

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 **MUR 7368**

6 DATE COMPLAINT FILED: April 17, 2018

7 DATE OF NOTIFICATION: April 24, 2018

8 DATE OF LAST RESPONSE: June 25, 2018

9 DATE OF ACTIVATION: September 27, 2018

10
11 ELECTION CYCLE: 2018

12 SOL EXPIRATION: Nov. 21, 2022/Apr. 17, 2023

13
14 **COMPLAINANT:**

Public Integrity Alliance

15 **RESPONDENTS:**

Postcards to Voters, LLC

16 Hiral for Congress and Katherine A. Jacklin in her
17 official capacity as treasurer

18 Hiral Tipirneni

19 Right Side of History PAC, f/k/a Doug Jones for
20 Senate, and J. Douglas Turner, Jr. in his official
21 capacity as treasurer

22 Conor Lamb for Senate, f/k/a Conor Lamb for
23 Congress, and DJ Ryan in his official capacity
24 as treasurer

25
26 **RELEVANT STATUTES AND
27 REGULATIONS:**

52 U.S.C. §§ 30102, 30103, 30104

52 U.S.C. § 30116(a), (f)

52 U.S.C. § 30118

52 U.S.C. § 30120

11 C.F.R. §§ 100.22, 100.26, 100.27

11 C.F.R. §§ 100.94, 100.155

11 C.F.R. §§ 109.20, 109.21

11 C.F.R. § 110.11

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36 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

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38 **FEDERAL AGENCIES CHECKED:**

None

39 **I. INTRODUCTION**

40 The Complaint alleges that Postcards to Voters, LLC (“PTV”) violated the Federal
41 Election Campaign Act of 1971, as amended (the “Act”), by making excessive or prohibited in-
42 kind contributions to Hiral for Congress “and other benefitted candidates” in connection with

1 get-out-the-vote (“GOTV”) postcards crafted by diffuse sets of volunteers.¹ The Complaint also
2 alleges that PTV failed to register and report as a political committee and that PTV failed to
3 include disclaimers on the postcards.² The Complaint further contends that various federal
4 candidates and committees violated the Act by accepting PTV’s excessive or prohibited
5 contributions and failing to report them.³

6 The Complaint raises numerous and novel questions, including (1) whether thousands of
7 volunteer postcard writers’ payments for postage and materials constituted contributions to PTV
8 or to benefited candidates and their committees and (2) whether the volunteers’ handmade
9 postcards are “public communications” under the Act and Commission regulations, such that
10 they could require disclaimers or be in-kind contributions in the form of coordinated
11 communications. For the reasons set forth below, we recommend that the Commission exercise
12 its prosecutorial discretion under *Heckler v. Chaney*⁴ and dismiss the allegations.

13 **II. FACTUAL BACKGROUND**

14 Hiral Tipirneni, Conor Lamb, and Doug Jones were candidates in special elections in
15 2017 and 2018. At that time, each had a principal campaign committee, though two of those
16 committees have since been renamed. The committees are now Hiral for Congress and
17 Katherine A. Jacklin in her official capacity as treasurer, Conor Lamb for Senate f/k/a Conor
18 Lamb for Congress and DJ Ryan in his official capacity as treasurer (“Lamb Committee”), and
19 Right Side of History PAC f/k/a Doug Jones for Senate and J. Douglas Turner, Jr. in his official

¹ Compl. at 1, 5-8 (Apr. 17, 2018).

² *Id.* at 1-5, 8-9.

³ *Id.* at 1, 8-9.

⁴ 470 U.S. 821 (1985).

1 capacity as treasurer (“Jones Committee”).⁵ PTV organized volunteer writers to send postcards
 2 to voters in each of these candidates’ elections.⁶

3 An individual named Tony McMullin started PTV in March 2017 by “sharing 5
 4 addresses apiece to 5 volunteers on Facebook so that they could mail postcards to voters in Jon
 5 Ossoff’s race.”⁷ According to PTV, within a month it grew to “1,200+ volunteers nationwide
 6 and over 51,000 postcards mailed.”⁸ In 2018, McMullin organized PTV into a Georgia single
 7 member LLC.⁹ On its website, PTV currently claims that “we consist of over 75,000+
 8 volunteers . . . who have written close to 8 million postcards to voters in over 200 key, close
 9 elections.”¹⁰

10 PTV represents that McMullin currently operates PTV with “several other individuals”
 11 (the “organizing team”).¹¹ PTV represents that the organizing team is uncompensated and that
 12 PTV has no paid staff.¹² PTV describes itself as a “hub for volunteers who wish to make a

⁵ Hiral for Congress, Amended Statement of Organization (Nov. 29, 2020); Conor Lamb for Senate, Amended Statement of Organization (Oct. 18, 2021); Right Side of History PAC, Amended Statement of Organization (Sept. 2, 2021).

⁶ See PTV Resp. at 3, n.3 (June 25, 2018); see also PTV, *Campaign #60: Dr. Hiral Tipirneni in AZ!*, <https://postcardstovoters.org/2018/03/09/hiral/>; PTV, *Campaign #50: Conor Lamb for U.S. Congress!*, <https://postcardstovoters.org/2018/01/21/lamb/>; PTV, *Doug Jones Postcards by Numbers!*, <https://postcardstovoters.org/2017/12/12/doug-jones-postcards-by-numbers/>.

⁷ Compl., Ex. A at 2 (citing PTV, *About*, <https://postcardstovoters.org/about/>) (“PTV, *About*”); see also PTV Resp. at 1.

⁸ Compl., Ex. A at 2 (citing PTV, *About*).

⁹ See PTV Resp. at 1; Postcards to Voters, Certificate of Organization (effective March 18, 2018), <https://ecorp.sos.ga.gov/BusinessSearch>. The current record does not indicate how PTV has elected to be treated for federal income tax purposes.

¹⁰ PTV, *About* (last visited Dec. 13, 2021).

¹¹ PTV Resp. at 1; PTV, *Our Team*, <https://postcardstovoters.org/team/> [<https://web.archive.org/web/20210815213813/https://postcardstovoters.org/team/>] (last archived Aug. 15, 2021) (“PTV, *Our Team*”) (identifying organizing team by titles including “Technical Director” and “Strategic Director”).

¹² PTV Resp. at 1-2.

1 difference by encouraging fellow Democratic voters to vote in contested elections.”¹³ It states
 2 that it focuses on grassroots GOTV efforts through the dissemination of “friendly, handwritten
 3 reminders from volunteers to targeted voters giving Democrats a winning edge in close, key
 4 races.”¹⁴

5 PTV’s website suggests that McMullin decides which candidates PTV will support by
 6 reference to, among other factors, GOTV strategy:

7 When faced with two or more great choices, Tony has to fairly weigh multiple
 8 factors. *Can we write the number of cards needed to reasonably influence the*
 9 *election across a tipping point? Since postcards are just one component of the*
 10 *whole GOTV program, how capable do they seem of executing a strong ground*
 11 *game? Are there any restrictions or demands being made that could impact*
 12 *volunteer interest? These are just a few considerations to stack up. . . .*¹⁵

13 For example, when PTV announced support for one non-federal candidate, it explained that the
 14 delivery of postcards would coincide with another mailer to be sent by “the campaign” that
 15 would encourage voters to request a mail-in ballot.¹⁶

16 The organizing team appears to communicate directly to varying degrees with candidates
 17 and their committees, and at least in one instance with a party committee.¹⁷ The PTV website

¹³ *Id.* at 1.

¹⁴ Compl., Ex. A at 2 (citing PTV, *About*); *see also* Postcards to Voters (Official) Store, Etsy.com, <https://www.etsy.com/shop/ToVoters> (last visited Dec. 13, 2021) (“PTV Etsy Store”) (describing PTV as a “grassroots initiative”).

