

October 21, 2019

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**VIA E-MAIL AND FIRST CLASS MAIL**

Eugene Scalia  
U.S. Secretary of Labor  
c/o Troy Krouse  
Investigator, Los Angeles District Office  
Office of Labor-Management Standards  
915 Wilshire Blvd., Suite 910  
Los Angeles, CA 90017

Re: Complaint Regarding the 2019 SAG-AFTRA Election

Dear Secretary Scalia:

Pursuant to 29 C.F.R. § 452.135(a), Adam Nelson hereby files this complaint with the Office of Labor-Management Standards ("OLMS") regarding the numerous violations of the requirements of Title IV of the Labor Management Reporting and Disclosure Act ("LMRDA"), Section 401 (29 U.S.C. § 481) in connection with the August 28, 2019 SAG-AFTRA National Board election (the "Election").

We represent Adam Nelson, a SAG-AFTRA (the "Union") member in good standing. Mr. Nelson timely filed two letters in protest of the Election on September 9 and 10, 2019 (individually and collectively, the "Protest Letters"), a copy of both of which are attached as Exhibit A. On October 4, 2019, the Union's National Officer Election Committee (the "Committee") reached a decision regarding Mr. Nelson's protests, finding that there were no violations of Title IV of the LMRDA (the "Decision"), a copy of which is attached as Exhibit B. The Committee was wrong in its determination that there were no violations of Title IV in the Election. Accordingly, Mr. Nelson files this timely complaint under 29 C.F.R. § 452.135(b).

In the Protest Letters, Mr. Nelson raised thirteen separate Title IV violations, some admittedly stronger and more apparent than others, but thirteen violations, each of which may have affected the outcome of the Election. In accordance with Article IV, Section G.2.i.ii.a) of the SAG-AFTRA Constitution (the "Constitution"), the Protest Letters set forth with reasonable specificity the nature of each of the alleged violations, the facts underlying them and how each may have affected the outcome of the Election.

In finding no violations of Title IV, however, the Committee conducted no substantive investigation and did not attempt to obtain evidence, whether through

testimony or documents, to ascertain any facts beyond what was in Mr. Nelson's possession or control. It also failed to conduct any hearing, even though it is authorized under the Constitution to do so. The Committee's failure to reasonably investigate any of the violations only confirm the concern expressed in the Sep. 9 Protest Letter that the Committee is indeed biased, considering that they were all selected and seated by Unite for Strength ("UFS"), Ms. Carteris' political party.

The purpose of Title IV is to ensure free and democratic elections and encourage union democracy. It, along with other provisions of the LMRDA was expressly designed "to prevent, discourage, and make unprofitable, improper conduct on the part of union officials, employers and their representatives." S.Rep. No. 187, 86th Cong., 1st Sess., reprinted in (1959) U.S. Code Cong. & Admin. News, 2318, 2321. Mr. Nelson's protest illuminates the improper conduct of the Union, Ms. Carteris and one of Ms. Carteris' employers with respect to the Election. In addition to the information contained in the Protest Letters and the exhibits attached to them, what follows is Mr. Nelson's rebuttal to the Decision regarding each of the violations.

#### **Violation No. 1. Discriminatory Performance of Videos**

Mr. Nelson protested the playing of videos in the Union's common areas, which predominantly included videos from UFS candidates, including Ms. Carteris as part of the cast of *BH90210*. Notably, however, *not one of the played videos included a MembershipFirst ("MF") candidate, including MF candidates that were union officials involved in newsworthy union activities*. No video featuring Mr. Modine, Patricia Richardson, David Jolliffe, Frances Fisher, or Jodi Long.

The Committee dismisses Mr. Nelson's protest of these videos through illogical reasoning and application of the wrong standard. First, the Committee claims that it did "not find the timing of the loop to be problematic, as the loop has consistently run since at least 2012." (Decision, p. 10). But that makes no sense. The issue is not whether there existed a loop of videos from 2012 but *whether the particular videos in the loop were timed to coincide with the Election*. This argument is analogous to claiming that a particular edition of a union newspaper could not possibly be a violation because the newspaper itself has been in circulation for decades.

Second, the Committee does not deny that Ms. Carteris is the one predominately displayed in the video loop during the period leading up to the Election, but instead argues that none of the videos promote her candidacy or denigrate any other candidates, and that all of the footage of Ms. Carteris is in the context of recent, newsworthy union activities. But that is not the standard. "Rather, its overall tone, timing and content must be evaluated to determine whether there is any blatant or subtle encouragement of the incumbents." *Donovan v. Local 719, United Auto., Aerospace & Agric. Implement Workers*, 561 F. Supp. 54, 58 (N.D. Ill. 1982) ("[I]n determining whether there has been impermissible campaign usage of

a union publication, the court must consider both direct and indirect references to candidates. To establish a violation of Section 401(g), it is not necessary that the questioned publication be totally or exclusively committed to endorsing specific candidates or attacking the opposition.”).

And that tone, timing and content can lead to the conclusion that an incumbent has used union material as a propaganda campaign tool if the incumbent’s coverage is excessive. *Donovan v. Nat’l Alliance of Postal & Fed. Emp.*, 566 F. Supp. 529, 532 (D.D.C. 1983) (“Coverage of newsworthy activities of the incumbent may be so excessive as to ‘render it campaign literature on behalf of the incumbent.’” (quoting *Camarata v. Int’l Bhd. of Teamsters*, 478 F. Supp. 321, 330 (D.D.C. 1979)); see also *United States v. Int’l Bhd. of Teamsters*, 742 F. Supp. 94, 102-03 (S.D.N.Y. 1990) (finding that the union periodical had a “fatally biased official editorial posture that may affect” the election, one of the reasons being that the union leadership had used it “as a propaganda tool for self-aggrandizement”). In fact, courts have voided an election where a union publication was used “as a campaign instrument” where it “shows excessive coverage, column-wise and pictorially” of the incumbent, and where it showed no references to the challenger’s activities as a union officer. *Yablonski v. United Mine Workers*, 305 F. Supp. 868, 874 (D.D.C. 1969) (The finding that the periodical was used as a campaign instrument of the incumbent “is made with full appreciation of the fact that [the incumbent], as the President of the [union] running for reelection, will in the nature of things be an important participant in many matters of importance to the membership and be more likely to have his participation in these matters the subject of inclusion in any report to the membership through the Journal.”)

And that is what happened with the use of the looped videos in the Union’s common area. The Union’s incumbent president, Ms. Carteris, is excessively featured in the loop of videos, while her opponent and members of her opponent’s party are categorically excluded from the videos, even though they are Union officers, board members and representatives who were engaged during that same period in newsworthy Union events. In fact, it appears that at the instruction of Ms. Carteris and her head of the Communications department, Pamela Greenwalt, MF members are categorically excluded from coverage of Union events.

For example, in February, 2019, there was a local Los Angeles march and event to help promote the Union’s position in its negotiation of a new commercials contract. When the two local Vice Presidents (who are MF members) Pat Richardson and David Jolliffe arrived, they were told that they were not allowed to address the crowd, and that only Ms. Carteris and UFS member Patrick Fabian were allowed to speak. Ms. Greenwalt, the Union’s Communications Director and UFS member, told the group that four-time Emmy Nominee and Emmy co-host Patricia Richardson wasn’t as “relevant as Patrick Fabian.” Once the march started, Ms. Carteris, Mr. Fabian and Clyde Kusatsu (all UFS members) were ushered to the front of the crowd, by the

Union Staff, headed by Ms. Greenwalt, to be positioned at the front of the march right behind the Union banner. Ms. Richardson and Mr. Jolliffe were not afforded the same accommodation. They both had to push their way to the front, to the point where Vice President Richardson stumbled and fell and broke her hip. Ms. Richardson went immediately to the Hospital via ambulance, accompanied by Mr. Jolliffe.

In another example, there is a video regarding the BBH Strike displayed as part of the digital version of the Union's 2019 Spring Edition of its magazine. Although numerous Union officers and MF members were leading this strike, only Ms. Carteris and her fellow UFS members (not officers) were featured in the video. Accordingly, these videos, like all of the discriminatory Union materials distributed by the Communications department controlled by Ms. Carteris, was used as de facto campaign literature to endorse and encourage members to re-elect Ms. Carteris in violation of Title IV.

## **Violation No. 2. Union Campaign Video**

Mr. Nelson protested the Union's use of funds and resources to help promote Ms. Carteris' campaign through the creation of a self-promoting video utilizing official Union graphics and design, as well as a Union-owned photograph of Ms. Carteris seated in the James Cagney Boardroom, conducting official Union business beneath the Union logo. Although Union videos utilizing the same graphics previously resided on YouTube, after Mr. Nelson Tweeted on July 17, 2019 that Ms. Carteris' campaign video incorporated these Union graphics, those other Union videos mysteriously disappeared from YouTube.

### *A. Graphics*

With respect to the graphics, the Committee claims that "Nelson makes no allegation that the graphics and design used in the video are trademarked by SAG-AFTRA, nor that the graphics and design were made using union computers, facilities, staff, or other resources." (Decision p. 19).

First, there is no requirement that the graphics and design are trademarked by the Union. The issue is whether the graphics and design were created by Union personnel on union time, and whether by creating the impression that the Union had created the video, the Union's goodwill was used to support Ms. Carteris's campaign. See, e.g., *McLaughlin v. Am. Fed'n of Musicians*, 700 F. Supp. 726, 736 (S.D.N.Y. 1988) (Title IV does not require an actual cash outlay to establish a violation. "[C]redit and goodwill of the union, together with the time of the union's Secretary, constitutes assets of a labor organization which cannot be used to support the candidacy of one running for union election." (quoting *Brennan v. Sindicato Empleados de Equipo Pesado, Construccion Y Ramas Anexas de Puerto Rico, Inc.*, 370 F. Supp. 872, 878 (D.P.R. 1974)).

