

**FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT**

MUR 7839

DATES COMPLAINT FILED: 10/27/2020;
10/28/2020

DATE OF NOTIFICATIONS: 11/3/2020

LAST RESPONSE RECEIVED: 2/5/2021

DATE ACTIVATED: 10/7/2021

EXPIRATION OF SOL: 10/22/2025

ELECTION CYCLE: 2020

COMPLAINANTS:

Steve Daines for Montana and Lorna Kuney
in her official capacity as treasurer
National Republican Senatorial Committee

RESPONDENTS:

Westerleigh Press, Inc.
Big Sky Values (f/k/a Montanans for Bullock) and
Sue Jackson in her official capacity as treasurer
Jaime Harrison for U.S. Senate and David Adams
in his official capacity as treasurer
Northern Leadership PAC (f/k/a Dr. Al Gross for
U.S. Senate) and Jay Petterson in his official
capacity as treasurer
Unknown Respondents

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(17)(A)
52 U.S.C. § 30104(b), (c)
52 U.S.C. § 30116(a)(1)(A), (f)
52 U.S.C. § 30118(a)
52 U.S.C. § 30120
11 C.F.R. § 100.22
11 C.F.R. § 109.21
11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint alleges that Westerleigh Press, Inc., a political print and mail vendor, and
unknown Westerleigh Press customers sent anonymous mailings to voters in Montana, Alaska,

1 and South Carolina shortly before the 2020 general election that expressly advocated against the
2 Republican candidates running for Senate in those states. Specifically, the Complaint alleges
3 that the mailings lacked required disclaimers and were not reported as independent expenditures
4 in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). The
5 Complaint further alleges that the mailings may have been coordinated with the campaigns of the
6 featured candidates’ Democratic opponents, Steve Bullock, Al Gross, and Jaime Harrison and,
7 therefore, the mailings were coordinated communications that resulted in excessive, prohibited,
8 and unreported in-kind contributions.

9 Westerleigh Press denies that it paid for the mailings, asserting that it was a paid vendor
10 that acted on behalf of its customers, and that it is not required to ensure that its customers’
11 mailings have disclaimers. Further, Westerleigh Press asserts that the customers who sent the
12 mailings are not federal political committees and thus are not required to include disclaimers,
13 unless they contained express advocacy or were coordinated communications. Westerleigh Press
14 asserts that the mailings do not contain express advocacy and, to the best of its knowledge, its
15 customers did not coordinate the mailings with any political committee. Big Sky Values (f/k/a
16 Montanans for Bullock) and Sue Jackson in her official capacity as treasurer (the “Bullock
17 Committee”), Jaime Harrison for U.S. Senate and David Adams in his official capacity as
18 treasurer (the “Harrison Committee”), and Northern Leadership PAC (f/k/a Dr. Al Gross for U.S.
19 Senate) and Jay Petterson in his official capacity as treasurer (the “Gross Committee”) filed
20 separate responses asserting that the allegations are speculative, they had no involvement with
21 the mailings, and that they did not coordinate with whomever sent them.

22 As discussed below, while the mailings criticize the incumbent officeholders’ purported
23 positions on various issues, they do not appear to constitute express advocacy. Based on the

1 information from Westerleigh Press that none of the customers who paid for the mailings were
2 federal political committees and given the lack of express advocacy, there is no basis to find a
3 violation of the Act's disclaimer or independent expenditure reporting requirements. Further,
4 there is no information suggesting that the mailings were coordinated with any candidate or
5 candidate committee to have resulted in the making an in-kind contribution.

6 Accordingly, we recommend that the Commission find no reason to believe that
7 Westerleigh Press and Unknown Respondents violated 52 U.S.C. § 30120 by failing to include
8 required disclaimers. We further recommend that the Commission find no reason to believe that
9 Westerleigh Press and Unknown Respondents violated 52 U.S.C. § 30104(c) by failing to report
10 independent expenditures. Finally, we recommend that the Commission find no reason to
11 believe that Westerleigh Press and Unknown Respondents made, and the Respondent political
12 committees knowingly accepted and failed to report, excessive and prohibited in-kind corporate
13 contributions, in violation of 52 U.S.C. §§ 30104(b), 30116(a)(1)(A), (f) and 30118(a).

