



FEDERAL ELECTION COMMISSION
Washington, DC

May 11, 2021

Jefferson United, Inc.
1901 Manhattan Blvd.
Building C, Suite 203
Harvey, LA 70058

RE: MUR 7543
Jefferson United, Inc.

To Whom it May Concern:

On November 21, 2018, the Federal Election Commission notified Jefferson United, Inc. of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (“the Act”). A copy of the complaint was forwarded to Jefferson United, Inc. following its receipt.

Upon review of the allegations contained in the complaint, the Commission, on April 8, 2021, found that there is reason to believe Jefferson United, Inc. violated 52 U.S.C. §§ 30120(a) and 30104(b) or (c), and (g), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission’s findings, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel within 30 days of receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 U.S.C. § 30109(a)(4).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause

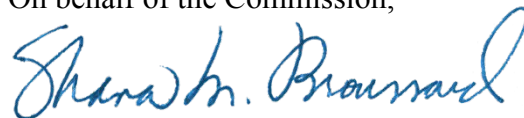
conciliation after briefs on probable cause have been delivered to the respondent. Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Don Campbell, the attorney assigned to this matter, at (202) 694-1650 or dcampbell@fec.gov.

On behalf of the Commission,



Shana M. Broussard
Chair

Enclosures
Factual and Legal Analysis
Designation of Counsel Form
Procedures

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Jefferson United, Inc.

MUR: 7543

4
 5 **I. INTRODUCTION**

6 The Complaint alleges that Jefferson United, Inc. (“Jefferson”) produced and distributed
 7 a mailer without a disclaimer advocating the defeat of Jesse Schmidt, a candidate in the 2018
 8 Primary Election for the Second Congressional District in Louisiana, in violation of 52 U.S.C.
 9 § 30120(a)(3).¹ According to the Complaint, the mailer was delivered to prospective voters
 10 starting November 2, 2018.² The mailer did not include a disclaimer, but did contain a return
 11 address of “Jefferson United,” in Harvey, Louisiana.³ Jefferson did not submit a response. The
 12 Commission’s records do not show that Jefferson United registered as a political committee or
 13 filed any independent expenditure reports, and no individuals have listed Jefferson United as an
 14 employer.⁴

15 The Schmidt mailer appears to be a public communication containing express advocacy
 16 that should have contained proper disclaimers and been reported to the Commission. Therefore,
 17 the Commission finds reason to believe that Jefferson United, Inc. violated 52 U.S.C.
 18 §§ 30120(a); 30104(b) or (c), and (g).

¹ Compl. at 1, ¶ 1-3 (November 15, 2018). Schmidt was an independent candidate for Louisiana's Second Congressional District in the U.S. House, and lost the primary election on November 6, 2018 with 8.7% of the vote.

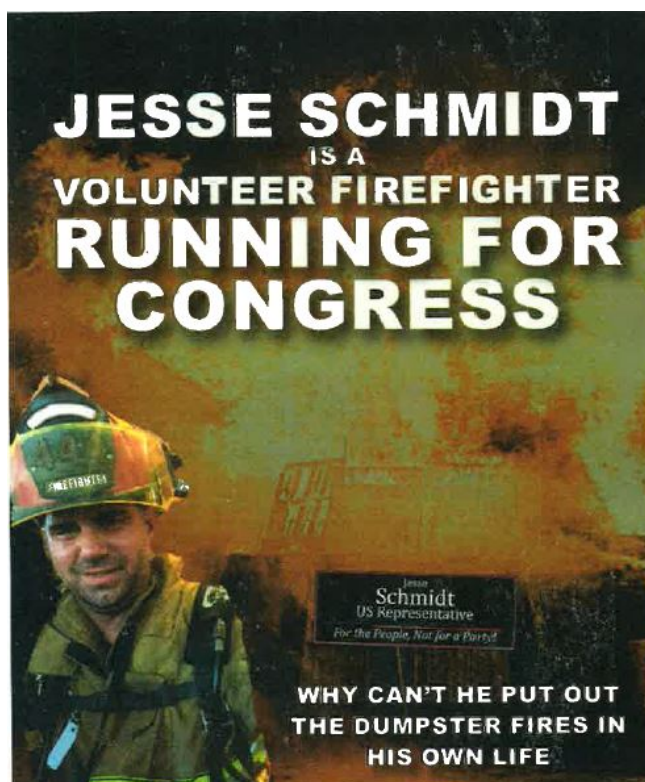
² *Id.*

³ *Id.* at 1-2.