Second, there is no way that Mr. Nelson could know *how* the video was created. His protest raised the reasonable possibility that the video was created in violation of Title IV. *It was up to the Committee to investigate how and under what circumstances the video was created.* But the Committee instead shirked its responsibility and did no investigating or hold a hearing to determine the truth. Once alerted to the reasonable possibility of a violation, the Committee cannot simply bury their heads in the sand like an ostrich and pretend that no violation had occurred.

#### *B. Use of Union Photo*

With respect to the Union-owned photograph, the Committee claims that the Union had confirmed that it did not own the photo appearing at the beginning of the video. (Decision p. 19). However, the photo is of Ms. Carteris acting in her official capacity in the James Cagney boardroom during a Union meeting. The Union *does not allow anyone to take photos in that boardroom during a Union meeting without its approval and consent.* Further, the Committee appears to have failed again to conduct any reasonable inquiry into *who* took the photo and whether it was taken with a Union camera or otherwise processed using Union equipment. Just like the graphics and design used in the video, this official-looking photo was used precisely because it gives the impression that the Union endorsed Ms. Carteris.

The Committee cites *Painters District Council 5 (DC5) of the International Union of Painters and Allied Trades* (Sep. 9, 2016), but in that case, OLMS found that a candidate had used photos of the union's president and vice-president (who were not the candidate at issue) on the candidate's website, and were taken with a personal camera, and that "[n]othing on the website created the impression that the [union] had endorsed [the candidate]." In contrast, the board meeting photo of Ms. Carteris, conducting union business where only union-approved photographs could be taken creates the impression that the Union endorsed Ms. Carteris.

#### *C. Use of Union Logo*

There can be no doubt that the Union logo is an asset of the Union. *Am. Fed'n of Musicians*, 700 F. Supp. at 736 (concluding that "in accordance with the broad interpretation given this language, that the logos do constitute money under section 401(g)"); *SAG-AFTRA New England Local* (March 9, 2018) (recognizing that the Union's logo is protected by trademark and that the Union's election policy prohibits candidates from using the logo "in a manner which would reasonably be construed as an endorsement of the Union.").

A candidate's use of a union logo constitutes a violation of Title IV when it gives the appearance of being an official statement of the union. *Sindicato Empleados*, 370 F. Supp. at 879. And that is exactly what the video does—the video opens with an official-looking photograph of Ms. Carteris performing her official responsibilities as union president in the union board room (where photographs are

not allowed to be taken absent Union consent) sitting underneath the Union logo. See *Am. Fed'n of Musicians*, 700 F. Supp. at 736 (“There are no factual circumstances regarding this letter to negate the promotional effect which was created by the use of Local 802’s logo by the President of Local 802 on this admitted campaign literature.”). Consequently, Ms. Carteris’s use of the Union logo in the video gave the appearance of being an official endorsement of the Union, thus violating Title IV.<sup>1</sup>

### Violation No. 3. Union Website Videos and Articles

Mr. Nelson protested the numerous videos and articles, including links to a podcast, appearing on the union’s website that, giving the timing and pervasiveness, effectively served to promote Ms. Carteris. “It is indeed often a fine line when the coverage of newsworthy activities of an incumbent official by a union publication becomes so excessive so as to ‘render it campaign literature on behalf of the incumbent.’” *Donovan v. Local 719*, 561 F. Supp. at 57 (quoting *Camarata*, 478 F. Supp. at 330).

The Committee concluded that there was no violation because the podcast does not mention Ms. Carteris’ candidacy and that the tone and content of the Alda podcast episode is identical to prior episodes of the podcast (Decision p. 6). But the Committee fails to consider the *timing* of the Alda episode and the circumstances surrounding the placement of the link to it on the Union’s website. See, e.g., *Reich v. Local 843 Bottle Beer Drivers, Warehousemen, Bottlers & Helpers, Int’l Bhd. of Teamsters*, 869 F. Supp. 1142, 1148 (D.N.J. 1994) (“In addition to the timing, tone, and content, courts often consider ‘the circumstances surrounding the challenged publications.’” (quoting *McLaughlin*, 700 F. Supp. at 734)).

Nor does the Committee consider the totality of the circumstances in assessing whether the placement of the podcast on the website right when the Election was announced was effectively served to promote Ms. Carteris. *Dole v. Fed’n of Postal Police Officers, Inc.*, 744 F. Supp. 413, 418 (E.D.N.Y. 1990) (“Considered under the totality of the circumstances, otherwise permissible statements may take on a different hue when viewed against the backdrop of an election campaign.”).

Mr. Nelson provided a screenshot showing that the announcement of the Election on the Union’s website was *immediately followed* by an excessively large photograph of Ms. Carteris and one of her supporters, Alan Alda, as part of a podcast series that, while possibly of interest to Union members, was not newsworthy and

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<sup>1</sup> Nothing in SAG-AFTRA New England Local (March 9, 2018) refutes that Ms. Carteris’ use of the union logo in her campaign video violated Title IV. In that case, OLMS found that a candidate’s campaign tweets, not tweets coming from the union, using the union name or logo could not “reasonably be construed as an endorsement of his candidacy or his slate by the union.”

appears to be purposely timed to the Election announcement. This is the type of subtle means of support prohibited by Title IV. *Id.* (“courts have prohibited not only explicit references to candidates but also more subtle means of support.”). While Ms. Carteris, as President, has the right to create content for the union, she cannot coordinate a campaign to inundate the union’s website with materials that promote her at the kickoff of the Election season.

#### Violation No. 4. SAG-AFTRA Magazine

Mr. Nelson protested the excessive and discriminatory coverage of Ms. Carteris in the Spring 2019 Edition of the Union’s magazine. Interestingly, the Committee does not dispute that it is Union policy to not include photographs of candidates in its magazine published during the Election, as evident by the Summer 2019 Edition of its magazine (published around August 15, half-way through the Election), which contained no photographs or articles about Ms. Carteris (other than the *Letter From the President*).<sup>2</sup> In its analysis of the Spring 2019 Edition, the Committee ignores this Union policy, fails to address the breach of its own policy with respect to the Spring 2019 Edition, and disregards how the inclusion of numerous and most likely excessive photographs and materials referencing Ms. Carteris may have constituted an implied endorsement of Ms. Carteris.

Astonishingly, the Committee concludes that “the timing of the release of the Spring 2019 issue does not raise any concerns.” (Decision p. 12). The Union published the Spring 2019 Edition in the middle of May 2019, *right before the commencement of the election*. The Committee further comments that the Spring 2019 Edition was released more than three months prior to the Election. Yet numerous courts addressing this very issue have found that union materials published well earlier than that were impermissible. See, e.g., *Guzman v. Local 32B-32J*, 1995 U.S. Dist. LEXIS 13709, \*6-\*7 (S.D.N.Y. Sep. 21, 1995) (seven month interval between the distribution of the incumbent’s literature and the election was close enough to constitute campaign literature); *New Directions v. Seda*, 867 F. Supp. 242, 245 (S.D.N.Y. 1994) (distribution of the newsletter, six months before the election, and five months before nomination ballots were circulated, was close enough to the election to conceivably influence its outcome).

The Committee then found that the tone and content of the Spring 2019 Edition was not problematic (Decision p. 12). But the Committee’s focus on the coverage of Ms. Carteris in prior editions is misplaced for two reasons. First, “otherwise permissible statements may take on a different hue when viewed against

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<sup>2</sup> The *Letter From The President* appears on page 3 of the Spring 2019 Edition, and may also constitute campaign literature in violation of Title IV, considering that in it, Ms. Carteris promotes herself as someone who fights for actors.

the backdrop of an election campaign." *Fed'n of Postal Police Officers, Inc.*, 744 F. Supp. at 418. Second, the fact that Ms. Carteris uses the Union's publicity department as her own personal propaganda tool for self-aggrandizement does not absolve the Union from providing excessive coverage of her in the Spring 2019 Edition so as to "render it campaign literature" on her behalf. See *Nat'l Alliance of Postal & Fed. Emp.*, 566 F. Supp. at 532.

Finally, the Committee points out all of the newsworthy events included in the Spring 2019 Edition involving Ms. Carteris and that the Union is not required to provide equal coverage in union publications. (Decision p. 13). But [c]overage of newsworthy activities of the incumbent may be so excessive as to 'render it campaign literature on behalf of the incumbent.'" *Id.* (quoting *Camarata*, 478 F. Supp. at 330); see also *Int'l Bhd. of Teamsters*, 742 F. Supp. at 102-03 (finding that the union periodical had a "fatally biased official editorial posture that may affect" the election). This is especially so, considering that MF candidates that were Union officials *attended those same events yet were not included, either pictorially or mentioned in the articles*, and considering that those same MF candidates/Union officials were engaged in other newsworthy events, *yet not one of those events were included in the Spring 2019 Edition*. In fact, it appears that at the instruction of Ms. Carteris and her head of the Communications department, MF members are categorically excluded from coverage of Union events.

