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Digitally signed
by Kristina
Portner
Date: 2018.05.16
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May 15, 2018

Our File Number: 304017-00001

Federal Election Commission
Office of Complaints Examination
& Legal Administration
Attention: Kristina Portner
1050 First Street, NW
Washington, D. C. 20463

RE: MUR 7368

Dear Ms. Portner:

Our firm represents Hiral For Congress (the "Committee") in connection with a complaint filed by the Public Integrity Alliance on April 16, 2018 (the "Complaint"). This letter is in response to your letter notifying the Committee that the Complaint was filed. The Committee received your letter on April 30, 2018.

As set forth below, the Committee did not coordinate with Postcards To Voters ("PTV")¹ with any public communications, nor did it commit any campaign finance violations as a result of any alleged coordination. Therefore, the Committee believes that no action should be taken against it in this matter.

Factual Background

Postcards To Voters ("PTV") is an all-volunteer initiative that helps volunteer postcard writers send postcards directly to voters who reside in competitive districts across the country. PTV intends that the volunteer postcard writers send their postcards in support of Democratic candidates in these districts. In order to participate in the initiative, volunteer postcard writers contact PTV via email or text. When contacted, PTV verifies the individual as a volunteer, tells the volunteer which campaigns are currently in progress, lets the volunteer choose which campaign he or she wants addresses for, and then allows the volunteer to request the number of voter addresses he or she plans to write to. Afterwards, PTV sends the volunteer postcard writer a file with the voter addresses, talking points² that may be included in the postcard, other things the volunteer postcard writer may want to say, and guidelines for respectful and safe use of voter addresses. After providing this information, it is up to the volunteer postcard writer to write his or her postcards, stamp them, and mail them to voters.

¹ The Committee takes no position on whether Postcards To Voters committed any campaign finance violations, including whether Postcards to Voters failed to register as a Committee, as alleged in the Complaint.

² PTV states that the talking points it sends to volunteer postcard writers are provided by the campaigns themselves. See Exhibit 1, FAQ from PTV website.

In order to help facilitate the volunteer postcard writers' activities, PTV uses an interactive texting service to assign voter addresses to volunteers and a "Help Desk" system to help new volunteers with their requests for voter addresses. In addition, PTV conducts data analysis to determine the top volunteers by campaign and to create a heatmap showing where the postcards are being written by zip code. Finally, PTV uses certain logistics services to manage its operation so that it can assign a large number of voter addresses to volunteers on a daily basis.

At no point does PTV provide any volunteer postcard writer with actual postcards or any payment for postage. Indeed, on its website, PTV specifically directs volunteer postcard writers to order or print postcards on their own, and to pay for postage themselves. See Exhibit 2, FAQ from PTV website. Furthermore, PTV does not oversee or supervise the writing or mailing of the postcards by the volunteers. Although PTV asks volunteer postcard writers to stick to the talking points that it provides to them, PTV cannot and does not ensure that the volunteer postcard writers stick to these talking points. Rather, PTV directs volunteers to "paraphrase" the talking points and "make [them] your own." See Exhibit 3, FAQ from PTV website. PTV also tells volunteers "[they] are welcome to make the wording feel more [their] style." *Id.*

The Committee is the authorized committee of Dr. Hiral Tipirneni, a candidate in the special election and general election in Arizona Congressional District 8 ("CD 8"). It is undisputed that volunteer postcard writers contacted PTV in order to express interest in sending postcards to voters in CD 8, that PTV provided volunteer postcard writers with addresses in CD 8, and that volunteer postcard writers sent postcards directly to voters in CD 8.

Coordination Issues

Contrary to the assertions in the Complaint, the Committee has not coordinated with PTV in any public communications.