¹⁵ *See* PTV, *FAQ’s*, <https://postcardstovoters.org/faq/> (last visited Dec. 13, 2021) (“PTV, *FAQ’s*”) (view “How are candidates chosen that postcards are written for?”) (emphasis in original); *see also* Compl., Ex. C (“You and thousands of others are building #PostcardsToVoters into a positive force of grassroots GOTV complementing campaigns’ winning plans.”).

¹⁶ Compl., Ex. A. at 9 (citing PTV, *Postcards to Voters Campaign #37 is for Margaret Good in Florida!*, https://postcardstovoters.org/2017/12/16/margaret_good/) (“Our postcards are timed to help give voters a friendly, early reminder so that when the campaign mailer arrives, they will receive it and pay attention to it a little more closely. When it gets closer to the election date, we will get a new list of these voters who did not respond by requesting a mail-in ballot plus all the other Democratic voters who normally vote in person. And we will write them anew for GOTV.”).

¹⁷ *See, e.g.*, Compl., Ex. A. at 4, 10 (citing PTV, *Campaign #74: Cecil Webster in TX!*, <https://postcardstovoters.org/2018/04/11/webster/>; PTV, *Postcards to Voters Campaign #36: Phyllis Hatcher in GA*,

1 states that PTV provides postcard writers with the talking points that “the campaign has
2 requested,”¹⁸ though McMullin has also stated that he has developed talking points himself after
3 reviewing candidate and committee websites and candidate statements.¹⁹ The PTV website
4 states that “in most every case with fewer than a handful of exceptions, [voters’ mailing
5 addresses] come[] directly from campaigns.”²⁰

6 The organizing team also communicates directly with postcard writers through its
7 website and social media. PTV posts on its website the candidates for which writers can request
8 addresses.²¹ PTV represents that individuals must register by submitting a sample postcard to
9 the organizing team for review.²² Volunteer writers can then request addresses via text message,
10 Slack, Facebook Messenger, or email; a “bot” referred to as “Abby” generally processes the

<https://postcardstovoters.org/2017/12/14/postcards-to-voters-campaign-36-phyllis-hatcher-in-ga/>; PTV, *Campaign #212 is for Jon Ossoff in Georgia!*, <https://postcardstovoters.org/2020/09/30/212/>). The PTV website also invites individuals, including candidates, to contact PTV via a webform. Compl., Ex. A at 20-21 (citing PTV, *Campaigns*, <https://postcardstovoters.org/campaigns/>) (“PTV, *Campaigns*”).

¹⁸ Compl., Ex. A at 16 (citing PTV, *FAQ’s* (view question “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?”)).

¹⁹ *Two Broads Talking Politics Podcast: Tony the Democrat from Postcards to Voters*, <https://twobroadstalkingpolitics.com/blog/2017/12/1/two-broads-talking-politics-episode-15> at 31-32:00 (“Two Broads Talking Politics”) (last visited Dec. 13, 2021) (stating that “well organized” candidates and committees will provide talking points to PTV when requested, but at times McMullin will develop talking points upon researching candidate and committee websites and news articles); *see also* Compl., Ex. A at 1 (identifying link to Two Broads Talking Politics from PTV website).

²⁰ *See* PTV, *FAQ’s* (view question “How do you get lists of addresses?”). PTV appears to also access voter addresses from state and county public records and to receive addresses from Democratic state and county parties. *Id.*; Two Broads Talking Politics at 26:30-27:00 (explaining how PTV worked “very closely” with the Iowa Democratic Party in 2017 to develop a list of voters to contact).

²¹ *See* Compl., Ex. A. at 4-12 (identifying blog posts announcing candidates being supported).

²² PTV Resp. at 2.

1 requests.²³ Through the bot, volunteer writers identify the “campaign” that they want to support
2 and request a specific number of addresses.²⁴ The bot then transmits “a link to a web page
3 containing the relevant information.”²⁵ Writers can receive between four and thirty addresses at
4 a time.²⁶ PTV states that it uses “a commercial Help Desk system” to process these requests,
5 including for postcard-making parties.²⁷

6 The PTV website also hosts resources to help volunteer writers prepare postcards. A
7 video previously on the website instructs volunteers on how they can make their own
8 postcards.²⁸ The “FAQ’s” page addresses numerous questions on how to print, download, or
9 design postcards.²⁹ Writers can download postcard templates³⁰ or purchase bundles of postcards

²³ See *id.*; PTV, *Addresses*, <https://postcardstovoters.org/addresses/> (last visited Dec. 13, 2021). PTV describes its bot, Abby, as “a software application that runs automated tasks (scripts) over the Internet.” PTV, *FAQ’s* (view response to “What is a bot?”).

²⁴ Two Broads Talking Politics at 15:45-16:00.

²⁵ PTV Resp. at 2.

²⁶ *Id.* PTV states that “on average PTV volunteers request 13 names at a time.” *Id.*

²⁷ Compl., Ex. A at 3 (citing PTV, *About*). PTV explains that “[a]nother commercial business intelligence package crunches the numbers so we always know who our top volunteers are by campaign, [and it provides] a heat-map showing where the postcards are being written by zip code around the country, and other essential dashboards to manage an operation that now averages 1,700 voter addresses assigned daily.” *Id.*; see also PTV Resp. at 2, 6; Two Broads Talking Politics at 15:45-16:00 (noting that some volunteers request numerous addresses to share). We understand a “postcard party” to be a group of these volunteers self-organizing to write postcards in shared company.

²⁸ See PTV, *Videos*, <https://postcardstovoters.org/videos/> (last visited Nov. 9, 2021) (embedding video titled “How to Volunteer with Postcards to Voters,” hosted at <https://www.youtube.com/watch?v=YxcGxJlGXgl&t=14s>).

²⁹ See PTV, *FAQ’s*.

³⁰ See PTV, *Templates*, <https://postcardstovoters.org/templates/> (last visited Dec. 13, 2021) (featuring templates that read “Vote No on the Republican Recall,” “Vote! It’s the All-American thing to do,” “Wake up, America! It’s time to vote for Democrats!,” and “Voting is like driving. To go forward choose ‘D.’ To go backward choose ‘R.’”); see also Compl., Ex. A at 15-18 (citing PTV, *FAQ’s*, (view “Where may we order postcards?,” “Where can I download templates to print my own?,” “How can I print my own postcards?”)).

1 via PTV's Etsy store.³¹

2 PTV provides writers "sample talking points,"³² but states that the writers are
3 "encouraged to change the wording to reflect their own personal style."³³ PTV asks them to
4 include the candidate's name, that "they're a Democrat," the office sought, election date, and
5 "one required sentence" that "the campaign . . . feel[s] . . . echoes with what [it is] saying locally
6 in [its] messaging."³⁴ For the "rest of the space," writers may incorporate approved talking
7 points, but may not "mak[e] things up."³⁵

8 In its Response submitted to the Commission, PTV acknowledges that it sends voters'
9 names and addresses and talking points to its volunteers,³⁶ but does not address how it obtains or
10 generates that information. Hiral for Congress, in its response, acknowledges "provid[ing]
11 talking points to PTV" and that "PTV . . . provided this information to volunteer postcard writers
12 and suggested (but did not require) that these volunteers use this information in their
13 postcards."³⁷ The Jones Committee and Lamb Committee "categorically deny that they have

³¹ PTV, *Postcards*, <https://postcardstovoters.org/postcards/> (last visited Dec. 13, 2021) ("PTV, *Postcards*") (linking to mypostcard.com and etsy.com shops).

³² PTV Resp. at 2 (internal quotes omitted).