For example, in February, 2019, there was a local Los Angeles march and event to help promote the Union's position in its negotiation of a new commercials contract. When the two local Vice Presidents (who are MF members) Pat Richardson and David Jolliffe arrived, they were told that they were not allowed to address the crowd, and that only Ms. Carteris and UFS member Patrick Fabian were allowed to speak. Ms. Greenwalt, the Union's Communications Director and UFS member, told the group that four-time Emmy Nominee and Emmy co-host Patricia Richardson wasn't as "relevant as Patrick Fabian." Once the march started, Ms. Carteris, Mr. Fabian and Clyde Kusatsu (all UFS members) were ushered to the front of the crowd, by the Union Staff, headed by Ms. Greenwalt, to be positioned at the front of the march right behind the Union banner. Ms. Richardson and Mr. Jolliffe were not afforded the same accommodation. They both had to push their way to the front, to the point where Vice President Richardson stumbled and fell and broke her hip. Ms. Richardson went immediately to the Hospital via ambulance, accompanied by Mr. Jolliffe.

In another example, there is significant coverage in the Spring 2019 Edition of the BBH Strike, including a video displayed as part of that edition's digital version. Although numerous Union officers and MF members were leading this strike, only Ms. Carteris and her fellow UFS members (not officers) were featured in the video. Further, although Ms. Richardson, a Union officer, was walking right next to the Union banner, the photo used by the Union's Communication's department appears to have cropped her out of the photo! Accordingly, the Spring 2019 Edition, like all of the

discriminatory Union materials distributed by the Communications department controlled by Ms. Carteris, was used as de facto campaign literature to endorse and encourage members to re-elect Ms. Carteris in violation of Title IV.

#### **Violation No. 5. Breach of Confidentiality**

Mr. Nelson protested the fact that Ms. Carteris campaigned used insider and highly confidential information that she was prohibited from revealing. Specifically, Ms. Carteris revealed to people unauthorized to know about the negotiations of an agreement with Netflix, including the governance department staff, the Committee and even people outside the Union (e.g., the printers of the ballots). That confidential information was an asset of the Union. "Confidential information acquired or compiled by a corporation in the course and conduct of its business is a species of property to which the corporation has the exclusive right and benefit, and which a court of equity will protect through the injunctive process or other appropriate remedy." *Carpenter v. United States*, 484 U.S. 19, 26 (1987). But assets of a labor union "cannot be used to support the candidacy of one running for union election." *Am. Fed'n of Musicians*, 700 F. Supp. at 736.

Ignoring that Ms. Carteris utilized a union asset to further her campaign, the Committee states that "there is no evidence that Carteris's reference to the Netflix agreement in her campaign statement involved an improper contribution of union or employer resources" because she "properly had access to that information." (Decision p. 17). The Committee is wrong and ignores Section 401(g). Mr. Nelson made clear that the Union's confidential information *was the union asset improperly utilized by Ms. Carteris*. The issue is not that Ms. Carteris had access to the confidential information, it is that she *improperly disclosed it*.

The Committee is also wrong in concluding that this disclosure had no impact on the Election. Had Ms. Carteris not exploited a Union asset (the confidential information about Netflix) in her campaign statement, which had to be submitted by June 28, then her campaign statement, which went out to every voting member of the Union, would not have included this information, *even though by the time the campaign statements were circulated the existence of the Netflix negotiation was no longer confidential*. Ms. Carteris' use of the union's confidential information in her campaign statement thus gave her an unfair advantage in the Election. Further, once a violation of Title IV has been shown, the existence of that violation establishes a prima facie case that the violation may have affected the outcome of the election. *Wirtz v. Hotel, Motel & Club Employees Union*, 391 U.S. 492, 506-07 (1968). The Committee presents no evidence or basis on which to overcome that presumption.

## Violation No. 6. BH90210 Promotion

Mr. Nelson protested Ms. Carteris' involvement with the TV show *BH90210*, where she was both an Executive Producer and cast member. Specifically, Mr. Nelson protested portions of *BH90210* that were effectively a blatant national commercial for her Union re-election campaign (the "Offending Episode").

Title IV precludes any employer from contributing monies or in-kind benefits to promote the candidacy of any person in an election. 29 U.S.C. § 481(g); see also C.F.R. § 452.78(a)-(b). There can be no question that FOX is an employer, and that if the Offending Episode contributed to Ms. Carteris' campaign in any way, then Section 401(g) was violated.

The Committee make several meritless arguments as to why *BH90210* does not violate Title IV. First, the Committee claims there is no issue with the timing of the Offending Episode: "Although the show aired in August 2019, production began significantly before the election." (Decision p. 15). Regardless of when production commenced, the Offending Episode aired and was viewed *during the Election*. The Committee's rationale is thus that FOX and/or Ms. Carteris had not intended the Offending Episode to affect the Election. But violations of Section 401(g) occur whether campaign contributions occur unknowingly or with good intentions. "Section 410(g) simply does not require intent or willfulness as an element of a violation." *Local 843 Bottle Beer Drivers*, 869 F. Supp. at 1151; accord *Nat'l Alliance of Postal & Fed. Emp.*, 566 F. Supp. at 532 ("[G]ood intentions will not excuse a violation of section 401(g).").

Second, the Committee claims that there "is nothing that occurs on the series that can even be remotely be considered to be promoting Carteris's candidacy." (Decision p. 15). The Committee, however, ignores that Ms. Carteris plays *herself*, as a "hard-working" and "concerned" Screen "Actors Guild" President, who has to be "impartial" and has to "protect actors." In fact, she admitted that as executive producer of *BH90210*, she had *creative control* over her character. It defies reason how her portrayal as her real life persona as the president of the "Actor's Guild," when there is *only one such guild in existence* in the U.S., where she extols her beneficent virtues in representing actors, could be construed as anything other than a blatant promotion for her campaign.

Finally, the Committee argues that there is no violation of Section 401(g) because the Offending Episode "do[] not refer to 'Gabrielle' running for union office or to an internal union election." (*Id.*). But again, the Committee has applied the wrong standard. "Rather, its overall tone, timing and content must be evaluated to determine whether there is any blatant or subtle encouragement of the incumbents." *Donovan v. Local 719*, 561 F. Supp. at 58 ("[I]n determining whether there has been impermissible campaign usage of a union publication, the court must consider both

direct and indirect references to candidates.”); see also *Int’l Bhd. of Teamsters*, 742 F. Supp. at 102-03 (finding that the periodical had a “fatally biased official editorial posture that may affect” the election, one of the reasons being that the union leadership had used it “as a propaganda tool for self-aggrandizement”).

The Committee thus failed to review the Offending Episode through the proper lens and evaluate whether under the totality of circumstances, it violated Title IV. Ms. Carteris was effectively given what amounts to a nationwide, prime time, broadcast TV ad by her employer, something that by necessity may have affected the outcome of the Election.

#### **Violation No. 7. Serving as Producer and IMDb Credits Blackout**

Mr. Nelson protested Ms. Carteris’ violation of Union rules and her attempt to hide her producer credits during the Election. While not technically a violation of Title IV in itself, these facts affect the totality of circumstances with respect to the other Title IV violations.

#### **Violation No. 8. Verbal Assault of Background Performer**

Mr. Nelson protested Ms. Carteris’ violation of Title I with respect to Ms. Carteris and other Union official’s harassment and assault of a Union member supporting an opposing candidate and preventing that Union member presenting opposing candidate campaign literature. Additionally, Section 401(c) also precludes such conduct.

The Committee disputes that there was a Title IV violation because (1) no “Union resources were used to denigrate MembershipFirst candidates” and (2) Ms. Carteris and her fellow candidates had not “acted in his or her capacity as a union official to prevent Harcharic from distributing campaign literature.” (Decision p. 21).

But Section 401(c) requires unions to provide adequate safeguards to ensure a fair election. Pursuant to this provision, the union’s actions are circumscribed by the general rule of fairness. Unions may not engage in discriminatory treatment of candidates. But that is exactly what occurred with Ms. Harcharic, who was prevented by Ms. Carteris and at least five other Union officials from supporting an opposing candidate.

When Ms. Carteris, the then-current president of the Union, along with five other Union officials, acted in concert to prevent Ms. Harcharic from distributing campaign materials, such conduct must be imputed to the Union itself under the broad reading of Section 401(c) to ensure a fair election.

### **Violation No. 9. Defamation of Matthew Modine**

Mr. Nelson protested Ms. Carteris' defamatory statements against candidate Matthew Modine. While not technically a violation of Title IV in itself, these facts affect the totality of circumstances with respect to the other Title IV violations.

### **Violation No. 10. Illegal and Unethical Electioneering**

Mr. Nelson protested a text message sent to Union members by employer Eye-Dentify, Inc. in support of Ms. Carteris' campaign (the "Text"). In addition to the Text, Ms. Fradin Tweeted and emailed Union members during the Election in support of Ms. Carteris, purporting to be speaking on behalf of 23 locals of the Union. As raised in the Protest Letters, there are several serious issues with respect to Ms. Fradin's communications, including the Text.

The Text was sent to Union members indirectly by Ms. Fradin, a Union official. Eye-Dentify obtained from Ms. Fradin a list of Union members' telephone numbers and sent each of those members the Text. The list of member's telephone numbers is an asset of the Union. But pursuant to Section 401(g), assets of a labor union "cannot be used to support the candidacy of one running for union election." *Am. Fed'n of Musicians*, 700 F. Supp. at 736. Additionally, neither the Union nor Ms. Fradin made the list of member's telephone numbers available to any other candidate, thereby violating Section 401(c). Further, Eye-Dentify, an employer, sent the Text to the Union members, in what appears to be an in-kind contribution to Ms. Carteris' campaign, thereby further violating Section 401(g) with respect to employer contributions.

Without conducting any substantive investigation, the Committee found no problem with the Text.

