



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 24, 2022

VIA ELECTRONIC MAIL ONLY

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Andrew Harris Werbrock, Esq.
Olson Remcho LLP
1901 Harrison Street
Suite 1550
Oakland, CA 94612

RE: MUR 7368
Postcards to Voters, LLC

Dear Mr. Werbrock:

On April 24, 2018, the Federal Election Commission notified your client, Postcards to Voters, LLC, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on February 15, 2022, voted to dismiss the allegations that your client violated 52 U.S.C. §§ 30116 or 30118 by making prohibited or excessive contributions to candidates and political committees, violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize, register, and report as a political committee, and violated 52 U.S.C. § 30120 by failing to include adequate disclaimers on postcards, and closed the file. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed.

Documents related to the case will be placed on the public record within 30 days. *See Disclosure of Certain Documents in Enforcement and Other Matters*, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

MUR 7368
Andrew Harris Werbrock, Esq.
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If you have any questions, please contact Theodore M. Lutz, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark Allen

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL & LEGAL ANALYSIS**

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2
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5 Respondents: Postcards to Voters, LLC MUR: 7368
6 Hiral for Congress and
7 Katherine A. Jacklin in her
8 official capacity as treasurer
9 Hiral Tipirneni
10 Right Side of History PAC,
11 f/k/a Doug Jones for Senate,
12 and J. Douglas Turner, Jr. in his
13 official capacity as treasurer
14 Conor Lamb for Senate,
15 f/k/a Conor Lamb for Congress,
16 and DJ Ryan in his
17 official capacity as treasurer
18

I. INTRODUCTION

20 This matter was generated by a Complaint filed with the Federal Election Commission.¹
21 The Complaint alleges that Postcards to Voters, LLC (“PTV”) violated the Federal Election
22 Campaign Act of 1971, as amended (the “Act”), by making excessive or prohibited in-kind
23 contributions to Hiral for Congress “and other benefitted candidates” in connection with get-out-
24 the-vote (“GOTV”) postcards crafted by diffuse sets of volunteers.² The Complaint also alleges
25 that PTV failed to register and report as a political committee and that PTV failed to include
26 disclaimers on the postcards.³ The Complaint further contends that various federal candidates
27 and committees violated the Act by accepting PTV’s excessive or prohibited contributions and
28 failing to report them.⁴

¹ See 52 U.S.C. § 30109(a)(1).

² Compl. at 1, 5-8 (Apr. 17, 2018).

³ *Id.* at 1-5, 8-9.

⁴ *Id.* at 1, 8-9.

1 The Complaint raises numerous questions, including (1) whether thousands of volunteer
2 postcard writers' payments for postage and materials constituted contributions to PTV or to
3 benefited candidates and their committees and (2) whether the volunteers' handmade postcards
4 are "public communications" under the Act and Commission regulations, such that they could
5 require disclaimers or be in-kind contributions in the form of coordinated communications. For
6 the reasons set forth below, the Commission exercises its prosecutorial discretion under *Heckler*
7 *v. Chaney*⁵ and dismisses the allegations.

8 **II. FACTUAL BACKGROUND**

9 Hiral Tipirneni, Conor Lamb, and Doug Jones were candidates in special elections in
10 2017 and 2018. At that time, each had a principal campaign committee: Hiral for Congress and
11 Katherine A. Jacklin in her official capacity as treasurer, Conor Lamb for Senate f/k/a Conor
12 Lamb for Congress and DJ Ryan in his official capacity as treasurer ("Lamb Committee"), and
13 Right Side of History PAC f/k/a Doug Jones for Senate and J. Douglas Turner, Jr. in his official
14 capacity as treasurer ("Jones Committee").⁶ PTV organized volunteer writers to send postcards
15 to voters in each of these candidates' elections.⁷

16 An individual named Tony McMullin started PTV in March 2017 by "sharing 5
17 addresses apiece to 5 volunteers on Facebook so that they could mail postcards to voters in Jon

⁵ 470 U.S. 821 (1985).

