

1 **FEDERAL ELECTION COMMISSION**
2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 **MUR 7724**

6 DATE COMPLAINT FILED: April 2, 2020
7 DATE OF NOTIFICATIONS: April 7, 2020
8 LAST RESPONSE RECEIVED: April 21, 2020
9 DATE ACTIVATED: September 11, 2020
10 EPS:

11
12 **COMPLAINANTS:**

13 Anne Meng
14 Gerry Lea Fuller

15 **MUR 7752**

16 DATE COMPLAINT FILED: June 22, 2020
17 DATE OF NOTIFICATIONS: June 24, 2020
18 LAST RESPONSE RECEIVED: July 20, 2020
19 DATE ACTIVATED: September 11, 2020
20 EPS:

21
22 **COMPLAINANTS:**

23 Amy Denton
24 Anita Haddock

25 ELECTION CYCLES: 2020, 2022
26 EXPIRATION OF SOL:
27 February 13, 2025 - May, 30 2027
28

29 **RESPONDENTS:**

30 Johnny Teague for Congress Campaign Committee
31 and James Poullard in his official capacity as
32 treasurer
33 Church at the Cross
34 Dr. Johnny Mark Teague

35 **RELEVANT STATUTES**
36 **AND REGULATIONS:**

37 52 U.S.C. § 30104(f)
38 52 U.S.C. § 30118(a)
39 52 U.S.C. § 30120
40 52 U.S.C. § 30104(b)
41 11 C.F.R. § 104.20
42 11 C.F.R. § 110.11
43 11 C.F.R. § 114.2

44 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

1

2 **FEDERAL AGENCIES CHECKED:**3 **I. INTRODUCTION**

4 These matters involve allegations that 2020 congressional candidate Dr. Johnny Mark
5 Teague, who also served as Senior Pastor at the Church at the Cross in Houston, Texas (the
6 “Church”), “effectively merged his business and his campaign,” resulting in violations of the
7 Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations.¹
8 Specifically, the Complaints allege that the Church aired a television ad featuring Teague shortly
9 before the Republican primary election that lacked the proper disclaimer and resulted in a
10 prohibited contribution by the Church to Teague. In addition, the Complaints allege that Teague
11 used the Church’s Facebook account to communicate about his campaign and that his principal
12 campaign committee, Johnny Teague for Congress Campaign Committee and James Poullard in
13 his official capacity as treasurer (the “Committee”), used the Church as a campaign office.

14 Respondents assert that the Committee and the Church have attempted to “keep all
15 Church business separate from campaign business,” but concede that Teague as a first-time
16 candidate “will correct” any mistakes “accordingly and immediately.”² Respondents state that
17 the Church’s television ad was not related to the campaign or intentionally timed to the election.

¹ Compl. at 1, MUR 7724 (Apr. 2, 2020); Compl. at 1 MUR 7752 (June 22, 2020). The Complaints in MUR 7724 and MUR 7752 are identical. Hereinafter, we cite to the Complaint in MUR 7724. In addition to alleging violations of the Act, the Complaints also allege violations of the Federal Communications Commission (“FCC”) rules and the so-called “Johnson Amendment” to the Internal Revenue Code, which fall outside the scope of the Commission’s jurisdiction. As such, we make no recommendations as to those alleged violations.

² Teague Resp. at 1, MUR 7724 (Apr. 7, 2020) (hereinafter “MUR 7724 Resp.”); Committee Resp. at 1, MUR 7724 (Apr. 21, 2020); Teague Resp. at 1, MUR 7752 (June 29, 2020); Committee Resp. at 1, MUR 7752 (July 20, 2020). Teague’s Response in MUR 7752 incorporated his initial Response in MUR 7724. The Committee adopted both of Teague’s Responses submitted for MURs 7724 and 7752. Teague, as Senior Pastor, also responded on behalf of the Church.

1 Moreover, Respondents assert that Teague has not used the Church's Facebook account for any
2 campaign activity.

3 As discussed below, the television ad at issue meets the requirements for a coordinated
4 communication and thus, constituted a contribution to the Committee that was subject to the
5 Act's limitations and source prohibitions in addition to the Act's disclosure and disclaimer
6 requirements. But as explained in further detail below, due to the ad's lack of electoral content,
7 the low dollar amount spent on the ad, and the fact-finding necessary to establish the precise
8 amount in violation, it would not be an efficient use of the Commission's resources to pursue the
9 allegations that the ad was a contribution or that it was subject to the Act's disclaimer and
10 disclosure requirements. Finally, there is insufficient available information regarding the extent
11 of Teague's use of the Church address and facilities for campaign related purposes, and the
12 alleged Facebook posts referencing Teague's campaign appear to be covered by the internet
13 exemption.

14 Accordingly, we recommend that the Commission exercise its prosecutorial discretion to
15 dismiss the allegations that the Church made, and Teague and the Committee knowingly
16 accepted, an in-kind corporate contribution in violation of 52 U.S.C. § 30118 and 11 C.F.R.
17 § 114.2 through the television ad; dismiss the allegation that the Committee failed to report
18 receipt of an in-kind contribution from the Church as it relates to the television ad in violation of
19 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a); dismiss the allegations that the Church violated
20 52 U.S.C. §§ 30120(a) and 30104(f) and 11 C.F.R. §§ 110.11 and 104.20 by failing to comply

1 with the disclaimer and disclosure requirements for electioneering communications in connection
2 with the television ad, and that it issue a caution letter as to these violations.³

3 We further recommend that the Commission exercise its prosecutorial discretion and
4 dismiss the allegations that the Church made, and Teague and the Committee knowingly
5 accepted, in-kind corporate contributions in violation of 52 U.S.C. § 30118 and 11 C.F.R.
6 § 114.2 in connection with the Committee's use of the Church address and facilities, and dismiss
7 the allegation that the Committee failed to report receipt of in-kind contributions from the
8 Church as it relates to such use in violation of 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a). In
9 addition, we recommend that the Commission find no reason to believe that the Church made,
10 and Teague and the Committee knowingly accepted, an in-kind corporate contribution in
11 violation of 52 U.S.C. § 30118 and 11 C.F.R. § 114.2 in connection with the Church's Facebook
12 posts, and no reason to believe that the Committee failed to report receipt of an in-kind
13 contribution from the Church as it relates to those posts. Last, we recommend the Commission
14 find no reason to believe that the Church violated 52 U.S.C. § 30120 and 11 C.F.R. § 110.11 by
15 failing to include a disclaimer on its Facebook posts referencing Teague's candidacy.

16 **II. FACTUAL BACKGROUND**

17 On March 3, 2020, Teague won the 2020 Republican primary election for Texas's 9th
18 Congressional District but lost the November 3, 2020 general election.⁴ On May 24, 2022,
19 Teague won the 2022 Republican primary run-off for Texas's 7th Congressional District but lost

³ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

⁴ Dr. Johnny Mark Teague Statement of Candidacy at 1 (Apr. 29, 2019); 2020 Texas Election Results, U.S. Rep. District 9, TEXAS SEC'Y OF STATE (<https://www.sos.state.tx.us/elections/historical/elections-results-archive.shtml>) (last visited: Feb. 7, 2023).

1 the November 8, 2022 general election.⁵ Since 2005, Teague has been employed as Senior
2 Pastor at the Church, which registered in 1952 as a domestic non-profit corporation with the
3 Texas Secretary of State.⁶ Until August 2022, the Committee's address listed in its Statement of
4 Organization was the same as the Church's address listed in its filings with the Texas Secretary
5 of State.⁷

6 According to the Complaints, the Church ran a television ad featuring Teague on Fox 26
7 Houston, from February 13 through March 2, 2020, shortly before the March 3, 2020, primary
8 election, which allegedly provided him with an "unfair advantage."⁸ Respondents acknowledge
9 that the Church ran a television ad on Fox 26, and they do not dispute the dates listed in the
10 Complaints.⁹

11 The television ad,¹⁰ a copy of which can be found on the Church's Facebook page,
12 features Teague, appearing in full view facing the camera with a picture of the Church in the
13 background and saying:

⁵ Dr. Johnny Mark Teague, Amended Statement of Candidacy at 1 (Nov. 16, 2021); Dr. Johnny Mark Teague, Statement of Candidacy at 1 (Apr. 29, 2019) 2022 Texas Election Results, U.S. Rep. District 7, TEXAS SEC'y OF STATE, <https://results.texas-election.com/races> (last visited: Feb. 7, 2023).

⁶ MUR 7724 Resp. at 1; Office of the Sec'y of State, State of Texas, Information Ltr. for Entity. (Sept. 25, 2020).

⁷ Compare Amended Statement of Organization, Johnny Teague for Congress Campaign Committee (Sept. 27, 2019), with Texas Sec'y of State, Church at the Cross Information Ltr. (Sept. 25, 2020); see Johnny Teague for Congress Campaign Committee, Amended Statement of Organization at 1 (Aug. 22, 2022) (listing Teague's residence as the campaign's address).

⁸ MUR 7724 Compl. at 1. The Complaints allege that the Church ran "numerous" ads, but it is unclear whether this was in reference to multiple different ads or a single ad broadcast multiple times. *Id.* Respondents state that there was a single ad, and we have no information to the contrary. MUR 7724 Resp. at 1.

⁹ See MUR 7724 Resp. at 1.

¹⁰ The ad is located in the "banner" at the top of the Church's Facebook page. MUR 7724 Resp. at 1. The same ad also appears in two posts on the Church's Facebook page dated February 9 and 12, 2020. One of the posts states: "Our new Church commercial" and both posts contain a link to the YouTube page of Joel Mathiason of Fox 26 Houston containing the ad. Joel Mathiason, *Creative Services, CATC022030*, YOUTUBE, (Feb. 6, 2020) (<https://www.youtube.com/watch?v=2Ckc8Wsip0o>) (last visited Jan. 24, 2023).

1 Have you ever asked a friend, “Do I have anything in my teeth?” Did you want
 2 them to tell you the truth, or tell you what made you feel good? A lot of people
 3 go to Church to make them feel good. God’s word does that but he also brings
 4 you the truth. What we need to clean up our lives and experience his blessing.
 5 I’m Dr. Johnny Teague and I invite you to join us at the Church at the Cross
 6 where we study every Sunday God’s truth at 3835 South Dairy Ashford.¹¹

7 Throughout most of the ad, a text banner appears at the bottom of the screen containing the
 8 Church’s logo, address, phone number, and schedule of worship times. Teague is identified with
 9 the text, “Dr. Johnny Teague, Pastor.” A screenshot from the television ad appears below:



11 At the end of the ad, there is a cut to a page that more prominently displays the Church’s
 12 logo, address, phone number, and worship times, but does not mention Teague’s name, as shown
 13 below:¹²

¹¹ Church at the Cross Houston, FACEBOOK, (<https://www.facebook.com/catchouston.org/>) (Feb. 9 and 12, 2020).

¹² *Id.*



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 2 No part of the ad references Teague's candidacy, his opponent, or the election.¹³
 3 The Complaints further assert that "Teague's campaign Facebook page and his campaign
 4 website make reference to his church," and that by doing this, "he has effectively merged his
 5 business and his campaign."¹⁴ Accordingly, the Complaints allege that "[h]is advertisements for
 6 his church . . . did not contain a political disclaimer as required by law."¹⁵

7 In addition, the Complaints assert that "his campaign headquarters was the address of his
 8 Church," and that "the Church used Facebook, Messenger, and other communication platforms
 9 to communicate his campaign directly to his parishioners and anyone else following the
 10 Church's page."¹⁶ Our review of the Church's Facebook page shows that it contains at least
 11 three posts by Teague referencing his candidacy.¹⁷ Further, the Complaints assert that "the

¹³ Fox26 Houston's FCC public inspection files do not show any advertisements related to Teague in its political files for U.S. House or files for non-candidate issue ads in the years 2019, 2020 or 2022. <https://publicfiles.fcc.gov/tv-profile/kriv>; <https://publicfiles.fcc.gov/tv-profile/ktxh/political-files/>. The FCC's political files must include all requests for broadcast time by candidates. 47 C.F.R. §§ 73.3526(e)(6), 73.3527(e)(5), 73.1943.

¹⁴ MUR 7724 Compl. at 1.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Church at the Cross Houston, *Pastor Johnny Teague showing off his skills #checkjohnny #congress* (video of Teague juggling and saying "Johnny Teague for Congress") (Sept. 5, 2020); *Word for the Week – GRASP* (" . . . I told him who I was and that I was running to be his Congressman. . .") (Sept. 27, 2020), *Word for the Week – IMPOSSIBLE* (Sept. 13, 2020), reading in pertinent part:

1 Church Facebook page repeatedly allows comments on it alluding to [Teague's] political
 2 campaign from his supporters."¹⁸ We do not have access to any private communications that
 3 may have been made by the Church on Facebook Messenger.

4 In his Response, Teague, who was a first-time candidate at the time of the Complaint,
 5 asserts that he has "done [his] best to keep all Church business separate from campaign
 6 business," but that if he has made any mistakes he "will correct accordingly and immediately."¹⁹
 7 Regarding the Church's television ad, Teague explains that the Church "always" runs television
 8 ads on Fox 26 whenever it has the funds to do so.²⁰ Moreover, Teague denies timing the ad in
 9 question based on his campaign but rather "on funds and the fluctuations of Church

I have called on the Lord to do many impossible things in my life. He has miraculously responded. Now I am asking Him a huge request. "Lord, let me win this race for the U.S. Congress please". Of all things, this one is the unlikeliest of them all. My opponent doesn't think I can win. Pour some water on that wood. My own party doesn't think I can win. Pour some more water on that wood. No one wants to give money because they say it's not winnable. Pour some more water on that wood. They say no one knows who I am. Pour some more water on that wood. They say mail-in voting may hurt me. Pour some more water on that wood. They think a Libertarian candidate may siphon some votes from me. Pour some more water on that wood. They acknowledge that I have no fortune of my own to pull this off. Pour some more water on that wood.

In addition, the Church posted photographs of its food fairs showing volunteers wearing "Check Johnny Teague for Congress" t-shirts and what appears to be a Memorial Day event where campaign signs were visible. Posts of June 13, July 11, Aug. 8, Sept. 5, Oct. 10, 2020, and May 29 and 30, 2022, FACEBOOK, (<https://www.facebook.com/catchouston.org/>). We reviewed the Church's current website and did not find any mentions of Teague's campaign. Church at the Cross Houston, (<https://churchatthecrosshouston.org>) (last visited Jan. 24, 2023). Our review of previous versions of the Church's website also do not show any reference to his candidacy. [https://web.archive.org/web/20200601000000*/churchatthecrosshouston.org] (last visited Jan. 24, 2023).

¹⁸ MUR 7724 Compl. at 1. One example of a comment from a supporter appears as a comment to Teague's September 13 "Word for the Week" post mentioning his candidacy appeared as follows: "God can do mighty things and he will. Praying for God to intercede on this and you will be a mighty, strong and true congressman that will stand firm on the word of the Lord." Church at the Cross Houston, *Word for the Week – IMPOSSIBLE*, FACEBOOK, (<https://www.facebook.com/catchouston.org/>) (Sept. 13, 2020).

¹⁹ MUR 7724 Resp. at 1.

²⁰ *Id.*

1 attendance.”²¹ In this instance, according to the Response, the Church received a \$60,000
2 windfall in February 2020, and “the Finance Team chose to use those funds to pay for a new
3 Church van, parking lot repairs, and run Church advertisements.”²² Teague asserts that he
4 agreed to appear in the ad at issue “with [the Finance Team’s] guidance as senior pastor.”²³ The
5 Response does not address the allegations that Teague used the Church as his campaign
6 headquarters or that the Church distributed campaign messages to its parishioners through social
7 media platforms.

8 The available information shows that there were at least three previous Church television
9 ads from October and December 2017, which may have also aired on Fox 26 Houston.²⁴ All
10 three are similar in form and content to the February-March 2020 television ad that is at issue in
11 this matter. Stills from two of those prior ads are shown below.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Joel Mathiason, *Creative Services, COTC121730*, YOUTUBE, https://www.youtube.com/watch?v=ssXQwQmuL_Q (Dec. 12, 2017); Joel Mathiason, *Creative Services, COTC011830*, YOUTUBE, (<https://www.youtube.com/watch?v=Ew-LL8N0YM>) (Dec. 12, 2017); Joel Mathiason, *Creative Services, CATC101730*, YOUTUBE, (<https://www.youtube.com/watch?v=beV741B9Ggg>) (Oct. 20, 2017). On August 3, 2021, the Church’s Facebook page linked to another television ad featuring Teague that appears to have also aired on Fox 26 Houston. Church at the Cross Houston, *Our New Church Commercial on Fox, Check It Out!*, FACEBOOK, (<https://facebook.com/catchouston.org>) (Aug. 3, 2021). Similar to the ad mentioned in the Complaints, Teague appears in full view facing the camera, this time inside the Church with his back to the pulpit, a text banner appears at the bottom of the screen throughout most of the ad containing the Church’s logo, address, phone number, and schedule of worship times, and Teague is identified with the text, “Dr. Johnny Teague, Pastor.” Joel Mathiason, *Creative Services, CATC082130*, YOUTUBE, <https://www.youtube.com/watch?v=5y6yIdXDJDM> (Aug. 3, 2021). No part of the ad references a candidacy or any election. *Id.*

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2 In addition, at the end of each television ad there is a cut to a page displaying the Church's logo,
3 address, phone number, and worship times, without mentioning Teague's name, and which is
4 identical to the ending of the February-March 2020 television ad.²⁵

5 In addition to those Facebook posts highlighted in the Complaints, during the 2022
6 election cycle, the Church's Facebook page showed two posts that appeared to reference
7 Teague's candidacy. The posts, from May 29 and 30, 2022, each describe a luncheon
8 celebrating Memorial Day and Teague's win in the May 24 primary run-off election. The
9 luncheon took place at the Church after one of its services. The first post reads in pertinent part:

10 Hello Brothers and Sisters in Christ. I ask that you take a
11 moment of silence for the many that have served and are
12 currently serving in the military. We would like to thank them
13 for their dedication. Happy Memorial Day!!! Our very own
14 Pastor Johnny Teague has the opportunity to serve, as he is the
15 candidate for the Republican party for the U.S. House Texas
16 District 7. We are very honored and excited that the community
17 decided to give our Pastor the support to make it all the way in
18 2022, so we had a wonderful celebration for Pastor, please enjoy
19 the pictures!!²⁶
20

²⁵ The holiday themed ad also appears on the Church's Facebook page. Church at the Cross Houston, *Merry Christmas! What do you want for Christmas?*, FACEBOOK (<https://www.facebook.com/catchouston.org/>) (Dec. 22, 2017).