14 **II. FACTUAL BACKGROUND**

15 The Complaint attaches copies of five anonymous mailings it asserts were mailed to
16 voters in Montana, Alaska, and South Carolina on or about October 22, 2020, 12 days before the
17 November 2, 2020, general elections for U.S. Senate.¹ The Complaint surmises, given the use of
18 a bulk-mail permit and mail and print vendor, that more than 500 pieces were mailed in each of
19 the three states; the pre-paid postage number on the bulk mail permit indicates that the mailings

¹ Compl. at 2 (Oct. 27, 2020); Supp. Compl. at 2 (Oct. 28, 2020). Complainants do not explain how they acquired the mailings or dates of the mailings. However, it is possible that they obtained information regarding the locations of some of the mailings from the address labels. *See, e.g.*, Compl., Exs. 1, 2 (mailings containing labels addressed to individuals with Montana addresses); Supp. Compl., Ex. 4 (addressee label cut-off); Ex. 5 (addressee label crossed out). *But see id.*, Ex. 6 (no address label).

- 1 were each sent by Westerleigh Press.² The Complaint states the mailings were a “dirty trick”
 2 designed to suppress the vote for the featured Republican Party candidates by making false
 3 statements as to their policy positions.³

Mailing	Featured Candidate	Description
1	Steve Daines	The front contains Daines’s photograph with a picture of the Capitol in the background, and money floating in air around him. The text states “Steve Daines is on a government spending spree.” The back of the mail piece contains a picture of a person with his or her head lying on a desk holding up a sign reading “Help!” with money floating in air, and states: “Call Steve Daines at 202-224-2651 and tell him to stop spending our families into government debt.” The mail piece also contains a quote from Fox News, and information about the legislative bill Daines voted for. ⁴
2	Steve Daines	The front contains Daines’s photograph with money scattered behind him, and sets forth: “Even before the pandemic Steve Daines voted for over \$2 trillion in new government spending.” The back of the mail piece contains a photograph of two adults and one child with a picture of an anvil and \$19,000 printed on it. The text on the back sets forth: “Montana families are footing the bill for Steve Daines’s spending spree” along with information about the related legislative bill. The back contains the same message as the first mailing: “Call Steve Daines at 202-224-2651 and tell him to stop spending our families into government debt.” ⁵

² Compl. at 2; Supp. Compl. at 2.

³ Supp. Compl. at 2.

⁴ Compl., Ex. 1.

⁵ *Id.* at Ex. 2.

3	Dan Sullivan	The front contains a photograph of Dan Sullivan imposed over a picture of cargo crates painted with the Chinese flag, and sets forth: "Why is Dan Sullivan turning his back on Donald Trump and sticking up for China?" The back discusses Sullivan's position on trade with China, and says "Call Dan Sullivan at 202-224-2651 and tell him to start standing up to China." ⁶
4	Dan Sullivan	The images on this mail piece are identical to those of the first mail piece, except a photograph of Dan Sullivan is exchanged for Steve Daines's photograph. The front of the fourth mail piece sets forth "Dan Sullivan is on a government spending spree." The back states: "Call Dan Sullivan at 202-224-3004 and tell him to stop spending our families into government debt." The mail piece also contains a quote from Fox News, and information about the legislative bill Sullivan voted for. ⁷
5	Lindsey Graham	The front depicts various firearms and says "Lindsey Graham wants to let the government round up guns. Will they come for yours?" The back contains a photograph of an adult and a child at a firing range, and a separate photograph of Lindsey Graham. The text on the back discusses legislation regarding gun control which Graham sponsored, along with a quote from <i>The Post and Courier</i> , and sets forth "Call Lindsey Graham at 202-224-5972 and tell him to protect the Second Amendment." ⁸

1 The Complaint alleges that the mailings should have contained a disclaimer stating who
 2 paid for them and whether they were authorized by any candidate or candidate's committee.⁹
 3 The Complaint also alleges that the mailings may have been coordinated with the campaigns of
 4 the incumbents' opponents and, if so, would therefore constitute prohibited in-kind corporate
 5 contributions from Westerleigh Press or unidentified Westerleigh Press customers — depending

⁶ Supp. Compl., Ex. 4.

⁷ *Id.*, Ex. 5.

⁸ *Id.*, Ex. 6.