As you know, Federal law sets forth a three-pronged test for the purpose of determining whether a communication is coordinated with a candidate for Federal election. First, the communication must be paid for by someone other than that candidate, authorized committee, or an agent of any of the foregoing. 11 CFR 109.21(a)(1); see *also* 11 CFR 109.37. Second, the communication must satisfy a "content standard" regarding the subject matter of the communication. 11 CFR 109.21(a)(2).³ Third, the communication must satisfy a "conduct

³ The types of communications that satisfy the content standard include: (1) a public communication that expressly advocates the election or defeat of a clearly identified Federal candidate (no matter when made); (2) a public communication that disseminates, distributes or republishes campaign materials (no matter when made); and (3) a public communication directed to voters in a particular area that refers to a clearly identified Federal candidate and that is disseminated 120 days or fewer before a primary, general, special or runoff election. 11 CFR 109.21(c).

standard” regarding the interactions between the person paying for the communication and the candidate, candidate’s authorized committee, or agents of the foregoing. 11 CFR 109.21(a)(3).⁴

The Content Prong

The Complaint alleges that the postcards sent by PTV’s volunteer postcard writers satisfies the content prong of the test because they constitute “public communications.” The Federal Election Commission has defined a “public communication” to include a “mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period.” 11 CFR 100.26, 100.27. For purposes of this provision, “substantially similar includes communications that include substantially the same template or language, but vary in non-material respects such as communications customized by the recipient’s name, occupation, or geographic location.” *Id.*

Here, the postcards in question are not a mass mailing under this definition for several reasons. First, a mass mailing implicitly refers to a mailing of more than 500 pieces of mail matter by a single source. However, the postcards were prepared and mailed by the volunteer postcard writers themselves. While it may have offered talking points to the volunteers, PTV did not do any of the “mailing” and hence its activities could not be considered a “mass mailing” to fall within the “public communication” definition for the content prong.⁵

Second, the postcards in question are not “identical or substantially similar.” While PTV provides talking points, the postcards necessarily vary in material respects, as it one has unique handwriting and may differ in message. Indeed, the individualized, personal touch of a handwritten postcard – even if broadly reciting similar talking points – is precisely the purpose of sending postcards to voters. Furthermore, as indicate above, PTV expressly tells voters that “[y]ou can paraphrase,” “make it your own,” and “[y]ou are welcome to make the wording feel more your style.” Therefore, while the broad themes of the talking points will likely be in every postcard, each postcard is distinct.

The sample postcard included in Exhibit B of the Complaint is a good illustration of the material differences between the postcards. Even assuming the wording is the same as for all the other postcards sent to voters in CD 8 (and that is unlikely given the leeway volunteers are given to “make it your own”), the postcard is still unique: it is a personalized handwriting, it is signed by

⁴ The types of conduct that satisfy the conduct standard include: (1) the creation, production, or distribution of the communication at the “request or suggestion” of the candidate; (2) “substantial discussions” regarding the candidate’s campaign plans, projects, activities, or needs which are material to the creation, production, and distribution of the communication; and (3) “material involvement” in decisions regarding the content, intended audience, and distribution of the communication by the candidate. 11 CFR 109.21(d)(1)-(3).

⁵ Nor for that matter, could the volunteers’ mailing of the postcards be considered “mass mailings.” To begin, PTV states that the “[t]he average number of postcards written is 13 per volunteer.” See Exhibit A of the Complaint at 20. So the likelihood of any given volunteer mailing at least 500 pieces of mail matter appears exceedingly small.

the individual writing it, and it is stylized with green check marks on policy priorities and has a distinctive squiggly green underlining to the phrase “your vote matters.”

For these reasons, the postcards do not satisfy the content prong of the coordination test.

The Conduct Prong

The Complaint next alleges that because the postcards broadly recite talking points provided by the Committee this necessarily means that the Committee and PTV have engaged in conduct constituting coordination. However, while the Committee did provide talking points to PTV, PTV itself did not use this information to conduct a mass mailing. Rather, PTV simply provided this information to volunteer postcard writers and suggested (but did not require) that these volunteers use this information in their postcards. Furthermore, at no point did the Committee coordinate with any of the volunteer postcard writers. The Committee had no way of knowing or controlling what was in each postcard. The postcards were not created at the request or suggestion of the campaign. Rather, the volunteer postcard writers themselves contacted PTV on their own and requested information about who they could send postcards to. While the Committee may have suggested talking points, it was ultimately up to the volunteer postcard writer to decide what to write and who to send the postcards to. For these reasons, the Committee did not undertake any conduct that would satisfy the conduct prong of the coordination test.

