, then a  
 11 candidate for U.S. Congress, sought Commission guidance through an Advisory Opinion  
 12 Request regarding Mullin Plumbing television ads, but the Commission did not issue an  
 13 Advisory Opinion.<sup>34</sup>

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<sup>32</sup> The Commission notified Mullin and the Committee of the Complaint on April 19, 2022, nearly two weeks before Mullin Plumbing entered the contract with KOKI-TV on May 2, 2022. *See* Compl. Notif. Letter (Apr. 19, 2022) (Mullin for Am.); Compl. Notif. Letter (Apr. 19, 2022) (Mullin). The Commission notified Mullin Plumbing of the Complaint on September 7, 2022. Compl. Notif. Letter (Sept. 7, 2022) (Mullin Plumbing, Inc.).

<sup>33</sup> Resp. at 1.

<sup>34</sup> *See* Cert. (May 31, 2012), Advisory Opinion Request at 1-2, Advisory Opinion 2012-20 (Markwayne Mullin); Letter from Kevin Deeley, Acting Assoc. Gen. Counsel, FEC, to Jason Torchinsky & Shawn Sheehy,

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1        In November 2012, then-Congressman-elect Mullin requested guidance from the U.S.  
 2        House Committee on Ethics (“House Ethics Committee”) regarding his future participation in  
 3        Mullin Plumbing ads.<sup>35</sup> The House Ethics Committee stated that “a Member should not be  
 4        actively involved in personally selling or endorsing goods or services in which the Member has a  
 5        financial interest.”<sup>36</sup> The House Ethics Committee concluded that:

6            Mullin should now understand that, going forward, he cannot  
 7            participate in the weekly radio program or the advertisements for  
 8            radio, television, and the web. This restriction only applies to the  
 9            active participation in selling or endorsing goods or services.  
 10          Thus, it does not require Representative Mullin to remove his  
 11         name from the Mullin Companies, nor does it require the Mullin  
 12         Companies to scour the Internet to take down old videos of  
 13         advertisements featuring Representative Mullin. Instead, the  
 14         Mullin Companies can no longer take active steps to promote  
 15         Representative Mullin’s endorsement of the companies. Thus, the  
 16         Mullin Companies cannot film any new advertisements featuring  
 17         Representative Mullin, and old advertisements featuring  
 18         Representative Mullin should be removed from the Mullin  
 19         Companies’ website.<sup>37</sup>

20        **III.    LEGAL ANALYSIS**

21        **A.    Mullin for America Advertisements**

22        A contribution’ is defined as “any gift . . . of money or anything of value made by any  
 23        person for the purpose of influencing any election for Federal office.”<sup>38</sup> “Anything of value”

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Counsel to Mullin (May 30, 2012), Advisory Opinion 2012-20 (“[T]his letter is to inform you that the Commission has concluded its consideration of your advisory opinion request without issuing an advisory opinion.”).

<sup>35</sup>        See U.S. House Comm. on Ethics, *In the Matter of Allegations Relating to Representative Markwayne Mullin*, H. Rep. 115-898, 115th Cong., 2d Sess. at 9-10, 82-83 (Aug. 10, 2018), <https://www.congress.gov/congressional-report/115th-congress/house-report/898/1?outputFormat=pdf> (“House Ethics Rpt.”).

<sup>36</sup>        House Ethics Rpt. at 9-10, 82-83 (noting that House Ethics Committee staff initially provided informal advice to Mullin that prior-recorded Mullin Plumbing ads featuring Mullin’s endorsement of his company could remain on the air provided that certain conditions were met).

<sup>37</sup>        *Id.* at 10 (internal citations omitted).

<sup>38</sup>        52 U.S.C. § 30101(8)(A)(i).

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1 includes in-kind contributions, such as the provision of goods or services without charge or at a  
 2 charge that is less than the usual and normal charge.<sup>39</sup> The Commission has previously  
 3 determined that a corporation’s name, trade name, trademarks, and service marks are things of  
 4 value owned by the corporation, and that allowing a committee to use them in a manner  
 5 suggesting the corporation’s support or endorsement of a candidate may constitute an in-kind  
 6 contribution.<sup>40</sup> The Act prohibits a corporation from making contributions to federal candidates  
 7 and their authorized committees.<sup>41</sup> Moreover, the Act “prohibits corporate officers and directors  
 8 from consenting to such contributions, and prohibits candidates and political committees from  
 9 knowingly accepting such contributions.”<sup>42</sup>

10 The Commission has dismissed allegations regarding the use of corporate logos or  
 11 images in campaign advertisements where the advertisements did not involve fundraising

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<sup>39</sup> See 11 C.F.R. § 100.52(d)(1).