²⁶ Church at the Cross Houston, FACEBOOK (May 29, 2022) www.facebook.com/catchouston.org (last visited Jan. 24, 2023); *see supra* note 17 and accompanying text.

1 The second post describing the combined event reads:

2 Hello Brothers and Sisters in Christ. As you know we celebrated
3 our Pastor's success of winning the run-off Sunday after second
4 service. This would not have been possible without the diligence
5 and dedication of our most faithful members. I would like to
6 give them a round of applause and many thank yous for the great
7 feast and wonderful hospitality given as they served others.
8 Once again much gratitude to those of you that served us
9 Sunday. Thank You and God Bless You.²⁷

10
11 A photograph obtained from one of the Facebook posts of the luncheon depicts Teague
12 standing next to a campaign sign, which reads "Check Johnny Teague for Congress." The
13 campaign sign contains a disclaimer stating: "Political Advertising Paid by ✓Johnny for
14 Congress Campaign," and includes the web address of his campaign website,
15 www.johnnyteague.com. The photograph appears below:



16
17 Other photographs include depictions of Teague standing next to individuals wearing
18 campaign t-shirts, and other participants at the luncheon. Copies of those photographs are
19 below:²⁸

²⁷ Church at the Cross Houston, FACEBOOK (May 30, 2022) www.facebook.com/catchouston.org (last visited Jan. 24, 2023); *see supra* note 17 and accompanying text.

²⁸ Church at the Cross Houston, FACEBOOK (May 29, 2022) www.facebook.com/catchouston.org (last visited Jan. 24, 2023); *see supra* notes 17, 26, 27.

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2 The Committee's disclosure reports show disbursements for signs in the amount of
3 \$202.65 and t-shirts in the amount of \$132.29 on May 20, but do not show any disbursements
4 around the same date related to the cost of food and beverage or renting of space for the
5 luncheon.²⁹ While the reports do not indicate receipts such as from ticket sales, the Committee
6 received one contribution on May 30, two days after the luncheon, in the amount of \$1,000.³⁰
7 Last, the luncheon does not appear to have been advertised by either the Committee or the
8 Church, given that a review of their respective websites does not list the luncheon as an event.³¹

²⁹ Johnny Teague for Congress Campaign Committee, Amended 2022 July Quarterly Report at 14 (Aug. 15, 2022). According to its disclosure reports, the Committee spent \$29,575.88 on signs during the 2020 cycle and has spent \$43,184.60 during the 2022 cycle, though some of those payments appeared to have also included the costs of mailers, campaign shirts, and other items. *FEC Disbursements: Filtered Results*, FEC.gov, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00706242&two_year_transaction_period=2020&two_year_transaction_period=2022&disbursement_description=signs (last visited Jan. 24, 2023) (showing 2019-2020 and 2021-2022 disbursements).

³⁰ Johnny Teague for Congress Campaign Committee, Amended 2022 July Quarterly Report at 7 (Aug. 15, 2022).

³¹ *See, e.g.*, Johnny Teague for Congress Campaign Committee, www.johnnyteague.com (last visited Jan. 24, 2023); Church at the Cross Houston, <https://churchatthecrosshouston.org> (last visited Jan. 24, 2023).

1 **III. LEGAL ANALYSIS**

2 **A. The Commission Should Exercise its Prosecutorial Discretion to Dismiss the**
3 **Alleged Prohibited In-Kind Corporate Contribution Violation and Related**
4 **Reporting and Disclaimer Violations Concerning the Television Ad**

5 The Act prohibits corporations from making contributions to federal candidates, and
6 likewise bars candidates, political committees (other than independent expenditure-only political
7 committees and committees with hybrid accounts), and other persons, from knowingly accepting
8 or receiving corporate contributions.³² Expenditures made by any person “in cooperation,
9 consultation, or concert, with, or at the request or suggestion of” a candidate or their authorized
10 committee or agent qualify as an in-kind contribution to the candidate and must be reported as
11 expenditures made by the candidate’s authorized committee.³³

12 A communication that is coordinated with a candidate or his authorized committee is
13 considered an in-kind contribution and is subject to the limits, prohibitions, and reporting
14 requirements of the Act.³⁴ The Commission’s regulations provide a three-part test for
15 determining when a communication is coordinated. A communication is coordinated if it: (1) is
16 paid for, in whole or in part, by a person other than the candidate or authorized committee;³⁵
17 (2) satisfies a content standard in 11 C.F.R. § 109.21(c);³⁶ and (3) satisfies a conduct standard in

³² 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), Note to Paragraph (b) (explaining that corporations and labor organizations may make contributions to nonconnected political committees that make only independent expenditures, or to separate accounts maintained by nonconnected political committees for making only independent expenditures).

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

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

³⁵ 11 C.F.R. § 109.21(a)(1).

³⁶ *Id.* § 109.21(c)(1)-(5). 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

1 11 C.F.R. § 109.21(d).³⁷ All three prongs must be satisfied for a communication to be
 2 considered coordinated under the regulations.³⁸

3 The Church's television ad satisfies all three prongs of the coordinated communication
 4 regulation.³⁹ First, the payment prong is satisfied because the Church, a third party, paid for the
 5 ad.⁴⁰ Respondents acknowledge that the Church received \$60,000 in February 2020 and used
 6 part of the money to fund the television ad.⁴¹

7 Second, the content prong is satisfied because the ad was an "electioneering
 8 communication."⁴² The ad meets the definition of an "electioneering communication" because
 9 Teague is (1) "clearly identified" in the ad; (2) the ad was publicly distributed through a
 10 television "broadcast" within 30 days before a primary election; and (3) the ad was "targeted to
 11 the relevant electorate."⁴³ Teague is "clearly identified" in the ad because he appears and speaks
 12 on camera and says his name, "I'm Dr. Johnny Teague."⁴⁴ Further, the ad was "broadcast"

the clearly identified candidate, and (5) a public communication that is the functional equivalent of express advocacy. *Id.* § 109.21(c).

³⁷ *Id.* § 109.21(d)(1)-(6). 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. *Id.* § 109.21(d).

³⁸ *Id.* § 109.21(a); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 453 (Jan. 3, 2003) (Explanation and Justification) ("Coordinated and Independent Expenditures E&J").

³⁹ The analysis in this Report is limited to the February 2020 television ad that was the subject of the Complaints. We need not analyze the August 2021 ad, *supra* note 24, given that Teague was not a federal candidate at the time that ad aired.

⁴⁰ 11 C.F.R. § 109.21(a)(1).

⁴¹ MUR 7724 Resp. at 1.

⁴² 52 U.S.C. §§ 30104(f)(3), 30116(a)(7)(B)(i); 11 C.F.R. §§ 100.29, 109.21(c)(1). Electioneering Communications, 67 Fed. Reg. 65,190 (Oct. 23, 2002) ("Electioneering Communications E&J"). 52 U.S.C. § 30116(a)(7)(C).

⁴³ 52 U.S.C. § 30104(f)(3); 11 C.F.R. § 100.29(a).

⁴⁴ 52 U.S.C. § 30101(18), 30104(f)(3)(A)(i)(I); 11 C.F.R. §§ 100.17, 100.29(b)(2); *Brown v. FEC*, 386 F. Supp. 3d 16, 26 (D.D.C. 2019) (stating that the statutory definition of electioneering communications "does not

1 through a television station, Fox 26 Houston, apparently from February 13 through March 2,
2 which was within 30 days of the March 3 primary election.⁴⁵ Additionally, the ad was “targeted
3 to the relevant electorate” because Fox 26 Houston apparently covers more than 50,000 persons
4 in Texas’s 9th Congressional District, the district which Teague sought to represent.⁴⁶

5 Third, the conduct prong is satisfied in multiple ways — Teague’s appearance and
6 participation in the production of the ad constitutes “material involvement” in the content of the
7 communication;⁴⁷ the ad was produced and distributed at the “request or suggestion” of the
8 person paying for the communications (the Church) and the candidate (Teague) assented to the
9 suggestion;⁴⁸ and there appears to have been “substantial discussion” between Teague and the
10 Church about the creation, production or distribution of the ad.⁴⁹ The relevant conduct standards
11 do not require that the person appear in the ad in his or her capacity as a candidate.⁵⁰

12 Thus, because all three of the prongs are satisfied, the Church’s television ad constitutes a
13 coordinated communication. Moreover, the ad does not appear to be covered by the coordinated
14 communications safe harbors established by the Commission. Notably, the coordination

require that the ads refer to the candidate *as a* candidate, or event that they reference an election”) (emphasis in the original).

⁴⁵ 52 U.S.C. § 30104(f)(3)(A)(i)(II)(bb); 11 C.F.R. § 100.29(b)(3)(i).

⁴⁶ 52 U.S.C. § 30104(f)(3)(A)(i)(III); 11 C.F.R. § 100.29(b)(5). Texas’s 9th Congressional District includes parts of the city of Houston, which as of July 2018 had a population of about 2,325,502; *see also*, District Map, ALGREENHOUSE.GOV, <https://algreen.house.gov/district/district> (last visited Jan. 24, 2023); Facts and Figures, HOUSTONTX.GOV, <https://www.houstontx.gov/about/houston/houstonfacts.html> (last visited Jan. 24, 2023). According to the FCC public inspection files, Fox 26 Houston’s air coverage includes all of Houston and surrounding areas. *See* TV Station Profile, KRIV, Houston, TX, Contour Maps, FCC.GOV <https://publicfiles.fcc.gov/tv-profile/kriv/contour-maps> (last visited Jan. 24, 2023).

⁴⁷ 11 C.F.R. § 109.21(d)(2).

⁴⁸ *Id.* § 109.21(d)(1).

⁴⁹ *Id.* § 109.21(d)(3).

⁵⁰ *See Brown v. FEC*, 386 F. Supp. 3d at 30 (“[W]hether the ads are coordinated has nothing to do with what [the candidate] says in the ad . . . all that matters is whether [the candidate] did, in fact, work with her company to create the ad.”).

MURs 7724, 7752 (Johnny Teague for Congress Campaign Committee, *et al.*)

First General Counsel's Report

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1 regulations provide a safe harbor for “certain business and commercial communications” that
2 excludes from the definition of a coordinated communication any public communication in
3 which a federal candidate is “clearly identified only in his or her capacity as the owner or
4 operator of a business that existed prior to the candidacy,” so long as “[the] medium, timing,
5 content, and geographic distribution of the public communication are consistent with public
6 communications made prior to the candidacy” and “[t]he public communication does not
7 promote, support, attack, or oppose [“PASO”] that candidate or another candidate who seeks the
8 same office as that candidate.”⁵¹ The Commission considered but did not adopt a similar safe
9 harbor for tax exempt nonprofit organizations organized under 26 U.S.C. § 501(c)(3), such as the
10 Church in this matter, that pay for communications in which a Federal candidate and
11 officeholder appears and “expresses or seeks support for the payor organization.”⁵² However,
12 “the Commission retain[ed] its prosecutorial discretion to dismiss enforcement matters involving
13 such communications.”⁵³

14 The circumstances here weigh in favor of dismissal. Here, the Church’s ad does not
15 PASO Teague or any other candidate; indeed, the ad identified Teague only in his capacity as
16 operator of the Church and the ad makes no mention of the election.⁵⁴ Further, the ad was
17 consistent with other public communications made by the Church prior to the candidacy;
18 Respondents assert that the Church has previously run ads through Fox 26 Houston in the past

⁵¹ 11 C.F.R. § 109.21(i)(1), (2); Coordinated Communications E&J at 55,959. The other coordinated communication safe harbors cover certain inquiries about legislative or policy issues, endorsements and solicitations of federal candidates by other federal candidates, and the establishment of a firewall between a campaign and the person paying for the communication. *See* 11 C.F.R. § 109.21(f), (g), (h).

⁵² Coordinated Communications E&J at 55,960.

⁵³ *Id.*

⁵⁴ 11 C.F.R. § 109.21(i)(2).

1 “based on funds and the fluctuations of Church attendance.”⁵⁵ As described above, we found
2 three such television ads from October and December 2017 that are consistent with the February-
3 March 2020 ad at issue in terms of the medium (30-second television ads), content (Teague
4 appearing in full view facing the camera with a background photo and discussing the Church
5 while a text banner appears below him identifying him as Pastor of the Church and listing
6 worship times and contact information), and geographic distribution (Fox 26 Houston).⁵⁶
7 Moreover, Teague has been employed by the Church since 2005 and serves as its Senior Pastor,
8 and thus his appearance in the ad as spokesperson for the Church was not unusual.⁵⁷ Finally, the
9 cost of the ad was likely minimal. While we do not have specific information about the cost of
10 the television ad, Respondents state that the Church received \$60,000, which was divided
11 between the purchase of a van, parking lot repairs, and to pay for the television ad.⁵⁸ Under
12 these circumstances, we recommend that the Commission exercise its prosecutorial discretion to
13 dismiss the coordination allegations and dismiss the allegation that the Committee failed to
14 report receipt of any resulting in-kind contribution.⁵⁹

⁵⁵ MUR 7724 Resp. at 1.

⁵⁶ *See supra* notes 24, 25 and accompanying text.

⁵⁷ 11 C.F.R. § 109.21(i)(1).

⁵⁸ MUR 7724 Resp. at 1. We also note that the television ad allegedly ran from February 13 up through March 2, one day before the March 3, 2020, primary election. MUR 7724 Compl. at 1. While the Response asserts that the Church chose to run the ad at that time because it received a windfall in February 2020, MUR 7724 Resp. at 1, the timing of the ad in close proximity to and stopping right before the election may appear to indicate that the ad was linked to the election. However, the dates on which the ad ran have not been firmly established and the non-electoral content of the ad otherwise weighs against recommending a reason-to-believe finding.

⁵⁹ *See, e.g.*, Factual & Legal Analysis (“F&LA”) at 6 & Cert. ¶ 2a (Apr. 8, 2016), MUR 6807 (Erin McClelland for Congress Committee, *et al.*) (without reaching the questions of whether the television ad was a coordinated communication or if it satisfied the safe harbor for commercial transactions, the Commission exercised its prosecutorial discretion to dismiss the matter and issued caution letters). In McClelland, a non-profit corporation paid for and aired a television ad featuring its executive director, who was also a federal candidate, within 90 days of the primary election. In dismissing the matter, the Commission’s F&LA noted the low cost of the ad (\$2,205), that the ad lacked electoral content by “solely promot[ing] the *bona fide* business” of the non-profit entity, and

1 For similar reasons, we recommend that the Commission exercise its prosecutorial
2 discretion and dismiss the allegation that the Church violated the disclaimer and disclosure
3 requirements related to the electioneering communication. The Act and Commission regulations
4 require any person who makes an electioneering communication to comply with disclaimer and
5 disclosure requirements.⁶⁰ These requirements include that a disclaimer must be “clear and
6 conspicuous,” specifying who paid for the ad and whether the candidate authorized it.⁶¹ Further,
7 if a corporation has spent more than \$10,000 on electioneering communications in a calendar
8 year, it must disclose certain information to the Commission about its electioneering
9 communications.⁶²

10 Here, an investigation would be necessary to obtain the cost of the ad. However, we
11 advise that to pursue the disclaimer and disclosure violations would not be an efficient use of the
12 Commission’s limited resources. As mentioned above, the amount in violation here appears to
13 be modest. Further, there appears to have been limited informational harm. Indeed the Church’s
14 involvement is clear because a photograph of the Church appears in the background, and
15 throughout most of the ad, its address, phone number, and worship times appear in the text
16 banner. Teague’s involvement with the ad is also obvious by virtue of his appearance and
17 speaking in the ad, and being identified as the Church’s Pastor. Accordingly, it does not appear

McClelland’s longtime role as a public spokesperson for the entity. F&LA at 6, MUR 6807 (Erin McClelland for Congress Committee, *et al.*).

⁶⁰ See 52 U.S.C. §§ 30104(f), 30120; 11 C.F.R. § 100.29(a).

⁶¹ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(4), (b)(2). Stand by Your Ad disclaimer requirements must include either an unobscured, full screen, view of the candidate stating that they approved the communication or a voice-over by the candidate stating that they approved the communication, accompanied by a clearly identifiable photographic or similar image of the candidate, and a similar statement must appear in clearly readable writing at the end of the ad. 52 U.S.C. § 30120(d)(1)(B), 11 C.F.R. § 110.11(c)(3).