⁴ “Jefferson United, Inc.” is registered with Louisiana Ethics Administration Program as a state Political Action Committee, and with the Louisiana Secretary of State as a Non-Profit Corporation. Jefferson has not electronically filed a state campaign finance report since 2015, but appears to still be registered. *See*: <http://www.ethics.la.gov/CampaignFinanceSearch/ViewEfiler.aspx?FilerID=PAC990365>. The most frequent expenditures in Jefferson’s most recent reports are “Canvassing,” “Election,” “Election Day,” and “Political Consultant.”

1 **II. FACTUAL BACKGROUND**

2 The Complaint alleges that beginning November 2, 2018, Jefferson produced and
 3 distributed a mailer, with no disclaimer, that specifically mentions U.S. House candidate Jesse
 4 Schmidt, and is an attempt to sway voters away from Schmidt.⁵ The front of the mailer is
 5 reproduced below:⁶



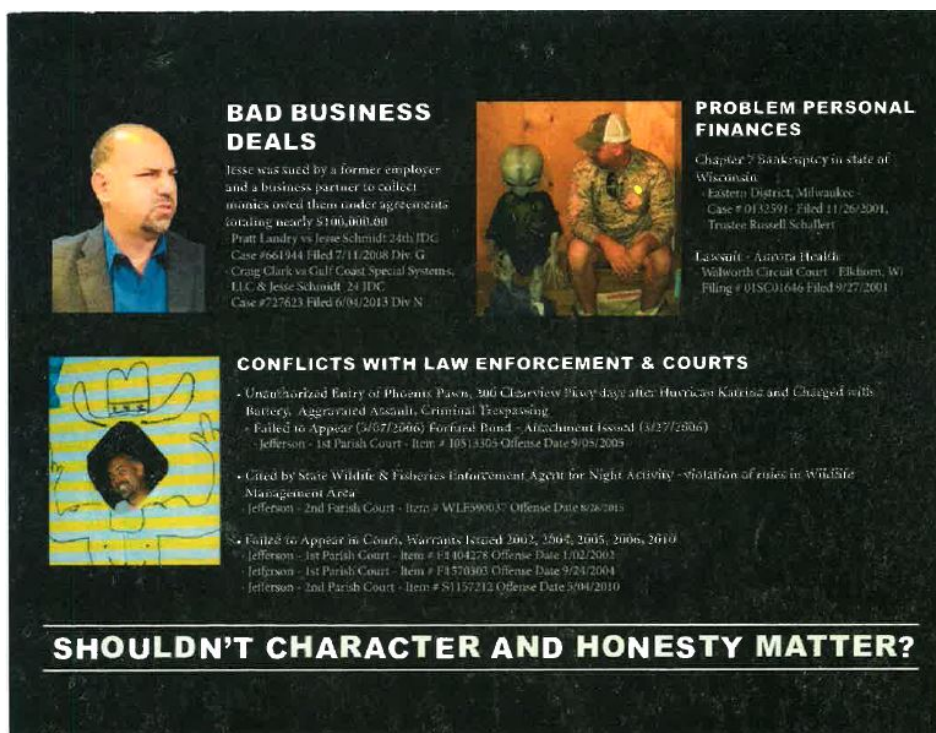
6
 7 The back of the mailer has three photos of Schmidt and lists three categories: "BAD
 8 BUSINESS DEALS," "PROBLEM PERSONAL FINANCES," and "CONFLICTS WITH LAW
 9 ENFORCEMENT & COURTS."⁷ These lists include the statements: "Jesse was sued by a
 10 former employer and a business partner to collect monies owed them under agreements totaling

⁵ Compl. at 1.

⁶ *Id.*

⁷ *Id.* at 2.

1 nearly \$100,000.00;” “Chapter 7 Bankruptcy in state of Wisconsin; Lawsuit – Aurora Health;”
 2 and “Unauthorized Entry of Phoenix Pawn, 200 Clearview Pkwy days after Hurricane Katrina
 3 and Charged with Battery, Aggravated Assault, Criminal Trespassing; Failed to Appear
 4 (3/07/2006) Forf[e]ited Bond – Attachment Issued (3/27/2006); Cited by State Wildlife &
 5 Fisheries Enforcement Agent for Night Activity – violation of rules in Wildlife Management
 6 Area; Failed to Appear in Court, Warrants Issued 2002, 2004, 2005, 2006, 2010.”⁸ The back of
 7 the mailer also states: “SHOULDN’T CHARACTER AND HONESTY MATTER?”⁹ The
 8 mailer does not contain a disclaimer, and the Complainant states that upon information and
 9 belief, the mailer was produced and distributed by Jefferson.¹⁰



10

⁸ *Id.* Each of these statements cite to corresponding court records and case numbers.

