



FEDERAL ELECTION COMMISSION  
1050 FIRST STREET, N.E.  
WASHINGTON, D.C. 20463

## BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	:	
	:	MUR 7978
Mullin for Am, <i>et al.</i>	:	
	:	
	:	

### STATEMENT OF REASONS OF VICE CHAIRMAN JAMES E. "TREY" TRAINOR, III AND COMMISSIONER ALLEN J. DICKERSON

“Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided.”<sup>1</sup> In the Commission’s governing statute, the Federal Election Campaign Act (“FECA” or “Act”), Congress vested this agency with the power to act only upon complaints filed by a “person who *believes* a violation of this Act...has occurred.”<sup>2</sup> Our regulations implement this statutory restriction, stating that a “person who believes that a violation of any statute or regulation over which the Commission has jurisdiction has occurred” may file a complaint, which “should contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction.”<sup>3</sup>

Against that backdrop, the Commission received two pieces of paper, on complainant’s letterhead, dated March 16, 2022 and April 1, 2022. The first page (March 16), addressed to all members of the Commission, queried: “Why does Congressman Markwayne Mullin run television advisement [*sic*] on television while he is running for office. We hear his voice requesting that we call his plumbing company for service. Please keep me informed about this very curious matter.” The second page (April 1), similarly addressed, asked us: “Congressman Markwayne Mullin is running for the U.S Senate in Oklahoma. In each advertisement his

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<sup>1</sup> *Nat'l Fed'n of Indep. Bus. v. U.S. Dep't of Labor*, 595 U.S. 109, 117 (2022).

<sup>2</sup> 52 U.S.C. § 30109(a)(1) (emphasis supplied).

<sup>3</sup> 11 C.F.R. § 111.4.

company vehicles with the business name and logo is [sic] clearly visitable [sic]. Is this a violation of federal campaign laws? Please keep me informed about this very curious matter.”

We do not believe these documents qualify as a complaint under FECA, because it is plain from the text of both letters that the purported complainant is not making an allegation. We concede that this conclusion is one upon which reasonable minds may differ, but, in the final analysis, an inchoate uncertainty about the application of FECA is not sufficient to trigger our complaint-driven enforcement procedures.<sup>4</sup> Complaints must clearly allege a violation of the Act.

While this outcome may appear formalistic, it is imperative that law enforcement agencies strictly adhere to their proper jurisdiction.<sup>5</sup> The rule of law requires bright lines and certainty, especially at the point at which a person formally comes under scrutiny by the federal government for breaking the law. Here, Congress has given us specific instructions concerning the triggers for our authority. We must give them effect.

Moreover, the submission of a proper complaint, laying out a specific allegation concerning violations of FECA, is necessary to give respondents proper notice. The Act gives respondents only one bite at the apple before the Commission’s initial consideration of a Matter – a response to the complaint as written, not OGC’s eventual (much supplemented) analysis.<sup>6</sup> Permitting bare-boned questions to serve as a complaint fails to give respondents the meaningful opportunity for response contemplated by the statute.

As this very case demonstrates, *ultra vires* action is not costless. Respondents waited nearly *three years* for our Office of General Counsel to consider the purported complaint in this Matter and ultimately recommend a dismissal. Because there is no jurisdiction, we do not take a position on the General Counsel’s dismissal recommendation. But the delay is especially egregious where a Matter should not have moved forward in the first instance.

For these reasons, we voted to dismiss.

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<sup>4</sup> In fact, Congress separately authorized the Commission to issue advisory opinions for such cases. 52 U.S.C. §§ 30107; 30108.

<sup>5</sup> U.S. Const. amend. V.

<sup>6</sup> 52 U.S.C. § 30109(a)(2).



James E. "Trey" Trainor, III  
Vice Chairman

April 9, 2025

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Date



Allen J. Dickerson  
Commissioner

April 9, 2025

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Date