<sup>40</sup> See, e.g., Advisory Opinion 2007-10 at 2-3 (Reyes Committee, Inc.) (concluding that recognizing corporate employers of individual contributors’ names, trademarks, or service marks on golf holes at a golf fundraising event to encourage contributions to the requesting committee would result in prohibited in-kind contributions); F&LA at 5-6, MUR 7302 (Tom Campbell for N.D., *et al.*) (holding that the appearance of corporate name and logo in campaign ad may have provided something of value to committee as an in-kind contribution, but dismissing because of likely *de minimis* value); F&LA at 7-8, MUR 6542 (Mullin for Congress, *et al.*) (dismissing allegations that the Committee used in its campaign ads images and footage of the Mullin Plumbing name, employees, and facilities because “the amounts at issue appear likely to be *de minimis*”); F&LA at 12-13, MUR 6110 (Democratic Nat’l Comm., *et al.*) (holding that inclusion of business entity names and logos in committee fundraiser promotional materials may have constituted a corporate contribution); *see also supra* note 7 (citing letters to Mullin, Mullin Plumbing, and Mullin for Congress noting the Act’s prohibition on corporate contributions and reminding them “to take steps to ensure that its conduct is in compliance with the Act and Commission regulations”). *But see* F&LA at 6-7, MUR 7508 (Friends of Sherrod Brown) (finding that there was no prohibited corporate contribution when a campaign advertisement featured corporate employees appearing voluntarily, wearing corporate logos and on public property with the corporate building and logos visible, when the campaign paid all expenses and the corporation attempted to make clear that it had not endorsed the advertisement).

<sup>41</sup> 52 U.S.C. § 30118(a).

<sup>42</sup> *Id.*; *see* F&LA at 8, MUR 8056 (Bob Healy for Congress, *et al.*) (finding that although committee’s use of corporate facility and logo in an advertisement was an in-kind corporate contribution to committee, the value was *de minimis* and warranted dismissal).

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1 solicitations or were *de minimis*.<sup>43</sup> Despite Respondents' demonstrated history of using  
 2 corporate logos and images in campaign advertisements, a dismissal is warranted here because  
 3 the value of the Mullin Plumbing logo and resources remains *de minimis*.<sup>44</sup> Similar to  
 4 MUR 8056 (Bob Healy for Congress, *et al.*), where a committee's ad using a corporate facility  
 5 and logo was an in-kind corporate contribution but merited dismissal because of the *de minimis*  
 6 value, the Committee's use of three apparent Mullin Plumbing employees and a Mullin  
 7 Plumbing-branded vehicle, displayed for two seconds of the 30-second ad, is of *de minimis*  
 8 value.<sup>45</sup> Accordingly, it would not be an efficient use of Commission resources to pursue these  
 9 allegations and the Commission exercises its prosecutorial discretion and dismisses the  
 10 allegation that Mullin Plumbing made, and Markwayne Mullin and the Committee knowingly  
 11 accepted, prohibited in-kind corporate contributions in violation of 52 U.S.C. § 30118(a).

12 **B. Mullin Plumbing Advertisements**

13 1. Coordinated Communications

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<sup>43</sup> F&LA at 9, MUR 8056 (Bob Healy for Congress, *et al.*); F&LA at 5-6, MUR 7302 (Tom Campbell for N.D.) (dismissing allegations that the use of a truck bearing a "Campbell Farms" logo in the background of the candidate's advertisement in a \$250,000 statewide television ad campaign constituted a prohibited in-kind contribution because its value was likely *de minimis*); F&LA at 8-13, MUR 6110 (Democratic Nat'l Comm., *et al.*) (dismissing allegations of use of corporate names and logos to solicit contributions for a local concert to benefit a joint fundraising committee, with the Commission noting the businesses did not contribute money directly to the committee or pay for the costs of the event, the event was modest and raised only \$13,500, and the value of the company names and logos was not substantial); F&LA at 4-6, MUR 6322 (Tommy Sowers for Congress, *et al.*) (examining use of a corporate logo on a fundraising invitation for an event that served as both a campaign event and a product launch for a corporation that was unrelated to the candidate and dismissing allegations as a matter of prosecutorial discretion).

