

1 expressly advocates for the election of President Obama and the Democratic Party. *Id.* The
2 Complaint includes copies of two images that appear to be the front and back sides of a mailer.
3 *Id.* at Attach 1. One image is imprinted with the text “GOTTA VOTE!”² You can’t afford not
4 to.” This central text in large print is surrounded by phrases such as “Turnout will determine
5 this election” and “Your vote could make a difference.” *Id.* The second image contains a
6 written message stating, “Dear Voter, I support President Obama because he made it possible
7 for young people to stay on their parent’s health insurance until they are 26. Also because he
8 has cut taxes for all working Americans.” *Id.* The second image contains an unidentifiable bar
9 code and a postage stamp, but it is not signed, dated, or postmarked. *Id.*

10 Whenever any person makes a disbursement for a “public communication” that
11 expressly advocates the election or defeat of a clearly identified candidate, he or she must
12 include a disclaimer. 2 U.S.C. § 441d(a); 11 C.F.R. §§ 110.11(a)(2), (b). Public
13 communications authorized and paid for by a candidate, an authorized committee of a
14 candidate, or an agent of either, must clearly state that the communications were paid for by
15 the authorized political committee.³ 2 U.S.C. § 441d(a)(1); 11 C.F.R. § 110.11(b)(1). Public
16 communications authorized by a candidate, an authorized committee of a candidate, or an
17 agent of either but paid for by another person, must clearly state that the communications were

² During the 2012 election, Obama For America (“OFA”) launched a website that used the phrase “Gotta Vote.” See <https://web.archive.org/web/20120922011829/http://blog.gottavote.org/post/23218590555/lets-get-started>. This website contained a boxed disclaimer stating “Paid For By Obama For America.” The post card at issue in the Complaint shares the same choice of words; however the post card does not contain any of the same logos or use the same typeface as GottaVote.org. and makes no reference to the GottaVote.org website or OFA.

³ A public communication is “a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.” 2 U.S.C. § 431(22); 11 C.F.R. § 100.26. The term public communication is defined to include mass mailings. *Id.* A mass mailing, in turn, is defined as a mailing of more than 500 pieces of mail of an identical or substantially similar nature within any 30-day period. 2 U.S.C. § 431(23); 11 C.F.R. § 100.27. There is no available information as to whether the post card at issue in this matter was a mass mailing.

12 In light of the limited information available to determine whether the mailer qualified
13 as a public communication under the Act and the unlikelihood that further research or
14 investigation would decisively determine who may have been responsible for the post card, the
15 Office of General Counsel recommends that the Commission exercise its prosecutorial
16 discretion, pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985), to dismiss this matter.
17 Additionally, the Office of General Counsel recommends that the Commission approve the
18 attached Factual and Legal Analysis and the appropriate letter, and close the file.