⁶² 52 U.S.C. § 30104(f); 11 C.F.R. § 104.20.

1 likely that anyone would have been misled regarding who paid for and authorized the ad. And,
2 finally, despite being close in time to the election, the ad lacked any electoral content.⁶³

3 Accordingly, we recommend that the Commission exercise its prosecutorial discretion
4 pursuant to *Heckler v. Chaney* and dismiss the allegation that the Church made, and Teague and
5 the Committee knowingly accepted, a prohibited in-kind corporate contribution in violation of
6 52 U.S.C. § 30118 and 11 C.F.R. § 114.2 in connection with the Church's television ad, and that
7 the Committee failed to report receipt of the in-kind contribution as it relates to the television ad
8 in violation of 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a).⁶⁴ We also recommend that the
9 Commission exercise its prosecutorial discretion to dismiss the allegations that the Church
10 violated 52 U.S.C. § 30120 and 11 C.F.R. § 110.11 by failing to include a disclaimer on the
11 television ad and 52 U.S.C. § 30104(f) and 11 C.F.R. § 104.20 by failing to disclose information
12 about its electioneering communications to the Commission. We further recommend that the
13 Commission issue a letter of caution as to all of these violations.⁶⁵

⁶³

Moreover, the Commission has not pursued recent disclaimer violations in a number of recent matters involving electioneering communications. *See, e.g.*, Cert. ¶ 1 (July 24, 2018), MUR 7377 (Wolf 2018) (dismissing as a low priority matter the failure to include a Stand by Your Ad statement where the content of the ad indicated the public would not be confused as to whether the candidate approved it); *cf.* Cert. ¶ 1 (Aug. 5, 2010), MUR 6126 (Republican Senate Campaign Committee) (dismissing the allegations, under *Heckler*, that the party committee failed to disclose an electioneering communication and failed to include a complete disclaimer where the television ad met the definition of an "electioneering communication" but focused primarily on a non-federal candidate).

⁶⁴ 470 U.S. 821 (1985).

⁶⁵ *Id.*; *see, e.g.*, F&LA at 10 & Cert. ¶ 8 (Feb. 6, 2018), MURs 7112 & 7115 (AJ Kern for Congress, *et al.*) (dismissing technical disclaimer violation and sending letter of caution); F&LA at 4 & Cert. ¶ 1 (Mar. 15, 2017), MUR 7095 (RGA Right Direction PAC) (same); F&LA at 12-13, MUR 6683 (Fort Bend County Democratic Party) (dismissing disclaimer violation as a matter of prosecutorial discretion because partial disclaimer clearly identified who paid for communication but issuing letter of caution); F&LA at 19-23, MUR 6438 (Art Robinson for Congress)

1 **B. The Commission Should Exercise its Prosecutorial Discretion and Dismiss**
 2 **the Allegations That the Church Made Prohibited In-Kind Corporate**
 3 **Contributions in Connection with Use of the Church Address and Facilities**
 4 **and the Related Reporting Violation**
 5

6 As discussed above, the Act prohibits corporations from making contributions to federal
 7 candidates, and likewise bars candidates, political committees (other than independent
 8 expenditure-only political committees and committees with hybrid accounts), and other persons,
 9 from knowingly accepting or receiving corporate contributions.⁶⁶ Corporate employees may
 10 make “occasional, isolated, or incidental use” of corporate facilities for individual volunteer
 11 activity in connection with a federal election, and are “required to reimburse the corporation only
 12 to the extent that the overhead or operating costs of the corporation are increased.”⁶⁷
 13 Corporations are prohibited from facilitating the making of contributions to candidates and
 14 political committees.⁶⁸

15 The Complaint asserts that “[Teague’s] campaign headquarters was the address of his
 16 Church,” raising the allegation that the Committee used Church facilities without compensation

(same); *see also* F&LA at 10 & Cert. ¶¶ 1, 2 (Aug. 10, 2022), MUR 7880 (Mike Gaul) (dismissing as a matter of prosecutorial discretion and issuing an admonishment letter in connection with the filing of an inaccurate Statement of Organization); Cert. ¶ 8 (Nov. 17, 2022), MUR 7745 (Casey Askar for Congress) (issuing admonishment letter for reporting violations stemming from a misreported line of credit); Cert. ¶ 2a, b (July 6, 2020), MUR 7643 (America Progress Now, *et al.*) (dismissing but sending reminder letter for respondent’s apparent disclaimer and disclosure violations where amount at issue was low); F&LA at 4 & Cert. ¶ 2 (Dec. 19, 2012), MUR 6497 (McCaskill for Missouri, *et al.*) (dismissing but sending cautionary letter for reporting violations outside statute of limitations).

⁶⁶ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), Note to Paragraph (b) (explaining that corporations and labor organizations may make contributions to nonconnected political committees that make only independent expenditures, or to separate accounts maintained by nonconnected political committees for making only independent expenditures).

⁶⁷ 11 C.F.R. § 114.9(a).

⁶⁸ *Id.* § 114.2(f)(1) (defining “facilitation” in pertinent part as “using corporate . . . resources or facilities to engage in fundraising activities in connection with any federal election . . .”).

1 to conduct Teague's campaign.⁶⁹ The Church's address is the same address that was listed for
2 the Committee in its Statements of Organization filed with the Commission until August 2022,
3 but even though the Committee's reports do not reveal disbursements to any other recipient for
4 office space, there is insufficient information to conclude that the Church actually functioned as
5 the Committee's headquarters or that the Committee conducted a significant amount of campaign
6 operations from this location.⁷⁰ Indeed, Teague's statement that, "I have done my best to keep
7 all Church business separate from campaign business," would suggest that he did not operate his
8 campaign out of the Church.⁷¹

9 The Committee's use of the Church's facilities without charge would constitute a thing of
10 value under the Act. However, Commission regulations appear to permit Teague, as an
11 employee volunteering on behalf of a federal campaign, to make "occasional, isolated, or
12 incidental use" of corporate facilities.⁷² First, it would not be unreasonable for Teague to receive
13 mail at the Church, where he worked as Senior Pastor and where he was thus located on a regular
14 basis. But we have no information indicating that the Committee received a substantial amount
15 of mail on a regular basis in order to conclude that use of the address was more than an
16 incidental use of the Church's facilities.⁷³ Further, as noted above, the Committee eventually

⁶⁹ MUR 7724 Compl. at 1. Our review of the Committee's disclosure reports shows that it did not make any disbursements to the Church.

⁷⁰ *FEC Disbursements: Filtered Results*, FEC.gov, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00706242&two_year_transaction_period=2020&two_year_transaction_period=2022 (last visited Jan. 24, 2023) (reflecting Committee disbursements for the 2019-2020 and 2021-2022 election cycles).

⁷¹ MUR 7724 Resp. at 1.

⁷² 11 C.F.R. § 114.9(a).

⁷³ *See id.* § 114.9(a)(1) (providing that the campaign is required to reimburse the corporation "only to the extent that the overhead or operating costs of the corporation are increased").

1 amended its Statement of Organization to remove the Church's address as the campaign
2 address.⁷⁴

3 Second, beyond use of the address, there is little information available indicating that the
4 Committee used the Church facilities for a significant number of campaign related events. While
5 a search of Google Maps showed that the Church displayed a "Vote Teague" yard sign expressly
6 advocating for Teague's election to Congress in February 2020, the mere display of a yard sign
7 does not indicate that the Church served as Teague's campaign headquarters.⁷⁵ Similarly, we
8 located photos of only a few events held at the Church during the two election cycles that
9 showed some kind of connection to the campaign: volunteers wearing campaign t-shirts during
10 Church food fairs during 2020 and a 2022 Memorial Day luncheon event at which campaign
11 signs were displayed.⁷⁶

12 Regarding the May 28 luncheon held at the Church celebrating both Memorial Day and
13 Teague's win at the May 24, 2022, run-off election, there is insufficient information to indicate
14 that this constituted a prohibited in-kind contribution from the Church. Because the Committee's
15 reports do not show any disbursements for food or beverage related to the event, it is likely that a

⁷⁴ *Supra* note 7.

⁷⁵ See GOOGLE MAPS, Place:3835 South Dairy Ashford Road Houston, TX, <https://www.google.com/maps/place/3835+S+Dairy+Ashford+Rd,+Houston,+TX+77082/@29.7162703,-95.6046647,3a,37.5y,115.3h,87.62t/data=!3m7!1e1!3m5!1sR2Y1AsiuGvwwUwXju1CIPA!2e0!5s20200201T00000!0!7i16384!8i8192!4m5!3m4!1s0x8640ddaaa4f2657d:0x87775490d9422734!8m2!3d29.7161366!4d-95.6042501> (last visited Jan. 24, 2023). Corporations are not prohibited from making independent expenditures. 52 U.S.C. § 30101(17); 11 C.F.R. §§ 100.16; 114.10; *Citizens United v. Federal Election Commission*, 558 U.S. 310, 360-362 (2010). While the Committee's reports disclose over \$1,000 in disbursements for yard signs during the 2020 cycle and in the period leading up to the March 2020 primary, based on the photographs of the signs outside the Church, the cost of those signs appears to be a small amount below the aggregate \$250 threshold triggering reporting requirements for independent expenditures by corporations. 11 C.F.R. §§ 114.10(b), 104.4(a), 109.10(b)-(e); Johnny Teague for Congress Campaign Committee, Amended 2020 Pre-Primary Report at 5, 8, 10-12, 15 (Aug. 15, 2022); Johnny Teague for Congress Campaign Committee Amended 2020 April Quarterly Report at 9 (Aug. 15, 2022).

⁷⁶ *Supra* pages 7, 10-12 and notes 17, 26, 27, 28.

1 third party, other than the Committee, paid for the costs associated with the event. It would also
2 be reasonable to assume that the Church paid for the food or beverage at the luncheon and made
3 its community room available to Teague for the event celebrating both his win and the holiday.
4 As a domestic, non-profit corporation, the Church's payment of those costs would constitute a
5 prohibited in-kind corporate contribution from the Church to the Committee.⁷⁷ However, as an
6 employee volunteering on behalf of a federal campaign, Teague is permitted to make
7 "occasional, isolated, or incidental use" of corporate facilities.⁷⁸ Given that the costs of the event
8 appear modest, as there appear to have been only a few tables and a small group of individuals in
9 attendance, and given it is unclear whether it was exclusively a campaign-related event, we do
10 not believe it is worth the use of Commission resources to determine the person or entity who
11 paid for the event.⁷⁹

12 Other than receiving mail there, holding the food fairs in 2020 and the May 28, 2022
13 luncheon, it is unclear whether the Church would have provided any other service that would
14 provide something of value to the Committee. Therefore, any value derived from Teague's
15 apparent limited use of the Church facilities may have been minimal.

16 Accordingly, we recommend that the Commission exercise its prosecutorial discretion
17 pursuant to *Heckler v. Chaney* and dismiss the allegations that the Church made, and Teague and
18 the Committee knowingly accepted, in-kind corporate contributions in violation of 52 U.S.C.
19 § 30118 and 11 C.F.R. § 114.2 in connection with the use of the Church address and facilities,
20 and that the Committee failed to report receipt of the in-kind contributions as it relates to the use

⁷⁷ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2.

⁷⁸ 11 C.F.R. § 114.9(a).

⁷⁹ *Supra* pages 10-12 and notes 17, 26, 27, 28.

1 of the Church address and facilities in violation of 52 U.S.C. § 30104(b) and 11 C.F.R.
2 § 104.3(a).⁸⁰

3 **C. The Commission Should Find No Reason to Believe That the Church Made a**
4 **Prohibited In-Kind Corporate Contribution in Connection with its Facebook**
5 **Posts and as to the Related Reporting and Disclaimer Violations**
6

7 Regarding the allegation that the Church impermissibly used Facebook “to communicate
8 [Teague’s] campaign directly to his parishioners and anyone else following the Church’s page,”
9 the Complaints do not point to or otherwise reference any specific instances.⁸¹ There are only a
10 limited number of available posts on the Church’s public Facebook page referencing Teague’s
11 candidacy.⁸² And, there are no known instances of paid communications by the Church on
12 Facebook or any other social media platform that reference Teague.⁸³ Furthermore, it does not
13 appear that the Church made any payments for communications referencing the campaign, or
14 that the Committee paid the Church to place the posts on its Facebook page. Moreover, there is
15 no information that the Church coordinated the limited Facebook posts with the campaign.

16 As discussed above, a communication that is coordinated with a candidate or their
17 authorized committee is considered an in-kind contribution and is subject to the limits,
18 prohibitions, and reporting requirements of the Act.⁸⁴ The payment prong of the coordination
19 regulation does not appear to be satisfied as there is no information that the Church paid to place

⁸⁰ 470 U.S. 821 (1985).

⁸¹ MUR 7724 Compl. at 1.

⁸² *Supra* notes 17, 18, 26, 27, 28.

⁸³ Our search of the Facebook Ad Library does not reveal any instances of paid communications by the Church on Facebook.

⁸⁴ 52 U.S.C. § 30116; 11 C.F.R. § 109.21(b); *see also supra* pages 13-16 (discussing the payment, content, and conduct prongs of the coordinated communication provision at 11 C.F.R. § 109.21)

1 the Facebook posts at issue here.⁸⁵ Additionally, the content standards under the coordinated
2 communication provision all require, at a minimum, that there be an “electioneering
3 communication” or a “public communication,” neither of which applies to the Facebook posts or
4 comments.⁸⁶ An electioneering communication is “any broadcast, cable, or satellite
5 communication” that refers to a “clearly identified candidate for Federal office,” is publicly
6 distributed within a certain time before an election, and meets certain requirements regarding the
7 audience.⁸⁷ The Church’s Facebook posts at issue here were published on the internet, not
8 through broadcast, cable, or satellite, and therefore were not electioneering communications.

9 A public communication is “a communication by means of any broadcast, cable, or
10 satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or
11 telephone bank to the general public, or any other form of general public political advertising.”⁸⁸
12 Commission regulations provide that public communications “shall not include communications
13 over the Internet, except for communications placed for a fee on another person’s Web site,” a
14 provision referred to as the “internet exemption.”⁸⁹ The internet exemption applies to the
15 Church’s Facebook posts and comments because they were published on the Church’s own
16 Facebook page and there is no indication that the Committee placed them for a fee on the
17 Church’s Facebook page. Therefore, the references to Teague’s candidacy on the Church’s
18 Facebook page do not appear to constitute prohibited in-kind contributions.

⁸⁵ 11 C.F.R. § 109.21(a)(1).

⁸⁶ *Id.* § 109.21(c).

⁸⁷ 52 U.S.C. § 30104(f)(3) (definition of electioneering communication); 11 C.F.R. § 109.29 (same).

⁸⁸ 52 U.S.C. § 30101(22) (definition of public communication); 11 C.F.R. § 100.26 (same).

⁸⁹ 11 C.F.R. § 100.26.

1 Furthermore, the posts, as communications over the internet not placed for a fee on
2 another person's website, would not have required disclaimers. The Act and Commission
3 regulations require that all "public communications" by any person that expressly advocate the
4 election or defeat of a clearly identified federal candidate, or solicit a contribution, or that
5 constitute an electioneering communication must contain an appropriate disclaimer.⁹⁰ "Public
6 communications" include "general public political advertising," which does not include
7 communications over the internet, except when those communications are "placed for a fee on
8 another person's Web site."⁹¹ Here, none of the Church's available posts on its Facebook page,
9 or comments posted by Teague's supporters mentioning his candidacy, were placed on another
10 person's website for a fee and, accordingly, they do not constitute "public communications;" nor
11 did the posts or comments solicit contributions, or constitute electioneering communications.⁹²
12 Therefore, the Church's Facebook posts at issue here are not subject to the disclaimer
13 requirement.⁹³

14 Accordingly, we recommend that the Commission find no reason to believe that the
15 Church made, and Teague and the Committee knowingly accepted, an in-kind corporate
16 contribution in violation of 52 U.S.C. § 30118 and 11 C.F.R. § 114.2 in connection with the
17 Church's Facebook posts and that the Committee failed to report receipt of the in-kind
18 contribution as it relates to those posts, in violation of 52 U.S.C. § 30104(b) and 11 C.F.R.

⁹⁰ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(2).

⁹¹ 11 C.F.R. § 100.26; *see also* Internet Communications, Final Rules, 71 Fed. Reg. 18,589, 18,600 (Apr. 12, 2006) ("Internet Communications E&J"); *see also* Final Rule, Internet Communication Disclaimers and Definition of "Public Communication" 87 Fed. Reg. 77,467 (Dec. 19, 2022) (revising the definition of "public communication" at 11 C.F.R. § 100.26 to include "communications placed for a fee on another person's website, digital device, application, or advertising platform.") (effective March 1, 2023).

⁹² *See* 11 C.F.R. § 100.29(a).

⁹³ *Id.* § 100.26; *see also* Internet Communications E&J at 18,593-94.

1 § 104.3(a). Last, we recommend that the Commission find no reason to believe that the Church
2 violated 52 U.S.C. § 30120 and 11 C.F.R. § 110.11 by failing to include a disclaimer on its
3 Facebook posts referencing Teague's candidacy.