<sup>44</sup> As discussed above, OGC is mindful that the Commission considered in MUR 6542 (Mullin for Congress, *et al.*) allegations of prohibited in-kind corporate contributions regarding Mullin, Mullin for Congress, which was Mullin's principal campaign committee at the time, and Mullin Plumbing, concerning the use of Mullin Plumbing's corporate logos and employees in campaign ads, and exercised its prosecutorial discretion to dismiss the allegations. F&LA at 6-10, MUR 6542 (Mullin for Congress, *et al.*). In that matter, the Commission issued reminder letters to Mullin, Mullin's campaign committee and Mullin Plumbing regarding the Act's prohibition on corporate contributions. *Id.* at 10; *supra* note 7.

<sup>45</sup> F&LA at 8-9, MUR 8056 (Bob Healy for Congress, *et al.*); see Markwayne Mullin (@MarkwayneMullin), X (Apr. 1, 2022, 11:14 AM) at 0:04-0:05, <https://x.com/MarkwayneMullin/status/1509912193348870145>.

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1        The Act prohibits corporations from making contributions to federal candidates or their  
 2        committees, and it prohibits federal candidates or their committees from knowingly accepting  
 3        corporate contributions.<sup>46</sup> Expenditures made by any person “in cooperation, consultation, or  
 4        concert with, or at the request or suggestion of” a candidate or his authorized committee or agent  
 5        qualify as an in-kind contribution to the candidate and must be reported as expenditures made by  
 6        the candidate’s authorized committee.<sup>47</sup>

7        A communication that is coordinated with a candidate or his authorized committee is

8        considered an in-kind contribution and is subject to the limits, prohibitions, and reporting  
 9        requirements of the Act.<sup>48</sup> The Commission’s regulations provide that a communication is  
 10       coordinated with a candidate, his authorized committee, or agent of either, if it meets a three-  
 11       prong test set forth in the Commission’s regulations: (1) it is paid for, in whole or in part, by a  
 12       person other than the candidate or authorized committee; (2) it satisfies a content standard in  
 13       11 C.F.R. § 109.21(c);<sup>49</sup> and (3) it satisfies a conduct standard in 11 C.F.R. § 109.21(d).<sup>50</sup> All  
 14       three prongs must be satisfied for a communication to be considered coordinated under these  
 15       regulations.<sup>51</sup>

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<sup>46</sup>        52 U.S.C. § 30118(a).

<sup>47</sup>        52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. §§ 109.20(a), (b).

<sup>48</sup>        52 U.S.C. § 30116; 11 C.F.R. § 109.21(b).

<sup>49</sup>        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).

<sup>50</sup>        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).

<sup>51</sup>        11 C.F.R. § 109.21(a); *see also* Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 453 (Jan. 3, 2003) (“Coordinated and Independent Expenditures E&J”).

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1        The coordination regulations provide a safe harbor that excludes from the definition of a  
 2        coordinated communication any public communication in which a federal candidate is clearly  
 3        identified only in his or her capacity as the owner or operator of a business that existed prior to  
 4        the candidacy, so long as the public communication does not promote, attack, support, or oppose  
 5        (“PASO”) that candidate or another candidate who seeks the same office, and so long as the  
 6        communication is consistent with other public communications made by the business prior to the  
 7        candidacy in terms of the medium, timing, content, and geographic distribution.<sup>52</sup> The  
 8        Commission has explained that the safe harbor was specifically designed to exempt *bona fide*  
 9        business communications from the coordination regulations.<sup>53</sup>

10        Even assuming *arguendo* that the communication satisfies all three prongs, the ad  
 11        appears to satisfy most, if not all, of the criteria within the commercial transaction safe harbor.<sup>54</sup>  
 12        First, the Mullin Plumbing ads that begin with “Hi, I’m Markwayne Mullin of Mullin Plumbing”  
 13        do not PASO Mullin’s or another’s candidacy for Senate; no language in the Mullin Plumbing  
 14        ads appears to build up or tear down Mullin’s candidacy or that of his opponents. Thus, the  
 15        commercial transaction safe harbor provision of 11 C.F.R. § 109.21(i) applies.