⁹ Compl. at 2-3; Supp. Compl. at 2-3.

on whether the mailings were paid for by Westerleigh Press or its customers — to the Harrison, Bullock, and Gross Committees.¹⁰ Alternatively, the Complaint alleges that if the mailings were not coordinated, because they contained express advocacy, they were independent expenditures and therefore Westerleigh Press or unidentified Westerleigh Press customers failed to report the independent expenditure within 24-hours.¹¹

Westerleigh Press acknowledges that it produced and disseminated the mailings but asserts that it did not pay for the mailings but rather was hired as a mail and print vendor by its paying customers, the identities of which it does not reveal.¹² Westerleigh Press submits an affidavit from its President indicating that the customers are not federal political committees.¹³ Westerleigh Press asserts that it is a vendor and is not responsible for ensuring that its printing and mailing customers have disclaimers that may be required by the Act.¹⁴ Westerleigh Press further argues, that since the mailings were not communications made by a political committee, they only required disclaimers if they contained express advocacy, but that the mailings did not contain express advocacy.¹⁵ Westerleigh Press further asserts that to its knowledge the mailings were not coordinated with any candidate or party committee.¹⁶

¹⁰ Compl. at 2-3; Supp. Compl. at 3-4. Although Westerleigh Press is a vendor, the Complaint appears to allege that Westerleigh Press may have paid for the mailings separate from or along with its unidentified customers or else was liable for the actions of its customers. *See* Supp. Compl. at 1 (“Westerleigh Press and one or more anonymous Respondents have created, paid for and disseminated false, misleading and anonymous mailers in at least two other states in violation of [the Act].”).

¹¹ Compl. at 3; Supp. Compl. at 4.

¹² Westerleigh Press Resp. at 1-2 (Feb. 5, 2021), James Glover, President, Westerleigh Press, Decl. ¶ 2 (Feb. 5, 2021).

¹³ Westerleigh Press Resp. at 1, James Glover, President, Westerleigh Press, Decl. at 3 (averring that in January 2021 he “searched the Federal Election Commission political committee on-line database and confirmed the Customers are not on the list of registered political committees”).

¹⁴ Westerleigh Press Resp. at 1.

¹⁵ *Id.* at 3-5.

¹⁶ *Id.* at 1; James Glover, President, Westerleigh Press, Decl. at 4.

The Bullock, Harrison, and Gross Committees filed separate Responses each denying any knowledge of the mailings, any involvement with their production or dissemination, and that they paid for or coordinated with anyone regarding the mailings.¹⁷ The Respondent Committees further assert that the allegations are speculative because the Complaint provides no evidence to suggest that there may have been coordination between the Committees and whoever sent the mailings.¹⁸ The Gross Committees attaches declarations from its treasurer and campaign manager, averring that Westerleigh Press is not a vendor of the committee, and that the committee had no involvement in preparing or sending the mailings.¹⁹ Similarly, the Harrison Committee asserts that Westerleigh Press is not a vendor for the committee.²⁰

III. LEGAL ANALYSIS

A. The Commission Should Find No Reason to Believe that Westerleigh Press and Unknown Respondents Violated the Disclaimer Provision of the Act

For political committees, the Act and Commission regulations require that all “public communications” must include a disclaimer.²¹ For any other person, the Act and Commission regulations require disclaimers on all public communications that expressly advocate the election or defeat of a federal candidate or that solicit any contribution, as well as on any “electioneering

¹⁷ Bullock Committee Resp. at 1 (Dec. 17, 2020); Harrison Committee Resp. at 1 (Dec. 17, 2020); Gross Committee Resp. at 1-2 (Dec. 4, 2020). On April 21, 2021, Montanans for Bullock converted from a principal campaign committee to a multi-candidate political committee and changed its name to Big Sky Values. Big Sky Values, Statement of Organization (Apr. 21, 2021). The allegations in the Complaint occurred prior to the conversion and name change. On July 22, 2021, Dr. Al Gross for U.S. Senate converted from a principal campaign committee to a multi-candidate political committee and changed its name to Northern Leadership PAC. Northern Leadership PAC, Statement of Organization (July 22, 2021). The allegations in the Complaint occurred prior to the conversion and name change.

¹⁸ Bullock Committee Resp. at 1-2; Harrison Committee Resp. at 1-2; Gross Committee Resp. at 1,3.

¹⁹ Gross Committee Resp., Ex. A, Jay Petterson Treasurer, Decl. ¶¶ 3-6, Ex. B, David Keith, Campaign Manager, Decl. ¶ 5.