4 **IV. RECOMMENDATIONS**

- 5 1. Dismiss as a matter of prosecutorial discretion the allegations that the Church at
6 the Cross made, and Dr. Johnny Mark Teague and Johnny Teague for Congress
7 Campaign Committee and James Poullard in his official capacity as treasurer
8 knowingly accepted, an in-kind corporate contribution in violation of 52 U.S.C.
9 § 30118 and 11 C.F.R. § 114.2 in connection with the television ad and issue a
10 letter of caution;
- 11 2. Dismiss as a matter of prosecutorial discretion the allegation that Johnny Teague
12 for Congress Campaign Committee and James Poullard in his official capacity as
13 treasurer failed to report receipt of an in-kind contribution in violation of
14 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) in connection with the television
15 ad and issue a letter of caution;
- 16 3. Dismiss as a matter of prosecutorial discretion the allegations that the Church at
17 the Cross violated 52 U.S.C. § 30120 and 11 C.F.R. § 110.11 by failing to include
18 a disclaimer on a television ad that aired from February through March 2020 and
19 violated 52 U.S.C. § 30104(f) and 11 C.F.R. § 104.20 by failing to disclose
20 information about its electioneering communication to the Commission, and issue
21 a letter of caution;
- 22 4. Dismiss as a matter of prosecutorial discretion the allegations that the Church at
23 the Cross made, and Dr. Johnny Mark Teague and Johnny Teague for Congress
24 Campaign Committee and James Poullard in his official capacity as treasurer
25 knowingly accepted, in-kind corporate contributions in violation of 52 U.S.C.
26 § 30118 and 11 C.F.R. § 114.2 in connection with use of the Church address and
27 facilities;
- 28 5. Dismiss as a matter of prosecutorial discretion the allegation that Johnny Teague
29 for Congress Campaign Committee and James Poullard in his official capacity as
30 treasurer failed to report receipt of in-kind contributions in violation of 52 U.S.C.
31 § 30104(b) and 11 C.F.R. § 104.3(a) in connection with use of the Church address
32 and facilities;
33
- 34 6. Find no reason to believe that the Church at the Cross made, and Dr. Johnny Mark
35 Teague and Johnny Teague for Congress Campaign Committee and James
36 Poullard in his official capacity as treasurer knowingly accepted, an in-kind
37 corporate contribution in violation of 52 U.S.C. § 30118 and 11 C.F.R. § 114.2 in
38 connection with the Church's Facebook posts;


- 1 7. Find no reason to believe that Johnny Teague for Congress Campaign Committee
 2 and James Poullard in his official capacity as treasurer failed to report receipt of
 3 an in-kind contribution in violation of 52 U.S.C. § 30104(b) and 11 C.F.R.
 4 § 104.3(a) in connection with the Church's Facebook posts;
- 5 8. Find no reason to believe that the Church at the Cross violated 52 U.S.C. § 30120
 6 and 11 C.F.R. § 110.11 by failing to include a disclaimer on its Facebook posts
 7 referencing Teague's candidacy;
- 8 9. Approve the attached Factual and Legal Analysis;
- 9 10. Approve the appropriate letters; and
- 10
 11 11. Close the file.


13 Lisa J. Stevenson
 14 Acting General Counsel


16 Charles Kitcher
 17 Associate General Counsel for Enforcement

18
 19
 20
 21 February 9, 2023

22 Date

23 
 24 _____
 25 Claudio J. Pavia
 26 Deputy Associate General Counsel
 27 for Enforcement

28 
 29 _____
 30 Ana J. Peña-Wallace
 31 Assistant General Counsel

32 
 33 _____
 34 Christine C. Gallagher
 35 Attorney

36 Attachment:
 37 Factual and Legal Analysis

1 the Church's television ad was not related to the campaign or intentionally timed to the election.
2 Moreover, Respondents assert that Teague has not used the Church's Facebook account for any
3 campaign activity.

4 As discussed below, the television ad at issue meets the requirements for a coordinated
5 communication and thus, constituted a contribution to the Committee that was subject to the
6 Act's limitations and source prohibitions in addition to the Act's disclosure and disclaimer
7 requirements. But as explained in further detail below, due to the ad's lack of electoral content,
8 the low dollar amount spent on the ad, and the fact-finding necessary to establish the precise
9 amount in violation, it would not be an efficient use of the Commission's resources to pursue the
10 allegations that the ad was a contribution or that it was subject to the Act's disclaimer and
11 disclosure requirements. Finally, there is insufficient available information regarding the extent
12 of Teague's use of the Church address and facilities for campaign related purposes, and the
13 alleged Facebook posts referencing Teague's campaign appear to be covered by the internet
14 exemption.

15 Therefore, the Commission exercises its prosecutorial discretion to dismiss the
16 allegations that the Church made, and Teague and the Committee knowingly accepted, an in-
17 kind corporate contribution in violation of 52 U.S.C. § 30118 and 11 C.F.R. § 114.2 through the
18 television ad; dismisses the allegation that the Committee failed to report receipt of an in-kind
19 contribution from the Church as it relates to the television ad in violation of 52 U.S.C.
20 § 30104(b) and 11 C.F.R. § 104.3(a); dismisses the allegations that the Church violated
21 52 U.S.C. §§ 30120(a) and 30104(f) and 11 C.F.R. §§ 110.11 and 104.20 by failing to comply

adopted both of Teague's Responses submitted for MURs 7724 and 7752. Teague, as Senior Pastor, also responded on behalf of the Church.

1 with the disclaimer and disclosure requirements for electioneering communications in connection
2 with the television ad; and cautions Respondents as to those violations.³

3 The Commission further exercises its prosecutorial discretion and dismisses the
4 allegations that the Church made, and Teague and the Committee knowingly accepted, in-kind
5 corporate contributions in violation of 52 U.S.C. § 30118 and 11 C.F.R. § 114.2 in connection
6 with the Committee's use of the Church address and facilities, and dismisses the allegation that
7 the Committee failed to report receipt of in-kind contributions from the Church as it relates to
8 such use in violation of 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a). In addition, the
9 Commission finds no reason to believe that the Church made, and Teague and the Committee
10 knowingly accepted, an in-kind corporate contribution in violation of 52 U.S.C. § 30118 and
11 11 C.F.R. § 114.2 in connection with the Church's Facebook posts, and no reason to believe that
12 the Committee failed to report receipt of an in-kind contribution from the Church as it relates to
13 those posts. Last, the Commission finds no reason to believe that the Church violated 52 U.S.C.
14 § 30120 and 11 C.F.R. § 110.11 by failing to include a disclaimer on its Facebook posts
15 referencing Teague's candidacy.

16 II. FACTUAL BACKGROUND

17 On March 3, 2020, Teague won the 2020 Republican primary election for Texas's 9th
18 Congressional District but lost the November 3, 2020 general election.⁴ On May 24, 2022,
19 Teague won the 2022 Republican primary run-off for Texas's 7th Congressional District but lost

³ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

⁴ Dr. Johnny Mark Teague Statement of Candidacy at 1 (Apr. 29, 2019); 2020 Texas Election Results, U.S. Rep. District 9, TEXAS SEC'Y OF STATE (<https://www.sos.state.tx.us/elections/historical/elections-results-archive.shtml>) (last visited: Feb. 7, 2023).

1 the November 8, 2022 general election.⁵ Since 2005, Teague has been employed as Senior
 2 Pastor at the Church, which registered in 1952 as a domestic non-profit corporation with the
 3 Texas Secretary of State.⁶ Until August 2022, the Committee's address listed in its Statement of
 4 Organization was the same as the Church's address listed in its filings with the Texas Secretary
 5 of State.⁷

6 According to the Complaints, the Church ran a television ad featuring Teague on Fox 26
 7 Houston, from February 13 through March 2, 2020, shortly before the March 3, 2020, primary
 8 election, which allegedly provided him with an "unfair advantage."⁸ Respondents acknowledge
 9 that the Church ran a television ad on Fox 26, and they do not dispute the dates listed in the
 10 Complaints.⁹

11 The television ad,¹⁰ a copy of which can be found on the Church's Facebook page,
 12 features Teague, appearing in full view facing the camera with a picture of the Church in the
 13 background and saying:

⁵ Dr. Johnny Mark Teague, Amended Statement of Candidacy at 1 (Nov. 16, 2021); Dr. Johnny Mark Teague, Statement of Candidacy at 1 (Apr. 29, 2019) 2022 Texas Election Results, U.S. Rep. District 7, TEXAS SEC'Y OF STATE, <https://results.texas-election.com/races> (last visited: Feb. 7, 2023).

⁶ MUR 7724 Resp. at 1; Office of the Sec'y of State, State of Texas, Information Ltr. for Entity. (Sept. 25, 2020).

⁷ Compare Amended Statement of Organization, Johnny Teague for Congress Campaign Committee (Sept. 27, 2019), with Texas Sec'y of State, Church at the Cross Information Ltr. (Sept. 25, 2020); see Johnny Teague for Congress Campaign Committee, Amended Statement of Organization at 1 (Aug. 22, 2022) (listing Teague's residence as the campaign's address).

⁸ MUR 7724 Compl. at 1. The Complaints allege that the Church ran "numerous" ads, but it is unclear whether this was in reference to multiple different ads or a single ad broadcast multiple times. *Id.* Respondents state that there was a single ad, and the Commission has no information to the contrary. MUR 7724 Resp. at 1.

⁹ See MUR 7724 Resp. at 1.

¹⁰ The ad is located in the "banner" at the top of the Church's Facebook page. MUR 7724 Resp. at 1. The same ad also appears in two posts on the Church's Facebook page dated February 9 and 12, 2020. One of the posts states: "Our new Church commercial" and both posts contain a link to the YouTube page of Joel Mathiason of Fox 26 Houston containing the ad. Joel Mathiason, *Creative Services, CATC022030*, YOUTUBE, (Feb. 6, 2020) (<https://www.youtube.com/watch?v=2Cke8Wsip0o>) (last visited Jan. 24, 2023).

1 Have you ever asked a friend, “Do I have anything in my teeth?” Did you want
 2 them to tell you the truth, or tell you what made you feel good? A lot of people
 3 go to Church to make them feel good. God’s word does that but he also brings
 4 you the truth. What we need to clean up our lives and experience his blessing.
 5 I’m Dr. Johnny Teague and I invite you to join us at the Church at the Cross
 6 where we study every Sunday God’s truth at 3835 South Dairy Ashford.¹¹

7 Throughout most of the ad, a text banner appears at the bottom of the screen containing the
 8 Church’s logo, address, phone number, and schedule of worship times. Teague is identified with
 9 the text, “Dr. Johnny Teague, Pastor.” A screenshot from the television ad appears below:



10
 11 At the end of the ad, there is a cut to a page that more prominently displays the Church’s
 12 logo, address, phone number, and worship times, but does not mention Teague’s name, as shown
 13 below:¹²

¹¹ Church at the Cross Houston, FACEBOOK, (<https://www.facebook.com/catchouston.org/>) (Feb. 9 and 12, 2020).

¹² *Id.*



1
 2 No part of the ad references Teague's candidacy, his opponent, or the election.¹³
 3 The Complaints further assert that "Teague's campaign Facebook page and his campaign
 4 website make reference to his church," and that by doing this, "he has effectively merged his
 5 business and his campaign."¹⁴ Accordingly, the Complaints allege that "[h]is advertisements for
 6 his church . . . did not contain a political disclaimer as required by law."¹⁵
 7 In addition, the Complaints assert that "his campaign headquarters was the address of his
 8 Church," and that "the Church used Facebook, Messenger, and other communication platforms
 9 to communicate his campaign directly to his parishioners and anyone else following the
 10 Church's page."¹⁶ Our review of the Church's Facebook page shows that it contains at least
 11 three posts by Teague referencing his candidacy.¹⁷ Further, the Complaints assert that "the

¹³ Fox26 Houston's FCC public inspection files do not show any advertisements related to Teague in its political files for U.S. House or files for non-candidate issue ads in the years 2019, 2020 or 2022. <https://publicfiles.fcc.gov/tv-profile/kriv>; <https://publicfiles.fcc.gov/tv-profile/ktxh/political-files/>. The FCC's political files must include all requests for broadcast time by candidates. 47 C.F.R. §§ 73.3526(e)(6), 73.3527(e)(5), 73.1943.

¹⁴ MUR 7724 Compl. at 1.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Church at the Cross Houston, *Pastor Johnny Teague showing off his skills #checkjohnny #congress* (video of Teague juggling and saying "Johnny Teague for Congress") (Sept. 5, 2020); *Word for the Week – GRASP* ("... I told him who I was and that I was running to be his Congressman. . .") (Sept. 27, 2020), *Word for the Week – IMPOSSIBLE* (Sept. 13, 2020), reading in pertinent part:

I have called on the Lord to do many impossible things in my life.
 He has miraculously responded. Now I am asking Him a huge

1 Church Facebook page repeatedly allows comments on it alluding to [Teague's] political
 2 campaign from his supporters."¹⁸ The Commission does not have access to any private
 3 communications that may have been made by the Church on Facebook Messenger.

4 In his Response, Teague, who was a first-time candidate at the time of the Complaint,
 5 asserts that he has "done [his] best to keep all Church business separate from campaign
 6 business," but that if he has made any mistakes he "will correct accordingly and immediately."¹⁹
 7 Regarding the Church's television ad, Teague explains that the Church "always" runs television
 8 ads on Fox 26 whenever it has the funds to do so.²⁰ Moreover, Teague denies timing the ad in
 9 question based on his campaign but rather "on funds and the fluctuations of Church

request. "Lord, let me win this race for the U.S. Congress please".
 Of all things, this one is the unlikeliest of them all. My opponent
 doesn't think I can win. Pour some water on that wood. My own
 party doesn't think I can win. Pour some more water on that wood.
 No one wants to give money because they say it's not winnable.
 Pour some more water on that wood. They say no one knows who I
 am. Pour some more water on that wood. They say mail-in voting
 may hurt me. Pour some more water on that wood. They think a
 Libertarian candidate may siphon some votes from me. Pour some
 more water on that wood. They acknowledge that I have no fortune
 of my own to pull this off. Pour some more water on that wood.

In addition, the Church posted photographs of its food fairs showing volunteers wearing "Check Johnny Teague for Congress" t-shirts and what appears to be a Memorial Day event where campaign signs were visible. Posts of June 13, July 11, Aug. 8, Sept. 5, Oct. 10, 2020, and May 29 and 30, 2022, FACEBOOK, (<https://www.facebook.com/catchouston.org/>). A review of the Church's current website and does not show any mentions of Teague's campaign. Church at the Cross Houston, (<https://churchatthecrosshouston.org>) (last visited Jan. 24, 2023). Our review of previous versions of the Church's website also do not show any reference to his candidacy. [https://web.archive.org/web/20200601000000*/churchatthecrosshouston.org] (last visited Jan. 24, 2023).

¹⁸ MUR 7724 Compl. at 1. One example of a comment from a supporter appears as a comment to Teague's September 13 "Word for the Week" post mentioning his candidacy appeared as follows: "God can do mighty things and he will. Praying for God to intercede on this and you will be a mighty, strong and true congressman that will stand firm on the word of the Lord." Church at the Cross Houston, *Word for the Week – IMPOSSIBLE*, FACEBOOK, (<https://www.facebook.com/catchouston.org/>) (Sept. 13, 2020).

¹⁹ MUR 7724 Resp. at 1.

²⁰ *Id.*

1 attendance.”²¹ In this instance, according to the Response, the Church received a \$60,000
 2 windfall in February 2020, and “the Finance Team chose to use those funds to pay for a new
 3 Church van, parking lot repairs, and run Church advertisements.”²² Teague asserts that he
 4 agreed to appear in the ad at issue “with [the Finance Team’s] guidance as senior pastor.”²³ The
 5 Response does not address the allegations that Teague used the Church as his campaign
 6 headquarters or that the Church distributed campaign messages to its parishioners through social
 7 media platforms.

8 The available information shows that there were at least three previous Church television
 9 ads from October and December 2017, which may have also aired on Fox 26 Houston.²⁴ All
 10 three are similar in form and content to the February-March 2020 television ad that is at issue in
 11 this matter. Stills from two of those prior ads are shown below.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Joel Mathiason, *Creative Services, COTC121730*, YOUTUBE, https://www.youtube.com/watch?v=ssXQwQmuL_Q (Dec. 12, 2017); Joel Mathiason, *Creative Services, COTC011830*, YOUTUBE, (<https://www.youtube.com/watch?v=Ew-LL8N0YM>) (Dec. 12, 2017); Joel Mathiason, *Creative Services, CATC101730*, YOUTUBE, (<https://www.youtube.com/watch?v=beV741B9Ggg>) (Oct. 20, 2017). On August 3, 2021, the Church’s Facebook page linked to another television ad featuring Teague that appears to have also aired on Fox 26 Houston. Church at the Cross Houston, *Our New Church Commercial on Fox, Check It Out!*, FACEBOOK, (<https://facebook.com/catchouston.org>) (Aug. 3, 2021). Similar to the ad mentioned in the Complaints, Teague appears in full view facing the camera, this time inside the Church with his back to the pulpit, a text banner appears at the bottom of the screen throughout most of the ad containing the Church’s logo, address, phone number, and schedule of worship times, and Teague is identified with the text, “Dr. Johnny Teague, Pastor.” Joel Mathiason, *Creative Services, CATC082130*, YOUTUBE, <https://www.youtube.com/watch?v=5y6yIdXDJDM> (Aug. 3, 2021). No part of the ad references a candidacy or any election. *Id.*



1
 2 In addition, at the end of each television ad there is a cut to a page displaying the Church's logo,
 3 address, phone number, and worship times, without mentioning Teague's name, and which is
 4 identical to the ending of the February-March 2020 television ad.²⁵

5 In addition to those Facebook posts highlighted in the Complaints, during the 2022
 6 election cycle, the Church's Facebook page showed two posts that appeared to reference
 7 Teague's candidacy. The posts, from May 29 and 30, 2022, each describe a luncheon
 8 celebrating Memorial Day and Teague's win in the May 24 primary run-off election. The
 9 luncheon took place at the Church after one of its services. The first post reads in pertinent part:

10 Hello Brothers and Sisters in Christ. I ask that you take a
 11 moment of silence for the many that have served and are
 12 currently serving in the military. We would like to thank them
 13 for their dedication. Happy Memorial Day!!! Our very own
 14 Pastor Johnny Teague has the opportunity to serve, as he is the
 15 candidate for the Republican party for the U.S. House Texas
 16 District 7. We are very honored and excited that the community
 17 decided to give our Pastor the support to make it all the way in
 18 2022, so we had a wonderful celebration for Pastor, please enjoy
 19 the pictures!!²⁶
 20

²⁵ The holiday themed ad also appears on the Church's Facebook page. Church at the Cross Houston, *Merry Christmas! What do you want for Christmas?*, FACEBOOK (<https://www.facebook.com/catchouston.org/>) (Dec. 22, 2017).