⁶ 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).

⁷ 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/>.

1 Ossoff’s race.”⁸ According to PTV, within a month it grew to “1,200+ volunteers nationwide
 2 and over 51,000 postcards mailed.”⁹ In 2018, McMullin organized PTV into a Georgia single
 3 member LLC.¹⁰ On its website, PTV currently claims that “we consist of over 75,000+
 4 volunteers . . . who have written close to 8 million postcards to voters in over 200 key, close
 5 elections.”¹¹

6 PTV represents that McMullin currently operates PTV with “several other individuals”
 7 (the “organizing team”).¹² PTV represents that the organizing team is uncompensated and that
 8 PTV has no paid staff.¹³ PTV describes itself as a “hub for volunteers who wish to make a
 9 difference by encouraging fellow Democratic voters to vote in contested elections.”¹⁴ It states
 10 that it focuses on grassroots GOTV efforts through the dissemination of “friendly, handwritten
 11 reminders from volunteers to targeted voters giving Democrats a winning edge in close, key
 12 races.”¹⁵

13 The organizing team appears to communicate directly to varying degrees with candidates

⁸ Compl., Ex. A at 2 (citing PTV, *About*, <https://postcardstovoters.org/about/>) (“PTV, *About*”); *see also* PTV Resp. at 1.

⁹ Compl., Ex. A at 2 (citing PTV, *About*).

¹⁰ *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.

¹¹ PTV, *About* (last visited Dec. 13, 2021).

¹² 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”).

¹³ PTV Resp. at 1-2.

¹⁴ *Id.* at 1.

¹⁵ 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, 20 21) (“PTV Etsy Store”) (describing PTV as a “grassroots initiative”).

1 and their committees, and at least in one instance with a party committee.¹⁶ The PTV website
 2 states that PTV provides postcard writers with the talking points that “the campaign has
 3 requested,”¹⁷ though McMullin has also stated that he has developed talking points himself after
 4 reviewing candidate and committee websites and candidate statements.¹⁸ The PTV website
 5 states that “in most every case with fewer than a handful of exceptions, [voters’ mailing
 6 addresses] come[] directly from campaigns.”¹⁹

7 The organizing team also communicates directly with postcard writers through its
 8 website and social media. PTV posts on its website the candidates for which writers can request
 9 addresses.²⁰ PTV represents that individuals must register by submitting a sample postcard to
 10 the organizing team for review.²¹ Volunteer writers can then request addresses via text message,
 11 Slack, Facebook Messenger, or email; a “bot” referred to as “Abby” generally processes the

¹⁶ 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*, <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”).

¹⁷ 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?”)).

¹⁸ *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).

¹⁹ 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).

²⁰ See Compl., Ex. A. at 4-12 (identifying blog posts announcing candidates being supported).

²¹ PTV Resp. at 2.

1 requests.²² Through the bot, volunteer writers identify the “campaign” that they want to support
2 and request a specific number of addresses.²³ The bot then transmits “a link to a web page
3 containing the relevant information.”²⁴ Writers can receive between four and thirty addresses at
4 a time.²⁵ PTV states that it uses “a commercial Help Desk system” to process these requests,
5 including for postcard-making parties.²⁶ The PTV website also hosts resources to help volunteer
6 writers prepare postcards. A video previously on the website instructs volunteers on how they
7 can make their own postcards.²⁷ The “FAQ’s” page addresses numerous questions on how to
8 print, download, or design postcards.²⁸ Writers can download postcard templates²⁹ or purchase
9 bundles of postcards via PTV’s Etsy store.³⁰

²² 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?”).

²³ Two Broads Talking Politics at 15:45-16:00.

²⁴ PTV Resp. at 2.

²⁵ *Id.* PTV states that “on average PTV volunteers request 13 names at a time.” *Id.*

²⁶ 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.

²⁷ 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>).