³³ *Id.* at 5; *see also* Compl., Ex. A at 16 (replicating PTV, *FAQ's* (view question "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?") ("You are welcome to make the wording feel more your style, but we do need you to stick with the talking points provided.")); Two Broads Talking Politics at 32-32:30 (stating that writers are not told "exactly what to write the same way every single time").

³⁴ Two Broads Talking Politics at 32-34:00.

³⁵ *Id.* at 32:30-33:30; *see also* Compl., Ex. A at 16-17 (PTV, *FAQ's* (view question "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 . . . but don't change the meaning or the facts. . . . [D]on't embellish with information that is not in the talking points.")).

³⁶ PTV Resp. at 2; *id.* at n.3 (identifying federal elections in which PTV engaged in activity as of June 2018).

³⁷ Hiral for Congress Resp. at 4 (May 16, 2018).

1 coordinated the creation of any talking points with [PTV].”³⁸

2 PTV asks writers to mail their postcards within three days of requesting addresses.³⁹

3 Nevertheless, PTV states that it “does not monitor the content or number of the postcards sent by
4 its volunteers, nor does it have any way of knowing that its volunteers have sent postcards to the
5 addresses requested.”⁴⁰

6 The PTV website indicates that PTV has supported hundreds of candidates at the local,
7 state, and federal levels. A chart previously available on the PTV website identifies the
8 candidates that PTV helped support through April 2, 2019.⁴¹ The chart indicates that PTV
9 supported 56 candidates in 2017, 106 candidates in 2018, and eight candidates through April 2,
10 2019.⁴² Out of a total number of 173 candidates and other projects identified on the chart,
11 twenty-five candidates were federal candidates (four in 2017 and 21 in 2018),⁴³ including
12 candidates in state-wide U.S. Senate elections, one of which was Jones’s U.S. Senate special

³⁸ Jones/Lamb Resp. at 1-2 (June 15, 2018).

³⁹ PTV, *FAQ's* (view question “How do we let you know when we have successfully completed and mailed our list?”).

⁴⁰ PTV Resp. at 2. The Complaint provides an image of a postmarked postcard with a redacted address and a screenshot of a tweet with a picture of postcards in support of Tipirneni and a message that reads “10 handcrafted postcards for Dr. Hiral Tipirneni to help #Flipthe8 BlueWave #PostcardstoVoters #AZ08 @hiral4congress.” Compl., Exs. B & D. The Complaint further alleges that the postcards replicated in this tweet, as well as other postcards generated by the volunteer writers, include express advocacy. *See id.* at 6-8 & Exs. B, D.

⁴¹ *See* PTV, *Results*, <https://postcardstovoters.org/results/> [<https://web.archive.org/web/20210815180042/https://postcardstovoters.org/results/>] (“PTV, *Results*”) (last archived August 15, 2021, and showing elections through April 2, 2019).

⁴² *Id.* The chart also identifies three non-candidate “campaigns,” such as a ballot initiative on the Florida general election ballot in 2018. *Id.*; PTV, *Campaign #117: Vote YES on 4 (Second Chances) in FL*, <https://postcardstovoters.org/2018/10/09/second-chances/> (announcing “non-partisan” postcard initiative encouraging Florida residents to vote in favor of “Amendment 4 – the Voting Restoration Amendment”).

⁴³ *See* PTV, *Results*.

1 election in Alabama identified in the Complaint.⁴⁴ In addition to the chart, the PTV blog
2 indicates that PTV engaged in 243 “campaigns” through at least February 2021.⁴⁵

3 PTV does not appear to release the number of postcards distributed in each race, or the
4 number of addresses requested for each candidate, but PTV has released some figures on an *ad*
5 *hoc* basis. For example, attached to the Complaint is a Facebook post in which PTV announced
6 that it transmitted on average approximately 3,189 addresses per day to support a Wisconsin
7 judicial candidate and an average of 3,359 addresses per day in support of Respondent Hiral
8 Tipirneni.⁴⁶ In a 2017 blog post, PTV states that 6,376 volunteers sent 347,709 postcards in
9 support of Jones during the six-week period leading up to his election in Alabama.⁴⁷

10 The PTV website states that candidates and their committees do not pay fees to PTV,⁴⁸
11 because “volunteers are donating their own postage and material costs.”⁴⁹ In its Response, PTV
12 asserts that its “only costs” are “administrative expenses such as a monthly fee for its email
13 platform, fees associated with the software that permits it to send and receive text messages, and
14 other software license fees.”⁵⁰ It denies “sponsor[ing] paid Internet advertising or any other

⁴⁴ See *id.* It appears that some GOTV efforts supported multiple candidates on the same ballot. Additionally, at least eight of the of the state elections identified on the chart appear to be for state-wide offices, such as Governor and Supreme Court Justice. *Id.*

⁴⁵ See PTV, *Blog*, <https://postcardstovoters.org/blog/> (last visited Dec. 13, 2021) (“PTV, *Blog*”) (titling most recent post as “Campaign #243”).

⁴⁶ Comp., Ex. C.

⁴⁷ *Id.*, Ex. A at 13 (citing PTV, *Doug Jones Postcards by Numbers*, <https://postcardstovoters.org/2017/12/12/doug-jones-postcards-by-numbers/> (noting that “[a] fun, friendly, fully-handwritten election reminder [was] mailed to every Democratic household in Alabama!”)).

⁴⁸ See *id.*, Ex A at 20 (citing PTV, *Campaigns*). PTV asks candidates and committees to (1) make candidates available for a thirty-minute conference call with postcard writers; (2) submit a picture of the candidate and staff participating in a future postcard-writing effort; and (3) be a future reference, if satisfied with PTV’s efforts. *Id.*

⁴⁹ *Id.*

⁵⁰ PTV Resp. at 2-3.

1 ‘public communications’⁵¹ or ‘purchas[ing] or rent[ing] email lists.’⁵²

2 The PTV website includes two pages with ways to give to PTV: “Donate” and
 3 “Postcards.”⁵³ The “Donate” page encourages readers to “keep pouring your money” into “time,
 4 postage, and postcards or materials”⁵⁴ and presents options for supporters “wanting to give Abby
 5 a tip or even sponsor her for a week or a month.”⁵⁵ The “Postcards” page states that proceeds
 6 from purchased templates “will be used to offset our operating expenses.”⁵⁶ PTV’s Response
 7 states that it does not inform “donors that funds raised will be used in connection with federal
 8 elections.”⁵⁷ PTV states in its Response that it received \$6,578 in 2017 and \$9,776 in 2018
 9 through June.⁵⁸

10 III. LEGAL ANALYSIS

11 The analysis below addresses the complicated and intertwined questions raised by the
 12 Complaint. Consideration of the allegations initially requires a determination regarding whether
 13 the underlying costs incurred by volunteers and PTV are contributions or expenditures —

⁵¹ *Id.* at 7. PTV appears to acknowledge “sponsor[ing]” on its website and in emails communications that include express advocacy. *Id.* at 8; *see also* Compl. at 4-5 (alleging that PTV website hosts a video that includes a postcard containing express advocacy).

⁵² *Id.*

⁵³ *See* Compl., Ex. A (depicting images of PTV’s website banner). PTV also appears to have held at least one fundraiser. *See* PTV, *Videos* (embedding video titled “PTV Fundraiser party with Tony,” hosted at https://www.youtube.com/watch?v=IEXZTl0_d10).

⁵⁴ PTV, *Donate*, <https://postcardstovoters.org/donate/> (“PTV, *Donate*”) (last visited Dec. 13, 2021).

⁵⁵ *Id.* (providing links to PayPal and GivingFuel payment platforms, and a mailing address for checks).