²⁶ Church at the Cross Houston, FACEBOOK (May 29, 2022) www.facebook.com/catchouston.org (last visited Jan. 24, 2023); *see supra* note 17 and accompanying text.

1 The second post describing the combined event reads:

2 Hello Brothers and Sisters in Christ. As you know we celebrated
 3 our Pastor's success of winning the run-off Sunday after second
 4 service. This would not have been possible without the diligence
 5 and dedication of our most faithful members. I would like to
 6 give them a round of applause and many thank yous for the great
 7 feast and wonderful hospitality given as they served others.
 8 Once again much gratitude to those of you that served us
 9 Sunday. Thank You and God Bless You.²⁷

10
 11 A photograph obtained from one of the Facebook posts of the luncheon depicts Teague
 12 standing next to a campaign sign, which reads "Check Johnny Teague for Congress." The
 13 campaign sign contains a disclaimer stating: "Political Advertising Paid by ✓Johnny for
 14 Congress Campaign," and includes the web address of his campaign website,
 15 www.johnnyteague.com. The photograph appears below:



16
 17 Other photographs include depictions of Teague standing next to individuals wearing
 18 campaign t-shirts, and other participants at the luncheon. Copies of those photographs are
 19 below:²⁸

²⁷ Church at the Cross Houston, FACEBOOK (May 30, 2022) www.facebook.com/catchouston.org (last visited Jan. 24, 2023); *see supra* note 17 and accompanying text.

²⁸ Church at the Cross Houston, FACEBOOK (May 29, 2022) www.facebook.com/catchouston.org (last visited Jan. 24, 2023); *see supra* notes 17, 26, 27.



1
 2 The Committee's disclosure reports show disbursements for signs in the amount of
 3 \$202.65 and t-shirts in the amount of \$132.29 on May 20, but do not show any disbursements
 4 around the same date related to the cost of food and beverage or renting of space for the
 5 luncheon.²⁹ While the reports do not indicate receipts such as from ticket sales, the Committee
 6 received one contribution on May 30, two days after the luncheon, in the amount of \$1,000.³⁰
 7 Last, the luncheon does not appear to have been advertised by either the Committee or the
 8 Church, given that a review of their respective websites does not list the luncheon as an event.³¹

²⁹ Johnny Teague for Congress Campaign Committee, Amended 2022 July Quarterly Report at 14 (Aug. 15, 2022). According to its disclosure reports, the Committee spent \$29,575.88 on signs during the 2020 cycle and has spent \$43,184.60 during the 2022 cycle, though some of those payments appeared to have also included the costs of mailers, campaign shirts, and other items. *FEC Disbursements: Filtered Results*, FEC.gov, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00706242&two_year_transaction_period=2020&two_year_transaction_period=2022&disbursement_description=signs (last visited Jan. 24, 2023) (showing 2019-2020 and 2021-2022 disbursements).

³⁰ Johnny Teague for Congress Campaign Committee, Amended 2022 July Quarterly Report at 7 (Aug. 15, 2022).

³¹ *See, e.g.*, Johnny Teague for Congress Campaign Committee, www.johnnyteague.com (last visited Jan. 24, 2023); Church at the Cross Houston, <https://churchatthecrosshouston.org> (last visited Jan. 24, 2023).

1 **III. LEGAL ANALYSIS**

2 **A. The Commission Exercises its Prosecutorial Discretion to Dismiss the Alleged**
 3 **Prohibited In-Kind Corporate Contribution Violation and Related Reporting**
 4 **and Disclaimer Violations Concerning the Television Ad**

5 The Act prohibits corporations from making contributions to federal candidates, and
 6 likewise bars candidates, political committees (other than independent expenditure-only political
 7 committees and committees with hybrid accounts), and other persons, from knowingly accepting
 8 or receiving corporate contributions.³² Expenditures made by any person “in cooperation,
 9 consultation, or concert, with, or at the request or suggestion of” a candidate or their authorized
 10 committee or agent qualify as an in-kind contribution to the candidate and must be reported as
 11 expenditures made by the candidate’s authorized committee.³³

12 A communication that is coordinated with a candidate or his authorized committee is
 13 considered an in-kind contribution and is subject to the limits, prohibitions, and reporting
 14 requirements of the Act.³⁴ The Commission’s regulations provide a three-part test for
 15 determining when a communication is coordinated. A communication is coordinated if it: (1) is
 16 paid for, in whole or in part, by a person other than the candidate or authorized committee;³⁵
 17 (2) satisfies a content standard in 11 C.F.R. § 109.21(c);³⁶ and (3) satisfies a conduct standard in

³² 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), Note to Paragraph (b) (explaining that corporations and labor organizations may make contributions to nonconnected political committees that make only independent expenditures, or to separate accounts maintained by nonconnected political committees for making only independent expenditures).

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

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

³⁵ 11 C.F.R. § 109.21(a)(1).

³⁶ *Id.* § 109.21(c)(1)-(5). 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

1 11 C.F.R. § 109.21(d).³⁷ All three prongs must be satisfied for a communication to be
 2 considered coordinated under the regulations.³⁸

3 The Church's television ad satisfies all three prongs of the coordinated communication
 4 regulation.³⁹ First, the payment prong is satisfied because the Church, a third party, paid for the
 5 ad.⁴⁰ Respondents acknowledge that the Church received \$60,000 in February 2020 and used
 6 part of the money to fund the television ad.⁴¹

7 Second, the content prong is satisfied because the ad was an "electioneering
 8 communication."⁴² The ad meets the definition of an "electioneering communication" because
 9 Teague is (1) "clearly identified" in the ad; (2) the ad was publicly distributed through a
 10 television "broadcast" within 30 days before a primary election; and (3) the ad was "targeted to
 11 the relevant electorate."⁴³ Teague is "clearly identified" in the ad because he appears and speaks
 12 on camera and says his name, "I'm Dr. Johnny Teague."⁴⁴ Further, the ad was "broadcast"

the clearly identified candidate, and (5) a public communication that is the functional equivalent of express advocacy. *Id.* § 109.21(c).

³⁷ *Id.* § 109.21(d)(1)-(6). 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. *Id.* § 109.21(d).

³⁸ *Id.* § 109.21(a); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 453 (Jan. 3, 2003) (Explanation and Justification) ("Coordinated and Independent Expenditures E&J").

³⁹ The analysis in this Report is limited to the February 2020 television ad that was the subject of the Complaints. We need not analyze the August 2021 ad, *supra* note 24, given that Teague was not a federal candidate at the time that ad aired.

⁴⁰ 11 C.F.R. § 109.21(a)(1).

⁴¹ MUR 7724 Resp. at 1.

⁴² 52 U.S.C. §§ 30104(f)(3), 30116(a)(7)(B)(i); 11 C.F.R. §§ 100.29, 109.21(c)(1). Electioneering Communications, 67 Fed. Reg. 65,190 (Oct. 23, 2002) ("Electioneering Communications E&J"). 52 U.S.C. § 30116(a)(7)(C).

⁴³ 52 U.S.C. § 30104(f)(3); 11 C.F.R. § 100.29(a).

⁴⁴ 52 U.S.C. § 30101(18), 30104(f)(3)(A)(i)(I); 11 C.F.R. §§ 100.17, 100.29(b)(2); *Brown v. FEC*, 386 F. Supp. 3d 16, 26 (D.D.C. 2019) (stating that the statutory definition of electioneering communications "does not

1 through a television station, Fox 26 Houston, apparently from February 13 through March 2,
 2 which was within 30 days of the March 3 primary election.⁴⁵ Additionally, the ad was “targeted
 3 to the relevant electorate” because Fox 26 Houston apparently covers more than 50,000 persons
 4 in Texas’s 9th Congressional District, the district which Teague sought to represent.⁴⁶

5 Third, the conduct prong is satisfied in multiple ways — Teague’s appearance and
 6 participation in the production of the ad constitutes “material involvement” in the content of the
 7 communication;⁴⁷ the ad was produced and distributed at the “request or suggestion” of the
 8 person paying for the communications (the Church) and the candidate (Teague) assented to the
 9 suggestion;⁴⁸ and there appears to have been “substantial discussion” between Teague and the
 10 Church about the creation, production or distribution of the ad.⁴⁹ The relevant conduct standards
 11 do not require that the person appear in the ad in his or her capacity as a candidate.⁵⁰

12 Thus, because all three of the prongs are satisfied, the Church’s television ad constitutes a
 13 coordinated communication. Moreover, the ad does not appear to be covered by the coordinated
 14 communications safe harbors established by the Commission. Notably, the coordination

require that the ads refer to the candidate *as a* candidate, or event that they reference an election”) (emphasis in the original).

⁴⁵ 52 U.S.C. § 30104(f)(3)(A)(i)(II)(bb); 11 C.F.R. § 100.29(b)(3)(i).

⁴⁶ 52 U.S.C. § 30104(f)(3)(A)(i)(III); 11 C.F.R. § 100.29(b)(5). Texas’s 9th Congressional District includes parts of the city of Houston, which as of July 2018 had a population of about 2,325,502; *see also*, District Map, ALGREENHOUSE.GOV, <https://algreen.house.gov/district/district> (last visited Jan. 24, 2023); Facts and Figures, HOUSTONTX.GOV, <https://www.houstontx.gov/about/houston/houstonfacts.html> (last visited Jan. 24, 2023). According to the FCC public inspection files, Fox 26 Houston’s air coverage includes all of Houston and surrounding areas. *See* TV Station Profile, KRIV, Houston, TX, Contour Maps, FCC.GOV <https://publicfiles.fcc.gov/tv-profile/kriv/contour-maps> (last visited Jan. 24, 2023).

⁴⁷ 11 C.F.R. § 109.21(d)(2).

⁴⁸ *Id.* § 109.21(d)(1).

⁴⁹ *Id.* § 109.21(d)(3).

⁵⁰ *See Brown v. FEC*, 386 F. Supp. 3d at 30 (“[W]hether the ads are coordinated has nothing to do with what [the candidate] says in the ad . . . all that matters is whether [the candidate] did, in fact, work with her company to create the ad.”).

1 regulations provide a safe harbor for “certain business and commercial communications” that
2 excludes from the definition of a coordinated communication any public communication in
3 which a federal candidate is “clearly identified only in his or her capacity as the owner or
4 operator of a business that existed prior to the candidacy,” so long as “[the] medium, timing,
5 content, and geographic distribution of the public communication are consistent with public
6 communications made prior to the candidacy” and “[t]he public communication does not
7 promote, support, attack, or oppose [“PASO”] that candidate or another candidate who seeks the
8 same office as that candidate.”⁵¹ The Commission considered but did not adopt a similar safe
9 harbor for tax exempt nonprofit organizations organized under 26 U.S.C. § 501(c)(3), such as the
10 Church in this matter, that pay for communications in which a Federal candidate and
11 officeholder appears and “expresses or seeks support for the payor organization.”⁵² However,
12 “the Commission retain[ed] its prosecutorial discretion to dismiss enforcement matters involving
13 such communications.”⁵³

14 The circumstances here weigh in favor of dismissal. Here, the Church’s ad does not
15 PASO Teague or any other candidate; indeed, the ad identified Teague only in his capacity as
16 operator of the Church and the ad makes no mention of the election.⁵⁴ Further, the ad was
17 consistent with other public communications made by the Church prior to the candidacy;
18 Respondents assert that the Church has previously run ads through Fox 26 Houston in the past

⁵¹ 11 C.F.R. § 109.21(i)(1), (2); Coordinated Communications E&J at 55,959. The other coordinated communication safe harbors cover certain inquiries about legislative or policy issues, endorsements and solicitations of federal candidates by other federal candidates, and the establishment of a firewall between a campaign and the person paying for the communication. See 11 C.F.R. § 109.21(f), (g), (h).

⁵² Coordinated Communications E&J at 55,960.

⁵³ *Id.*

⁵⁴ 11 C.F.R. § 109.21(i)(2).

1 “based on funds and the fluctuations of Church attendance.”⁵⁵ As described above, there are
2 three such television ads from October and December 2017 that are consistent with the February-
3 March 2020 ad at issue in terms of the medium (30-second television ads), content (Teague
4 appearing in full view facing the camera with a background photo and discussing the Church
5 while a text banner appears below him identifying him as Pastor of the Church and listing
6 worship times and contact information), and geographic distribution (Fox 26 Houston).⁵⁶
7 Moreover, Teague has been employed by the Church since 2005 and serves as its Senior Pastor,
8 and thus his appearance in the ad as spokesperson for the Church was not unusual.⁵⁷ Finally, the
9 cost of the ad was likely minimal. While the Commission does not have specific information
10 about the cost of the television ad, Respondents state that the Church received \$60,000, which
11 was divided between the purchase of a van, parking lot repairs, and to pay for the television ad.⁵⁸
12 Under these circumstances the Commission exercises its prosecutorial discretion to dismiss the
13 coordination allegations and dismiss the allegation that the Committee failed to report receipt of
14 any resulting in-kind contribution.⁵⁹

⁵⁵ MUR 7724 Resp. at 1.

⁵⁶ *See supra* notes 24, 25 and accompanying text.

⁵⁷ 11 C.F.R. § 109.21(i)(1).

⁵⁸ MUR 7724 Resp. at 1.

⁵⁹ *See, e.g.*, Factual & Legal Analysis (“F&LA”) at 6 & Cert. ¶ 2a (Apr. 8, 2016), MUR 6807 (Erin McClelland for Congress Committee, *et al.*) (without reaching the questions of whether the television ad was a coordinated communication or if it satisfied the safe harbor for commercial transactions, the Commission exercised its prosecutorial discretion to dismiss the matter and issued caution letters). In McClelland, a non-profit corporation paid for and aired a television ad featuring its executive director, who was also a federal candidate, within 90 days of the primary election. In dismissing the matter, the Commission’s F&LA noted the low cost of the ad (\$2,205), that the ad lacked electoral content by “solely promot[ing] the *bona fide* business” of the non-profit entity, and McClelland’s longtime role as a public spokesperson for the entity. F&LA at 6, MUR 6807 (Erin McClelland for Congress Committee, *et al.*).

1 For similar reasons, the Commission exercises its prosecutorial discretion and dismisses
2 the allegation that the Church violated the disclaimer and disclosure requirements related to the
3 electioneering communication. The Act and Commission regulations require any person who
4 makes an electioneering communication to comply with disclaimer and disclosure
5 requirements.⁶⁰ These requirements include that a disclaimer must be “clear and conspicuous,”
6 specifying who paid for the ad and whether the candidate authorized it.⁶¹ Further, if a
7 corporation has spent more than \$10,000 on electioneering communications in a calendar year, it
8 must disclose certain information to the Commission about its electioneering communications.⁶²

9 Here, it would not be an efficient use of the Commission’s limited resources to
10 investigate the costs of the ad in this matter. As mentioned above, the amount in violation here
11 appears to be modest. Further, there appears to have been limited informational harm. Indeed
12 the Church’s involvement is clear because a photograph of the Church appears in the
13 background, and throughout most of the ad, its address, phone number, and worship times appear
14 in the text banner. Teague’s involvement with the ad is also obvious by virtue of his appearance
15 and speaking in the ad, and being identified as the Church’s Pastor. Accordingly, it does not
16 appear likely that anyone would have been misled regarding who paid for and authorized the ad.
17 And, finally, despite being close in time to the election, the ad lacked any electoral content.

⁶⁰ See 52 U.S.C. §§ 30104(f), 30120; 11 C.F.R. § 100.29(a).

⁶¹ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(4), (b)(2). Stand by Your Ad disclaimer requirements must include either an unobscured, full screen, view of the candidate stating that they approved the communication or a voice-over by the candidate stating that they approved the communication, accompanied by a clearly identifiable photographic or similar image of the candidate, and a similar statement must appear in clearly readable writing at the end of the ad. 52 U.S.C. § 30120(d)(1)(B), 11 C.F.R. § 110.11(c)(3).

⁶² 52 U.S.C. § 30104(f); 11 C.F.R. § 104.20.