²⁰ Harrison Committee Resp. at 1.

²¹ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(1).

1 communications.”²² Where required, disclaimers must be “presented in a clear and conspicuous
 2 manner, to give the reader, observer, or listener adequate notice of the identity of the person or
 3 political committee that paid for, and where required, that authorized the communication.”²³ If a
 4 communication requiring a disclaimer is not authorized by a candidate or candidate’s authorized
 5 committee, it must clearly state the name and permanent street address, telephone number, or
 6 website address of the person who paid for the communication and state that the communication
 7 is not authorized by any candidate or candidate’s committee.²⁴

8 The Complaint alleges that the five mailings at issue, described above, should have
 9 contained a disclaimer stating who paid for them and whether they were authorized by any
 10 candidate or candidate’s committee.²⁵ As explained below, there is no basis to conclude that the
 11 mailings required a disclaimer.

12 Westerleigh Press states that it did not pay for the mailings but rather sent them on behalf
 13 of its customers; the Response provides no details to identify its customers other than to state that
 14 they are not political committees.²⁶ Assuming Westerleigh Press’s representation is accurate,
 15 and we have no information to otherwise suggest that its customers were political committees,
 16 the mailings would only require disclaimers if they were “public communications” that contained
 17 express advocacy, or solicited a contribution, or were “electioneering communications.” We

²² 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a). The term “public communication” includes mass mailings, which in turn are defined as mailings “by United States mail . . . of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period.” 52 U.S.C. § 30101(22), (23); 11 C.F.R. §§ 100.26, 100.27.

²³ 11 C.F.R. § 110.11(c).

²⁴ *Id.* § 110.11(b)(3).

²⁵ Compl. at 2-3; Supp. Compl. at 2-3.

²⁶ As mentioned above, Westerleigh Press’s President avers that in January 2021 he searched the Commission’s database to determine if the customer or customers were political committees. *Supra* note 13.

1 assess that none of these categories appear to be satisfied and thus no disclaimer was required for
 2 any of the mailings.

3 At the outset, as printed material, the mailings do not satisfy the meaning of
 4 electioneering communications which includes only broadcast, cable, or satellite
 5 communications meeting certain specified requirements.²⁷ Further, the mailings do not solicit
 6 any contribution.²⁸ Thus, the analysis as to whether disclaimers were required focuses on
 7 whether the mailings were public communications that contained express advocacy.

8 As an initial matter, it appears that the mailings may be “public communications”
 9 because they were apparently “mass mailings.”²⁹ The Commission regulations define a mass
 10 mailing as “a mailing by United States mail or facsimile of more than 500 pieces of mail matter
 11 of an identical or substantially similar nature within any 30-day period.”³⁰ As indicated by the
 12 bulk mail permit appearing on each of the mailings, they were sent through the United States
 13 Post Office via a vendor, suggesting that more than 500 pieces of mail were sent.³¹

14 However, although the mailings were likely public communications, it does not appear
 15 that they contained express advocacy. Under the Commission’s regulations, a communication
 16 contains express advocacy when it uses words or phrases which in context can have no other
 17 reasonable meaning than to urge the election or defeat of one or more clearly identified
 18 candidates.³² In addition, a communication contains express advocacy if, when taken as a whole

²⁷ 52 U.S.C. § 30104(f)(3) (definition of “electioneering communication”); 11 C.F.R. § 100.29 (same).

²⁸ 11 C.F.R. § 110.11(a)(3) (requiring a disclaimer if the communication solicits any contribution).

²⁹ *Id.* § 100.26 (definition of “public communication”).

³⁰ *Id.* § 100.27 (definition of “mass mailing”).

³¹ Compl., Exs. 1, 2; Supp. Compl., Exs. 4, 5, 6.