First, the Committee claims that "Nelson provides no evidence that the Union sent the text message at issue to members." (Decision p. 22). But that doesn't excuse Ms. Fradin, a Union official, from using a Union membership list to do so.

Second, the Committee claims that Mr. Nelson "provides no evidence indicating that Eye-Dentify is, in fact, an employer or that Fradin failed to pay for the text distribution." (*Id.*) Had the Committee done even the most rudimentary Internet search, it would have discovered that Eye-Dentify is an employer of at least two people.<sup>3</sup> But the Committee didn't need to do that, as such evidence *was included on the last page of the Exhibits to the Sep. 9, 2019 Protest Letter*. It was the Committee's responsibility to investigate the facts once a legitimate protest was raised, and it failed utterly to do that. In fact, while the Committee made the effort

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<sup>3</sup> See, e.g., <http://www.buzzfile.com/business/Eye~Dentify-Inc.-312-543-4025>.

to contact the Union, there is no indication that it sought the truth by contacting either Ms. Fradin or Eye-Dentify. As to whether Ms. Fradin failed to pay for the Text, *how would anyone other than Ms. Fradin or Eye-Dentify know that?* Again, the Committee has a duty to investigate the facts and circumstances surrounding a possible election violation.

Third, the Committee claims that Mr. Nelson “does not allege or provide evidence that the Union or any of its officers provided Fradin with the phone numbers of SAG-AFTRA members in order to distribute the text messages.” (*Id.*). To the contrary, Mr. Nelson accused Ms. Fradin to be the Union official who provided Eye-Dentify with the members’ phone numbers. The Committee refuses to answer the fundamental question: Where did Ms. Fradin obtain the list of members’ phone numbers? Again, the Committee completely failed to perform any substantive investigation—who other than Ms. Fradin would know where she obtained the list?

Fourth, the Committee theorizes that “it is not unusual for a candidate, particularly one like Fradin who has been involved in the union for decades, to have members’ phone numbers, or for a campaign to obtain personal contact information from members who sign up to receive information from the campaign.” (*Id.*). Had the Committee actually investigated the genesis of the list of members’ phone numbers instead of being willfully blind, it may have discovered that to be true, but it more likely would have discovered that Fradin, in her official capacity with the Union, obtained or had access to members’ telephone numbers, or that people who may have requested campaign information never authorized the sending of text messages to them. Paul Edney, one of the Union members who received the Text, sent to Michelle Bennett an email entitled “Possible National Election Violation” on August 1, 2019, alerting the Union of the Text and asking where Ms. Fradin got his phone number, considering that they are not friends. It appears that the Committee failed to investigate Mr. Edney’s claim as well.

#### **Violation No. 11. False Allegations Against Membership First Candidates**

Mr. Nelson protested the fact that eight union officials, including its President and Executive Vice-President (the “Officials”), engaged an attorney to send a letter to twenty Union members, threatening legal action if they did not stop from asserting that Ms. Carteris had committed election violations and breaches of her fiduciary duties to the Union.<sup>4</sup> Not only does such action violate Title I, but also Section 403(c) of Title IV.

Section 401(c) requires unions to provide adequate safeguards to ensure a fair election. Pursuant to this provision, the union’s actions are circumscribed by the general rule of fairness. Unions may not engage in discriminatory treatment of

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<sup>4</sup> The Officials had absolutely no basis to accuse *any* of these members.

candidates. The letter effectively discriminated against Ms. Carteris' opposition candidates by attempting to chill members from raising legitimate election concerns regarding Ms. Carteris' campaign.

Although the Official's attorney claimed to only be representing the Officials in their individual capacity, considering that the letter was sent on behalf of eight union officials, including its President and Executive Vice-President, the only reasonable interpretation of the letter is that the Officials, in their official capacity, were attempting to curtail the rights of other members to bring grievances to the Union's attention, which included the right to assert the legal right to sue in the event the union did not timely take appropriate action under Title V.

### **Violation No. 12. Failure to Ensure Adequate Safeguards**

Nelson protested the Union's failure to ensure adequate safeguards of the election when Union officials denied observer access to a meeting held to discuss irregularities in the ballot counting process, in violation of Section 401(c).

The Committee claims that "[t]here is no requirement that observers be allowed to observe internal Election Committee deliberations." (Decision p. 23). First, the meeting was not an *internal* Committee deliberation. The Committee does not dispute the fact that the Union's General Counsel and its Executive Director of Governance, both *not* part of the Committee, along with members of the Committee, met with an independent ballot counting company employee to discuss ballot counting irregularities. Second, Federal regulations make clear that the rights of a candidate's observer "encompasses *every phase and level of the counting and tallying process.*" 29 C.F.R. § 452.107 (emphasis added). Since the topic of the meeting was a problem with the counting of ballots, Richard Hadfield was entitled by law to observe that discussion, and the Union's exclusion of him was a violation of Section 401(c).

### **Violation No. 13. Unlawful Reprisals for Supporting MF Candidates**

Nelson protested the Union's retaliation against supporters of opposition candidate Mr. Modine. In one example, Mr. Nelson discussed the plight of Joseph Pearlman, whose classes were cancelled by the Union once he voiced support for Mr. Modine. Preliminarily, Mr. Nelson is unaware of such strict scrutiny applied by the Union to any UFS supporter. The Committee based its finding that there was no violation on a series of emails in which the Union allegedly had a concern regarding a video interview where Mr. Pearlman agreed with a student who often presents herself as a local hire so that the production doesn't not have to pay for travel.

Had the Committee conducted any substantive investigation, it would have discovered that the Union's email was pre-textual—Mr. Pearlman had not broken any rules. Specifically, if the Committee had watched the video in question or actually

spoken with Mr. Pearlman, it would have discovered that the member stated that she presents herself as a local hire *when in fact she is local to the shoot*, and that Mr. Pearlman agreed that *when the member is actually local, he/she should let the production know*. There is nothing wrong with truthfully letting a producer know about one's residency.

The Committee also fails to explain the *timing* of the Union's actions with respect to Mr. Pearlman or Ms. Barth. In yet another example, the Union pressured a local election committee member to recuse himself because he liked a post on Facebook where Mr. Modine was mentioned. We are confident that a bona fide investigation would discover countless more examples of retaliation to anyone who supported or even thought-favorably of Mr. Modine.

### Conclusion

It is disheartening that in light of these blatant election violations, the Committee has chosen to turn a blind eye to this impropriety, and instead serve as a rubber stamp on the incumbent Ms. Carteris's malfeasance. The Union is in dire need of new leadership and a thorough review by the OLMS to ensure that it is once again run for the benefit of its members.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'RE Allen', with a long horizontal flourish extending to the right.

ROBERT E. ALLEN

of GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP

# **EXHIBIT A**

**Robert E. Allen**

Partner

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September 9, 2019

**Via Email Michelle.Bennett@sagaftra.org**

Michelle Bennett

Executive Director, Governance, SAG-AFTRA

5757 Wilshire Boulevard, 7th Floor

Los Angeles, CA 90036-3600

RE: **Protest to the 2019 SAG-AFTRA Election**

Dear Ms. Bennett:

We represent Adam Nelson, a SAG-AFTRA Union member in good standing. This letter shall constitute our client's timely protest of the August 28, 2019 SAG-AFTRA National Board election.

Within fourteen (14) days following a National Board election, a member in good standing may file with the Election Committee an election protest concerning an alleged violation of the election provisions of this Constitution, the Union's election rules or applicable law. Any such protest shall set forth with reasonable specificity the nature of the alleged violation, the facts underlying it and how it may have affected the outcome of the election.

Article IV, Section G.2.i.ii.a) of the SAG-AFTRA Constitution (the "Constitution").

### **Introduction**

Despite the risk of retribution by Ms. Carteris, her associates and union staff under her control, as well as the risk to prospective work opportunities by studio personnel in league with Ms. Carteris, Mr. Nelson has agreed to protest this election. So there is no confusion as to Mr. Nelson's motives, Mr. Nelson has asked that we include his following words:

I have been a proud union member since 1987. Throughout the 2019 election, I witnessed Gabrielle Carteris commit numerous election violations during her campaign for Sag-Aftra President. I also witnessed Ms. Carteris' slander Matthew Modine, a fellow union member and friend, charging him with violating federal labor law without due process in relation to third party Public Service Announcement videos that were not contributions to his campaign. I am therefore filing this notice of protest individually (and not on behalf of, or in association with, MembershipFirst) for the national President of our union and challenge its validity.

What follows, after a preliminary discussion of concerns involving the election protest process, is a compendium of Ms. Carteris' violations, the facts underlying them and how they may have affected the outcome of the election.

### **Preliminary Concerns**

We have two preliminary concerns about the election review process.

The first is **bias**. It is our understanding that the Election Committee consists of 6 members, all of whom were selected and seated by Unite for Strength ("UFS"), Ms. Carteris' political party. In light of this fact, we request that a truly independent Election Committee be appointed to review the election violations specified in this letter, along with other violations raised by other members. We further request that all election violation reviews be conducted with the utmost transparency, including public hearings and opportunities for members to be heard, as well as conducting all deliberations in public to ensure that transparency.

The second is **timing**. Pursuant to Article IV, Section G.2.i.ii.c) of the Constitution, the Election Committee has up to 45 days to render a written decision on election protests. Such 45 day period, however, is past the date of the convention and election of new leadership. Consequently, if the Election Committee determines after the convention that there were violations that may have affected the election, it will be very costly to the union to rerun the election, reconvene the convention and reseal the elected officials. We therefore request that the Election Committee ensure that its decision occurs prior to the convention, including having the union postponing the convention until after the committee's decision and possible rerun of the election.