1 Therefore, the Commission exercises its prosecutorial discretion pursuant to *Heckler v.*
2 *Chaney* to dismiss the allegations that the Church made, and Teague and the Committee
3 knowingly accepted, an in-kind corporate contribution in violation of 52 U.S.C. § 30118 and
4 11 C.F.R. § 114.2 in connection with the television ad, and that the Committee failed to report
5 receipt of an in-kind contribution in connection with the television ad in violation of 52 U.S.C.
6 § 30104(b) and 11 C.F.R. § 104.3(a).⁶³ The Commission further dismisses as a matter of
7 prosecutorial discretion the allegations that the Church violated 52 U.S.C. § 30120 and 11 C.F.R.
8 § 110.11 by failing to include a disclaimer on a television ad that aired from February through
9 March 2020 and violated 52 U.S.C. § 30104(f) and 11 C.F.R. § 104.20 by failing to disclose
10 information about its electioneering communication to the Commission. The Commission
11 cautions the Church at the Cross, Dr. Johnny Mark Teague, and Johnny Teague for Congress
12 Campaign Committee and James Poullard in his official capacity as treasurer as to these
13 violations.

14 **B. The Commission Exercises its Prosecutorial Discretion and Dismisses the**
15 **Allegations That the Church Made Prohibited In-Kind Corporate**
16 **Contributions in Connection with Use of the Church Address and Facilities**
17 **and the Related Reporting Violation**
18

19 As discussed above, the Act prohibits corporations from making contributions to federal
20 candidates, and likewise bars candidates, political committees (other than independent
21 expenditure-only political committees and committees with hybrid accounts), and other persons,
22 from knowingly accepting or receiving corporate contributions.⁶⁴ Corporate employees may

⁶³ 470 U.S. 821 (1985).

⁶⁴ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), Note to Paragraph (b) (explaining that corporations and labor organizations may make contributions to nonconnected political committees that make only independent expenditures, or to separate accounts maintained by nonconnected political committees for making only independent expenditures).

1 make “occasional, isolated, or incidental use” of corporate facilities for individual volunteer
2 activity in connection with a federal election, and are “required to reimburse the corporation only
3 to the extent that the overhead or operating costs of the corporation are increased.”⁶⁵
4 Corporations are prohibited from facilitating the making of contributions to candidates and
5 political committees.⁶⁶

6 The Complaint asserts that “[Teague’s] campaign headquarters was the address of his
7 Church,” raising the allegation that the Committee used Church facilities without compensation
8 to conduct Teague’s campaign.⁶⁷ The Church’s address is the same address that was listed for
9 the Committee in its Statements of Organization filed with the Commission until August 2022,
10 but even though the Committee’s reports do not reveal disbursements to any other recipient for
11 office space, there is insufficient information to conclude that the Church actually functioned as
12 the Committee’s headquarters or that the Committee conducted a significant amount of campaign
13 operations from this location.⁶⁸ Indeed, Teague’s statement that, “I have done my best to keep
14 all Church business separate from campaign business,” would suggest that he did not operate his
15 campaign out of the Church.⁶⁹

16 The Committee’s use of the Church’s facilities without charge would constitute a thing of
17 value under the Act. However, Commission regulations appear to permit Teague, as an

⁶⁵ 11 C.F.R. § 114.9(a).

⁶⁶ *Id.* § 114.2(f)(1) (defining “facilitation” in pertinent part as “using corporate . . . resources or facilities to engage in fundraising activities in connection with any federal election . . .”).

⁶⁷ MUR 7724 Compl. at 1. Our review of the Committee’s disclosure reports shows that it did not make any disbursements to the Church.

⁶⁸ *FEC Disbursements: Filtered Results*, FEC.gov, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00706242&two_year_transaction_period=2020&two_year_transaction_period=2022 (last visited Jan. 24, 2023) (reflecting Committee disbursements for the 2019-2020 and 2021-2022 election cycles).

⁶⁹ MUR 7724 Resp. at 1.

1 employee volunteering on behalf of a federal campaign, to make “occasional, isolated, or
 2 incidental use” of corporate facilities.⁷⁰ First, it would not be unreasonable for Teague to receive
 3 mail at the Church, where he worked as Senior Pastor and where he was thus located on a regular
 4 basis. But the Commission has no information indicating that the Committee received a
 5 substantial amount of mail on a regular basis in order to conclude that use of the address was
 6 more than an incidental use of the Church’s facilities.⁷¹ Further, as noted above, the Committee
 7 eventually amended its Statement of Organization to remove the Church’s address as the
 8 campaign address.⁷²

9 Second, beyond use of the address, there is little information available indicating that the
 10 Committee used the Church facilities for a significant number of campaign related events. While
 11 a search of Google Maps showed that the Church displayed a “Vote Teague” yard sign expressly
 12 advocating for Teague’s election to Congress in February 2020, the mere display of a yard sign
 13 does not indicate that the Church served as Teague’s campaign headquarters.⁷³ Similarly, the
 14 Commission located photos of only a few events held at the Church during the two election

⁷⁰ 11 C.F.R. § 114.9(a).

⁷¹ *See id.* § 114.9(a)(1) (providing that the campaign is required to reimburse the corporation “only to the extent that the overhead or operating costs of the corporation are increased”).

⁷² *Supra* note 7.

⁷³ *See* GOOGLE MAPS, Place:3835 South Dairy Ashford Road Houston, TX, <https://www.google.com/maps/place/3835+S+Dairy+Ashford+Rd,+Houston,+TX+77082/@29.7162703,-95.6046647,3a,37.5y,115.3h,87.62t/data=!3m7!1e1!3m5!1sR2Y1AsiuGvwwUwXju1CIPA!2e0!5s20200201T00000017i16384!8i8192!4m5!3m4!1s0x8640ddaaa4f2657d:0x87775490d9422734!8m2!3d29.7161366!4d-95.6042501> (last visited Jan. 24, 2023). Corporations are not prohibited from making independent expenditures. 52 U.S.C. § 30101(17); 11 C.F.R. §§ 100.16; 114.10; *Citizens United v. Federal Election Commission*, 558 U.S. 310, 360-362 (2010). While the Committee’s reports disclose over \$1,000 in disbursements for yard signs during the 2020 cycle and in the period leading up to the March 2020 primary, based on the photographs of the signs outside the Church, the cost of those signs appears to be a small amount below the aggregate \$250 threshold triggering reporting requirements for independent expenditures by corporations. 11 C.F.R. §§ 114.10(b), 104.4(a), 109.10(b)-(e); Johnny Teague for Congress Campaign Committee, Amended 2020 Pre-Primary Report at 5, 8, 10-12, 15 (Aug. 15, 2022); Johnny Teague for Congress Campaign Committee Amended 2020 April Quarterly Report at 9 (Aug. 15, 2022).

1 cycles that showed some kind of connection to the campaign: volunteers wearing campaign t-
2 shirts during Church food fairs during 2020 and a 2022 Memorial Day luncheon event at which
3 campaign signs were displayed.⁷⁴

4 Regarding the May 28 luncheon held at the Church celebrating both Memorial Day and
5 Teague's win at the May 24, 2022, run-off election, there is insufficient information to indicate
6 that this constituted a prohibited in-kind contribution from the Church. Because the Committee's
7 reports do not show any disbursements for food or beverage related to the event, it is likely that a
8 third party, other than the Committee, paid for the costs associated with the event. It would also
9 be reasonable to assume that the Church paid for the food or beverage at the luncheon and made
10 its community room available to Teague for the event celebrating both his win and the holiday.
11 As a domestic, non-profit corporation, the Church's payment of those costs would constitute a
12 prohibited in-kind corporate contribution from the Church to the Committee.⁷⁵ However, as an
13 employee volunteering on behalf of a federal campaign, Teague is permitted to make
14 "occasional, isolated, or incidental use" of corporate facilities.⁷⁶ The costs of the event appear
15 modest, as there appear to have been only a few tables and a small group of individuals in
16 attendance, and it is unclear whether it was exclusively a campaign-related event.⁷⁷

17 Other than receiving mail there, holding the food fairs in 2020 and the May 28, 2022
18 luncheon, it is unclear whether the Church would have provided any other service that would

⁷⁴ *Supra* pages 6-7, 9-12 and notes 17, 26, 27, 28.

⁷⁵ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2.

⁷⁶ 11 C.F.R. § 114.9(a).

⁷⁷ *Supra* pages 9-12 and notes 17, 26, 27, 28.

1 provide something of value to the Committee. Therefore, any value derived from Teague's
2 apparent limited use of the Church facilities may have been minimal.

3 Therefore, the Commission exercises its prosecutorial discretion pursuant to *Heckler v.*
4 *Chaney* and dismisses the allegations that the Church made, and Teague and the Committee
5 accepted, in-kind corporate contributions in violation of 52 U.S.C. § 30118 and 11 C.F.R.
6 § 114.2 in connection with use of the Church address and facilities, and that the Committee
7 failed to report receipt of in-kind contributions in connection with the use of the Church address
8 and facilities, in violation of 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a).⁷⁸

9 **C. The Commission Finds No Reason to Believe That the Church Made a**
10 **Prohibited In-Kind Corporate Contribution in Connection with its Facebook**
11 **Posts and as to the Related Reporting and Disclaimer Violations**
12

13 Regarding the allegation that the Church impermissibly used Facebook “to communicate
14 [Teague’s] campaign directly to his parishioners and anyone else following the Church’s page,”
15 the Complaints do not point to or otherwise reference any specific instances.⁷⁹ There are only a
16 limited number of available posts on the Church’s public Facebook page referencing Teague’s
17 candidacy.⁸⁰ And, there are no known instances of paid communications by the Church on
18 Facebook or any other social media platform that reference Teague.⁸¹ Furthermore, it does not
19 appear that the Church made any payments for communications referencing the campaign, or
20 that the Committee paid the Church to place the posts on its Facebook page. Moreover, there is
21 no information that the Church coordinated the limited Facebook posts with the campaign.

⁷⁸ 470 U.S. 821 (1985).

⁷⁹ MUR 7724 Compl. at 1.

⁸⁰ *Supra* notes 17, 18, 26, 27, 28.

⁸¹ A search of the Facebook Ad Library does not reveal any instances of paid communications by the Church on Facebook.

1 As discussed above, a communication that is coordinated with a candidate or their
2 authorized committee is considered an in-kind contribution and is subject to the limits,
3 prohibitions, and reporting requirements of the Act.⁸² The payment prong of the coordination
4 regulation does not appear to be satisfied as there is no information that the Church paid to place
5 the Facebook posts at issue here.⁸³ Additionally, the content standards under the coordinated
6 communication provision all require, at a minimum, that there be an “electioneering
7 communication” or a “public communication,” neither of which applies to the Facebook posts or
8 comments.⁸⁴ An electioneering communication is “any broadcast, cable, or satellite
9 communication” that refers to a “clearly identified candidate for Federal office,” is publicly
10 distributed within a certain time before an election, and meets certain requirements regarding the
11 audience.⁸⁵ The Church’s Facebook posts at issue here were published on the internet, not
12 through broadcast, cable, or satellite, and therefore were not electioneering communications.

13 A public communication is “a communication by means of any broadcast, cable, or
14 satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or
15 telephone bank to the general public, or any other form of general public political advertising.”⁸⁶
16 Commission regulations provide that public communications “shall not include communications
17 over the Internet, except for communications placed for a fee on another person’s Web site,” a
18 provision referred to as the “internet exemption.”⁸⁷ The internet exemption applies to the

⁸² 52 U.S.C. § 30116; 11 C.F.R. § 109.21(b); *see also supra* pages 13-16 (discussing the payment, content, and conduct prongs of the coordinated communication provision at 11 C.F.R. § 109.21)

⁸³ 11 C.F.R. § 109.21(a)(1).

⁸⁴ *Id.* § 109.21(c).

⁸⁵ 52 U.S.C. § 30104(f)(3) (definition of electioneering communication); 11 C.F.R. § 109.29 (same).

⁸⁶ 52 U.S.C. § 30101(22) (definition of public communication); 11 C.F.R. § 100.26 (same).

⁸⁷ 11 C.F.R. § 100.26.

1 Church's Facebook posts and comments because they were published on the Church's own
2 Facebook page and there is no indication that the Committee placed them for a fee on the
3 Church's Facebook page. Therefore, the references to Teague's candidacy on the Church's
4 Facebook page do not appear to constitute prohibited in-kind contributions.

5 Furthermore, the posts, as communications over the internet not placed for a fee on
6 another person's website, would not have required disclaimers. The Act and Commission
7 regulations require that all "public communications" by any person that expressly advocate the
8 election or defeat of a clearly identified federal candidate, or solicit a contribution, or that
9 constitute an electioneering communication must contain an appropriate disclaimer.⁸⁸ "Public
10 communications" include "general public political advertising," which does not include
11 communications over the internet, except when those communications are "placed for a fee on
12 another person's Web site."⁸⁹ Here, none of the Church's available posts on its Facebook page,
13 or comments posted by Teague's supporters mentioning his candidacy, were placed on another
14 person's website for a fee and, accordingly, they do not constitute "public communications;" nor
15 did the posts or comments solicit contributions, or constitute electioneering communications.⁹⁰
16 Therefore, the Church's Facebook posts at issue here are not subject to the disclaimer
17 requirement.⁹¹

18 Therefore, the Commission finds no reason to believe that the Church made, and Teague

⁸⁸ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(2).

⁸⁹ 11 C.F.R. § 100.26; *see also* Internet Communications, Final Rules, 71 Fed. Reg. 18,589, 18,600 (Apr. 12, 2006) ("Internet Communications E&J"); *see also* Final Rule, Internet Communication Disclaimers and Definition of "Public Communication" 87 Fed. Reg. 77,467 (Dec. 19, 2022) (revising the definition of "public communication" at 11 C.F.R. § 100.26 to include "communications placed for a fee on another person's website, digital device, application, or advertising platform.") (effective March 1, 2023).

⁹⁰ *See* 11 C.F.R. § 100.29(a).

⁹¹ *Id.* § 100.26; *see also* Internet Communications E&J at 18,593-94.

THIS PROPOSED DRAFT WAS VOTED ON BUT
NOT APPROVED BY THE COMMISSION.

1 and the Committee knowingly accepted, an in-kind corporate contribution in violation of
2 52 U.S.C. § 30118 and 11 C.F.R. § 114.2 in connection with the Church's Facebook posts and
3 that the Committee failed to report receipt of an in-kind contribution, in violation of 52 U.S.C.
4 § 30104(b) and 11 C.F.R. § 104.3(a) in connection with those posts. The Commission also finds
5 no reason to believe that the Church violated 52 U.S.C. § 30120 and 11 C.F.R. § 110.11 by
6 failing to include a disclaimer on its Facebook posts referencing Teague's candidacy.

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

3
4 **RESPONDENTS:** Johnny Teague for Congress Campaign Committee **MURs 7724, 7752**
5 and James Poullard in his official capacity as treasurer
6 Church at the Cross
7 Dr. Johnny Mark Teague
8

9 **I. INTRODUCTION**

10
11 This matter was generated by Complaints filed with the Federal Election Commission
12 involving allegations that 2020 congressional candidate Dr. Johnny Mark Teague, who also
13 served as Senior Pastor at the Church at the Cross in Houston, Texas (the “Church”), “effectively
14 merged his business and his campaign,” resulting in violations of the Federal Election Campaign
15 Act of 1971, as amended (the “Act”), and Commission regulations.¹ Specifically, the
16 Complaints allege that the Church aired a television ad featuring Teague shortly before the
17 Republican primary election that lacked the proper disclaimer and resulted in a prohibited
18 contribution by the Church to Teague. In addition, the Complaints allege that Teague used the
19 Church’s Facebook account to communicate about his campaign and that his principal campaign
20 committee, Johnny Teague for Congress Campaign Committee and James Poullard in his official
21 capacity as treasurer (the “Committee”), used the Church as a campaign office.

22 Respondents assert that the Committee and the Church have attempted to “keep all
23 Church business separate from campaign business,” but concede that Teague as a first-time
24 candidate “will correct” any mistakes “accordingly and immediately.”² Respondents state that

¹ Compl. at 1, MUR 7724 (Apr. 2, 2020); Compl. at 1 MUR 7752 (June 22, 2020). The Complaints in MUR 7724 and MUR 7752 are identical. Hereinafter, we cite to the Complaint in MUR 7724. In addition to alleging violations of the Act, the Complaints also allege violations of the Federal Communications Commission (“FCC”) rules and the so-called “Johnson Amendment” to the Internal Revenue Code, which fall outside the scope of the Commission’s jurisdiction. As such, the Commission does not address those alleged violations.

² Teague Resp. at 1, MUR 7724 (Apr. 7, 2020) (hereinafter “MUR 7724 Resp.”); Committee Resp. at 1, MUR 7724 (Apr. 21, 2020); Teague Resp. at 1, MUR 7752 (June 29, 2020); Committee Resp. at 1, MUR 7752 (July 20, 2020). Teague’s Response in MUR 7752 incorporated his initial Response in MUR 7724. The Committee

1 the Church's television ad was not related to the campaign or intentionally timed to the election.
2 Moreover, Respondents assert that Teague has not used the Church's Facebook account for any
3 campaign activity.

4 As discussed below, while the television ad at issue meets the requirements for a
5 coordinated communication, it was not a prohibited in-kind contribution because it qualifies for
6 the commercial transaction safe harbor in the Commission's regulations. Finally, there is
7 insufficient available information regarding the extent of Teague's use of the Church address and
8 facilities for campaign related purposes, and the alleged Facebook posts referencing Teague's
9 campaign appear to be covered by the internet exemption.