²⁸ See PTV, *FAQ’s*.

²⁹ 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?”)).

³⁰ PTV, *Postcards*, <https://postcardstovoters.org/postcards/> (last visited Dec. 13, 2021) (“PTV, *Postcards*”) (linking to mypostcard.com and etsy.com shops).

1 In its Response submitted to the Commission, PTV acknowledges that it sends voters’
2 names and addresses and talking points to its volunteers,³¹ but does not address how it obtains or
3 generates that information. Hiral for Congress, in its response, acknowledges “provid[ing]
4 talking points to PTV” and that “PTV . . . provided this information to volunteer postcard writers
5 and suggested (but did not require) that these volunteers use this information in their
6 postcards.”³² The Jones Committee and Lamb Committee “categorically deny that they have
7 coordinated the creation of any talking points with [PTV].”³³

8 PTV asks writers to mail their postcards within three days of requesting addresses.³⁴
9 Nevertheless, PTV states that it “does not monitor the content or number of the postcards sent by
10 its volunteers, nor does it have any way of knowing that its volunteers have sent postcards to the
11 addresses requested.”³⁵

12 The PTV website indicates that PTV has supported hundreds of candidates at the local,
13 state, and federal levels. A chart previously available on the PTV website identifies the
14 candidates that PTV helped support through April 2, 2019.³⁶ The chart indicates that PTV
15 supported 56 candidates in 2017, 106 candidates in 2018, and eight candidates through April 2,

³¹ PTV Resp. at 2; *id.* at n.3 (identifying federal elections in which PTV engaged in activity as of June 2018).

³² Hiral for Congress Resp. at 4 (May 16, 2018).

³³ Jones/Lamb Resp. at 1-2 (June 15, 2018).

³⁴ PTV, *FAQ’s* (view question “How do we let you know when we have successfully completed and mailed our list?”).

³⁵ 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.

³⁶ *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).

1 2019.³⁷ Out of a total number of 173 candidates and other projects identified on the chart,
2 twenty-five candidates were federal candidates (four in 2017 and 21 in 2018),³⁸ including
3 candidates in state-wide U.S. Senate elections, one of which was Jones’s U.S. Senate special
4 election in Alabama identified in the Complaint.³⁹ In addition to the chart, the PTV blog
5 indicates that PTV engaged in 243 “campaigns” through at least February 2021.⁴⁰

6 PTV does not appear to release the number of postcards distributed in each race, or the
7 number of addresses requested for each candidate, but PTV has released some figures on an *ad*
8 *hoc* basis. For example, attached to the Complaint is a Facebook post in which PTV announced
9 that it transmitted on average approximately 3,189 addresses per day to support a Wisconsin
10 judicial candidate and an average of 3,359 addresses per day in support of Respondent Hiral
11 Tipirneni.⁴¹ In a 2017 blog post, PTV states that 6,376 volunteers sent 347,709 postcards in
12 support of Jones during the six-week period leading up to his election in Alabama.⁴²

³⁷ *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”).

³⁸ *See* PTV, *Results*.

³⁹ *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.*

⁴⁰ *See* PTV, *Blog*, <https://postcardstovoters.org/blog/> (last visited Dec. 13, 2021) (“PTV, *Blog*”) (titling most recent post as “Campaign #243”).

⁴¹ Comp., Ex. C.

⁴² *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!”)).

1 The PTV website states that candidates and their committees do not pay fees to PTV,⁴³
 2 because “volunteers are donating their own postage and material costs.”⁴⁴ In its Response, PTV
 3 asserts that its “only costs” are “administrative expenses such as a monthly fee for its email
 4 platform, fees associated with the software that permits it to send and receive text messages, and
 5 other software license fees.”⁴⁵ It denies “sponsor[ing] paid Internet advertising or any other
 6 ‘public communications’”⁴⁶ or “purchas[ing] or rent[ing] email lists.”⁴⁷