### **Election Violations**

#### **Violation No. 1. Discriminatory Performance of Videos**

The Ken Howard membership Center is a common area of SAG-AFTRA in Los Angeles. In that center, along with other common areas of SAG-AFTRA like the lobby, the union played certain videos during the election cycle. These videos predominantly included videos from UFS candidates, including Ms. Carteris, including a video of her not in her official capacity of the union but as part of the cast of *BH90210*. Notably, however, *not one of the played videos included a MembershipFirst ("MF") candidate*. No video featuring Mr. Modine was played, despite the fact that he was running for SAG-AFTRA President. Neither were there videos featuring current leaders such as Patricia Richardson, who was running for Los Angeles local President, David Jolliffe, who was running for Los Angeles local Vice President, Frances Fisher, who was running for National Board, nor Jodi Long, who was running for National Secretary Treasurer.

Such conduct violates several provisions of the Labor Management Reporting and Disclosure Act ("LMRDA"). First, Title I of the LMRDA guarantees each union member equal rights with respect to voting in elections and freedom of speech and assembly. 29 U.S.C. § 411(a)(1)-(2). By only playing videos of non-MF candidates, SAG-AFTRA has denied MF candidates equal rights and privileges within the union with respect to voting in elections, and

effectively denying MF candidates the right to express their views in the common areas of the union. Second, Title IV of the LMRDA precludes a union from promoting the candidacy of any person in an election, including using any money or resources to do so. 29 U.S.C. § 481(g). SAG-AFTRA selected only certain videos to play in its common areas, including videos promoting the candidacy of Ms. Carteris and other UFS candidates, but did not play videos of other candidates, most notably any video of a MF candidate. Using union resources (such as audio-visual equipment) to promote some candidates while excluding others violates Title IV. This also violates Article IV, Section A of the SAG-AFTRA Nominations and Election Policy (the “Policy”), which similarly precludes the use of union funds, resources, personnel and facilities to promote the candidacy of Ms. Carteris.

Third, pursuant to Title V of the LMRDA, union officers have a fiduciary duty to ensure that they act solely for the benefit of the union and not for personal gain. 29 U.S.C. § 501(a). To the extent Ms. Carteris or another UFS union officer, directed, encouraged or facilitated the playing of UFS videos to the exclusion of MF videos, then such union officers have breached their fiduciary duties to the union.

Once a violation of Title IV has been shown, the existence of that violation establishes a prima facie case that the violation may have affected the outcome of the election. *Wirtz v. Hotel, Motel & Club Employees Union*, 391 U.S. 492, 506-07 (1968). Further, the exclusion of videos featuring MF candidates in the union’s common areas may have affected the outcome of the election by effectively providing a union endorsement to UFS candidates, especially Ms. Carteris. Union members visiting those areas would see the UFS candidate videos and conclude that the union supports them, and by implication, that the absence of MF videos meant that the union was not supportive of those candidates. The creation of such a bias and perceived endorsement by the Union is exactly the type of conduct Titles I and IV are meant to preclude.

## **Violation No. 2. Union Campaign Videos**

Ms. Carteris directed SAG-AFTRA funds and resources to help promote her campaign through the creation of self-promoting videos and their display on YouTube. Specifically, Ms. Carteris created a video promoting her candidacy utilizing official SAG-AFTRA graphics and design, as well as union-owned photographs of her seated in the James Cagney Boardroom, conducting official union business beneath the SAG-AFTRA logo. Ms. Carteris then Tweeted to union members with a link to the YouTube video, and also made this video available on social media.

Title IV precludes union money or resources from being used to promote the candidacy of any person in an election. 29 U.S.C. § 481(g). Yet Ms. Carteris used union graphics and design, as well as a union-owned photograph in her video. Such uses give the impression that the union supports Ms. Carteris. Further, the union logo is also an asset of the union, again used to promote Ms. Carteris’ candidacy, thereby violating Section 481(g). See *McLaughlin v. American Federation of Musicians*, 700 F. Supp. 726, 736 (S.D.N.Y. 1988) (“The use of the logo . . . constituted a use of union moneys to promote Emerson's candidacy, in violation of section [481](g).”). Such conduct by Ms. Carteris and other union officials also violates Title V by using union assets for personal gain. 29 U.S.C. § 501(a).

Article IV of the Policy similarly bars the use of union funds, resources, personnel and facilities to promote the candidacy of Ms. Carteris. In fact, use of the union logo in this manner is specifically prohibited. Article IV, Section A.1.(d) of the Policy.

Once a violation of Title IV has been shown, the existence of that violation establishes a prima facie case that the violation may have affected the outcome of the election. *Wirtz*, 391 U.S. at 506-07. Further, the use of union assets in Ms. Carteris' campaign videos may have affected the outcome of the election by creating the false perception that the union was endorsing Ms. Carteris to the exclusion of other candidates.

### **Violation No. 3. Union Website Videos and Articles**

The day the 2019 SAG-AFTRA election was announced, videos and articles appeared on the union's website, promoting Ms. Carteris. First, a video entitled *Actor to Actor* featuring Ms. Carteris and her endorser, Alan Alda, appeared immediately below the election announcement on the homepage of the union's website. This video was initially posted upon the commencement of the elections, and unsurprisingly is no longer on the homepage. Second, a podcast of this video was promoted in the "News Updates" section *the same day*. While Ms. Carteris, as President, has the right to create content for the union, she cannot coordinate a campaign to inundate the union's website with materials that promote her at the kickoff of the election season.

Title IV precludes union money or resources from being used to promote the candidacy of any person in an election. 29 U.S.C. § 481(g). Yet Ms. Carteris's self-serving coordination of union resources at the commencement of the election period gave the impression that the union supports Ms. Carteris. Article IV of the Policy similarly bars the use of union funds, resources, personnel and facilities to promote the candidacy of Ms. Carteris. Such conduct also violates Title V by using union assets for personal gain. 29 U.S.C. § 501(a).

Once a violation of Title IV has been shown, the existence of that violation establishes a prima facie case that the violation may have affected the outcome of the election. *Wirtz*, 391 U.S. at 506-07. Further, Ms. Carteris' coordination of union assets at the commencement of the election may have affected the outcome of the election by creating the false perception that the union was endorsing Ms. Carteris.

### **Violation No. 4. SAG-AFTRA Magazine**

In order to maintain its neutrality in a National Election, SAG-AFTRA does not include photographs of candidates in its magazine published during the election. SAG-AFTRA complied with this policy with respect to the Summer 2019 Edition of its magazine, which was published around August 15, half-way through the election. However, SAG-AFTRA published the Spring 2019 Edition in the middle of May 2019, *right before the commencement of the election*. Unlike the Summer 2019 Edition, however, the Spring 2019 Edition is littered with a plethora of photographs of UFS candidates, including presidential candidate Ms. Carteris. See pages 18, 20, 21, 27, 32, 33, 46, 50, 57 and 60. In fact, the digital version contains a video on page 40, inclusive of interviews of three UFS candidates, Elaine Loh, Ben Whitehair and Chantal Cousineau. Notably absent from the Spring 2019 Edition is *any photograph of National Board Member and presidential candidate Mr. Modine or any other MF candidate*.

It was the Spring 2019 Edition, not the Summer 2019 Edition, that would have been on the coffee tables of SAG-AFTRA members immediately prior to and during the first half of the election. Additionally, it was the Spring 2019 Edition, not the Summer 2019 Edition, that includes the *Call to Convention* on page 8, which is headed by the newly elected president of the union, and is immediately followed by the multi-page article *Calling All Candidates* on pages 10-14, which specifically invites members to run for office.

Title IV precludes union resources from being used to promote the candidacy of any person in an election. 29 U.S.C. § 481(g). Yet the inclusion of countless photographs and video interviews of UFS candidates, including Ms. Carteris, in the Spring 2019 of the SAG-AFTRA magazine at the commencement and through the first half of the election period, *to the exclusion of other candidates including Mr. Modine and other MF candidates*, gives the impression that the union is promoting and supporting UFS candidates, including Ms. Carteris. Article IV of the Policy similarly bars the use of union funds, resources, personnel and facilities to promote the candidacy of Ms. Carteris. Such conduct by Ms. Carteris and her staff also violates Title V by using union assets for personal gain. 29 U.S.C. § 501(a).

Once a violation of Title IV has been shown, the existence of that violation establishes a prima facie case that the violation may have affected the outcome of the election. *Wirtz*, 391 U.S. at 506-07. Further, Ms. Carteris' coordination of union assets at the commencement and during the election may have affected the outcome of the election by creating the false perception that the union was endorsing Ms. Carteris and her fellow UFS candidates.

#### **Violation No. 5. Breach of Confidentiality / Amending Election Statement**

Ms. Carteris campaigned using insider and highly confidential information that she would be prohibited from revealing, and then used her current position of power to cause the facts underlying that highly confidential information to occur.

Ms. Carteris' 100 word statement is as follows (emphasis added):

GABRIELLE CARTERIS I'm asking for your vote because SAG-AFTRA has a huge impact on performers' ability to make a living and I'm experienced in making positive change for members. I led the groundbreaking Commercials negotiations, the NLRB victory during the BBH strike, and fought for industry respect for members working background. I've championed legislation to eliminate sexual harassment, ageism on IMDb, and to protect members' digital image/voice rights. ***Negotiated a direct, comprehensive agreement with Netflix that eliminates free bargaining in low budget SVOD, improves protections against outrageous exclusivity terms/options, and for the first time covers performance capture.***

This statement was utilized *three times*: (1) for President (No. 2); (2) National Board (No. 119); and (3) Los Angeles, Local Board (No. 45).