³² 11 C.F.R. § 100.22(a); *Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976); *FEC v. Mass. Citizens for Life*, 479 U.S. 238, 249 (1986).

and with limited reference to external events, it “could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates,” because it contains an “electoral portion” that is “unmistakable, unambiguous, and suggestive of only one meaning” and “reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidates or encourages some other kind of action.”³³

Here, the mailings discuss either the candidate’s purported position on a policy or pending legislation. For instance:

- Mail piece #1: “Steve Daines is on a government spending spree.”;³⁴
- Mail piece #2: “Even before the pandemic Steve Daines voted for over \$2 trillion in new government spending Montana families are footing the bill for Steve Daine’s spending spree.”;³⁵
- Mail piece #3: “Why is Dan Sullivan turning his back on Donald Trump and sticking up for China?”;³⁶
- Mail piece #4: “Dan Sullivan is on a government spending spree.”;³⁷
- Mail piece #5 “Lindsay Graham wants to let the government round up guns. Will They come for yours?”³⁸

The exhortations in each of mailings relate to asking the person — each of the features candidates were incumbents — to change their purported policy position:

³³ 11 C.F.R. § 100.22(b).

³⁴ Compl., Ex. 1.

³⁵ *Id.*, Ex. 2.

³⁶ Supp. Compl., Ex. 4.

³⁷ *Id.*, Ex. 5.

³⁸ *Id.*, Ex. 6.

- 1 • Mail piece #1: “Call Steve Daines at 202-224-2651 and tell him to stop spending our
 2 families into government debt.”;³⁹
- 3 • Mail piece #2: “Call Steve Daines at 202-224-2651 and tell him to stop spending our
 4 families into government debt.”;⁴⁰
- 5 • Mail piece #3: “Call Dan Sullivan at 202-224-2651 and tell him to start standing up to
 6 China.”;⁴¹
- 7 • Mail piece #4: “Call Dan Sullivan at 202-224-3004 and tell him to stop spending our
 8 families into government debt.”;⁴²
- 9 • Mail piece #5 “Call Lindsey Graham at 202-224-5972 and tell him to protect the Second
 10 Amendment.”⁴³

11 Given that each of the exhortations is followed by an incumbent’s congressional phone
 12 number, the “tell him” call to action could be interpreted as a request to call and express
 13 disapproval of a vote or stance on policy. Thus, there is no express exhortation to vote against
 14 the incumbent. The mailings do not contain any reference to an election or call on the reader to
 15 take any electoral action. Although the third mailing mentions Donald J. Trump, who was at the
 16 time a presidential candidate — *i.e.*, “Why is Dan Sullivan turning his back on Donald Trump
 17 and sticking up for China?” — Trump was also the President of the United States and this could
 18 be interpreted as a call to action for Sullivan to align himself with the president’s stance on
 19 foreign policy. Thus, the mail pieces do not contain express advocacy under 100.22(a).⁴⁴

³⁹ Compl., Ex. 1.

⁴⁰ *Id.*, Ex. 2.

⁴¹ Supp. Compl., Ex. 4.

⁴² *Id.*, Ex. 5.

⁴³ *Id.*, Ex. 6.

⁴⁴ See, e.g., Factual and Legal Analysis at 5-6, MUR 6311 (Americans for Prosperity) (finding no reason to believe where ad’s exhortation “Tell [a Congressperson we] won’t forget” followed by a phone number “could be interpreted as a request to call and express disapproval of the vote”); Advisory Opinion 2012-11 at 6-7 (Free Speech) (concluding no express advocacy where an ad encouraged viewers to “call” an incumbent president to voice disapproval of his tax policy).

1 In its explanation and justification for section 100.22(b), the Commission stated,
 2 “communications discussing or commenting on a candidate’s character, qualifications or
 3 accomplishments are considered express advocacy under new section 100.22(b) if, in context,
 4 they can have no other reasonable meaning than to encourage actions to elect or defeat the
 5 candidate in question.”⁴⁵ Here, the mail pieces do not comment on the candidate’s character,
 6 qualifications or accomplishments. Moreover, they do not refer to the incumbents as candidates
 7 in a federal election and do not mention their political opponents.⁴⁶ While the mail pieces were
 8 sent twelve days before the election, the focus of the communications is on the incumbents’
 9 stances on policy or pending legislation, and the target of the advertisement is a current
 10 officeholder with the ability to effect change on the policy. Thus, the mail pieces do not appear
 11 to constitute express advocacy under 11 C.F.R. § 100.22(b).⁴⁷

12 Accordingly, because the mailings were not electioneering communications, did not
 13 solicit a contribution, and were not public communications that contained express advocacy,

⁴⁵ Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35,292, 35,295 (July 6, 1995).