7 The PTV website includes two pages with ways to give to PTV: “Donate” and
 8 “Postcards.”⁴⁸ The “Donate” page encourages readers to “keep pouring your money” into “time,
 9 postage, and postcards or materials”⁴⁹ and presents options for supporters “wanting to give Abby
 10 a tip or even sponsor her for a week or a month.”⁵⁰ The “Postcards” page states that proceeds
 11 from purchased templates “will be used to offset our operating expenses.”⁵¹ PTV’s Response
 12 states that it does not inform “donors that funds raised will be used in connection with federal

⁴³ 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.*

⁴⁴ *Id.*

⁴⁵ PTV Resp. at 2-3.

⁴⁶ *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).

⁴⁷ *Id.*

⁴⁸ 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=1EXZTI0_d10).

⁴⁹ PTV, *Donate*, <https://postcardstovoters.org/donate/> (“PTV, *Donate*”) (last visited Dec. 13, 2021).

⁵⁰ *Id.* (providing links to PayPal and GivingFuel payment platforms, and a mailing address for checks).

⁵¹ 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*.

1 elections.”⁵² PTV states in its Response that it received \$6,578 in 2017 and \$9,776 in 2018
2 through June.⁵³

3 **III. LEGAL ANALYSIS**

4 Consideration of the allegations initially raises issues regarding whether the underlying
5 costs incurred by volunteers and PTV are contributions or expenditures — specifically whether
6 volunteers’ payments for postage and materials constituted contributions and whether PTV’s
7 payments for its online organizing of volunteers’ offline activity were contributions or
8 expenditures or instead exempt uncompensated internet activity. The allegation that PTV was a
9 political committee depends to a degree on whether volunteers’ payments were contributions
10 made to PTV or candidates and their committees, whether payments for postcards were for
11 “coordinated communications” and thus in-kind contributions, and an analysis of PTV’s federal
12 versus nonfederal activity. The Complaint’s allegation that candidates and their committees
13 failed to report contributions from PTV also turns on whether volunteers or PTV made
14 contributions to candidates and their committees. Finally, whether payments for the volunteers’
15 handmade postcards were for “coordinated communications,” as well as whether the postcards
16 required disclaimers, hinges on whether the postcards were “public communications” under the
17 Act and Commission regulations. For the reasons set forth below, the Commission exercises its
18 prosecutorial discretion and dismisses the matter.

⁵² PTV Resp. at 9.

⁵³ *Id.* It is unclear whether the figures in PTV’s Response include both direct donations and sale proceeds.

1 **A. Allegation that Volunteers’ Payments for Materials and Postage Are**
 2 **“Contributions” to Candidates or Committees**

3 The Act defines a “contribution” as “any gift, subscription, loan, advance, or deposit of
 4 money or anything of value made by any person for the purpose of influencing any election for
 5 Federal office.”⁵⁴ Any expenditure made by a person in cooperation, consultation, or concert,
 6 with, or at the request or suggestion of, a candidate or his or her authorized political committee is
 7 an in-kind contribution to such candidate and is subject to the limits, prohibitions, and reporting
 8 requirements of the Act.⁵⁵ The Act specifically exempts “the value of services provided without
 9 compensation by any individual who volunteers on behalf of a candidate or political committee”
 10 from the definition of “contribution.”⁵⁶ Here, no available information suggests that the postcard
 11 writers are compensated for their time and services; the writers appear to be uncompensated
 12 volunteers engaging in grassroots activity. Thus, their services in writing the postcards do not
 13 appear to constitute contributions.

14 **B. Many of PTV’s Payments Are Likely Exempt from the Definitions of**
 15 **“Contribution” and “Expenditure” Under the Uncompensated Internet**
 16 **Activity Exemptions**

17 The Complaint alleges that PTV incurred “substantial costs” for an “extensive array of
 18 sophisticated services . . . [that] generate and distribute mass mailings” that resulted in excessive
 19 or prohibited in-kind contributions from PTV to candidates.⁵⁷ PTV responds, *inter alia*, that it

⁵⁴ 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).