Coordinated, In-Kind Contributions

The Complaint argues in the alternative that even if the postcards in question are not “public communications,” they still resulted in an in-kind contribution to the Committee because they were coordinated with the Committee. However, as set forth above, the Committee did not coordinate with PTV in connection with the postcards. Again, while the Committee may have provided talking points to PTV, PTV did not conduct a mass mailing, nor make any expenditures in support of any mass mailing.⁶ Rather, the postcards were created, paid for, and mailed by volunteer postcard writers. Similarly, the Committee did not coordinate with the volunteer postcard writers. There were no communications between the Committee and the volunteer postcard writers. The volunteer postcard writers were provided with talking points, but were free to customize their postcards and were ultimately responsible for sending them to voters. Because there was no coordination between the Committee and PTV or the Committee and the volunteer postcard writers that were responsible for the postcards, there could not have been any coordinated, in-kind contributions made to the Committee.

Failure To Report

Because the Committee did not coordinate with PTV, the Committee did not accept and/or fail to

⁶ The Complaint makes reference to “logistics services” that PTV provided and argues that the cost of these services should be considered as contributions to the Committee. However, as explained in further detail *infra*, these services were provided for the benefit of the volunteer postcard writers, not the Committee, and should not be considered as contributions.

report any excessive or prohibited contributions from PTV. However, even assuming *arguendo* that there was coordination between the Committee and PTV, any potential expenditures related to the materials used, postage costs paid for, and time spent by the volunteer postcard writers in creating and sending the postcards are exempt from the definition of a contribution.

Federal Election Commission regulations provide that “[t]he value of services provided without compensation by an individual who volunteers on behalf of a candidate or political committee is not a contribution.” 11 CFR 100.74. Thus, any time spent by volunteer postcard writers on writing out the postcards would be considered an uncompensated service that would not count as a contribution. In addition, even though the postage and material costs for the printing and mailing of the postcards are paid for by each individual volunteer, unless any given volunteer paid more than \$200 in postage and printing, such contribution (to the extent it would even be one) would not even have to be disclosed. See 11 CFR 102.9(a)(2) (addressing accounting threshold of \$200 for contributions).

Furthermore, to the extent volunteers wrote their postcards at home, any expenses would not count as contributions under the rule for volunteers’ use of real or personal property:

No contribution results where an individual, in the course of volunteering personal services on his or her residential premises to any candidate or to any political committee of a political party, provides the use of his or her real or personal property to such candidate for candidate-related activity or to such political committee of a political party for party-related activity.

11 CFR 100.75. Therefore, if a volunteer wrote their postcards at home, he or she was volunteering services on his or her residential premises and, by paying for the materials and postage, was providing the use of his or her personal property. Thus, such an expenditure would not be a contribution pursuant to 11 CFR 100.75.

The Complaint separately argues that PTV’s logistics services should also be considered as a contribution to the Committee. However, the services that PTV provides on its website are not provided to the Committee, or for any other participating campaign. Instead, the services are provided to the volunteer postcard writers in order to assist their volunteer efforts. The services are analogous to the services provided by companies operating websites that process contributions as a service to contributors without receiving compensation from the recipient political committees. In several advisory opinions, the Federal Election Commission has concluded that such companies are not making contributions because they are not providing any services to the recipient political committees.⁷ See Advisory Opinion 2012-22 (*skimmerhat*)

⁷ The Federal Election Commission has also approved proposals in which companies that process contributions as a service to contributors provide contributors with tools to gather information about and to evaluate potential recipient candidates. See Advisory Opinion 2014-07 (*CrowdPAC*). Although PTV does not process any contributions to candidate, its method of providing talking points and other candidate information to volunteer postcard writers is similar to proposals in which companies provide information about candidates to individuals that visit their website.

(distinguishing between companies that process contributions as service to contributors and companies that process contributions as service to recipient political committees); Advisory Opinion 2011-06 (Democracy Engine) (same). Because PTV is not providing any services to any political committees and is only providing services to the volunteer postcard writers who express interest in sending postcards, the services it provides on its platform to assist volunteer postcard writers and process their requests do not result in contributions by PTV to the Committee.