⁴⁶ Factual & Legal Analysis at 5-6, MUR 5854 (The Lantern Project) (finding no express advocacy where “the overwhelming focus of the communication is on issues and [the officeholder’s] policies or positions on those issues” and the communications “lack . . . any electoral directives”); *see also* First Gen. Counsel’s Rpt. at 8-10, note 29, MURs 7536/7551 (Coalition for a Safe Secure America) (“CSSA”) (recommending that mailings disseminated close to an election which clearly identified a candidate, criticized their positions on an issue, did not contain an exhortation to vote, and advocated that the recipient call the candidate and express their opinions on the matter contained express advocacy under 11 C.F.R. § 100.22(b) because the mailings also compared that candidates’ positions to that of his or her opponent); Certification ¶ 1 (Apr. 28, 2021), MURs 7536/7551 (CSSA) (dismissing as an exercise of prosecutorial discretion pursuant to *Heckler v. Chaney*).

⁴⁷ Factual & Legal Analysis at 4-5, MUR 7150 (New Yorkers Together) (finding no reason to believe the respondent violated the disclaimer or independent expenditure reporting requirements of the Act, where the mailing included a candidate’s statements on abortion and alleged disregard for women’s health, yet did not contain express advocacy because it did not mention the candidate as a federal candidate, did not mention the federal election, and did not exhort recipients to vote for the candidate, and contained an exhortation to vote against a state candidate); Factual & Legal Analysis at 6-8, MUR 6122 (Nat’l Ass’n of Home Builders) (finding no reason to believe respondent made prohibited in-kind contribution because, on the whole, the subject mailing lacked a clear directive to take electoral action and was, therefore, not express advocacy).

1 assuming the senders were not political committees and there is no information to suggest that
 2 they were, there were no obligations for the senders to include disclaimers. Therefore, we
 3 recommend that the Commission find no reason to believe Westerleigh Press and Unknown
 4 Respondents violated 52 U.S.C. § 30120.⁴⁸

5 **B. The Commission Should Find No Reason to Believe that Westerleigh Press**
 6 **and Unknown Respondents Violated the Reporting Requirements Relating to**
 7 **Independent Expenditures**

8 The term “independent expenditure” means an expenditure by a person for a
 9 communication that expressly advocates the election or defeat of a clearly identified candidate;
 10 and that is not made in cooperation, consultation, or concert with or at the request or suggestion
 11 of such candidate, his or her authorized political committee, their agents or a political party
 12 committee or its agents.⁴⁹ Persons other than political committees who make independent
 13 expenditures aggregating more than \$250 in a calendar year must file reports of independent
 14 expenditures.⁵⁰ Political committees and other persons that make or contract to make
 15 independent expenditures after the 20th day, but more than 24 hours, before an election must
 16 disclose the activity within 24 hours each time that the expenditures aggregate \$1,000 or
 17 more.⁵¹

18 The Complaint alleges that Westerleigh Press and/or its unidentified customers, *i.e.*,
 19 whoever paid for the mailings, which were sent 12 day before the election, failed to report

⁴⁸ We note that a vendor is not liable for the disclaimer requirements of its customers. *See* 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a); Factual & Legal Analysis at 9, MUR 5158 (Brady Campaign to Prevent Gun Violence) (“[C]ommittees, not vendors, are responsible for ensuring that proper disclaimers appear on communications.”) (citing MUR 4759 (Maloof); MUR 4741 (Mary Bono Committee); MUR 3682 (Fox for Congress Committee)).

⁴⁹ 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16.

⁵⁰ 52 U.S.C. § 30104(c)(1); *see also* 11 C.F.R. §§ 104.4, 109.10(b).

⁵¹ 52 U.S.C. § 30104(g)(1); 11 C.F.R. §§ 104.4(c), 109.10(d).

independent expenditures within the required 24 hours.⁵² Regardless of whether the unidentified Westerleigh Press customers were political committees, under 52 U.S.C. § 30104(g)(1), they would still have an obligation to report independent expenditures aggregating in excess of \$1,000 within 24 hours of the expenditures. The same is true for Westerleigh Press if it were the payor. However, because we conclude that the mailings do not contain express advocacy,⁵³ they are not independent expenditures and would not be required to be reported as such. Accordingly, we recommend that the Commission find no reason to believe Westerleigh Press and Unknown Respondents violated 52 U.S.C. § 30104(c).