⁵⁶ PTV, *Postcards* (linking to Mypostcard.com site and specifying that “50% of proceeds from MyPostcard go to support Postcards to Voters”). Similar representations appear on several of the PTV Etsy store offerings. *See* PTV, *Etsy Store*.

⁵⁷ PTV Resp. at 9.

⁵⁸ *Id.* It is unclear whether the figures in PTV’s Response include both direct donations and sale proceeds.

1 specifically whether volunteers' payments for postage and materials constituted contributions
2 and whether PTV's payments for its online organizing of volunteers' offline activity were
3 contributions or expenditures or instead exempt uncompensated internet activity. The allegation
4 that PTV was a political committee, analyzed subsequently, depends to a degree on whether
5 volunteers' payments were contributions made to PTV or candidates and their committees,
6 whether payments for postcards were for "coordinated communications" and thus in-kind
7 contributions, and an analysis of PTV's federal versus nonfederal activity. Next, the
8 Complaint's allegation that candidates and their committees failed to report contributions from
9 PTV also turns on whether volunteers or PTV made contributions to candidates and their
10 committees. Finally, the determination of whether payments for the volunteers' handmade
11 postcards were for "coordinated communications," as well as whether the postcards required
12 disclaimers, hinges on whether the postcards were "public communications" under the Act and
13 Commission regulations. While the below analysis sets forth how these various questions may
14 be understood and answered, we ultimately recommend that the Commission exercise its
15 prosecutorial discretion and dismiss the matter.

16 **A. Volunteers' Payments for Materials and Postage Are "Contributions" if**
17 **Made to Candidates or Committees**

18 The Act defines a "contribution" as "any gift, subscription, loan, advance, or deposit of
19 money or anything of value made by any person for the purpose of influencing any election for
20 Federal office."⁵⁹ Any expenditure made by a person in cooperation, consultation, or concert,
21 with, or at the request or suggestion of, a candidate or his or her authorized political committee is

⁵⁹ 52 U.S.C. § 30101(8)(A)(i); *see also* 11 C.F.R. § 100.52(a). "Anything of value" includes all in-kind contributions and, unless specifically excepted from the definition of contribution, "the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution." 11 C.F.R. § 100.52(d)(1).

1 an in-kind contribution to such candidate and is subject to the limits, prohibitions, and reporting
2 requirements of the Act.⁶⁰

3 The Act specifically exempts “the value of services provided without compensation by
4 any individual who volunteers on behalf of a candidate or political committee” from the
5 definition of “contribution.”⁶¹ However, “[t]he exception for volunteer activities . . . does not
6 generally exempt actual costs incurred on behalf of a Federal candidate.”⁶²

7 No available information suggests that the postcard writers are compensated for their
8 time and services; the writers appear to be uncompensated volunteers engaging in what could be
9 considered grassroots activity. Thus, their services in writing the postcards do not appear to
10 constitute contributions. However, it is undisputed that the volunteer postcard writers incurred
11 costs for materials and postage when they participated in the postcard writing campaigns. Those
12 payments for materials and postage may be in-kind contributions if incurred on behalf of federal
13 candidates or committees, as discussed further below.⁶³

⁶⁰ 52 U.S.C. § 30116; *see also* 11 C.F.R. § 109.20(b) (“Any expenditure that is coordinated . . . but that is not made for a coordinated communication under 11 CFR 109.21 is . . . an in-kind contribution”); 11 C.F.R. § 109.21 (setting out three-part test for determining whether a communication is coordinated with a candidate or the candidate’s authorized committee, or agent of either and, therefore, a contribution).

⁶¹ 52 U.S.C. § 30101(8)(B)(i); *see also* 11 C.F.R. § 100.74.

⁶² Advisory Opinion 2007-08 (King) at n.2; *see also* Advisory Opinion 1982-04 (Jerry Apodaca for U.S. Senate) at 2 (concluding that the value of “materials used in [a committee headquarters] renovation which were donated to the Committee must be reported as an in-kind contribution” although uncompensated volunteer labor provided by tradesmen was not a contribution); Factual & Legal Analysis at 2-4, 7-8, MUR 5739 (Darcy Burner for Congress) (finding television producer had made a contribution purchasing supplies in connection with volunteer services, but dismissing matter because the amounts (\$222.37 in contributions and \$244.87 in expenditures) were *de minimis* and the committee had amended its reports).

⁶³ *See infra* III.C.1.b. (addressing allegation that postcard writers made contributions to PTV).

1 **B. Much of PTV's Payments Are Likely Exempt from the Definitions of**
 2 **“Contribution” and “Expenditure” Under the Uncompensated Internet**
 3 **Activity Exemptions**

4 The Complaint alleges that PTV incurred “substantial costs” for an “extensive array of
 5 sophisticated services . . . [that] generate and distribute mass mailings” that resulted in excessive
 6 or prohibited in-kind contributions from PTV to candidates.⁶⁴ PTV responds, *inter alia*, that it
 7 neither provides services to “campaigns” nor “incur[s] ‘substantial costs’” and that its activity
 8 does not result in the making of contributions or expenditures under the exemptions for
 9 uncompensated internet activity set out at 11 C.F.R. §§ 100.94 and 100.155.⁶⁵

10 “When an individual or a group of individuals, acting independently or in coordination
 11 with any candidate, authorized committees, or political party committee, engages in Internet
 12 activities for the purpose of influencing a Federal election, neither . . . [t]he individual's
 13 uncompensated personal services related to such Internet activities [nor] [t]he individual's use of
 14 equipment or services for uncompensated Internet activities, regardless of who owns the
 15 equipment and services” is a contribution or expenditure “by that individual or that group of
 16 individuals.”⁶⁶ “Internet activities,” for purposes of the exemptions, includes, but is not limited

⁶⁴ Compl. at 6-8 (citing 11 C.F.R. §§ 109.20(b), 109.21). Under Commission regulations, treatment of a contribution from a single-member LLC may depend on the LLC's election for federal tax purposes. *See* 11 C.F.R. § 110.1(g). The current record does not indicate PTV's tax election. Nonetheless, for the reasons set out below, we recommend dismissing the allegations that PTV made excessive and prohibited contributions in violation of 52 U.S.C. §§ 30116 and 30118.

⁶⁵ PTV Resp. at 6-7; *see also* Hiral for Congress Resp. at 6.

⁶⁶ 11 C.F.R. §§ 100.94(a), 100.155(a). These exemptions also “appl[y] to any corporation that is wholly owned by one or more individuals, that engages primarily in Internet activities, and that does not derive a substantial portion of its revenues from sources other than income from its Internet activities.” 11 C.F.R. §§ 100.94(d), 100.155(d); *see* Internet Communications, 71 Fed. Reg. 18,589, 18,606 (Apr. 12, 2006) (explaining that the Commission will treat “an individual who engages in Internet activity after incorporating . . . the same under the new exceptions as an unincorporated individual who engages in similar Internet activity”). The rationale behind the “incorporation” exemptions appears to apply to PTV, which McMullin organized as an LLC, to send information to volunteer postcard writers. *See* Two Broads Talking Politics at 4-6:00 (describing how McMullin first transmitted addresses to postcard writers before organizing PTV into an LLC).