The deadline to submit election statements was *June 28*. Yet Ms. Carteris' statement reveals the strictly confidential information about a possible deal with Netflix, but makes clear that *the agreement was already done ("negotiated")*. It wasn't until *July 20* that the National Board was presented with the proposed agreement with Netflix, where it was approved. That means the people unauthorized to know about the Netflix agreement, including the governance department staff and the Elections Committee, knew from reviewing the candidate statements about the Netflix negotiation weeks before the national board, local boards, and the General Counsel. Even the printers of the ballots knew long before the membership did. There is an alternative yet equally alarming explanation—Ms. Carteris conspired with the election staff and altered her previously written statement after the July 20 board meeting. Either way, Ms. Carteris divulged confidential information about an ongoing contract negotiation, a union asset, and then used her position of power to cause it to occur, and/or utilized her position of power as President to change her statement to the detriment of all other candidates.

Additionally, based upon her statement, Ms. Carteris states that *she* personally negotiated with Netflix, and that the Negotiating Committee (the party that should have been conducting negotiations pursuant to the Constitution) had nothing to do with it. The Negotiating Committee did not negotiate the Netflix Agreement in any way. There is no way that Ms. Carteris knew, prior to June 28 when she submitted her statement, that the Netflix deal would be approved prior to a National Board vote. Further, Ms. Carteris and the National Board's failure to submit the Netflix agreement to the SAG-AFTRA membership for ratification, clearly an agreement to be "used in widespread or industry-wide application affecting a substantial portion of the membership," violates Article XI(B)(2) of the Constitution. Ms. Carteris therefore used her position of power as the union president to ramrod the Netflix agreement through without membership ratification, in violation of the Constitution, in order for its timing to personally serve her reelection campaign.

Title IV precludes union money or resources from being used to promote the candidacy of any person in an election. 29 U.S.C. § 481(g). Yet Ms. Carteris used confidential union information to promote her candidacy, information that she disclosed to unauthorized people, both inside and outside the union, for her personal gain. Alternatively, she caused union staff to change her statement after the deadline, thereby discriminating against all of the other candidates who were not allowed to do so in violation of Title I and Title V, 29 U.S.C. §§ 411(a), 481(g). Such conduct also violates Title V by using union assets and the incumbent's position for personal gain. 29 U.S.C. § 501(a).

Once a violation of Title IV has been shown, the existence of that violation establishes a prima facie case that the violation may have affected the outcome of the election. *Wirtz*, 391 U.S. at 506-07. Further, the use of confidential information in Ms. Carteris' campaign statement, her use of her position of power as the incumbent to force the Netflix deal through without Negotiating Committee input or membership referendum so that its timing would personally benefit her, may have affected the outcome of the election by creating the false impression that Ms. Carteris was acting in the best interest of union members by personally negotiating the Netflix agreement and causing it to occur before the election.

### **Violation No. 6. BH90210 Promotion**

Ms. Carteris is an Executive Producer and cast member of the new TV show, *BH90210* on FOX, portions of which she personally turned into a blatant national commercial for her SAG-AFTRA re-election campaign. First, Ms. Carteris does not reprise her role as Andrea Zuckerman on this television program. Instead, Ms. Carteris plays *herself*, and as a hard-working and concerned Screen “Actors Guild” President, who has to be “impartial” and has to “protect actors.” In fact, she admitted that as executive producer of *BH90210*, she had *creative control* over her character. She was given what amounts to a nationwide, prime time, broadcast TV ad by her employer. These episodes aired during the union’s election period while thousands of members had voting ballots in their possession. Specifically, the union mailed the ballots on July 29 and were tabulated on August 28, while *BH90210* episode 1 *The Reunion* aired August 7 and episode 2 *The Pitch* aired August 14. See <https://vimeo.com/357415861>

Title IV not only precludes the union from contributing monies or in-kind benefits to a candidate’s campaign, but also any employer from contributing monies or in-kind benefits to promote the candidacy of any person in an election. 29 U.S.C. § 481(g); *see also* C.F.R. § 452.78(a)-(b). Similarly, Article IV, Section B of the Policy provides:

No employer . . . funds, resources, personnel or facilities may be used to promote the candidacy of any person, and no candidate may receive any employer . . . contributions made to promote his or her candidacy. This prohibition includes a ban on monetary contributions and the use of a . . . employer’s stationery, equipment, facilities, personnel or other resources to promote a candidate extends to every employer, regardless of the nature of the business or whether any union represents its employees.

Here, Ms. Carteris received something of extraordinary value directly from FOX, an employer—a nationwide commercial during the election to advocate her as a legitimate protector of actors’ rights. None of her four opponents were given the same platform for nationwide self-promotion.

Once a violation of Title IV has been shown, the existence of that violation establishes a *prima facie* case that the violation may have affected the outcome of the election. *Wirtz*, 391 U.S. at 506-07. Further, FOX’s promotion of Ms. Carteris as the president of the “Actor’s Guild” through *BH90210* may have affected the outcome of the election by giving Ms. Carteris a tremendous advantage in promoting her campaign through employer contributions.

### **Violation No. 7. Serving as Producer and IMDb Credits Blackout**

Ms. Carteris sits on the Wages & Working Conditions Committee and the Negotiating Committee. The union requires all members of each of these committees to warrant and represent in writing that he/she cannot be actively producing theatrical or television programs while sitting on either of these committees. Ms. Carteris made such warranties and representations, yet during the Netflix negotiation, she violated them by executive producing *BH90210*. To hide her malfeasance, Ms. Carteris had her IMDb page hide her producing credits *prior to* the election, only to become visible again *after* the election.

Union rules prohibited Ms. Carteris from serving on the Wages & Working Conditions Committee and the Negotiating Committee while simultaneously producing *BH90210*. Her efforts to have IMDb hide her producer credits during the election confirm that she was aware of this violation and tried to cover it up. If Ms. Carteris was not on the Negotiating Committee, she would presumably not been involved in the negotiation of the Netflix agreement, the crown jewel of her re-election campaign.

Ms. Carteris' violation of union rules regarding producing may have affected the outcome of the election by allowing her to serve on the Negotiating Committee and have access to the Netflix negotiation, thus allowing her to prominently campaign on this issue. Her cover up of the evidence of her producing during the election confirms she was aware of this violation.

### **Violation No. 8. Verbal Assault of Background Performer**

On August 12, 2019 during the election campaign, Ms. Carteris, and other UFS candidates, including Bill Charleton, Ellen Crawford, Clyde Kusatsu, Chantal Courseineau and Parvesh Cheena, verbally assaulted, intimidated, harassed and prevented Linda Harcharic, a MF union member, from presenting opposing candidate campaign literature outside of the SAG-AFTRA building.

In fact, in a recent email to SAG-AFTRA National Board Members, National Executive Director David White apparently commented on Ms. Carteris' verbal assault and bullying of Ms. Harcharic:

This is unacceptable and must stop. While our union is a democracy and we fully support the right to free speech, we have an absolute zero tolerance for this kind of conduct. Bullying, harassment, and violent verbal and written attacks will not be tolerated. This is particularly the case as many of our members have faced the damaging experience of being stalked and even attacked during their careers.

Title I guarantees each union member equal rights with respect to voting in elections and freedom of speech and assembly. 29 U.S.C. § 411(a)(1)-(2). By harassing and preventing opposing candidates to freely assemble and disseminate campaign literature, Ms. Carteris, a union official, along with her UFS supporters, denied Ms. Harcharic equal rights and privileges within the union with respect to voting in elections, and denied her right to express her views in a public space in front of the SAG-AFTRA building. Additionally, pursuant to Title V, union officers have a fiduciary duty to ensure that they act solely for the benefit of the union and not for personal gain. 29 U.S.C. § 501(a). Ms. Carteris and other UFS union officers have breached their fiduciary duties to the union by verbally assaulting, intimidating, harassing and preventing a union member from freely assembling and presenting opposing candidate campaign literature during an election.

Failing to provide Ms. Harcharic the ability to distribute campaign literature in a public space in front of the SAG-AFTRA building, where other members frequently visit may have affected the outcome of the election by preventing other members from learning about viewpoints of MF candidates in opposition to UFS and Ms. Carteris. Further, for the President

and other officers of the union to create a mob and bully Ms. Harcharic is antithetical to their fiduciary duties to protect and serve *all union* members, not just those that kowtow to her.

### **Violation No. 9. Defamation of Matthew Modine**

On August 22 and 23, 2019, Ms. Carteris defamed Mr. Modine in comments to news articles, Tweets and email to all union members. In reference to public service announcements created and owned by the New York Film Academy that do not endorse or promote Mr. Modine's candidacy, Ms. Carteris commented to the *LA Times*: "These aren't just flagrant violations of our union election rules, but of federal labor law as well." After watching the videos themselves, Ms. Carteris knew or had serious doubts about the truth of her statement. Falsely accusing someone of a crime in these circumstances is libel per se. Further, Ms. Carteris and other UFS union officers emailed all of the members and, citing to another, stated "the use of the NYFA videos on Membership First's campaign website and YouTube pages— where the videos were co-branded for the slate and the school — is a 'per se violation' of federal law, using a legal term that means 'inherent' or 'automatic.'"

But Mr. Modine committed no such violation of federal labor law, as Ms. Carteris well knows. NYFA created and owns public service announcements that solely promote the importance of stunt performers, singers & dancers and background actors, not Mr. Modine's candidacy. NYFA made these PSAs available on YouTube, allowing anyone to link or embed them. While Title IV precludes any employer from contributing monies or in-kind benefits to promote the candidacy of any person in an election, these PSAs were not employer contributions to Mr. Modine's campaign. 29 U.S.C. § 481(g); *see also* C.F.R. § 452.78(a)-(b).