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<sup>52</sup>        11 C.F.R. § 109.21(i).

<sup>53</sup>        Coordinated Communications, 75 Fed. Reg. 55,947, 55,959 (Sept. 15, 2010) (“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* F&LA at 2-5, MUR 5410 (Oberweis Dairy, Inc., *et al.*); F&LA at 3-7, MUR 5517 (James R. Stork, *et al.*). The Coordinated Communications E&J refers to a third similar matter, MUR 6013 (Friends of Peter Teahan, *et al.*), in which the Commission dismissed the matter pursuant to its prosecutorial discretion. *See* Cert. at 1 (Mar. 12, 2009), MUR 6013. “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.

<sup>54</sup>        *See* F&LA at 6-8, MUR 7428 (Matlock for Congress, *et al.*) (finding no reason to believe that a 2018 candidate for Congress coordinated communications with his tire business by appearing in their ads and “explain[ing] that the safe harbor was specifically designed to exempt *bona fide* business communications from the coordination regulations”).

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1        Second, the Mullin Plumbing advertisements appear to use the same medium, content,  
 2        and geographic distribution as other Mullin Plumbing ads. Specifically, the advertisements  
 3        appear to be similar to those for which Mullin, in connection with a 2012 Advisory Opinion  
 4        request during his candidacy for Congress in 2012, represented were Mullin Plumbing's standard  
 5        advertisements.<sup>55</sup> The 2012 ads were on television and aired in Oklahoma television markets.<sup>56</sup>  
 6        Overall, the Mullin Plumbing ads that reportedly ran during Mullin's Senatorial campaign appear  
 7        to be "consistent with [Mullin Plumbing ads] made prior to the [Senate] candidacy."<sup>57</sup>

8            Whether the timing of the ads is consistent with Mullin Plumbing's prior advertising is a  
 9        closer call. While FCC records suggest an increase in advertisements aired during 2022 in the  
 10       lead up to the June Special Election,<sup>58</sup> as well as a lack of advertisements aired after the June  
 11       Special Election,<sup>59</sup> and these facts could suggest that the ads were timed for the election, further  
 12       investigation of Mullin Plumbing's advertising spending would not be an efficient use of  
 13       Commission resources given the amount in violation.

14           Accordingly, the Commission exercises its prosecutorial discretion and dismisses the  
 15       allegation that Mullin Plumbing, Markwayne Mullin, and the Committee violated 52 U.S.C.  
 16       § 30118(a) by making, and knowingly accepting, prohibited in-kind corporate contributions.  
 17       The Commission issues a caution letter reminding Respondents to refrain from making  
 18       communications that would violate the Act or Commission regulations.

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<sup>55</sup>       Advisory Opinion Request at 2 & Ex. C, Advisory Opinion 2012-20 (Markwayne Mullin). The available information indicates that, based on the Advisory Opinion Request's description of the ads, the content of the Mullin Plumbing ads at issue in this matter is substantially similar to the content of the ads for which Mullin Plumbing requested the Advisory Opinion in 2012. *See supra* Part II; *supra* note 34 and accompanying text.

<sup>56</sup>       Advisory Opinion Request at 2 & Ex. C, Advisory Opinion 2012-20 (Markwayne Mullin).

<sup>57</sup>       11 C.F.R. § 109.21(i)(1).

<sup>58</sup>       *See supra* notes 24-**Error! Bookmark not defined.** and accompanying text.

<sup>59</sup>       *See supra* note 32 and accompanying text.

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1                   2.     Electioneering Communications

2                 Although the commercial transaction safe harbor provision of 11 C.F.R. § 109.21(i)  
 3     exempts the Mullin Plumbing ad from being a prohibited coordinated communication, the safe  
 4     harbor provision does not shield the ad from being an electioneering communication.<sup>60</sup> “An  
 5     electioneering communication is ‘any broadcast, cable, or satellite communication’ that refers to  
 6     a ‘clearly identified candidate for Federal office,’ is publicly distributed within a certain time  
 7     before the election, depending on the office, and meets certain requirements regarding the  
 8     audience, depending on the office.”<sup>61</sup> Although the statute establishes a 60-day cut-off period  
 9     for electioneering communications “before a general, special, or runoff election for the office  
 10    sought by the candidate,”<sup>62</sup> 11 C.F.R. § 100.29(b)(4) states: “[a] *special election* or a runoff  
 11    election is a primary election if held to nominate a candidate,” and a “special election or a runoff  
 12    election is a general election if held to elect a candidate.”<sup>63</sup> Under § 100.29(b)(4), the June  
 13    Special Primary and August Runoff Elections were primary elections because they were held to  
 14    nominate a candidate, and thus had the 30-day reporting period.<sup>64</sup>