1 to, “[s]ending or forwarding electronic messages; providing a hyperlink or other direct access to
2 another person’s Web site; blogging; creating, maintaining, or hosting a Web site,” and “any
3 other form of communication distributed over the Internet.”⁶⁷ “Equipment and services”
4 includes, but is not limited to, “[c]omputers, software, Internet domain names, Internet Service
5 Providers (ISP), and any other technology that is used to provide access to or use of the
6 Internet.”⁶⁸

7 Nothing in the available record contradicts PTV’s assertion that the organizing team is
8 uncompensated and that PTV has no paid staff.⁶⁹ Because PTV and its organizing team appear
9 to be uncompensated, the regulatory exemptions for uncompensated internet activities appear to
10 apply to much of PTV’s activities. For instance, the regulations set forth at 11 C.F.R. §§ 100.94
11 and 100.155 exempt the costs of equipment and services used to create, maintain, and host the
12 PTV website. The costs of software (*e.g.*, PTV’s “commercial help desk,” “business intelligence
13 package,” and “heatmap” database) also appear to be exempt when used to send messages or
14 communications over the internet.⁷⁰ Additionally, any costs PTV incurs in transmitting links
15 with addresses and talking points to volunteers via email or Facebook messenger⁷¹ also appear
16 exempt as costs for equipment and services used to engage in “Internet activities.”

⁶⁷ 11 C.F.R. §§ 100.94(b), 100.155(b).

⁶⁸ 11 C.F.R. §§ 100.94(c), 100.155(c).

⁶⁹ PTV Resp. at 1-2, 7.

⁷⁰ *Id.* at 6 (asserting that PTV uses “intelligence” and “heatmap” software for internal organizational purposes and “to post statistics . . . on social media” but that it “does not pay for” the database software because an individual provides “access . . . free of charge”). Under the uncompensated internet activity exemptions, individuals’ use of software is exempt from the definitions of contribution and expenditure regardless of who owns the software. *See* 11 C.F.R. §§ 100.94(a)(2), (c) & 100.155(a)(2), (c).

⁷¹ PTV Resp. at 2, 7. PTV also states that it transmits material to volunteers via “SMTP texts,” which it describes as “emails that are sent to cellular phones.” *Id.* at 2, n.2. It is unclear whether the “SMTP” texts are the same text messages “with volunteers working on federal elections” that PTV incurred costs of \$793.53 to transmit.

1 PTV acknowledges receiving \$16,354 in donations “to offset its technology costs,”
2 though it is not clear whether all PTV overhead and administrative costs, for “technology” or
3 otherwise, are for “equipment and services” to engage in “Internet activities” as defined in the
4 regulations.⁷² For example, although PTV claims that it “engages exclusively in activities over
5 the internet to facilitate the volunteer political activity of other uncompensated volunteers,”⁷³ it
6 appears that PTV’s activity in support of volunteers’ postcard-based GOTV effort has both
7 internet (*e.g.*, address distribution via email to volunteers) and non-internet (*e.g.*, contact via text
8 message) components.⁷⁴ PTV’s payments for costs incurred for those non-internet activities
9 appear to not be exempt under the regulations set out at 11 C.F.R. §§100.94 and 100.155 and
10 may constitute contributions or expenditures,⁷⁵ as discussed further below.

11 **C. The Available Information is Insufficient to Conclude That PTV is a Political**
12 **Committee**

13 Political committees must, *inter alia*, register with the Commission and file periodic
14 disclosure reports.⁷⁶ The Act defines a “political committee” as “any committee, club,
15 association, or other group of persons which receives contributions aggregating in excess of

Id. at 9. PTV argues that the SMTP messages are not “general public political advertising” or “public communications.” *Id.* at 6, n.18.

⁷² *Id.* at 8-9 (“PTV’s only costs have been for administrative and overhead costs”).

⁷³ PTV Resp. at 1, 7.

⁷⁴ *See id.* at 2-3, 6, 9 (describing use of text messages between PTV and volunteer writers and acknowledging incurring \$793.53 in costs associated with text messages); *see also* Advisory Opinion Request 2021-11 (DSCC & DCCC) (asking whether text messages to supporters via short-code texting program are “public communications”) (pending request).

⁷⁵ *See* Advisory Opinion 2018-13 (OsiaNetwork LLC) at 6 (concluding that uncompensated internet activity exemption for use of computer “equipment and services” “extends only to the use of equipment ‘for . . . Internet activities,’” as that term is defined).

⁷⁶ *See* 52 U.S.C. §§ 30102-04 (setting out organization, registration, and reporting obligations of political committees).

1 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000
2 during a calendar year.”⁷⁷ Under the Act as construed by the Supreme Court in *Buckley v.*
3 *Valeo*,⁷⁸ an organization that is not controlled by a candidate must register as a political
4 committee only if (1) it crosses the \$1,000 threshold and (2) it has as its “major purpose” the
5 nomination or election of federal candidates.⁷⁹

6 1. Statutory Threshold

7 The Complaint alleges three ways in which PTV received contributions or made
8 expenditures aggregating in excess of \$1,000: solicitation and receipt of direct contributions
9 from supporters; in-kind contributions in the form of volunteer writers’ postage and materials
10 costs (as discussed in part III.A, above); and PTV’s payments for software and services (as
11 discussed in part III.B, above).⁸⁰ PTV generally denies making or receiving contributions and
12 expenditures,⁸¹ as well as making express advocacy communications other than those on its own
13 website and in emails to volunteers.⁸² No available information suggests that PTV engaged in
14 activity other than that associated with its support of postcard writing.

15 a. *Allegation that PTV solicited and received contributions*

16 The Complaint alleges that PTV has received more than \$1,000 in contributions because

⁷⁷ 52 U.S.C. § 30101(4)(A); *see also* 11 C.F.R. § 100.5.

⁷⁸ 424 U.S. 1 (1976).

⁷⁹ *Id.* at 79; Political Committee Status, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007) (“Supplemental E&J”) (explaining Commission policy of determining on a case-by-case basis whether an organization’s major purpose is “Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate)” and whether it is a political committee).

⁸⁰ Compl. at 2-3.

⁸¹ PTV Resp. at 8-9. PTV is not identified in any Commission disclosure database as making contributions or independent expenditures.

⁸² *Id.* at 8.

1 PTV “explicitly solicits contributions”⁸³ on its website, maintains an “expansive scope of []
2 operations and activities,” and has “establish[ed] . . . accounts to accept donated funds.”⁸⁴ As
3 discussed above, PTV acknowledges that it accepted \$16,354 from 2017 to June 2018.⁸⁵

4 The PTV “Donate” page suggests supporters “tip” or “sponsor” “Abby.”⁸⁶ The PTV
5 “Donate” page does not use the term “contribution,” but it includes a banner, which appears on
6 other pages of the PTV website, that describes “Postcards to Voters” as “reminders from
7 volunteers to targeted voters giving Democrats a winning edge in close, key races coast to
8 coast.”⁸⁷ Nevertheless, it is not clear that funds received by PTV, even if given in response to
9 solicitations to “give Democrats a winning edge,” are made “for the purpose of influencing any
10 election for *Federal* office” and, thus, “contributions.”⁸⁸ Although funds given to a political
11 committee for administrative and overhead costs are contributions,⁸⁹ PTV has not organized as a
12 political committee. Moreover, the record contains no information that any person gave PTV
13 funds for administrative costs in order to influence a *federal* election rather than a state or local
14 election. Under the circumstances, there is insufficient information on which to conclude that

⁸³ Compl. at 2.

⁸⁴ *Id.*

⁸⁵ PTV Resp. at 9; *see also* PTV, *Donate*.

⁸⁶ PTV, *Donate*; *see also* PTV Resp. at 9 (asserting that PTV “does not tell donors that funds raised will be used in connection with federal elections”); *see also* PTV, Etsy Store (representing that PTV will use proceeds from the sale of blank postcards to offset operational costs).

⁸⁷ PTV, *Donate*. The GivingFuel donation page linked from PTV’s “Donate” page includes the same language. *See id.* (linking to <https://postcardstovoters.givingfuel.com/welcome> (last visited Dec. 13, 2021)); *cf.* PTV, Etsy Store (including a statement that PTV’s activities support candidates at the local, state, and federal levels and showing examples of postcards for state office candidates).