On the other hand, Ms. Carteris' knowingly defamatory statement breached her fiduciary duty as a union officer by falsely accusing a member of a crime for the sole purpose of gaining personal advantage in the election. 29 U.S.C. § 501(a).

Ms. Carteris' knowingly defamatory remarks against opposing candidate Mr. Modine may have affected the outcome of the election by implanting the false belief in members that Mr. Modine committed a crime.

### **Violation No. 10. Illegal and Unethical Electioneering**

Illyssa Fradin, a National Board member for the Chicago Local and UFS candidate for the 2019 Election, contracted with Eye-Dentify, Inc., an employer, to send a text blast to union members with a large photograph of Ms. Carteris and the following message "I support re-electing Gabrielle Carteris President of SAG-AFTRA." The text messages (the "Text") was from unidentified phone number (312) 543-4025, which is registered to Eye-Dentify.



The Text constitutes a violation of not only SAG-AFTRA rules on campaign literature and the LMRDA, but also of the Telephone Consumers Protection Act (“TCPA”).

First, the Text violates Article III, Section B of the Policy. This Section, entitled “Mailings of Candidate Literature,” requires candidates who want to send campaign materials to union members to make a written request to the union to send either physical or electronic mail to the membership. *Notably absent is the ability of a candidate to request telephonic or text communications.* The union then undertakes the sending of mail communications through an independent company to ensure that no candidate receives the union’s records of each member’s contact information. The Text was not sent through SAG-AFTRA’s independent company, yet MS. Fradin and/or Eye-Dentify someone obtained members’ private contact information in order to send the Text.

Further, Article III, Section B.4. of the Policy requires that all campaign materials sent to members electronically include certain information: (a) the subject line must read “SAG-AFTRA Election Campaign Literature;” (b) “All messages” must be (1) preceded by the following disclaimer: “This e-mail is not an official communication from SAG-AFTRA, and has not been transmitted at SAG-AFTRA’s expense” (the “Pre-Message Disclaimer”);” and (2) followed by the following disclaimer:

SAG-AFTRA is required by federal law to comply with all reasonable requests by candidates for union office regarding the distribution of campaign literature at the candidate’s expense. The preceding message has been prepared by the candidate and is not endorsed or reviewed by SAG-AFTRA. The candidate has not been provided with your email address and will not receive any responses. This message is being transmitted by an independent electronic communications company that has signed an agreement with SAG-AFTRA which requires the company to guarantee the confidentiality of your email address.

(the “Post-Message Disclaimer”). The Text, however, did not include an analogous subject line, did not include the Pre-Message Disclaimer nor include the Post-Message

Disclaimer. Accordingly, the Text constitutes an unauthorized distribution of campaign literature to union members that fails to comply with union Policy.

The Text also violates Article IV, Section B of the Policy, which prohibits employer funds, resources, personnel or facilities from being used to promote the candidacy of any person. This prohibition includes a ban on monetary contributions and the use of an employer's stationery, equipment, facilities, personnel or other resources regardless of the nature of the business.

Ms. Fradin engaged Eye-Dentify, an employer, to promote Ms. Carteris. Eye-Dentify utilized its services to send the Text to union members. Unless Ms. Fradin paid Eye-Dentify at the fair market value for its distribution of the Text, such distribution constitutes a prohibited employer contribution to Ms. Carteris' campaign.

Second, the Text violates the LMRDA. Title IV provides that:

Every national or international labor organization . . . and every local labor organization, and its officers, shall be under a duty, . . . to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members, and whenever such labor organizations *or its officers* authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate . . . *similar distribution* at the request of any other bona fide candidate shall be made by such labor organization and its officers, *with equal treatment as to the expense of such distribution*.

29 U.S.C. § 481(c) (emphasis added). Ms. Fradin, a National Board member of the union, authorized and facilitated the distribution of campaign materials in support of Ms. Carteris to members, but did not provide equal treatment to supporters of Mr. Modine or any of the other candidates. In fact, Ms. Fradin obfuscated her involvement by using Eye-Dentify to anonymously send the Text to members, thus preventing any other candidate or supporters of other candidates of even knowing who was distributing the Text and thereby preventing them from requesting a similar distribution.

Title IV also only precludes any employer from contributing monies or in kind benefits to promote the candidacy of any person in an election. 29 U.S.C. § 481(g); *see also* C.F.R. § 452.78(a)-(b). Here, Ms. Carteris received from Eye-Dentify a prohibited in-kind contribution to her campaign during the Election. None of her four opponents were given the same platform for self-promotion.

Pursuant to Title V, union officers have a fiduciary duty to ensure that they act solely for the benefit of the union and not for personal gain. 29 U.S.C. § 501(a). To the extent Ms. Fradin, Ms. Carteris or another union officer, directed, encouraged or facilitated the sending of the Text through access to the union's confidential records, then such union officers have breached their fiduciary duties to the union.

Third, the Text violates the TCPA. Among other things, it is unlawful under the TCPA to send a text message to a cell phone using an automated system without the

recipient's prior express consent. 47 U.S.C. § 227 *et seq.* It is highly doubtful that any of the members expressly authorized Ms. Fradin or Eye-Dentify to send the Text. Accordingly, each member who received the Text has the right to bring a private cause of action against the perpetrator and recover \$500, and if the person is on the do-not-call registry, \$1,500. *Id.* § 227(b)(3). So, for example, if Ms. Fradin caused Eye-Dentify to send the Text to 1,000 members who are on the do-not-call registry, Ms. Fradin could be liable for \$1,500,000.

Once a violation of Title IV has been shown, the existence of that violation establishes a *prima facie* case that the violation may have affected the outcome of the election. *Wirtz*, 391 U.S. at 506-07. Further, the unauthorized, discriminatory and unlawful Text may have affected the outcome of the election by providing Ms. Carteris' campaign an unfair advantage in the promotion of Ms. Carteris' candidacy.

### **Violation No. 11. False Allegations Against MembershipFirst Candidates**

On August 1, 2019, eight union officials, Ms. Carteris, Rebecca Damon, Clyde Kusatsu, Liz Zazzi, Suzanne Burkhead, Samantha Mathis, Catherine Brown and Dan Navarro ("Union Officials"), authorized their attorney, Pamela Jeffrey, to send a letter directly to twenty MF members, including Mr. Modine (the "MF Members"), threatening litigation if they did not cease and desist from asserting claims that Ms. Carteris had committed election violations and breached her fiduciary duties to SAG-AFTRA (the "Letter"). Such claims were part of a July 29, 2019 letter I had sent to SAG-AFTRA on behalf of a group of undisclosed members of the union, alerting SAG-AFTRA of election violations and breaches of fiduciary duties by candidate and current President Ms. Carteris. The Letter also falsely accused the MF Members of breaching their fiduciary duties to the union by alerting the union of these violations and breaches.

To make matters worse, at least one of the Union Officials and/or Ms. Jeffrey proceeded to leak the Letter to news publications, including trade publications *The Hollywood Reporter* and *Variety*, before or simultaneously as Ms. Jeffrey sent the letter to the MF Members.

One of the MF Members, Pamela Guest, emailed Ms. Jeffrey on August 2, 2019, alerting Ms. Jeffrey that Ms. Guest was not a party to any proposed legal action nor had any knowledge of it, and that she resented Ms. Jeffrey's implication that she was not a loyal union member. Ms. Guest demanded an apology. Instead of providing a substantive response, Ms. Jeffrey emailed Ms. Guest to alert her that she forwarded Ms. Guest's email to "her client Rebecca Damon," and that she should "direct all future communications to Ms. Damon."

First, if Ms. Jeffrey thought that any of the people she contacted directly were, in fact, represented by me, then she has violated both California and New York rules of professional conduct Rule 4.2(a) by contacting people she knew to be represented by counsel, and subjects herself to discipline by the state bar. Her failure to investigate or correct her allegations once confronted by Ms. Guest further demonstrates Ms. Jeffrey's unethical conduct.

Second, the Union Officials violated the LMRDA by authorizing Ms. Jeffrey to send the Letter. Title I prohibits a labor organization from limiting the right of any member to institute any legal action. 29 U.S.C. § 411(a)(4). Although Ms. Jeffrey claims in the Letter to only be

representing the Union Officials in their individual capacity, considering that the Letter was sent on behalf of eight union officials, including its President and Executive Vice-President, the only reasonable interpretation of the Letter is that the Union Officials, in their official capacity, were attempting to curtail the rights of other members to bring grievances to the union's attention, which included the right to assert the legal right to sue in the event the union did not timely take appropriate action under Title V.

The Union Officials, including Ms. Carteris, knowingly defamed the MF Members, including Mr. Modine, by falsely accusing them of breaching their fiduciary duties to the union. And while legal accusations in a demand letter are usually protected speech under the litigation privilege, the facts that the letter was leaked to the press prior to or simultaneously as it was sent to the MF Members, coupled with the fact that Ms. Jeffrey's sole purpose was to write the Letter and not actually potentially litigate the matters asserted, illustrate that the allegations were not made in good faith and therefore do not constitute protected speech.

Such defamation by the Union Officials, including Ms. Carteris, constitutes breaches of their fiduciary duty as a union officer by knowingly, falsely and in bad faith accusing the MF Members, including Mr. Modine, of violating Title V for the sole purpose of gaining personal advantage in the election. 29 U.S.C. § 501(a).