⁵⁵ 52 U.S.C. § 30116; *see also* 11 C.F.R. § 109.20(b); 11 C.F.R. § 109.21.

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

⁵⁷ 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, the

1 neither provides services to “campaigns” nor “incur[s] ‘substantial costs’” and that its activity
2 does not result in the making of contributions or expenditures under the exemptions for
3 uncompensated internet activity set out at 11 C.F.R. §§ 100.94 and 100.155.⁵⁸

4 “When an individual or a group of individuals, acting independently or in coordination
5 with any candidate, authorized committees, or political party committee, engages in Internet
6 activities for the purpose of influencing a Federal election, neither . . . [t]he individual’s
7 uncompensated personal services related to such Internet activities [nor] [t]he individual’s use of
8 equipment or services for uncompensated Internet activities, regardless of who owns the
9 equipment and services” is a contribution or expenditure “by that individual or that group of
10 individuals.”⁵⁹ “Internet activities,” for purposes of the exemptions, includes, but is not limited
11 to, “[s]ending or forwarding electronic messages; providing a hyperlink or other direct access to
12 another person’s Web site; blogging; creating, maintaining, or hosting a Web site,” and “any
13 other form of communication distributed over the Internet.”⁶⁰ “Equipment and services”
14 includes, but is not limited to, “[c]omputers, software, Internet domain names, Internet Service

Commission dismisses the allegations that PTV made excessive and prohibited contributions in violation of 52 U.S.C. §§ 30116 and 30118.

⁵⁸ PTV Resp. at 6-7; *see also* Hiral for Congress Resp. at 6.

⁵⁹ 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 postcards writers before organizing PTV into an LLC).

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

1 Providers (ISP), and any other technology that is used to provide access to or use of the
2 Internet.”⁶¹

3 Nothing in the available record contradicts PTV’s assertion that the organizing team is
4 uncompensated and that PTV has no paid staff.⁶² Because PTV and its organizing team appear
5 to be uncompensated, the regulatory exemptions for uncompensated internet activities appear to
6 apply to much of PTV’s activity. Additionally, any costs PTV incurs in transmitting links with
7 addresses and talking points to volunteers via email or Facebook messenger⁶³ also appear
8 exempt as costs for equipment and services used to engage in “Internet activities.”

9 PTV acknowledges receiving \$16,354 in donations “to offset its technology costs,”
10 though it is not clear whether all PTV overhead and administrative costs, for “technology” or
11 otherwise, are for “equipment and services” to engage in “Internet activities” as defined in the
12 regulations. For example, although PTV claims that it “engages exclusively in activities over the
13 internet to facilitate the volunteer political activity of other uncompensated volunteers,” it
14 appears that PTV’s activity in support of volunteers’ postcard-based GOTV effort has both
15 internet (*e.g.*, address distribution via email to volunteers) and non-internet (*e.g.*, contact via text
16 message) components. Still, the Commission has no information indicating that PTV received
17 more than \$16,354 in total donations.

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

⁶² PTV Resp. at 1-2, 7.

⁶³ 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. *Id.* at 9. PTV argues that the SMTP messages are not “general public political advertising” or “public communications.” *Id.* at 6, n.18.

1 **C. Allegation that PTV is a Political Committee**

2 Political committees must, *inter alia*, register with the Commission and file periodic
 3 disclosure reports.⁶⁴ The Act defines a “political committee” as “any committee, club,
 4 association, or other group of persons which receives contributions aggregating in excess of
 5 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000
 6 during a calendar year.”⁶⁵ Under the Act as construed by the Supreme Court in *Buckley v.*
 7 *Valeo*,⁶⁶ an organization that is not controlled by a candidate must register as a political
 8 committee only if (1) it crosses the \$1,000 threshold and (2) it has as its “major purpose” the
 9 nomination or election of federal candidates.⁶⁷

10 1. Statutory Threshold

11 The Complaint alleges three ways in which PTV received contributions or made
 12 expenditures aggregating in excess of \$1,000.⁶⁸

13 First, the Complaint alleges that PTV has received more than \$1,000 in contributions
 14 because PTV “explicitly solicits contributions”⁶⁹ on its website, maintains an “expansive scope
 15 of [] operations and activities,” and has “establish[ed] . . . accounts to accept donated funds.”⁷⁰

⁶⁴ See 52 U.S.C. §§ 30102-04 (setting out organization, registration, and reporting obligations of political committees).