⁹ *Id.*

¹⁰ *Id.* at 1.

1 The mailer’s return address reads “Jefferson United, 1901 Manhattan, Building C, Suite
 2 203, Harvey, Louisiana 70058.”¹¹ Since the mailer does not include a disclaimer, the
 3 Complainant alleges that it violates 52 U.S.C. § 30120(a).¹²

4 **III. LEGAL ANALYSIS**

5 **A. Disclaimers**

6 The Federal Election Campaign Act of 1971, as amended (the “Act”), requires that
 7 whenever a political committee makes a disbursement for the purpose of financing any
 8 communication through any mailing, or any other type of general public political advertising,
 9 such communication must clearly state who paid for the communication.¹³ A communication
 10 authorized and paid for by a candidate, an authorized committee of a candidate, or an agent of
 11 either, must clearly state that the communication was paid for by the authorized political
 12 committee.¹⁴ A communication authorized by a candidate, an authorized committee of a
 13 candidate, or an agent of either but paid for by another person, must clearly state that the
 14 communication was paid for by such person but authorized by the political committee.¹⁵

15 The Act also requires that all public communications that expressly advocate the election

¹¹ *Id.* at 1. The postmark reads: “PRESORTED STANDARD US POSTAGE PAID KENNER, LA PERMIT NO. 39.” The delivery address contains a barcode, and the USPS code: “SCH 5-DIGIT 70053 seq 0000229 cont 000001.” It appears at least 200 copies of the mailer were distributed because the bulk mail permit imprint indicates that the mailers were sent by Standard Mail. The U.S. Postal Service (“USPS”) requires a minimum of 200 pieces or 50 pounds of mail to qualify for the Standard Mail bulk mail discount. *See* USPS, <https://pe.usps.com/businessmail101?ViewName=StandardMail>. (Last visited October 30, 2019). The Louisiana Secretary of State reports that there are 510,934 qualified voters in the second congressional district, and 248,172 votes were cast in the November 6, 2018, election. *See* “Voter Stats” at <https://voterportal.sos.la.gov/Graphical>. (Last visited October 30, 2019). Given the size of the district, it is likely that more than 500 pieces were mailed.

¹² *Id.* at 1-2. *See also* 11 C.F.R. § 110.11(b), (c)(1)-(2).

¹³ 52 U.S.C. § 30120(a).

¹⁴ 52 U.S.C. § 30120(a)(1).

¹⁵ 52 U.S.C. § 30120(a)(2); *see also* 11 C.F.R. § 110.11(b)(2).

1 or defeat of a clearly identified candidate include a disclaimer.¹⁶ “Public communications”
2 include “mass mailings,” which are mailings of more than 500 pieces of mail of an identical or
3 substantially similar nature within any 30-day period.¹⁷

4 Where required, disclaimers must be “presented in a clear and conspicuous manner, to
5 give the reader, observer, or listener adequate notice of the identity of the person or political
6 committee that paid for, and where required, that authorized the communication.”¹⁸ If a
7 communication is not authorized by a candidate’s authorized committee, it must clearly state the
8 name and permanent address, telephone number or website address of the person who paid for
9 the communication and state that the communication is not authorized by any candidate or
10 candidate’s committee.¹⁹

11 The available information indicates that the Schmidt mailer constitutes a public
12 communication. It appears professionally produced, included a USPS permit imprint, and likely
13 consisted of more than 500 pieces.²⁰ The mailer, however, does not include any disclaimers.²¹

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

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

¹⁸ 11 C.F.R. § 110.11(c). For printed communications, disclaimers must be clear and conspicuous, be of sufficient type size to be clearly readable, be contained in a printed box set apart from the other contents of the communication, and must clearly state who paid for the communication. *Id.* § 110.11(c)(2).

¹⁹ *Id.* § 110.11(b)(3).

²⁰ The Complaint does not specify the number of mailings, however, the voter turnout for the November 6, 2018, election in Louisiana’s Second Congressional District was 248,172. *See* “Voter Stats” at <https://voterportal.sos.la.gov/Graphical>.

²¹ Compl. at 1-2.