Lastly, even if the logistics services provided by PTV to volunteer postcard writers may be considered contributions, the value of these services fall within the uncompensated internet activity exemption to the definition of a contribution. Federal Election Commission regulations provide that, if an individual or a group of individuals engages in uncompensated Internet activities for the purpose of influencing a Federal election, neither the uncompensated personal services provided by the individual nor, generally speaking, the individual's use of equipment or services for the uncompensated activity will be a "contribution." See 11 CFR 100.94.

Here, PTV exists as an all-volunteer initiative that helps volunteer postcard writers send postcards to voters. PTV operates a website where volunteer postcard writers can obtain information about the postcard writing process and receive specific instructions on where they can send postcards. PTV is not compensated for the services it provides on its website, nor for the information it provides to volunteer postcard writers. Therefore, its uncompensated activities, including its use of equipment or services for its uncompensated activities, fall within the uncompensated Internet activities exemption and are not contributions.

Conclusion

For the reasons set forth above, no action should be taken against the Committee in this matter. Please let the Committee know if you have any additional questions or need any additional information.

Very truly yours,

/s/ Roy Herrera

Roy Herrera Jr.
Lewis Roca Rothgerber Christie LLP

Enclosures

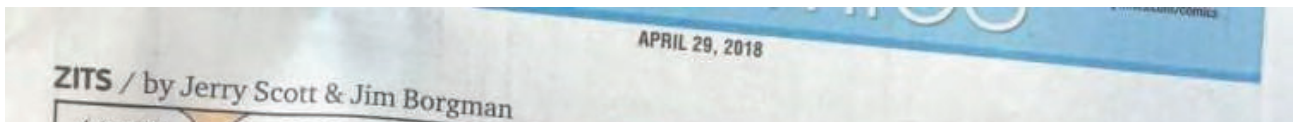
EXHIBIT 1

EXHIBIT 1



POSTCARDS TO VOTERS

JOIN PEOPLE ACROSS THE USA TO WRITE POSTCARDS TO VOTERS





[All](#) [Joining](#) [Postcards](#) [Campaigns](#) [Abby](#)

⊕ I want to participate, but I'm not sure how to get started. Do I use the email that is listed?

⊕ How do I obtain addresses?

⊕ How do I become a "Verified" writer?

⊕ How do I send you a picture?

⊕ HELP! I asked for too many addresses. Can I return them?

⊕ Where may we order postcards?

⊕ Where can I download templates to print my own?

+ How can I print my own postcards?

+ Where can I find postcard stamps or plain postcards with stamps printed on them?

+ Do we have a resource list for purchasing creative postcards?

+ What are the USPS size and thickness parameters for postcards?

+ What are the postal restrictions for decorations? Stickers? Glitter? Fabric?

- What do I write on a postcard? Are there standard talking points and/or Election Day info given along with the address assignments? Or are talking points based on our own research/point of view?

When you request addresses from Postcards to Voters, we will provide talking points and addresses. The talking points are the ones that the campaign has requested. You are welcome to make the wording feel more your style, but we do need you to stick with the talking points provided.

Like this:



[2 bloggers](#) like this.

+ I see a lot of postcards that deviate from the talking points to a greater or lesser degree. What is permissible and what isn't?

+ Do I sign my name?

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+ Is it good to say “Hello from Cincinnati” or wherever you’re writing from, or is this more likely to make them bristle and perceive it as outsiders trying to influence their election?

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+ Who are we writing to?

+ Why do you mail the postcards so early? In our modern, hectic world aren’t you afraid people will forget?

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+ How do you get lists of addresses?