C. The Commission Should Find No Reason to Believe that Westerleigh Press and Unknown Respondents Made, and Respondent Committees Knowingly Accepted and Failed to Report, Excessive or Prohibited In-Kind Corporate Contributions

Political committees must report their financial activity, including their receipts and disbursements in accordance with the provisions of the Act and Commission regulations.⁵⁴ Each political committee must report the name, mailing address, occupation, and employer of any individual who contributes more than \$200 to the committee in a calendar year, along with the amount and date of the individual's contributions.⁵⁵ Among other required itemizations, the report must include the identification of each political committee making a contribution to the reporting committee together with the date and amount of the contribution.⁵⁶ Under the Act, a "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of

⁵² Compl. at 3; Supp. Compl. at 4.

⁵³ Part III.A.

⁵⁴ 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

⁵⁵ 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i).

⁵⁶ 52 U.S.C. § 30104(b)(3)(B); 11 C.F.R. § 104.3(a)(4)(ii).

value made by any person for the purpose of influencing any election for Federal office.⁵⁷ The term “anything of value” includes “all in-kind contributions.”⁵⁸ In-kind contributions include “coordinated expenditures,” that is, expenditures “made by any person in cooperation, consultation or in concert, with, or at the request or suggestion of, a candidate, his [or her] authorized committees, or their agents.”⁵⁹ A communication is coordinated and thus treated as an in-kind contribution when it is: (1) paid for by a third-party; (2) satisfies one of five content standards; and (3) satisfies one of five conduct standards.⁶⁰

The Act limits the amount an individual may contribute to a candidate’s authorized committee per election (\$2,800 during the 2020 election cycle) and limits the amount a candidate committee may contribute to another candidate committee per election (\$2,000 during the 2020 election cycle).⁶¹ Likewise, the Act prohibits any candidate or committee from knowingly accepting an excessive contribution.⁶² The Act prohibits corporations from making contributions to federal candidates, and likewise bars candidates, political committees (other than independent expenditure-only political committees and committees with hybrid accounts), and other persons, from knowingly accepting or receiving corporate contributions.⁶³

⁵⁷ 52 U.S.C. § 30101(8)(A); 11 C.F.R. § 100.52.

⁵⁸ 11 C.F.R. § 100.52(d).

⁵⁹ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20.

⁶⁰ 11 C.F.R. § 109.21(a).

⁶¹ 52 U.S.C. § 30116(a)(1)(A); *see also* 11 C.F.R. § 110.1(b); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 84 Fed. Reg. 2,504, 2,505 (Feb. 7, 2019) (adjusting certain limitations for the 2019-2020 election cycle).

⁶² 52 U.S.C. § 30116(f), *see also* 11 C.F.R. § 110.9.

⁶³ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a), (d).

1 The Complaint alleges that Westerleigh Press or Unknown Respondents may have
2 coordinated the mailings with the campaigns of the incumbents' opponents.⁶⁴ However, as
3 explained below, the Commission's coordinated communication regulation does not appear to be
4 satisfied.

5 The first prong of the coordination test, the payment prong, is satisfied because the mail
6 pieces were apparently paid for by one or more customers of Westerleigh Press.⁶⁵ As noted
7 above, the Complaint appears to suggest that Westerleigh Press itself may have also paid for the
8 mailings but Westerleigh Press denies this and states that it operated as a mail and print vendor
9 for its unidentified customers.⁶⁶

10 The second prong of the coordination test, the content prong, is satisfied because the
11 mailings appear to have been public communications, in this case, mass mailings, which refer to
12 a clearly identified Senate candidate and were publicly distributed in the clearly identified
13 candidate's jurisdiction 90 days or fewer before the general election.⁶⁷ As noted above, the
14 mailings are likely mass mailings based on the information that they were sent in bulk mail by
15 the United States Postal Service through a vendor.⁶⁸ And, according to the Complaint, the
16 mailings were sent around October 22, 2020, which is 12 days before the November 2, 2020,
17 general election in the candidates' respective jurisdictions.⁶⁹ Furthermore, each of the mailings
18 contained images of clearly identified candidates and referred to them by name.⁷⁰

⁶⁴ Compl. at 2-3; Supp. Compl. at 3-4.

⁶⁵ See 11 C.F.R. § 109.21(a)(1).

⁶⁶ *Supra* notes 10, 12 and accompanying text.

⁶⁷ See *id.* § 109.21(c)(4)(i).