1 **The Schmidt Mailer Needed a Disclaimer because it Contained Express Advocacy**

2 Commission regulations provide that a communication expressly advocates the election
3 or defeat of a clearly identified candidate²² when it uses certain phrases or uses campaign
4 slogans or individual words, “which in context can have no other reasonable meaning than to
5 urge the election or defeat of one or more clearly identified candidate(s).”²³ Commission
6 regulations also state, a communication constitutes express advocacy if “[w]hen taken as a whole
7 and with limited reference to external events, such as the proximity to the election, [the
8 communication] could only be interpreted by a reasonable person as containing advocacy of the
9 election or defeat of one or more clearly identified candidate(s) because — (1) [t]he electoral
10 portion of the communication is unmistakable, unambiguous, and suggestive of only one
11 meaning; and (2) [r]easonable minds could not differ as to whether it encourages actions to elect
12 or defeat one or more clearly identified candidate(s) or encourages some other kind of action.”²⁴

13 Here, the mailer clearly identifies Schmidt, a federal candidate. However, the mailer
14 does not use the certain phrases, campaign slogans, or individual words that have been
15 interpreted to constitute express advocacy under 11 C.F.R. § 100.22(a). Therefore, the mailer
16 constitutes express advocacy only if the electoral portions are “unmistakable, unambiguous, and

²² The term “clearly identified” means “the candidate’s name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as ‘the President,’ ‘your Congressman,’ or the ‘the incumbent,’ or through an unambiguous reference to his or her status as a candidate such as ‘the Democratic presidential nominee’ or ‘the Republican candidate for Senate in the State of Georgia.’” 11 C.F.R. § 100.17.

²³ 11 C.F.R. § 100.22(a). The Commission explained that the phrases enumerated in 11 C.F.R. § 100.22(a), such as “vote for the President,” “Smith for Congress” and “Bill McKay in ‘94,” have no other reasonable meaning than to urge the election or defeat of a clearly identified candidate. *See Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures*, 60 Fed. Reg. 35,292, 35,294 (July 6, 1995) (“Express Advocacy E&J”); *see also FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 249 (1986) (a communication is express advocacy when “it provides, in effect, an explicit directive” to vote for the named candidates).

²⁴ 11 C.F.R. § 100.22(b).

1 suggestive of only one meaning,” and if the messages could only be interpreted by a reasonable
2 mind as encouraging the defeat of Schmidt under 11 C.F.R. § 100.22(b).

3 In its explanation and justification for section 100.22(b), the Commission stated,
4 “communications discussing or commenting on a candidate’s *character, qualifications* or
5 *accomplishments* are considered express advocacy under new section 100.22(b) if, in context,
6 they can have no other reasonable meaning than to encourage actions to elect or defeat the
7 candidate in question.”²⁵ In MUR 5024R, the Commission concluded that, in context, the
8 brochures constituted express advocacy under 11 C.F.R. § 100.22(b), because the electoral
9 portions of the brochure, including the phrase “Tell Tom Kean Jr....New Jersey Needs New
10 Jersey Leaders,” were “unmistakable, unambiguous and suggestive of only one meaning” — to
11 vote against Tom Kean.²⁶ In MURs 5511/5525, the Commission concluded that attacks on John
12 Kerry’s character, fitness for public office, and capacity to lead, including phrases such as
13 “JOHN KERRY CANNOT BE TRUSTED” and “unfit for command” were “unmistakable,
14 unambiguous and suggestive of only one meaning” — and had no reasonable meaning other than
15 to encourage actions to defeat him in the upcoming election.²⁷ Similarly, in MUR 5831, the
16 Commission concluded that, in context, the ad attacking Bob Casey’s qualifications and stating
17 “Can we really risk Bob Casey learning on the job?” constituted express advocacy under 11
18 C.F.R. § 100.22(b), because the electoral portions were “unmistakable, unambiguous and
19 suggestive of only one meaning” — to vote against Bob Casey.²⁸ The Commission concluded

²⁵ Express Advocacy E&J, 60 Fed. Reg. at 35,295 (emphasis added).

²⁶ MUR 5024R (Council for Responsible Government) Factual and Legal Analysis at 14-15.

²⁷ MUR 5511/5525 (Swift Boat Veterans) Conciliation Agreement at IV.25-28.

²⁸ MUR 5831 (Softer Voices) Factual and Legal Analysis at 6-8.

1 that outside the context of the upcoming election, these advertisements were virtually
2 meaningless.²⁹

3 The available information indicates that the mailer contained express advocacy under
4 11 C.F.R. § 100.22(b) because it comments on Schmidt’s character, qualifications or
5 accomplishments and, when read in context, has no other reasonable meaning than to encourage
6 actions to defeat Schmidt. The mailer clearly identifies a federal candidate by using a photo
7 image of Schmidt, states that he is “RUNNING FOR CONGRESS,” and shows a billboard
8 image reading “Jesse Schmidt US Representative.” Further, the phrase “SHOULDN’T
9 CHARACTER AND HONESTY MATTER?” when preceded by the statements “bad business
10 deals,” “problem personal finances,” and “conflicts with law enforcement & courts,” is similar in
11 nature to “JOHN KERRY CANNOT BE TRUSTED” and “unfit for command,” phrases the
12 Commission found to have no other reasonable meaning other than to encourage Kerry’s defeat.
13 Additionally, Commission regulations specify that the “proximity to the election” is a
14 permissible external event to consider when determining whether a communication has a
15 reasonable, non-electoral meaning.³⁰ Here, the mailer was sent on November 2, 2018, four days
16 before the November 6 primary election.³¹