⁸⁸ 52 U.S.C. § 30101(8)(A)(i) (emphasis added); 11 C.F.R. § 100.52(a).

⁸⁹ *See* Conciliation Agreement at V.2, MUR 6718 (Ensign) (citing *Cal. Med. Ass’n v. FEC*, 453 U.S. 182, 198 n.19 (1981) (plurality opinion)).

1 PTV received over \$1,000 in direct “contributions” under the Act.

2 *b. Allegation that Volunteers’ Payments for Materials and Postage*
3 *are In-Kind Contributions Made to and Received by PTV*

4 The Complaint alleges that the volunteers’ payments for materials and postage also
5 represent in-kind contributions to PTV from the volunteers. As analyzed above, the volunteers’
6 payments for materials and postage may be in-kind contributions.⁹⁰ It is also unclear whether
7 any volunteers’ contributions would be to PTV or to the federal candidates and committees
8 referenced on the postcards the volunteers write and mail.

9 The relationship between candidates and committees, PTV, and volunteer postcard
10 writers is ambiguous.⁹¹ It appears that candidates and committees share with PTV’s organizing
11 team, to varying degrees, GOTV strategy, voter information, and talking points. PTV recruits
12 and screens volunteers, who must register with PTV to use Abby; transmits to volunteers
13 addresses and talking points, which PTV represents are approved by candidates and their
14 committees; and instructs volunteers on preparing and disseminating postcards. However, PTV
15 does not appear to review postcard content, ask that PTV be identified on postcards, or confirm
16 that volunteers actually send postcards.⁹² In these ways, the PTV organizing team resembles a

⁹⁰ See *supra* III.A.

⁹¹ PTV’s own website includes conflicting statements. Some statements suggest that PTV encompasses the organizing team and postcard writers, and others suggesting that PTV is only the former. Compare PTV, *About*, (stating “we consist of over 75,000+ voters in every state”) (emphasis added), and PTV, *Volunteer*, <https://postcardstovoters.org/volunteer/> (“Thanks for taking the first step to join Postcards to Voters”), with PTV, *Our Team* (“learn more about *our Team* members”) (emphasis added), and PTV, *FAQ’s* (view “Will we be writing for candidate So-and-So?”) (“*We* no longer announce *our* campaign line-up in advance. . . . We ask for *your* patience”) (emphasis added).

⁹² The Complaint attaches an image of an apparent PTV postcard that shows a URL for the Hiral for Congress website, though it is unclear whether that was included at the behest of PTV or Hiral for Congress. See Compl., Ex. D (“Use Early Voting to Avoid a Line [www.HiralforCongress.co\[m\]](http://www.HiralforCongress.co[m])”).

1 committee's GOTV volunteer coordinators, albeit remotely.⁹³

2 If PTV had itself paid for the postage and materials associated with the GOTV volunteer
3 efforts it organized for the purpose of influencing federal candidates' elections, those costs
4 potentially constitute in-kind contributions from PTV to those candidates and committees.⁹⁴
5 Indeed, the Complaint alleges that the costs of the postcards represented excessive or prohibited
6 in-kind contributions from PTV to various federal candidates in the form of coordinated
7 communications under 11 C.F.R. § 109.21, thereby violating 52 U.S.C. §§ 30116 and 30118.
8 However, due to the ambiguous relationship between PTV, the volunteer postcard writers, and
9 candidates and committees, it is not clear that the postcards writers' costs are appropriately
10 attributable to PTV and therefore considered to be its contributions or expenditures. Moreover, it
11 is not clear that the postcards would satisfy the Commission's definition of "public
12 communication" and therefore satisfy the relevant content standard of 11 C.F.R. § 109.21.⁹⁵
13 Nonetheless, PTV did not pay the postage and materials costs itself. Instead, PTV
14 engaged in (likely exempt, as discussed above) internet activities to organize volunteers to make

⁹³ See Internet Communications, 71 Fed. Reg. at 18,603 ("The Internet has changed the way in which individuals engage in political activity by expanding the opportunities for them to participate in campaigns and grassroots activities at little or no cost and from remote locations.").

⁹⁴ Cf. First Gen. Counsel's Rpt. ("First GCR") at 6-8, 10, MUR 7384 (Andrew Janz for Congress, *et al.*) (concluding that local party committee's payments for postage and materials of postcards filled-out by volunteers may have been a party coordinated communication under 11 C.F.R. § 109.37(a), but recommending the Commission dismiss the alleged failure to report the making and receipt of a contribution given the likely *de minimis* amount in violation). The Commission determined to dismiss the allegations but was evenly divided over whether to approve the Factual and Legal Analysis recommended in the FGCR. See Certification ("Cert.") ¶¶ 2-3 (July 26, 2019), MUR 7384.

⁹⁵ See 11 C.F.R. § 109.21(c) (providing that a coordinated communication be either an "electioneering communication" under 11 C.F.R. § 100.29 or a "public communication" under 11 C.F.R. § 100.26); see also *infra* III.E. (addressing whether the volunteers' postcards satisfy the definition of "public communication").

1 those payments.⁹⁶ An investigation may clarify the relationship between PTV, the volunteers,
2 and the benefiting candidate committees to determine the entity or entities to which volunteers
3 made in-kind contributions. However, assuming *arguendo* that volunteers' materials and
4 postage costs are in-kind contributions to PTV, PTV likely received in excess of \$1,000 in
5 contributions from its volunteers, in light of the alleged number of postcards distributed by
6 volunteers and the cost of postage.⁹⁷

7 *c. Allegation that PTV Uses Services from Commercial Vendors and*
8 *Therefore Received Contributions or Made Expenditures*

9 Citing references to PTV's "interactive texting service," "commercial Help Desk," and
10 "commercial business intelligence package," the Complaint alleges that PTV has either received
11 in-kind contributions from vendors (who provided goods or services for free or below market
12 value) or that PTV has made expenditures.⁹⁸

13 As analyzed above, it appears that PTV's costs for equipment and services for volunteer
14 internet activities are neither "contributions" nor "expenditures" under the Act.⁹⁹ Although
15 PTV's payments for costs incurred (or acceptance of free equipment and services) for non-
16 internet activities would not be exempt under the regulations set out at 11 C.F.R. §§ 100.94 and
17 100.155 and may constitute contributions or expenditures, the current record does not provide a
18 basis to determine that such costs exceed the \$1,000 threshold.

⁹⁶ See Hiral for Congress Resp. at 2, 5-6, n.7 (asserting that PTV provided "logistics services" as a service to volunteers, similar to the way payment processors provide services to persons who want to make contributions to candidates) (citing Advisory Opinion 2014-07 (Crowdpac) and Advisory Opinion 2012-22 (skimmerhat)).

⁹⁷ See, e.g., Compl. at 2 (alleging that one postcard "effort" by PTV cost over \$17,850 in postage, referencing statements by PTV that 51,000 postcards were disseminated in that federal special election in Georgia).

⁹⁸ Compl. at 3.

⁹⁹ See *supra* III.B.

1 2. Major Purpose

2 Even assuming that PTV satisfied the Act's definition of "political committee" by
3 crossing the \$1,000 threshold, an organization that is not controlled by a candidate must only
4 register as a political committee if it has as its "major purpose" the nomination or election of
5 federal candidates.¹⁰⁰ The available information does not sufficiently indicate whether PTV's
6 major purpose is the nomination or election of federal candidates.