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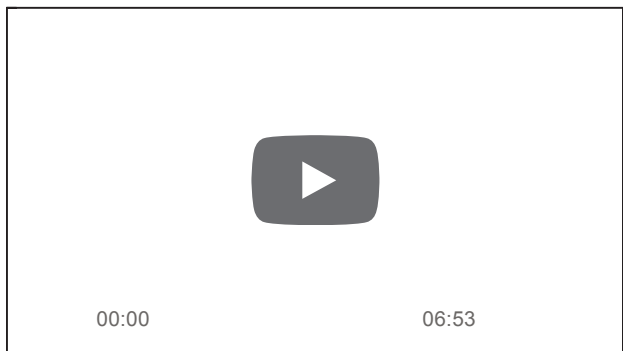
RECENT POSTS

Campaign #86: Geneviève Jones-Wright in CA!

Campaign #85: Jesse Salinas in CA!

Campaign #84: Lisa Lott in GA!

Handwritten text on a postcard, including "Greetings from Democrat" and "A reminder to VOTER".



PODCASTS

Two Broads Talking Politics Podcast: Tony the Democrat from Postcards to Voters

GOTV with postcards! Tony speaks with “Blue Revolution”

The Voter Project – Episode #7: Tony The Democrat

The Midpod: Tony the Democrat – The Power of the Postcard

CONTACT US!

 2774 Cobb Pkwy NW #109-199

Kennesaw, Georgia 30152

info@TonyTheDemocrat.org



EXHIBIT 2

EXHIBIT 2



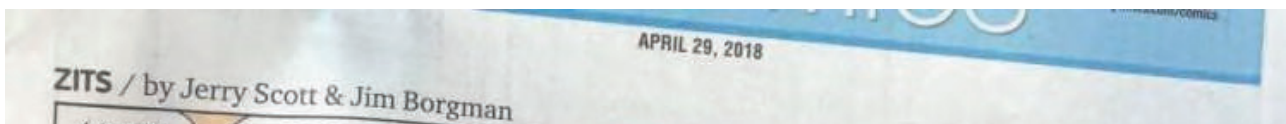
POSTCARDS TO VOTERS

JOIN PEOPLE ACROSS THE USA TO WRITE POSTCARDS TO VOTERS

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FAQ's





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⊕ I want to participate, but I'm not sure how to get started. Do I use the email that is listed?

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⊕ How do I send you a picture?

⊕ HELP! I asked for too many addresses. Can I return them?

⊖ Where may we order postcards?

Many volunteers ask us where they may find postcards. Others want to print their own. The resources compiled here and the accompanying links were submitted by volunteers

and researched by our own team. Please report links which may be out of date. Share any new resources we may not have included. Thanks for building a community with helpful tips like these!

- [100 "Be a Voter" postcards](#) – \$5.50
- [50 Blank 4"x6" Heavy Duty 14PT Postcards with Mailing Side](#) – \$7.95
- [Jot & Mark Design Your Own Postcards 4" x 6" Heavy Cardstock \(Pack of 50\)](#) – \$7.99
- [Desktop Publishing Supplies](#) offers an array of postcard cardstock. They also have an [Amazon store](#).
- [Animal Box: 100 Postcards by 10 Artists](#) – \$4.98
- [Marimekko: 100 Postcards](#) – \$16.03
- [Women in Science: 100 Postcards \(Amazon\)](#) – \$16.36 and [Barnes & Noble](#) – \$16.81
- [Barnes & Noble](#) has dozens of postcard collections in many themes – \$10.46 and up
- [The Book Depository](#) has dozens of postcard collections in a variety of themes – \$5.00 and up
- [Collective Vision](#) is run by one of our own volunteers and biggest champions – \$6.00 and up
- [Dover Publications](#) has an assortment of pad format postcards with many subjects/themes. – \$6.95
- On eBay, [search for "postcards" or "postcards lot" or "unused postcards"](#)
- One of our [volunteers](#) is a postcard dealer on eBay and sells both small and large lots at shows."I can probably put together something in the 10-cent each range if you let me know what you're looking for".
- [Vertical Printing](#) – an Etsy Shop: Sells a variety of resistance postcards – 50 cards for \$6.00
- [CrunchyMom](#), one of our volunteers and a co-founder of "Glen Rock After the March", offers postcard bundles on Amazon (Prime 2-day free shipping) – 100 postcards for \$9.97