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

⁶⁶ 424 U.S. 1 (1976).

⁶⁷ *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).

⁶⁸ Compl. at 2-3.

⁶⁹ Compl. at 2.

⁷⁰ *Id.*

1 PTV acknowledges that it accepted \$16,354 from 2017 to June 2018.⁷¹ The PTV “Donate” page
2 suggests supporters “tip” or “sponsor” “Abby.”⁷² The PTV “Donate” page does not use the term
3 “contribution.” The record contains no information that any person gave PTV funds to influence
4 a *federal* election rather than a state or local election.

5 Second, the Complaint alleges that the volunteers’ payments for materials and postage
6 represent in-kind contributions to PTV from the volunteers. PTV is not organized as a political
7 committee itself, and the record contains no information that PTV engaged in activity other than
8 that associated with its support of postcard writing.⁷³

9 Third, citing references to PTV’s “interactive texting service,” “commercial Help Desk,”
10 and “commercial business intelligence package,” the Complaint alleges that PTV has either
11 received in-kind contributions from vendors (who provided goods or services for free or below
12 market value) or that PTV has made expenditures.⁷⁴ As analyzed above, it appears that PTV’s
13 costs for equipment and services for volunteer internet activities are neither “contributions” nor
14 “expenditures” under the Act.⁷⁵

⁷¹ PTV Resp. at 9; *see also* PTV, *Donate*.

⁷² 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).

⁷³ In particular, PTV recruits and screens volunteers, who must register with PTV to use Abby; transmits to volunteers addresses and talking points, which PTV represents are approved by candidates and their committees; and instructs volunteers on preparing and disseminating postcards. However, PTV does not appear to review postcard content, ask that PTV be identified on postcards, or confirm that volunteers actually send postcards.

⁷⁴ Compl. at 3.

⁷⁵ *See supra* III.B.

1 2. Major Purpose

2 Even if the statutory threshold is met, an organization that is not controlled by a candidate
3 must only register as a political committee if it has as its “major purpose” the nomination or
4 election of federal candidates.⁷⁶ The available information does not sufficiently indicate whether
5 PTV’s major purpose is the nomination or election of federal candidates.

6 To determine an entity’s “major purpose,” the Commission considers a group’s “overall
7 conduct,” including, among other factors, public statements about its mission, organizational
8 documents, government filings (*e.g.*, IRS notices), and the proportion of spending related to
9 “Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).”⁷⁷ The
10 Commission has stated that it compares how much of an organization’s spending is for “*federal*
11 *campaign activity*” relative to “activities that [a]re not campaign related.”⁷⁸

12 PTV acknowledges that it seeks to help the election of Democratic candidates through
13 GOTV efforts, but it denies that its major purpose is the nomination or election of federal
14 candidates.⁷⁹ PTV appears to have supported hundreds of GOTV efforts for candidates for local,
15 state, and federal candidates (as well as ballot and other initiatives). But the available
16 information does not include the number of addresses that PTV has disseminated in each race,
17 whether volunteers disseminated postcards to all the addresses that PTV transmitted, or how
18 much volunteers spent on particular races.

⁷⁶ *See Buckley v. Valeo*, 424 U.S. at 80.

⁷⁷ Supplemental E&J, 72 Fed. Reg. at 5597, 5605.

⁷⁸ *Id.* at 5597, 5605-06.