⁶⁸ *Supra* note 31 and accompanying text.

⁶⁹ Compl. at 2; Supp. Compl. at 2.

⁷⁰ *Supra* pages 4-5.

1 However, there is no information satisfying the conduct prong, *i.e.*, there is nothing to
2 suggest that Westerleigh Press or its unidentified customers coordinated with the Harrison,
3 Gross, or Bullock Committees. In support of its coordination allegation, the Complaint points to
4 Westerleigh Press's website on which it "describes itself as having specialty knowledge and
5 information about 'political printing' and that 'Westerleigh Press is the nationwide leader in
6 union political print and mail,' and identifies several Democratic candidates as clients."⁷¹
7 According to the Complaint, "Westerleigh Press, as an experienced 'political printer,' is well
8 aware of the requirements of federal law regarding the inclusion of disclaimers and information
9 as to the source of payment for political mailings about federal candidates and campaigns.
10 Westerleigh Press has conspired with unknown Democratic operatives and/or committees to
11 violate federal law"⁷² Further, the Complaint relies on the fact that the Respondent
12 Committees were opponents of the incumbent candidates.⁷³

13 The Complaint does not provide any specific factual support for its general allegations
14 that the mail pieces were made at the request or suggestion of the Respondent Committees, or
15 that they had substantial discussion in or material involvement in the creation, production, or
16 distribution of the mail pieces. Further, although we do not know the identities of the
17 anonymous senders, the Respondent Committees all deny that they coordinated with anyone
18 about the mailings, and the response from the Gross Committee included a sworn declaration
19 from its campaign manager specifically denying involvement in the preparation or dissemination

⁷¹ Compl. at 1 (citing *Political Printing. Your premier union printer for all your campaign resources*, Westerleigh Press, Inc., <https://wpprinting.com/political-printing/>, (last visited Dec. 29, 2021)).

⁷² *Id.* at 1.

⁷³ Compl. at 3; Supp. Compl. at 3-4.

of the mailings.⁷⁴ Given that there is no information to satisfy the conduct prong, the mailings do not constitute coordinated communications, and thus did not constitute in-kind contributions to the Bullock, Harrison, and Gross Committees.

Therefore, we recommend that the Commission find no reason to believe that Westerleigh Press and Unknown Respondents made, and the Bullock, Harrison, and Gross Committees knowingly accepted and failed to report, excessive and prohibited in-kind corporate contributions in violation 52 U.S.C. §§ 30104(b), 30116(a)(1)(A), (f), and 30118(a).

IV. RECOMMENDATIONS

1. Find no reason to believe that Westerleigh Press, Inc., and Unknown Respondents violated 52 U.S.C. § 30120 by failing to include required disclaimers;
2. Find no reason to believe that Westerleigh Press, Inc., and Unknown Respondents violated 52 U.S.C. § 30104(c) by failing to report independent expenditures;
3. Find no reason to believe that Westerleigh Press, Inc., and Unknown Respondents made, and Big Sky Values (f/k/a Montanans for Bullock) and Sue Jackson in her official capacity as treasurer, Jaime Harrison for U.S. Senate and David Adams in his official capacity as treasurer, Northern Leadership PAC (f/k/a Dr. Al Gross for U.S. Senate) and Jay Petterson in his official capacity as treasurer knowingly accepted and failed to report, excessive and prohibited in-kind corporate contributions, in violation of 52 U.S.C. §§ 30104(b), 30116(a)(1)(A), (f) and 30118(a);
4. Approve the attached Factual and Legal Analysis;
5. Approve the appropriate letters; and
6. Close the file.

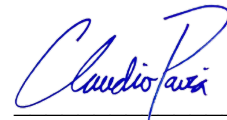
⁷⁴ Statement of Reasons, Comm'rs Mason, Sandstrom, Smith, & Thomas at 1, MUR 4960 (Clinton for U.S. Exploratory Committee) ("The Commission may find 'reason to believe' only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the [Act]."). Gross Committee Resp. at 1-2, Ex. B, David Keith, Campaign Manager, Decl. ¶ 5 (stating that he "did not have any discussions about, did not make any request or suggestion for, nor was [] involved in the preparation or dissemination of the mailer ... either with Westerleigh Press or another person or group."); Bullock Committee Resp. at 1; Harrison Committee Resp. at 1.

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10 January 4, 2022
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12 Date



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