- [Etsy](#) can be a treasure trove of postcards with a wide range of designs, quality, vintage, material, and price
- [The Metropolitan Museum of Art](#) can be a fun “window shopping” experience for many types of postcards – \$6.48 and up
- All of [Postcard Fair’s](#) themed postcard collections are sold on Amazon. But, the link is their gallery where you can browse a surprising array of designs for any mood – 20 cards for \$7.98
- [Syracuse Cultural Workers’](#) site is full of postcards on sale with designs you don’t see elsewhere – 12 cards for \$7.77
- [Marylikespostcards](#) offers postcards and embellishments.
- [Persuasive Postcards](#) is volunteer’s Geri W. Etsy shop. She also offers [specific #PostcardsToVoters postcards](#).
- [#Wethepostcard](#) (via [Curious & Company](#)) offers high-quality, made-in-America uncoated (i.e. ink doesn’t smear) cards. The company donates 50% of their proceeds to various organizations, such as Natural Resources Defense Council, Americans for the Arts, and the ACLU. Free Shipping in the U.S. – 10 cards for \$12.00
- [Walgreen’s](#) is an option to print cards using your own photos and images. They often have 50% coupons
- [Vistaprint](#) has its fans and its critics, to be sure. But, for those looking to print their own cards at high volumes to reduce the per-card cost, this is one reliable option
- You can also order the postcards with stamps directly from [USPS online](#)

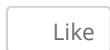
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+ Where can I download templates to print my own?

- How can I print my own postcards?

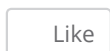
- Option 1: Use one of our shared [templates](#). They generally print 4 to a 8.5×11 page. Then cut.
- Option 2: Download one of our [templates](#) and upload/take it to a print shop ([Vistaprint](#), [Staples](#), [The UPS Store](#), [FedEx Office](#), etc.) Check out this [Google Search for “Postcard Printing”](#). Many of these services do other sizes besides 4 to a page.

Like this:

One blogger likes this.

⊖ Where can I find postcard stamps or plain postcards with stamps printed on them?

- Check out one of our own volunteer writers' Etsy shop ([Anna Z. Etsy Store: Vintage Postage Stamps and More](#)) where Anna Z. offers bundles of vintage, mint, unused U.S. postage stamps at a 20% discount.
- You can also email Manny Z. (simonzuck@aol.com), his [Ebay store](#) specializes in vintage stamps. However, he offers a 25% discount of 200 \$.35 cent combos if you order via email. When you contact him, tell him you were referred by Giliani @ Postcards To Voters.
- You can order online from USPS ([Pre-Stamped Postcards](#) or [Postcard Stamps](#))

Like this:

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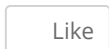
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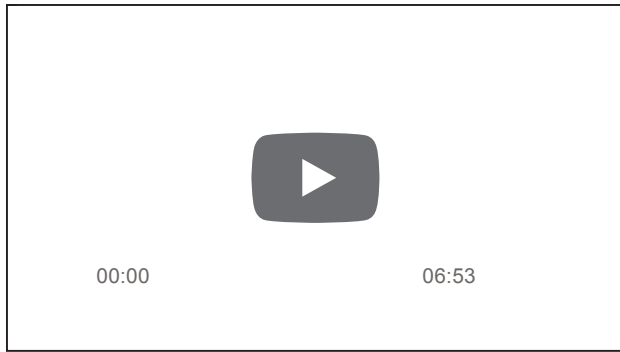
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Postcard to Voters





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The Voter Project – Episode #7: Tony The Democrat

The Midpod: Tony the Democrat – The Power of the Postcard

CONTACT US!

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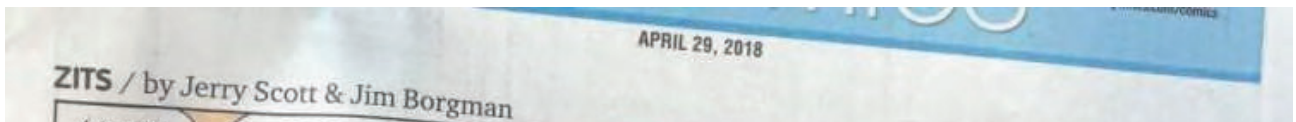
EXHIBIT 3

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POSTCARDS TO VOTERS

JOIN PEOPLE ACROSS THE USA TO WRITE POSTCARDS TO VOTERS





[All](#) [Joining](#) [Postcards](#) [Campaigns](#) [Abby](#)

⊕ I want to participate, but I'm not sure how to get started. Do I use the email that is listed?