10 Therefore, the Commission finds no reason to believe that the Church made, and Teague
11 and the Committee knowingly accepted, an in-kind corporate contribution in violation of 52
12 U.S.C. § 30118 and 11 C.F.R. § 114.2 through the television ad; finds no reason to believe that
13 the Committee failed to report receipt of an in-kind contribution from the Church as it relates to
14 the television ad in violation of 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a); and dismisses
15 the allegations that the Church violated 52 U.S.C. §§ 30120(a) and 30104(f) and 11 C.F.R.
16 §§ 110.11 and 104.20 by failing to comply with the disclaimer and disclosure requirements for
17 electioneering communications in connection with the television ad.

18 The Commission further exercises its prosecutorial discretion and dismisses the
19 allegations that the Church made, and Teague and the Committee knowingly accepted, in-kind
20 corporate contributions in violation of 52 U.S.C. § 30118 and 11 C.F.R. § 114.2 in connection
21 with the Committee's use of the Church address and facilities, and dismisses the allegation that

adopted both of Teague's Responses submitted for MURs 7724 and 7752. Teague, as Senior Pastor, also responded on behalf of the Church.

1 the Committee failed to report receipt of in-kind contributions from the Church as it relates to
2 such use in violation of 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a). In addition, the
3 Commission finds no reason to believe that the Church made, and Teague and the Committee
4 knowingly accepted, an in-kind corporate contribution in violation of 52 U.S.C. § 30118 and
5 11 C.F.R. § 114.2 in connection with the Church's Facebook posts, and no reason to believe that
6 the Committee failed to report receipt of an in-kind contribution from the Church as it relates to
7 those posts. Last, the Commission finds no reason to believe that the Church violated 52 U.S.C.
8 § 30120 and 11 C.F.R. § 110.11 by failing to include a disclaimer on its Facebook posts
9 referencing Teague's candidacy.

10 II. FACTUAL BACKGROUND

11 On March 3, 2020, Teague won the 2020 Republican primary election for Texas's 9th
12 Congressional District but lost the November 3, 2020 general election.³ On May 24, 2022,
13 Teague won the 2022 Republican primary run-off for Texas's 7th Congressional District but lost
14 the November 8, 2022 general election.⁴ Since 2005, Teague has been employed as Senior
15 Pastor at the Church, which registered in 1952 as a domestic non-profit corporation with the
16 Texas Secretary of State.⁵ Until August 2022, the Committee's address listed in its Statement of

³ Dr. Johnny Mark Teague Statement of Candidacy at 1 (Apr. 29, 2019); 2020 Texas Election Results, U.S. Rep. District 9, TEXAS SEC'Y OF STATE (<https://www.sos.state.tx.us/elections/historical/elections-results-archive.shtml>) (last visited: Feb. 7, 2023).

⁴ Dr. Johnny Mark Teague, Amended Statement of Candidacy at 1 (Nov. 16, 2021); Dr. Johnny Mark Teague, Statement of Candidacy at 1 (Apr. 29, 2019) 2022 Texas Election Results, U.S. Rep. District 7, TEXAS SEC'Y OF STATE, <https://results.texas-election.com/races> (last visited: Feb. 7, 2023).

⁵ MUR 7724 Resp. at 1; Office of the Sec'y of State, State of Texas, Information Ltr. for Entity. (Sept. 25, 2020).

1 Organization was the same as the Church’s address listed in its filings with the Texas Secretary
 2 of State.⁶

3 According to the Complaints, the Church ran a television ad featuring Teague on Fox 26
 4 Houston, from February 13 through March 2, 2020, shortly before the March 3, 2020, primary
 5 election, which allegedly provided him with an “unfair advantage.”⁷ Respondents acknowledge
 6 that the Church ran a television ad on Fox 26, and they do not dispute the dates listed in the
 7 Complaints.⁸

8 The television ad,⁹ a copy of which can be found on the Church’s Facebook page,
 9 features Teague, appearing in full view facing the camera with a picture of the Church in the
 10 background and saying:

11 Have you ever asked a friend, “Do I have anything in my teeth?” Did you want
 12 them to tell you the truth, or tell you what made you feel good? A lot of people
 13 go to Church to make them feel good. God’s word does that but he also brings
 14 you the truth. What we need to clean up our lives and experience his blessing.
 15 I’m Dr. Johnny Teague and I invite you to join us at the Church at the Cross
 16 where we study every Sunday God’s truth at 3835 South Dairy Ashford.¹⁰

⁶ Compare Amended Statement of Organization, Johnny Teague for Congress Campaign Committee (Sept. 27, 2019), with Texas Sec’y of State, Church at the Cross Information Ltr. (Sept. 25, 2020); see Johnny Teague for Congress Campaign Committee, Amended Statement of Organization at 1 (Aug. 22, 2022) (listing Teague’s residence as the campaign’s address).

⁷ MUR 7724 Compl. at 1. The Complaints allege that the Church ran “numerous” ads, but it is unclear whether this was in reference to multiple different ads or a single ad broadcast multiple times. *Id.* Respondents state that there was a single ad, and the Commission has no information to the contrary. MUR 7724 Resp. at 1.

⁸ See MUR 7724 Resp. at 1.

⁹ The ad is located in the “banner” at the top of the Church’s Facebook page. MUR 7724 Resp. at 1. The same ad also appears in two posts on the Church’s Facebook page dated February 9 and 12, 2020. One of the posts states: “Our new Church commercial” and both posts contain a link to the YouTube page of Joel Mathiason of Fox 26 Houston containing the ad. Joel Mathiason, *Creative Services, CATC022030*, YOUTUBE, (Feb. 6, 2020) (<https://www.youtube.com/watch?v=2Ckc8Wsip0o>) (last visited Jan. 24, 2023).

¹⁰ Church at the Cross Houston, FACEBOOK, (<https://www.facebook.com/catchouston.org/>) (Feb. 9 and 12, 2020).

- 1 Throughout most of the ad, a text banner appears at the bottom of the screen containing the
 2 Church's logo, address, phone number, and schedule of worship times. Teague is identified with
 3 the text, "Dr. Johnny Teague, Pastor." A screenshot from the television ad appears below:



- 4
 5 At the end of the ad, there is a cut to a page that more prominently displays the Church's
 6 logo, address, phone number, and worship times, but does not mention Teague's name, as shown
 7 below:¹¹



- 8
 9 No part of the ad references Teague's candidacy, his opponent, or the election.¹²

¹¹ *Id.*

¹² Fox26 Houston's FCC public inspection files do not show any advertisements related to Teague in its political files for U.S. House or files for non-candidate issue ads in the years 2019, 2020 or 2022. <https://publicfiles.com>

1 The Complaints further assert that “Teague’s campaign Facebook page and his campaign
 2 website make reference to his church,” and that by doing this, “he has effectively merged his
 3 business and his campaign.”¹³ Accordingly, the Complaints allege that “[h]is advertisements for
 4 his church . . . did not contain a political disclaimer as required by law.”¹⁴

5 In addition, the Complaints assert that “his campaign headquarters was the address of his
 6 Church,” and that “the Church used Facebook, Messenger, and other communication platforms
 7 to communicate his campaign directly to his parishioners and anyone else following the
 8 Church’s page.”¹⁵ Our review of the Church’s Facebook page shows that it contains at least
 9 three posts by Teague referencing his candidacy.¹⁶ Further, the Complaints assert that “the

[fcc.gov/tv-profile/kriv](https://www.fcc.gov/tv-profile/kriv); <https://publicfiles.fcc.gov/tv-profile/ktxh/political-files/>. The FCC’s political files must include all requests for broadcast time by candidates. 47 C.F.R. §§ 73.3526(e)(6), 73.3527(e)(5), 73.1943.

¹³ MUR 7724 Compl. at 1.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Church at the Cross Houston, *Pastor Johnny Teague showing off his skills #checkjohnny #congress* (video of Teague juggling and saying “Johnny Teague for Congress”) (Sept. 5, 2020); *Word for the Week – GRASP* (“ . . . I told him who I was and that I was running to be his Congressman. . .”) (Sept. 27, 2020), *Word for the Week – IMPOSSIBLE* (Sept. 13, 2020), reading in pertinent part:

I have called on the Lord to do many impossible things in my life. He has miraculously responded. Now I am asking Him a huge request. “Lord, let me win this race for the U.S. Congress please”. Of all things, this one is the unlikeliest of them all. My opponent doesn’t think I can win. Pour some water on that wood. My own party doesn’t think I can win. Pour some more water on that wood. No one wants to give money because they say it’s not winnable. Pour some more water on that wood. They say no one knows who I am. Pour some more water on that wood. They say mail-in voting may hurt me. Pour some more water on that wood. They think a Libertarian candidate may siphon some votes from me. Pour some more water on that wood. They acknowledge that I have no fortune of my own to pull this off. Pour some more water on that wood.

In addition, the Church posted photographs of its food fairs showing volunteers wearing “Check Johnny Teague for Congress” t-shirts and what appears to be a Memorial Day event where campaign signs were visible. Posts of June 13, July 11, Aug. 8, Sept. 5, Oct. 10, 2020, and May 29 and 30, 2022, FACEBOOK, (<https://www.facebook.com/catchouston.org/>). A review of the Church’s current website and does not show any mentions of Teague’s campaign. Church at the Cross Houston, (<https://churchatthecrosshouston.org/>) (last visited Jan. 24, 2023). Our review of previous versions of the Church’s website also do not show any reference to his

1 Church Facebook page repeatedly allows comments on it alluding to [Teague’s] political
 2 campaign from his supporters.”¹⁷ The Commission does not have access to any private
 3 communications that may have been made by the Church on Facebook Messenger.

4 In his Response, Teague, who was a first-time candidate at the time of the Complaint,
 5 asserts that he has “done [his] best to keep all Church business separate from campaign
 6 business,” but that if he has made any mistakes he “will correct accordingly and immediately.”¹⁸
 7 Regarding the Church’s television ad, Teague explains that the Church “always” runs television
 8 ads on Fox 26 whenever it has the funds to do so.¹⁹ Moreover, Teague denies timing the ad in
 9 question based on his campaign but rather “on funds and the fluctuations of Church
 10 attendance.”²⁰ In this instance, according to the Response, the Church received a \$60,000
 11 windfall in February 2020, and “the Finance Team chose to use those funds to pay for a new
 12 Church van, parking lot repairs, and run Church advertisements.”²¹ Teague asserts that he
 13 agreed to appear in the ad at issue “with [the Finance Team’s] guidance as senior pastor.”²² The
 14 Response does not address the allegations that Teague used the Church as his campaign

candidacy. [https://web.archive.org/web/20200601000000*/churchatthecrosshouston.org] (last visited Jan. 24, 2023).

¹⁷ MUR 7724 Compl. at 1. One example of a comment from a supporter appears as a comment to Teague’s September 13 “Word for the Week” post mentioning his candidacy appeared as follows: “God can do mighty things and he will. Praying for God to intercede on this and you will be a mighty, strong and true congressman that will stand firm on the word of the Lord.” Church at the Cross Houston, *Word for the Week – IMPOSSIBLE*, FACEBOOK, (<https://www.facebook.com/catchouston.org/>) (Sept. 13, 2020).

¹⁸ MUR 7724 Resp. at 1.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

1 headquarters or that the Church distributed campaign messages to its parishioners through social
 2 media platforms.

3 The available information shows that there were at least three previous Church television
 4 ads from October and December 2017, which may have also aired on Fox 26 Houston.²³ All
 5 three are similar in form and content to the February-March 2020 television ad that is at issue in
 6 this matter. Stills from two of those prior ads are shown below.



7
 8 In addition, at the end of each television ad there is a cut to a page displaying the Church's logo,
 9 address, phone number, and worship times, without mentioning Teague's name, and which is
 10 identical to the ending of the February-March 2020 television ad.²⁴

11

²³ Joel Mathiason, *Creative Services, COTC121730*, YOUTUBE, https://www.youtube.com/watch?v=ssXQwOmuL_Q (Dec. 12, 2017); Joel Mathiason, *Creative Services, COTC011830*, YOUTUBE, (<https://www.youtube.com/watch?v=Ew-LL8N0YM>) (Dec. 12, 2017); Joel Mathiason, *Creative Services, CATC101730*, YOUTUBE, (<https://www.youtube.com/watch?v=beV741B9Ggg>) (Oct. 20, 2017). On August 3, 2021, the Church's Facebook page linked to another television ad featuring Teague that appears to have also aired on Fox 26 Houston. Church at the Cross Houston, *Our New Church Commercial on Fox, Check It Out!*, FACEBOOK, (<https://facebook.com/catchouston.org>) (Aug. 3, 2021). Similar to the ad mentioned in the Complaints, Teague appears in full view facing the camera, this time inside the Church with his back to the pulpit, a text banner appears at the bottom of the screen throughout most of the ad containing the Church's logo, address, phone number, and schedule of worship times, and Teague is identified with the text, "Dr. Johnny Teague, Pastor." Joel Mathiason, *Creative Services, CATC082130*, YOUTUBE, <https://www.youtube.com/watch?v=5y6yIdXDJDM> (Aug. 3, 2021). No part of the ad references a candidacy or any election. *Id.*

²⁴ The holiday themed ad also appears on the Church's Facebook page. Church at the Cross Houston, *Merry Christmas! What do you want for Christmas?*, FACEBOOK (<https://www.facebook.com/catchouston.org/>) (Dec. 22, 2017).

1
2 **III. LEGAL ANALYSIS**

3 **A. The Commission Finds No Reason to Believe that the Church Made, and**
4 **Teague and the Committee Knowingly Accepted, a Prohibited In-Kind**
5 **Corporate Contribution and Dismisses Related Reporting and Disclaimer**
6 **Violations Concerning the Television Ad**

7 The Act prohibits corporations from making contributions to federal candidates, and
8 likewise bars candidates, political committees (other than independent expenditure-only political
9 committees and committees with hybrid accounts), and other persons, from knowingly accepting
10 or receiving corporate contributions.²⁵ Expenditures made by any person “in cooperation,
11 consultation, or concert, with, or at the request or suggestion of” a candidate or their authorized
12 committee or agent qualify as an in-kind contribution to the candidate and must be reported as
13 expenditures made by the candidate’s authorized committee.²⁶

14 A communication that is coordinated with a candidate or his authorized committee is
15 considered an in-kind contribution and is subject to the limits, prohibitions, and reporting
16 requirements of the Act.²⁷ The Commission’s regulations provide a three-part test for
17 determining when a communication is coordinated. A communication is coordinated if it: (1) is
18 paid for, in whole or in part, by a person other than the candidate or authorized committee;²⁸
19 (2) satisfies a content standard in 11 C.F.R. § 109.21(c);²⁹ and (3) satisfies a conduct standard in

²⁵ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), Note to Paragraph (b) (explaining that corporations and labor organizations may make contributions to nonconnected political committees that make only independent expenditures, or to separate accounts maintained by nonconnected political committees for making only independent expenditures).

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

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

²⁸ 11 C.F.R. § 109.21(a)(1).

²⁹ *Id.* § 109.21(c)(1)-(5). 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

1 11 C.F.R. § 109.21(d).³⁰ All three prongs must be satisfied for a communication to be
 2 considered coordinated under the regulations.³¹

3 The Church’s television ad satisfies all three prongs of the coordinated communication
 4 regulation. First, the payment prong is satisfied because the Church, a third party, paid for the
 5 ad.³² Respondents acknowledge that the Church received \$60,000 in February 2020 and used
 6 part of the money to fund the television ad.³³

7 Second, the content prong is satisfied because the ad was an “electioneering
 8 communication.”³⁴ The ad meets the definition of an “electioneering communication” because
 9 Teague is (1) “clearly identified” in the ad; (2) the ad was publicly distributed through a
 10 television “broadcast” within 30 days before a primary election; and (3) the ad was “targeted to
 11 the relevant electorate.”³⁵ Teague is “clearly identified” in the ad because he appears and speaks
 12 on camera and says his name, “I’m Dr. Johnny Teague.”³⁶ Further, the ad was “broadcast”

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. *Id.* § 109.21(c).

³⁰ *Id.* § 109.21(d)(1)-(6). 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. *Id.* § 109.21(d).

³¹ *Id.* § 109.21(a); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 453 (Jan. 3, 2003) (Explanation and Justification) (“Coordinated and Independent Expenditures E&J”).

³² 11 C.F.R. § 109.21(a)(1).

³³ MUR 7724 Resp. at 1.

³⁴ 52 U.S.C. §§ 30104(f)(3), 30116(a)(7)(B)(i); 11 C.F.R. §§ 100.29, 109.21(c)(1). Electioneering Communications, 67 Fed. Reg. 65,190 (Oct. 23, 2002) (“Electioneering Communications E&J”). 52 U.S.C. § 30116(a)(7)(C).

³⁵ 52 U.S.C. § 30104(f)(3); 11 C.F.R. § 100.29(a).

³⁶ 52 U.S.C. § 30101(18), 30104(f)(3)(A)(i)(I); 11 C.F.R. §§ 100.17, 100.29(b)(2); *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 event that they reference an election”) (emphasis in the original).