17 The statements in the mailer, along with its timing,³² have an unmistakable, unambiguous
18 meaning: vote against Jesse Schmidt in the upcoming election. Because the Schmidt mailer

²⁹ *Id.*

³⁰ 11 C.F.R. § 100.22(b); *FEC v. Furgatch*, 807 F.2d 857, 865 (9th Cir. 1987) (“Timing the appearance of the advertisement less than a week before the election left no doubt of the action proposed.”).

³¹ *See* Compl. at 1.

³² Commission regulations specify that the “proximity to the election” is a permissible external event to consider when determining whether a communication has a reasonable, non-electoral meaning. *See* 11 C.F.R. § 100.22(b); *Furgatch*, 807 F.2d at 865.

1 advocates the defeat of a federal candidate, it constitutes express advocacy, and should have
2 contained a disclaimer. Accordingly, the Commission finds reason to believe that Jefferson
3 United, Inc. violated 52 U.S.C. § 30120(a).

4 **B. Reporting**

5 Jefferson is registered in Louisiana as a state political action committee and as a non-
6 profit corporation; however, there is insufficient information in the record to determine whether
7 Jefferson is a federal political committee. Political committees, whether authorized by any
8 candidate or not, must disclose disbursements as part of their regular reporting to the
9 Commission.³³ Political committees that make independent expenditures, whether authorized by
10 any candidate or not, must also disclose these expenditures to the Commission as part of their
11 regular reporting.³⁴ Any person other than a political committee that makes expenditures that
12 expressly advocate the election or defeat of a federal candidate that exceed \$250 must file an
13 independent expenditure report with the Commission pursuant to 52 U.S.C. § 30104(c).³⁵
14 Additionally, political committees and other persons that make independent expenditures
15 aggregating \$1,000 or more made after the 20th day, but more than 24 hours before, the date of
16 an election, must report the expenditures by filing a 24-hour notice.³⁶

³³ 52 U.S.C. § 30104(b)(4)(G), (H)(v). An organization that is not controlled by a candidate that (1) exceeds the \$1,000 aggregate expenditure threshold and (2) it has as its “major purpose” the nomination or election of federal candidates would also have to register and file disclosure reports with the Commission.

³⁴ 52 U.S.C. § 30104(b)(4)(G), (H)(iii).

³⁵ The Act defines “independent expenditure” as “an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate; and that is not made in concert or cooperation with or at the request or suggestion of such a candidate, the candidate’s authorized political committee, or their agents, or a political party committee or its agents.” 52 U.S.C. § 30101(17).

³⁶ See 52 U.S.C. § 30104(g)(1)(A). Political committees and other persons must file 24-hour notices by 11:59 p.m. on the day following the date on which the independent expenditure communication is publicly distributed. See 11 C.F.R. §§ 104.4(c), 109.10(d).

1 The available information suggests that expenditures for the mailer likely exceeded \$250.
2 Therefore, they should have been disclosed to the Commission, either as an independent
3 expenditure or as a communication made by a political committee. Accordingly, the Commission
4 finds reason to believe that Jefferson United, Inc. violated 52 U.S.C. § 30104(b) or (c) by failing
5 to report expenditures made in connection with the mailer. Also, because the Schmidt mailer
6 appears to have been distributed on November 2, 2018,³⁷ four days before the November 6, 2018,
7 primary election, and it appears to have cost over \$1,000, a 24-hour notice may also have been
8 required.³⁸ Accordingly, the Commission finds reason to believe that Jefferson United, Inc.
9 violated 52 U.S.C. § 30104(g).

³⁷ *See* Compl. at 1.

³⁸ While the scope of the mailing is uncertain, there were 121,211 qualified voters in Louisiana's Jefferson Parish in the November 6, 2018, election. *See* "Voter Stats" at <https://voterportal.sos.la.gov/Graphical>. The mailer is marked USPS Marketing Mail as a non-automation basic 5-digit mailing, which costs a minimum of \$0.234/piece. Therefore, if Jefferson sent the mailer to each qualified voter in the parish, the postage alone would have likely cost approximately \$28,363. *See* USPS Business Price Calculator, available at <https://dbcalc.usps.com/CalculatorSetPage.aspx>.