⊕ How do I obtain addresses?

⊕ How do I become a "Verified" writer?

⊕ How do I send you a picture?

⊕ HELP! I asked for too many addresses. Can I return them?

⊕ Where may we order postcards?

⊕ Where can I download templates to print my own?

⊕ How can I print my own postcards?

⊕ Where can I find postcard stamps or plain postcards with stamps printed on them?

⊕ Do we have a resource list for purchasing creative postcards?

⊕ What are the USPS size and thickness parameters for postcards?

⊕ What are the postal restrictions for decorations? Stickers? Glitter? Fabric?

⊖ What do I write on a postcard? Are there standard talking points and/or Election Day info given along with the address assignments? Or are talking points based on our own research/point of view?

When you request addresses from Postcards to Voters, we will provide talking points and addresses. The talking points are the ones that the campaign has requested. You are welcome to make the wording feel more your style, but we do need you to stick with the talking points provided.

Like this:



2 bloggers like this.

⊖ I see a lot of postcards that deviate from the talking points to a greater or lesser degree. What is permissible and what isn't?

We ask all writers to please stick to the talking points. You can paraphrase, make it your own, but don't change the meaning or the facts. In addition, please don't embellish with information that is not in the talking points.

Like this:

Like

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+ Do I sign my name?

+ To whom do I address the card?

+ Is it good to say "Hello from Cincinnati" or wherever you're writing from, or is this more likely to make them bristle and perceive it as outsiders trying to influence their election?

+ I'm not very artistic. Is it worth it for me to just write boring (but informative) postcards?

+ Can I pre-write postcards to save time?

+ How do we let you know when we have successfully completed and mailed our list?

+ What are some tips on hosting a postcard party?

+ Who are we writing to?

+ Why do you mail the postcards so early? In our modern, hectic world aren't you afraid people will forget?

+ How are candidates chosen that postcards are written for?

+ How do you get lists of addresses?

+ Is there any evidence to indicate that mail-based campaigns make a real difference at the ballot box?

+ Will we be writing for candidate So-and-So?

+ What is a bot?

+ What, or who, is Abby?

+ How do I use Abby?

+ Can you use a flip phone to text Abby?

+ What is a .txt file? And, how do I open it?

+ Will Abby also email me the addresses?

+ Why is Abby taking so long to send me addresses?

+ HELP! I need to change my email address with Abby?

⊕ I keep getting the message “Abby sent me” when I try to register. What do I do?

⊕ Is it true that Abby is now on Facebook?

⊕ I see Facebook Abby still needs a cell phone number from me, but, I don't have one. What can I do?

⊕ Having never used Abby before, if I get a free cell number, where will Abby send the addresses? To my email? To my FB messenger? Or to the free phone number that doesn't have a phone attached to it?

⊕ I'm going to an event and would like to set-up a booth for Postcards to Voters. What supplies do I need and what do I do?

⊕ Why does Abby sometimes take so long to respond via text?

⊕ Why don't I hear from you all as much via email?

⊕ What do I do if I am unable to write a list from Abby?

⊕ Do you have a way to locate nearby postcard parties or groups?

⊕ I know a local campaign. How do they get in touch with you?

⊕ I don't see the candidate name I'm looking for on Abby's menu. Why not?

⊕ How do I get voter addresses from you for a specific campaign you're not doing?

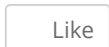
⊕ Do you plan to stockpile pre-written postcards in preparation for the mid-terms?

⊕ Abby just gave me addresses for a deadline 3 days from now. Can you give me a campaign with more time to write?

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*Card prepared by
[unclear]*





Two Broads Talking Politics Podcast: Tony the Democrat from Postcards to Voters

GOTV with postcards! Tony speaks with “Blue Revolution”

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