1 through a television station, Fox 26 Houston, apparently from February 13 through March 2,
 2 which was within 30 days of the March 3 primary election.³⁷ Additionally, the ad was “targeted
 3 to the relevant electorate” because Fox 26 Houston apparently covers more than 50,000 persons
 4 in Texas’s 9th Congressional District, the district which Teague sought to represent.³⁸

5 Third, the conduct prong is satisfied in multiple ways — Teague’s appearance and
 6 participation in the production of the ad constitutes “material involvement” in the content of the
 7 communication;³⁹ the ad was produced and distributed at the “request or suggestion” of the
 8 person paying for the communications (the Church) and the candidate (Teague) assented to the
 9 suggestion;⁴⁰ and there appears to have been “substantial discussion” between Teague and the
 10 Church about the creation, production or distribution of the ad.⁴¹ The relevant conduct standards
 11 do not require that the person appear in the ad in his or her capacity as a candidate.⁴²

12 Thus, because all three of the prongs are satisfied, the Church’s television ad constitutes a
 13 coordinated communication. However, the ad did not result in a prohibited in-kind contribution
 14 because it qualifies for the commercial transaction safe harbor established by the Commission’s
 15 coordinated communications regulations. Notably, the coordination regulations provide a safe

³⁷ 52 U.S.C. § 30104(f)(3)(A)(i)(II)(bb); 11 C.F.R. § 100.29(b)(3)(i).

³⁸ 52 U.S.C. § 30104(f)(3)(A)(i)(III); 11 C.F.R. § 100.29(b)(5). Texas’s 9th Congressional District includes parts of the city of Houston, which as of July 2018 had a population of about 2,325,502; *see also*, District Map, ALGREENHOUSE.GOV, <https://algreen.house.gov/district/district> (last visited Jan. 24, 2023); Facts and Figures, HOUSTONTX.GOV, <https://www.houstontx.gov/about/houston/houstonfacts.html> (last visited Jan. 24, 2023). According to the FCC public inspection files, Fox 26 Houston’s air coverage includes all of Houston and surrounding areas. *See* TV Station Profile, KRIV, Houston, TX, Contour Maps, FCC.GOV <https://publicfiles.fcc.gov/tv-profile/kriv/contour-maps> (last visited Jan. 24, 2023).

³⁹ 11 C.F.R. § 109.21(d)(2).

⁴⁰ *Id.* § 109.21(d)(1).

⁴¹ *Id.* § 109.21(d)(3).

⁴² *See Brown v. FEC*, 386 F. Supp. 3d at 30 (“[W]hether the ads are coordinated has nothing to do with what [the candidate] says in the ad . . . all that matters is whether [the candidate] did, in fact, work with her company to create the ad.”).

1 harbor for “certain business and commercial communications” that excludes from the definition
2 of a coordinated communication any public communication in which a federal candidate is
3 “clearly identified only in his or her capacity as the owner or operator of a business that existed
4 prior to the candidacy,” so long as “[the] medium, timing, content, and geographic distribution of
5 the public communication are consistent with public communications made prior to the
6 candidacy” and “[t]he public communication does not promote, support, attack, or oppose
7 [“PASO”] that candidate or another candidate who seeks the same office as that candidate.”⁴³
8 As explained below, the Church’s ad identified Teague only in his capacity as operator of the
9 Church, was consistent with other public communications made by the Church prior to Teague’s
10 candidacy, and did not PASO Teague or any other candidate.

11 Here, the Church’s ad does not PASO Teague or any other candidate; indeed, the ad
12 identified Teague only in his capacity as operator of the Church and the ad makes no mention of
13 the election.⁴⁴ Further, the ad was consistent with other public communications made by the
14 Church prior to the candidacy; Respondents assert that the Church has previously run ads
15 through Fox 26 Houston in the past “based on funds and the fluctuations of Church
16 attendance.”⁴⁵ As described above, there are three such television ads from October and
17 December 2017 that are consistent with the February-March 2020 ad at issue in terms of the
18 medium (30-second television ads), content (Teague appearing in full view facing the camera
19 with a background photo and discussing the Church while a text banner appears below him

⁴³ 11 C.F.R. § 109.21(i)(1), (2). The other coordinated communication safe harbors cover certain inquiries about legislative or policy issues, endorsements and solicitations of federal candidates by other federal candidates, and the establishment of a firewall between a campaign and the person paying for the communication. *See* 11 C.F.R. § 109.21(f), (g), (h).

⁴⁴ 11 C.F.R. § 109.21(i)(2).

⁴⁵ MUR 7724 Resp. at 1.

1 identifying him as Pastor of the Church and listing worship times and contact information), and
2 geographic distribution (Fox 26 Houston).⁴⁶ Moreover, Teague has been employed by the
3 Church since 2005 and serves as its Senior Pastor, and thus his appearance in the ad as
4 spokesperson for the Church was not unusual.⁴⁷

5 Under these circumstances, the Commission finds no reason to believe that the Church
6 made and Teague and the Committee knowingly accepted a prohibited in-kind corporate
7 contribution in violation of 52 U.S.C. § 30118 and 11 C.F.R. § 114.2 in connection with the
8 Church's television ad, or that the Committee failed to report receipt of any resulting in-kind
9 contribution.

10 For similar reasons, the Commission dismisses the allegation that the Church violated the
11 disclaimer and disclosure requirements related to the electioneering communication. The Act
12 and Commission regulations require any person who makes an electioneering communication to
13 comply with disclaimer and disclosure requirements.⁴⁸ These requirements include that a
14 disclaimer must be "clear and conspicuous," specifying who paid for the ad and whether the
15 candidate authorized it.⁴⁹ Further, if a corporation has spent more than \$10,000 on
16 electioneering communications in a calendar year, it must disclose certain information to the
17 Commission about its electioneering communications.⁵⁰

⁴⁶ See *supra* notes 23, 24 and accompanying text.

⁴⁷ 11 C.F.R. § 109.21(i)(1).

⁴⁸ See 52 U.S.C. §§ 30104(f), 30120; 11 C.F.R. § 100.29(a).

⁴⁹ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(4), (b)(2). Stand by Your Ad disclaimer requirements must include either an unobscured, full screen, view of the candidate stating that they approved the communication or a voice-over by the candidate stating that they approved the communication, accompanied by a clearly identifiable photographic or similar image of the candidate, and a similar statement must appear in clearly readable writing at the end of the ad. 52 U.S.C. § 30120(d)(1)(B), 11 C.F.R. § 110.11(c)(3).

⁵⁰ 52 U.S.C. § 30104(f); 11 C.F.R. § 104.20.

1 Here, it would not be an efficient use of the Commission’s limited resources to
2 investigate the costs of the ad in this matter. The amount in violation here appears to be modest,
3 and the cost of the Church’s ad was likely minimal. While the Commission does not have
4 specific information about the cost of the television ad, Respondents state that the Church
5 received \$60,000, which was divided between the purchase of a van, parking lot repairs, and
6 payment for the television ad.⁵¹ Further, there appears to have been limited informational harm.
7 Indeed the Church’s involvement is clear because a photograph of the Church appears in the
8 background, and throughout most of the ad, its address, phone number, and worship times appear
9 in the text banner. Teague’s involvement with the ad is also obvious by virtue of his appearance
10 and speaking in the ad, and his identification as the Church’s Pastor. Accordingly, it does not
11 appear likely that anyone would have been misled regarding who paid for and authorized the ad.
12 And, finally, despite being close in time to the election, the ad lacked any electoral content.

13 Therefore, the Commission dismisses the allegations that the Church violated 52 U.S.C. §
14 30120 and 11 C.F.R. § 110.11 by failing to include a disclaimer on a television ad that aired from
15 February through March 2020 and violated 52 U.S.C. § 30104(f) and 11 C.F.R. § 104.20 by
16 failing to disclose information about its electioneering communication to the Commission.

17 **B. The Commission Exercises its Prosecutorial Discretion and Dismisses the**
18 **Allegations That the Church Made Prohibited In-Kind Corporate**
19 **Contributions in Connection with Use of the Church Address and Facilities**
20 **and the Related Reporting Violation**
21

22 As discussed above, the Act prohibits corporations from making contributions to federal
23 candidates, and likewise bars candidates, political committees (other than independent
24 expenditure-only political committees and committees with hybrid accounts), and other persons,

⁵¹ MUR 7724 Resp. at 1.

1 from knowingly accepting or receiving corporate contributions.⁵² Corporate employees may
2 make “occasional, isolated, or incidental use” of corporate facilities for individual volunteer
3 activity in connection with a federal election, and are “required to reimburse the corporation only
4 to the extent that the overhead or operating costs of the corporation are increased.”⁵³
5 Corporations are prohibited from facilitating the making of contributions to candidates and
6 political committees.⁵⁴

7 The Complaint asserts that “[Teague’s] campaign headquarters was the address of his
8 Church,” raising the allegation that the Committee used Church facilities without compensation
9 to conduct Teague’s campaign.⁵⁵ The Church’s address is the same address that was listed for
10 the Committee in its Statements of Organization filed with the Commission until August 2022,
11 but there is insufficient information to conclude that the Church actually functioned as the
12 Committee’s headquarters or that the Committee conducted a significant amount of campaign
13 operations from this location.⁵⁶ Indeed, Teague’s statement that, “I have done my best to keep
14 all Church business separate from campaign business,” would suggest that he did not operate his
15 campaign out of the Church.⁵⁷

⁵² 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), Note to Paragraph (b) (explaining that corporations and labor organizations may make contributions to nonconnected political committees that make only independent expenditures, or to separate accounts maintained by nonconnected political committees for making only independent expenditures).

⁵³ 11 C.F.R. § 114.9(a).

⁵⁴ *Id.* § 114.2(f)(1) (defining “facilitation” in pertinent part as “using corporate . . . resources or facilities to engage in fundraising activities in connection with any federal election . . .”).

⁵⁵ MUR 7724 Compl. at 1. Our review of the Committee’s disclosure reports shows that it did not make any disbursements to the Church.

⁵⁶ *FEC Disbursements: Filtered Results*, FEC.gov, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00706242&two_year_transaction_period=2020&two_year_transaction_period=2022 (last visited Jan. 24, 2023) (reflecting Committee disbursements for the 2019-2020 and 2021-2022 election cycles).

⁵⁷ MUR 7724 Resp. at 1.

1 The Committee’s use of the Church’s facilities without charge would constitute a thing of
2 value under the Act. However, Commission regulations permit Teague, as an employee
3 volunteering on behalf of a federal campaign, to make “occasional, isolated, or incidental use” of
4 corporate facilities.⁵⁸ First, it would not be unreasonable for Teague to receive mail at the
5 Church, where he worked as Senior Pastor and where he was thus located on a regular basis. But
6 the Commission has no information indicating that the Committee received a substantial amount
7 of mail on a regular basis in order to conclude that use of the address was more than an
8 incidental use of the Church’s facilities.⁵⁹ Further, as noted above, the Committee eventually
9 amended its Statement of Organization to remove the Church’s address as the campaign
10 address.⁶⁰

11 Second, beyond use of the address, there is little information available indicating that the
12 Committee used the Church facilities for a significant number of campaign related events.

13 Other than receiving mail there, it is unclear whether the Church would have provided
14 any other service that would provide something of value to the Committee. Therefore, any value
15 derived from Teague’s apparent limited use of the Church facilities was likely minimal.

16 Therefore, the Commission exercises its prosecutorial discretion pursuant to *Heckler v.*
17 *Chaney* and dismisses the allegations that the Church made, and Teague and the Committee
18 accepted, in-kind corporate contributions in violation of 52 U.S.C. § 30118 and 11 C.F.R.
19 § 114.2 in connection with use of the Church address and facilities, and that the Committee

⁵⁸ 11 C.F.R. § 114.9(a).

⁵⁹ *See id.* § 114.9(a)(1) (providing that the campaign is required to reimburse the corporation “only to the extent that the overhead or operating costs of the corporation are increased”).

⁶⁰ *Supra* note 6.

1 failed to report receipt of in-kind contributions in connection with the use of the Church address
2 and facilities, in violation of 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a).⁶¹

3 **C. The Commission Finds No Reason to Believe That the Church Made a**
4 **Prohibited In-Kind Corporate Contribution in Connection with its Facebook**
5 **Posts and as to the Related Reporting and Disclaimer Violations**
6

7 Regarding the allegation that the Church impermissibly used Facebook “to communicate
8 [Teague’s] campaign directly to his parishioners and anyone else following the Church’s page,”
9 the Complaints do not point to or otherwise reference any specific instances.⁶² There are only a
10 limited number of available posts on the Church’s public Facebook page referencing Teague’s
11 candidacy.⁶³ And, there are no known instances of paid communications by the Church on
12 Facebook or any other social media platform that reference Teague.⁶⁴ Furthermore, it does not
13 appear that the Church made any payments for communications referencing the campaign, or
14 that the Committee paid the Church to place the posts on its Facebook page.

15 As discussed above, a communication that is coordinated with a candidate or their
16 authorized committee is considered an in-kind contribution and is subject to the limits,
17 prohibitions, and reporting requirements of the Act.⁶⁵ The payment prong of the coordination
18 regulation does not appear to be satisfied as there is no information that the Church paid to place
19 the Facebook posts at issue here.⁶⁶ Additionally, the content standards under the coordinated

⁶¹ 470 U.S. 821 (1985).

⁶² MUR 7724 Compl. at 1.

⁶³ *Supra* notes 16, 17, **Error! Bookmark not defined., Error! Bookmark not defined., Error! Bookmark not defined..**

⁶⁴ A search of the Facebook Ad Library does not reveal any instances of paid communications by the Church on Facebook.

⁶⁵ 52 U.S.C. § 30116; 11 C.F.R. § 109.21(b); *see also supra* pages 13-16 (discussing the payment, content, and conduct prongs of the coordinated communication provision at 11 C.F.R. § 109.21)

⁶⁶ 11 C.F.R. § 109.21(a)(1).

1 communication provision all require, at a minimum, that there be an “electioneering
2 communication” or a “public communication,” neither of which applies to the Facebook posts or
3 comments.⁶⁷ An electioneering communication is “any broadcast, cable, or satellite
4 communication” that refers to a “clearly identified candidate for Federal office,” is publicly
5 distributed within a certain time before an election, and meets certain requirements regarding the
6 audience.⁶⁸ The Church’s Facebook posts at issue here were published on the internet, not
7 through broadcast, cable, or satellite, and therefore were not electioneering communications.

8 A public communication is “a communication by means of any broadcast, cable, or
9 satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or
10 telephone bank to the general public, or any other form of general public political advertising.”⁶⁹
11 Commission regulations provide that public communications “shall not include communications
12 over the Internet, except for communications placed for a fee on another person’s Web site,” a
13 provision referred to as the “internet exemption.”⁷⁰ The internet exemption applies to the
14 Church’s Facebook posts and comments because they were published on the Church’s own
15 Facebook page, and there is no indication that the Committee placed them for a fee on the
16 Church’s Facebook page. Therefore, the references to Teague’s candidacy on the Church’s
17 Facebook page do not constitute prohibited in-kind contributions.

18 Furthermore, the posts, as communications over the internet not placed for a fee on
19 another person’s website, would not have required disclaimers. The Act and Commission

⁶⁷ *Id.* § 109.21(c).

⁶⁸ 52 U.S.C. § 30104(f)(3) (definition of electioneering communication); 11 C.F.R. § 109.29 (same).

⁶⁹ 52 U.S.C. § 30101(22) (definition of public communication); 11 C.F.R. § 100.26 (same).

⁷⁰ 11 C.F.R. § 100.26.

1 regulations require that all “public communications” by any person that expressly advocate the
2 election or defeat of a clearly identified federal candidate, or solicit a contribution, or that
3 constitute an electioneering communication must contain an appropriate disclaimer.⁷¹ “Public
4 communications” include “general public political advertising,” which does not include
5 communications over the internet, except when those communications are “placed for a fee on
6 another person’s Web site.”⁷² Here, none of the Church’s available posts on its Facebook page,
7 or comments posted by Teague’s supporters mentioning his candidacy, were placed on another
8 person’s website for a fee and, accordingly, they do not constitute “public communications;” nor
9 did the posts or comments solicit contributions, or constitute electioneering communications.⁷³
10 Therefore, the Church’s Facebook posts at issue here are not subject to the disclaimer
11 requirement.⁷⁴

12 Therefore, the Commission finds no reason to believe that the Church made, and Teague
13 and the Committee knowingly accepted, an in-kind corporate contribution in violation of
14 52 U.S.C. § 30118 and 11 C.F.R. § 114.2 in connection with the Church’s Facebook posts and
15 that the Committee failed to report receipt of an in-kind contribution, in violation of 52 U.S.C.
16 § 30104(b) and 11 C.F.R. § 104.3(a) in connection with those posts. The Commission also finds
17 no reason to believe that the Church violated 52 U.S.C. § 30120 and 11 C.F.R. § 110.11 by

⁷¹ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(2).

⁷² 11 C.F.R. § 100.26; *see also* Internet Communications, Final Rules, 71 Fed. Reg. 18,589, 18,600 (Apr. 12, 2006) (“Internet Communications E&J”); *see also* Final Rule, Internet Communication Disclaimers and Definition of “Public Communication” 87 Fed. Reg. 77,467 (Dec. 19, 2022) (revising the definition of “public communication” at 11 C.F.R. § 100.26 to include “communications placed for a fee on another person’s website, digital device, application, or advertising platform.”) (effective March 1, 2023).

⁷³ *See* 11 C.F.R. § 100.29(a).

⁷⁴ *Id.* § 100.26; *see also* Internet Communications E&J at 18,593-94.

MURs 7724, 7752 (Johnny Teague for Congress Campaign Committee, *et al.*)
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THIS PROPOSED DRAFT WAS VOTED ON BUT
NOT APPROVED BY THE COMMISSION.

- 1 failing to include a disclaimer on its Facebook posts referencing Teague's candidacy.