7 To determine an entity's "major purpose," the Commission considers a group's "overall
8 conduct," including, among other factors, public statements about its mission, organizational
9 documents, government filings (*e.g.*, IRS notices), and the proportion of spending related to
10 "Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate)."¹⁰¹ The
11 Commission has stated that it compares how much of an organization's spending is for "*federal*
12 *campaign activity*" relative to "activities that [a]re not campaign related."¹⁰²

13 PTV acknowledges that it seeks to help the election of Democratic candidates through
14 GOTV efforts, but it denies that its major purpose is the nomination or election of federal
15 candidates.¹⁰³ Assuming, *arguendo*, that volunteers' payments for materials and postage are
16 attributed to PTV, and that volunteers' federal election GOTV activity is "federal campaign
17 activity,"¹⁰⁴ the available information is unclear as to the proportion of volunteer funds spent on

¹⁰⁰ *See Buckley v. Valeo*, 424 U.S. at 80.

¹⁰¹ Supplemental E&J, 72 Fed. Reg. at 5597, 5605.

¹⁰² *Id.* at 5597, 5605-06.

¹⁰³ PTV Resp. at 1, 10.

¹⁰⁴ For example, it is likely that postcards sent in support of federal candidates clearly identified those candidates and generally included express advocacy. *See* 11 C.F.R. § 100.22 (defining express advocacy); *see* Compl., Ex. D (expressly advocating recipient to vote for identified federal candidate). However, the record in this matter includes a small number of sample postcards relative to the alleged number of postcards distributed.

1 federal campaign activity relative to other activities. PTV appears to have supported hundreds of
2 GOTV efforts for candidates for local, state, and federal candidates (as well as ballot and other
3 initiatives). But the available information does not include the number of addresses that PTV has
4 disseminated in each race, whether volunteers disseminated postcards to all the addresses that
5 PTV transmitted, or how much volunteers spent on particular races. And while federal races
6 often involve larger populations of eligible voters, PTV also appears to have conducted its
7 activities in state-wide state-level elections.¹⁰⁵ Ultimately, the available information does not
8 indicate the amounts that volunteers spent on “federal campaign activity” relative to “activities
9 that [a]re not campaign related.”¹⁰⁶ If, however, the Commission were to conduct an
10 investigation, a comparison of the number of addresses disseminated in connection with federal
11 races against the number disseminated in connection with state races could give an indication of
12 the extent to which PTV’s major purpose is the nomination or election of federal candidates.

13 **D. Candidate Committees May Have Failed to Report Itemized and Unitemized**
14 **Contributions from PTV or Volunteer Postcard Writers**

15 Committees’ disclosure reports must include the identification of each person who makes
16 a contribution or contributions that have an aggregate amount or value of \$200 during an
17 election, in the case of an authorized committee of a federal candidate, together with the date and

¹⁰⁵ The Complaint, for example, cites PTV’s statements that volunteers sent (1) over 347,000 postcards in connection with the 2017 U.S. Senate race in Alabama, *see* Compl., Ex. A at 13, and (2) 51,000 postcards in connection with a Georgia special election, *see* Compl., Ex. A at 2. However, PTV also supported state-level judicial candidates in elections held in fall 2017 and spring 2018 where, according to its website, its supported candidates garnered over 650,000 votes. Later in 2018, PTV engaged in activity in support of the 2018 Georgia and Florida Democratic gubernatorial candidates, who received over 1.9 million and 4 million votes, respectively. PTV, *Results*.

¹⁰⁶ Supplemental E&J, 72 Fed. Reg. at 5605-06.

1 amount of any such contribution.¹⁰⁷ Disclosure reports must also include the total amount of all
2 receipts and the total amount of all contributions from persons other than political committees.¹⁰⁸

3 The Complaint alleges that Hiral for Congress, and other benefiting candidates and
4 committees, failed to disclose contributions received from PTV.¹⁰⁹ As discussed above, the
5 current record does not provide a basis to determine the total equipment and overhead costs PTV
6 incurred for non-internet activities that may constitute contributions or expenditures; it is unclear
7 whether any such costs attributable to a particular candidate would exceed that candidate's
8 reporting threshold.¹¹⁰ And, as analyzed above, it is unclear whether the volunteer writers'
9 payments for materials and postage were in-kind contributions from individual volunteers to
10 PTV and then from PTV to federal candidates and committees.¹¹¹ If volunteers' payments for
11 materials and postage were in-kind contributions to PTV and then from PTV to federal
12 candidates and committees, then Hiral for Congress would have had to disclose receiving
13 contributions from PTV. If, on the other hand, the volunteers' payments for materials and
14 postage constitute contributions from the volunteers to Hiral for Congress and other benefiting
15 candidates and committees, then those committees would have been required to disclose the total
16 value of the volunteers' payments as contributions. Further, if any volunteer had made more

¹⁰⁷ See 52 U.S.C. § 30104(b)(3)(A); *see id.* § 30101(13)(A) (defining "identification," in the case of an individual as name, mailing address, occupation, and employer).

¹⁰⁸ See 52 U.S.C. § 30104(b)(2)(A).

¹⁰⁹ Compl. at 1, 8; *see also* Hiral for Congress Resp. at 4-5 (arguing that it did not coordinate with PTV, accepted no contributions from PTV, and that "any potential expenditures related to the materials used, postage costs paid for, and time spent by the volunteer postcard writers . . . are exempt from the definition of a contribution," citing the exceptions for uncompensated services by volunteers and volunteer internet activity); *but see supra*, Parts III.A, B.

¹¹⁰ See *supra*, Part III.B.

¹¹¹ See *supra*, Part III.A.

1 than \$200 in contributions in any election cycle to a candidate or committee, that committee
 2 would need to itemize the contributions from that volunteer.¹¹² No specific information
 3 currently indicates whether any individual volunteer contributed more than \$200 to any
 4 respondent committee. Based on the available information about the activity of PTV and
 5 volunteer writers, it is likely that many volunteers remained below that \$200 threshold and that
 6 some prolific volunteer writers may have passed it by writing numerous postcards in connection
 7 with a specific federal candidate's race.

8 **E. The Available Information is Insufficient to Conclude that Volunteer**
 9 **Writers' Postcards Required Disclaimers**

10 All public communications made by a political committee and all public communications
 11 made by any person that expressly advocate the election or defeat of a clearly identified
 12 candidate are required to include a disclaimer identifying who paid for the communication and
 13 whether the communication was authorized by a candidate.¹¹³ The definition of "public
 14 communication" includes a "mass mailing," and a "mass mailing" is defined as a mailing "of
 15 more than 500 pieces of mail matter of an identical or substantially similar nature within any 30
 16 day period."¹¹⁴ Commission regulations state that "substantially similar" includes
 17 "communications that include substantially the same template or language, but vary in non-
 18 material respects such as communications customized by the recipient's name, occupation, or

¹¹² See Hiral for Congress Resp. at 5 (arguing that "unless any given volunteer paid more than \$200 in postage and printing, such contribution . . . would not even have to be disclosed," citing 11 C.F.R. § 102.9(a)(2)).

¹¹³ 52 U.S.C. § 30120; 11 C.F.R. § 110.11(a), (b). The disclaimer must be presented in a clear and conspicuous manner, and a disclaimer that appears on any printed public communication must be of sufficient type size to be clearly readable by the recipient of the communication, in a printed box, and with a reasonable degree of color contrast between the background and the printed statement. 52 U.S.C. § 30120(c); 11 C.F.R. § 110.11(c); *see also supra* n.104 (discussing whether postcards included express advocacy).

¹¹⁴ 52 U.S.C. §§ 30101(22), (23); 11 C.F.R. §§ 100.26, 100.27.