⁷⁹ PTV Resp. at 1, 10.

1 **D. Allegation that Candidate Committees May Have Failed to Report Itemized**
2 **and Unitemized Contributions from PTV or Volunteer Postcard Writers**

3 Committees' disclosure reports must include the identification of each person who makes
4 a contribution or contributions that have an aggregate amount or value of \$200 during an
5 election, in the case of an authorized committee of a federal candidate, together with the date and
6 amount of any such contribution.⁸⁰ Disclosure reports must also include the total amount of all
7 receipts and the total amount of all contributions from persons other than political committees.⁸¹

8 The Complaint alleges that Hiral for Congress, and other benefiting candidates and
9 committees, failed to disclose contributions received from PTV.⁸² But the current record does
10 not provide a basis to determine the total equipment and overhead costs, if any, that PTV
11 incurred for non-internet activities that may constitute contributions or expenditures. And no
12 specific information currently indicates whether any individual volunteer contributed more than
13 \$200 to any respondent committee.

14 **E. Allegation that Volunteer Writers' Postcards Required Disclaimers**

15 All public communications made by a political committee and all public communications
16 made by any person that expressly advocate the election or defeat of a clearly identified
17 candidate are required to include a disclaimer identifying who paid for the communication and

⁸⁰ 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).

⁸¹ See 52 U.S.C. § 30104(b)(2)(A).

⁸² 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.

1 whether the communication was authorized by a candidate.⁸³ The definition of “public
2 communication” includes a “mass mailing,” and a “mass mailing” is defined as a mailing “of
3 more than 500 pieces of mail matter of an identical or substantially similar nature within any 30
4 day period.”⁸⁴ Commission regulations state that “substantially similar” includes
5 “communications that include substantially the same template or language, but vary in non-
6 material respects such as communications customized by the recipient’s name, occupation, or
7 geographic location.”⁸⁵

8 The available information suggests that, in connection with some elections, volunteers
9 may have mailed at least 500 postcards and that those postcards likely included a candidate’s
10 name, office sought, election date, that the candidate was a Democrat, and “one required
11 sentence.”⁸⁶ Nonetheless, it appears that volunteers had discretion in preparing the postcards,
12 which included putting talking points into their own words and using or developing their own
13 templates. Moreover, while the Complaint and PTV website include images of some postcards,
14 none of the examples show that a particular template was reproduced over 500 times.⁸⁷

⁸³ 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).

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

⁸⁵ 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”).

⁸⁶ Two Broads Talking Politics at 32-34:00.

⁸⁷ *See* Compl., Exs. B (depicting the back of one postcard) & D (purporting to depict ten non-uniform postcards).

1 **IV. THE COMMISSION EXERCISES ITS PROSECUTORIAL DISCRETION TO**
2 **DISMISS THE COMPLAINT**

3 PTV organizes, at a large scale, what can be considered to be highly de-centralized
4 grassroots GOTV activity using internet technology. Conducting an investigation in a manner
5 that seeks information from PTV's volunteers would not only be administratively challenging
6 but also represent a potential intrusion on the individual grassroots volunteers who used online
7 communications tools and as to whom the Commission does not here analyze a theory of direct
8 liability. As the Commission has recognized, "[t]he Internet has changed the way in which
9 individuals engage in political activity by expanding the opportunities for them to participate in
10 campaigns and grassroots activities at little or no cost and from remote locations."⁸⁸ Beyond the
11 costs for postcards and stamps incurred by individual grassroots volunteers, the Commission is
12 aware of only \$16,354 in potential donations to PTV, and it is unclear how much of this was
13 spent on federal activities. Under these circumstances, the Commission declines to investigate
14 this matter and instead exercises its prosecutorial discretion and dismisses the allegations in the
15 Complaint.⁸⁹

⁸⁸ See Internet Communications, 71 Fed. Reg. at 18,603.

⁸⁹ See *Heckler v. Chaney*, 470 U.S. 821 (1985).