15                 The Act requires “[e]very person who makes a disbursement for the direct costs of  
 16     producing and airing electioneering communications” that aggregate more than \$10,000 in a  
 17     calendar year to file a statement with the Commission disclosing such communications within 24  
 18     hours of each disclosure date.<sup>65</sup> In 2022, Mullin Plumbing spent over \$15,000 to air the Mullin

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<sup>60</sup>                 52 U.S.C. §§ 30104(f)(3), 30116(a)(7)(B)(i), 30116(a)(7)(C); 11 C.F.R. §§ 100.29, 109.21(c)(1);  
 Electioneering Communications, 67 Fed. Reg. 65,190 (Oct. 23, 2002).

<sup>61</sup>                 F&LA at 8, MUR 7742 (Twitter, Inc.) (citing 52 U.S.C. § 30104(f)(3) and 11 C.F.R. § 100.29).

<sup>62</sup>                 52 U.S.C. § 30104(f)(3)(A)(i)(II)(a).

<sup>63</sup>                 11 C.F.R. § 100.29(b)(4) (emphases omitted).

<sup>64</sup>                 *Id.*

<sup>65</sup>                 52 U.S.C. § 30104(f)(1).

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1 Plumbing ads that appear to be electioneering communications, but the Respondents apparently  
 2 did not file the required disclosure reports.<sup>66</sup>

3 As reflected in the Mullin Plumbing ad included in the *Fox23 News* article,<sup>67</sup> the Mullin  
 4 Plumbing ad appears to be an electioneering communication because it (1) referred to Mullin, a  
 5 clearly identified candidate for Federal office,<sup>68</sup> (2) aired within 30 days of the June 28, 2022  
 6 Primary Election, and (3) was targeted to Oklahoma voters where Mullin was running for  
 7 Senate.<sup>69</sup> Moreover, the ad reportedly beginning with the announcer stating “Hi, I’m  
 8 Markwayne Mullin of Mullin Plumbing” is reported to have aired 130 times in February, 218  
 9 times in March, 440 times in April, and 524 times in May, all in 2022, and approximately two-  
 10 thirds of the time in the Tulsa market.<sup>70</sup> Though the initial letter that formed the Complaint is  
 11 dated March 16, 2022, the available information indicates that the ads also aired in the month  
 12 leading up to the June 28, 2022 Special Primary Election.

13 Nonetheless, because Mullin Plumbing appears to have spent only \$15,115 for these ads  
 14 in 2022,<sup>71</sup> during which time it appears to have disseminated at least one Mullin Plumbing ad  
 15 within the electioneering communications window, the Commission exercises its prosecutorial

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<sup>66</sup> During the period May 30 to June 26, 2022, Mullin Plumbing paid KOKI-TV \$6,515; KWTV-TV \$5,100; and KOTV-TV \$3,500 to air its ads.

<sup>67</sup> *Fox23 News* Article.

<sup>68</sup> See, e.g., *Brown v. FEC*, 386 F. Supp. 3d 16, 26 (D.D.C. 2019) (stating that the statutory definition of electioneering communications “does not require that the ads refer to the candidate *as a* candidate, or even that they reference an election”) (emphasis in original).

<sup>69</sup> 52 U.S.C. § 30104(f)(3)(A); 11 C.F.R. § 100.29(a). A communication is “targeted to the relevant electorate” if it can be received by 50,000 or more persons in the district or state in which the candidate is running. 52 U.S.C. § 30104(f)(3)(C).

<sup>70</sup> *Oklahoman* Article.

<sup>71</sup> See *supra* note 31 and accompanying text.

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- 1 discretion and dismisses the allegation that Mullin Plumbing violated 52 U.S.C. § 30104(f) by
- 2 failing to report electioneering communications.