1 geographic location.”¹¹⁵

2 The available information suggests that it is likely that volunteers mailed at least 500
 3 postcards in connection with some elections and that those postcards likely included a
 4 candidate's name, office sought, election date, that the candidate was a Democrat, and “one
 5 required sentence.”¹¹⁶ Nonetheless, the available information is insufficient at this time to
 6 conclude that over 500 postcards in any one election were “substantially similar,” because
 7 volunteers were given discretion to choose additional talking points, put talking points into their
 8 own words, and use or develop their own templates.¹¹⁷ Moreover, while the Complaint and PTV
 9 website include images of some postcards, none of the examples show that a particular template
 10 was reproduced over 500 times.¹¹⁸

11 **IV. THE COMMISSION SHOULD EXERCISE ITS PROSECUTORIAL**
 12 **DISCRETION TO DISMISS THE COMPLAINT**

13 PTV organizes, at a large scale, what can be considered to be highly de-centralized

¹¹⁵ 11 C.F.R. § 100.27; *see also* Advisory Opinion 2004-37 (Waters) at 2, 6 (concluding “each version of [a] proposed brochure will be . . . a ‘mass mailing’ and therefore . . . a public communication,” where the versions differed “to reflect accurately the actual ballot within the recipient’s voting precinct”); Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,072 (July 29, 2002) (explaining rule was intended to capture mailers that “change an internal sentence every 490 letters” or “are largely identical but contain a separate paragraph addressing a targeted group”).

¹¹⁶ Two Broads Talking Politics at 32-34:00.

¹¹⁷ By contrast, this Office has reasoned previously that 680 postcards prepared by volunteers at a single-day event organized by a local party committee appeared to be public communications, even though the volunteers were provided “model language” but permitted to personalize the message. First GCR at 8, MUR 7384 (Andrew Janz for Congress, *et al.*). In that matter, however, the local party committee also acknowledged that “[p]ostage and blank postcards were provided” to its volunteers. Resp. of Santa Clara County United Democratic Campaign at 1 (July 13, 2018), MUR 7384 (Andrew Janz for Congress, *et al.*). Here, nothing in the record shows that volunteers were provided hard-copy templates by PTV. To the contrary, while PTV makes available various templates, on its website, no available information suggests that PTV provides particular templates to volunteers. To the contrary, it encourages volunteers to create their own templates. *See also supra* n.94 (Commission treatment of MUR 7384).

¹¹⁸ *See* Compl., Exs. B (depicting the back of one postcard) & D (purporting to depict ten non-uniform postcards).

1 grassroots GOTV activity using internet technology.¹¹⁹ The activity implicates novel legal
2 issues, such as the application of the “mass mailing” definition to an organized, but
3 decentralized, mailing of bespoke postcards. And the available information suggests that
4 individual volunteers may have made in-kind contributions to PTV or to the candidates and
5 committees for which they wrote postcards.

6 At the same time, this matter presents a unique investigative challenge in obtaining the
7 facts and records necessary to substantiate any violations and to assess amounts in violation. It
8 appears that thousands of volunteers across the country produced and disseminated postcards in
9 the 2017 and 2018 elections identified in the Complaint. To identify the approximate amounts
10 individual volunteers spent to produce and disseminate postcards, this Office could likely obtain
11 from PTV volunteers’ online contact information and the number of addresses PTV sent to each
12 volunteer. However, it would be resource-intensive to contact the volunteers to determine the
13 number of postcards they actually mailed and to procure information from them about their costs
14 for materials and postage. Moreover, individual grassroots volunteers are not likely to have
15 created and retained records of their activity and expenses in the years since they wrote
16 postcards. Further, an investigation may not reveal the content of the postcards the volunteers
17 mailed.

¹¹⁹ It is possible that two prior MURs involved PTV activity. In MUR 7384 (Andrew Janz for Congress, *et al.*), the complaint included copies of postcards that supported a federal candidate’s election, as well as what appears to be screenshots of announcements of postcard-writing parties. One screenshot in the complaint appears to be under the name of “Indivisible Colusa County” and refers to a “Postcards to Voters Party – Janz for Congress.” See Compl. in MUR 7384 (Andrew Janz for Congress, *et al.*). The record in that matter includes no reference to PTV as an organization, however, and a respondent local party committee acknowledged organizing the postcard parties at issue and providing postcards and postage. See MUR 7384 (Andrew Janz for Congress, *et al.*); see also *supra* nn.94, 117. In MUR 7342 (Marie Newman for Congress), the Commission dismissed under the Enforcement Priority System an allegation pertaining to a postcard advocating Marie Newman’s election, which PTV also supported. See Cert. (July 26, 2018), MUR 7342; PTV, *Campaign #54: Marie Newman in IL*, <https://postcardstovoters.org/2018/02/10/newman/>. The record in MUR 7342 makes no reference to PTV.

1 Significantly, we recognize that conducting an investigation in a manner that seeks
2 information from PTV's volunteers would not only be administratively challenging but also
3 represent a potential intrusion on the individual grassroots volunteers who used online
4 communications tools and as to whom this report does not analyze a theory of direct liability. As
5 the Commission has recognized, "[t]he Internet has changed the way in which individuals engage
6 in political activity by expanding the opportunities for them to participate in campaigns and
7 grassroots activities at little or no cost and from remote locations."¹²⁰ Ultimately, though it
8 would be possible for the Commission to seek to determine more particular facts about the
9 conduct at issue, we do not recommend that the Commission expend further Commission
10 resources to investigate this matter and that the Commission instead exercise its prosecutorial
11 discretion and dismiss the allegations in the Complaint.¹²¹

12 **V. RECOMMENDATIONS**

- 13 1. Dismiss the allegation that Postcards to Voters, LLC, violated 52 U.S.C. §§ 30116 or
14 30118 by making prohibited or excessive in-kind contributions to candidates;
15
- 16 2. Dismiss the allegation that Postcards to Voters, LLC, violated 52 U.S.C. §§ 30102,
17 30103, and 30104 by failing to organize, register, and report as a political committee;
- 18 3. Dismiss the allegations that Hiral Tipirneni, Hiral for Congress and Katherine A.
19 Jacklin in her official capacity as treasurer, Conor Lamb for Senate f/k/a Conor Lamb
20 for Congress and DJ Ryan in his official capacity as treasurer, and Right Side of
21 History PAC f/k/a Doug Jones for Senate and J. Douglas Turner, Jr. in his official
22 capacity as treasurer violated 52 U.S.C. §§ 30116 or 30118 by knowingly accepting
23 excessive or prohibited contributions;
- 24 4. Dismiss the allegations that Hiral for Congress and Katherine A. Jacklin in her
25 official capacity as treasurer, Conor Lamb for Senate f/k/a Conor Lamb for Congress
26 and DJ Ryan in his official capacity as treasurer, and Right Side of History PAC f/k/a

¹²⁰ See Internet Communications, 71 Fed. Reg. at 18,603.

¹²¹ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

- 1 Doug Jones for Senate and J. Douglas Turner, Jr. in his official capacity as treasurer
2 violated 52 U.S.C. § 30104(b) by failing to accurately report contributions;
- 3 5. Dismiss the allegation that Postcards to Voters, LLC, violated 52 U.S.C. § 30120 by
4 failing to include adequate disclaimers on postcards;
- 5 6. Approve the attached Factual and Legal Analysis;
- 6
- 7 7. Approve the appropriate letters; and
- 8
- 9 8. Close the file.

10
11 Lisa J. Stevenson
12 Acting General Counsel

13
14
15
16 December 16, 2021
17 DATE

18 *Charles Kitcher*
19 _____
20 Charles Kitcher
21 Associate General Counsel for Enforcement

22 *Mark Allen*
23 _____
24 Mark Allen
25 Assistant General Counsel

26
27 *Theodore M. Lutz*
28 _____
29 Theodore M. Lutz
30 Attorney

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