The Union Officials' authorization to send the Letter to the MF Members and leak to the press may have affected the outcome of the election by portraying all of the MF candidates, including Mr. Modine, as disreputable and maliciously litigious union members, when the facts point to the exact opposite—that even if the MF Members authorized my July 29 letter, alerting the union of Ms. Carteris' election violations and breaches of her fiduciary duties constitutes the fulfillment of one's fiduciary duties, not the violation of them.

## Conclusion

We continue to investigate additional elections violations by Ms. Carteris and other UFS union officials. Nevertheless, the eleven violations listed above represent significant and egregious election violations by Ms. Carteris and other UFS union officials that undoubtedly and materially affected the outcome of the 2019 Election for President of SAG-AFTRA. Accordingly, in accordance with the Constitution and the Policy, the Election for President of SAG-AFTRA must be rerun.

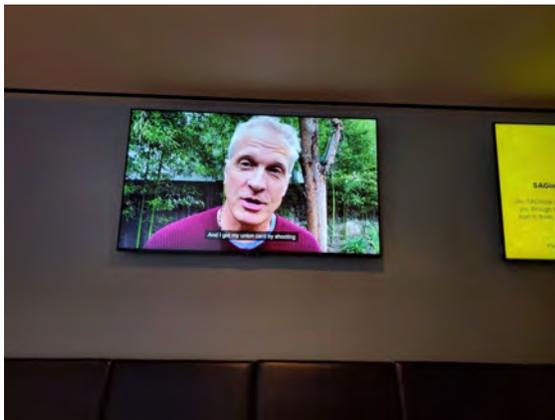
Sincerely,



Robert E. Allen

# Gabrielle Carteris Election Violations | Protest to the 2019 Sag-Aftra Election

## **Violation No. 1. Discriminatory Performance of Videos**



## Violation No. 5. Breach of Confidentiality / Amending Election Statement



**GABRIELLE CARTERIS**  
SAG-AFTRA PRESIDENT

I'm asking for your vote because SAG-AFTRA has a huge impact on performers' ability to make a living and I'm experienced in making positive change for members. I led the groundbreaking Commercials negotiations, the NLRB victory during the BBH strike, and fought for industry respect for members working background. I've championed legislation to eliminate sexual harassment, ageism on IMDb, and to protect members' digital image/voice rights. Negotiated a direct, comprehensive agreement with Netflix that eliminates free bargaining in low budget SVOD, improves protections against outrageous exclusivity terms/options, and for the first time covers performance capture.

# NETFLIX

As the president she was looped in on the negotiations; it was taken before the TV/Theatrical Negotiating Committee where it passed overwhelmingly. The enthusiastic approval of the TV/Theatrical Negotiating Committee was established well before the candidate statement deadline. Since this committee is diverse both geographically and ideologically, there was a clear indication that the National Board would acknowledge this agreement as a major achievement as well. Regardless of the outcome, our members would have been informed of this significant development.

## Violation No. 7. Serving as Producer and IMDb Credits Blackout

A screenshot of the IMDb profile for Gabrielle Carteris. The name 'Gabrielle Carteris' is at the top, with 'Actress | Soundtrack' below it. A red arrow points to the word 'Soundtrack', which is circled in red. To the right of the name is a black asterisk. Below the name is a small photo of her and a large yellow 'IMDb' logo. The bio text below reads: 'Gabrielle Carteris was born on January 2, 1961 in Scottsdale, Arizona, USA as Gabrielle Anne Carteris. She is an actress, known for Raising Cain (1992), Minority Report (2002) and The Event (2010). She has been married to Charles Isaacs since May 3, 1992. They have two children. See full bio &gt;'. At the bottom, it says 'Born: January 2, 1961 in Scottsdale, Arizona, USA' and 'More at IMDbPro &gt;'. A contact info link is also visible: 'Contact Info: View agent, publicist, legal on IMDbPro'.



# EPIISODE 1



# EPIISODE 2

IMDb Series Produced by	
Shannen Doherty	... executive producer (6 episodes, 2019)
Paul Sciarrotta	... executive producer (6 episodes, 2019)
Chris Albergini	... executive producer (1 episode, 2019)
Gabrielle Carteris	... executive producer (1 episode, 2019)



**GABRIELLE CARTERIS  
EXECUTIVE PRODUCER**

**\* 1 EPISODE?**



Cathy Krasnianski shared a link to the group: **Signatory Actors Group - News & Action Alliance.**

11 mins · 📷

Gee, look at those Executive Producer credits back up on her page, less than 48 hours after the election. 🤔



About this website

IMDB.COM

**Gabrielle Carteris - IMDb**

Gabrielle Carteris, Actress: Raising Cain. Gabrielle Carteris was born on January 2, 1961 in Scottsdale, Arizona, USA as Gabrielle Anne Ca...

👍 1

## Violation No. 8. Verbal Assault of Background Performer

On Aug 25, 2019, at 6:35 PM, Linda Harcharic <harcharic@aol.com> wrote:

My encounter with SAG-AFTRA President Gabrielle Carteris:

DATE: Monday, August 12, 2019

TIME: Approximately 10:10 AM - 11:15 AM

LOCATION: On the left side of the sidewalk that runs from the parking structure to the main building at 5757 Wilshire Blvd.,

in front and to the right side of the glass SAG-AFTRA lobby door (when facing the door)

PEOPLE IN CARTERIS' GROUP ON THE SIDEWALK ON THE LEFT SIDE OF THE SAG-AFTRA LOBBY DOOR:

Gabrielle Carteris, Bill Charleton, Ellen Crawford, Clyde Kusatsu, Chantal Cousineau, Parvesh Cheena, and at least 2 or 3 other people whose names I do not know. I think Mike Genovese and Woody Schultz were also there but I am not positive as it was such a blur after she started yelling.

PEOPLE WHO WALKED BY WHILE THIS WAS GOING ON: The conversation was so heated at the beginning that I was not aware of who was walking by, but as it quietened down, I noticed Rick Markman, Pedro Lopez, Shaan Sharma, and many others whose names I do not know go by.

Upon arriving at 5757 Wilshire and exiting the parking structure, I walked by a group of people huddled and talking in a circle (Carteris & her group) on the left side of the doors to the SAG-AFTRA lobby. They did not look toward me so I did not acknowledge them. I entered the SAG-AFTRA lobby to go to the restroom. When I exited the lobby, I stood to the right side of the lobby door in order to pass out Membership First flyers to members attending an 11 AM Ads Go Union meeting before I attended an 11:00 AM Organizing Committee Meeting. As soon as I came out of the building, Carteris stepped away from the group of people with whom she had been huddled, came directly to me, and started very loudly yelling:

- **GC: I AM SO DISAPPOINTED IN YOU. YOU ATTACKED ME ON SOCIAL MEDIA.**

**LH:** I have not attacked you. Show me one thing I have posted that is not based upon fact.

**GC: I DIDN'T SEE IT; SOMEONE TOLD ME.**

- **GC: I AM SO DISAPPOINTED IN YOU AFTER EVERYTHING I HAVE DONE FOR YOU AND BG PERFORMERS.**

**LH:** I'm disappointed in you, too. Name one thing you've done for BG performers.

**GC: YOU GUYS GOT ALL THE THINGS YOU ASKED FOR IN THE LAST TV/THEATRICAL NEGOTIATIONS AND I GOT YOU THE MUSIC VIDEO COVERAGE.**

**LH:** We got our union # added to the our vouchers which has always been true in NY and cost zero because the payroll companies used up all the old vouchers before printing up new ones with the space for the number to be added; double time after 10 instead of 12 in west coast zones which has always been the case in east coast zones and state law in CA; photo double rate increased to stand-in rate which affects very few people: CW terms and rates changed to TV/TH terms and rates which was a loss of nationwide, wall-to-wall coverage for BG Performers in order to get an extra \$30 per day for 21 BG Performers - a provision requested by the AMPTP because it saved them money - but it cost BG Performers jobs; the biggest item we wanted was additional coverage for more BG Performers and we got zero.

It was MembershipFirst BG Performers who got the coverage for 10 BG Performers under the Music Video contract, after you appointed a Music Video negotiating committee with not one BG voice on it even though we had asked to be included for the 5 years since the first contract under SAG-AFTRA was negotiated in 2012. When the committee with no BG voice was announced to be voted on in a board meeting, 3

MembershipFirst BG Performers (Ron Ostrow, Samantha Hartson, and I) all objected, and Duncan Crabtree-Ireland then said he saw no problem with putting one NON-VOTING BG voice on the committee even though the two main groups who work music videos are dancers and background performers. After initially refusing to discuss BG coverage, after I sat across the table and told the music label attorneys why BG Performers should be covered, they asked how the caps on BG coverage worked. You stopped by for 10 minutes on your way to your daughter's birthday dinner, sat across the table, said one line, and left. Yes, your one sentence helped, but you are not responsible for getting that coverage as you left us out from the beginning causing us to have to fight within our own union to get into the room, and now you are taking all the credit.

- **GC: YOU'RE WITH THOSE PEOPLE. YOU STAND WITH THOSE PEOPLE.**

**LH:** Who are you talking about? MembershipFirst? Yes, I am and do you want to know why? Because your compadres over there vote against every single thing that could help BG performers when it comes up for vote in the boardroom, and MembershipFirst votes for any improvements needed for any work constituency within the union including BG Performers. Even Ellen Crawford who chairs the Organizing Committee shoots down anything I bring up in those meetings about trying to organize LA BG for more covered spots.

- **GC: DO YOU THINK ANYTHING IS GOING TO CHANGE FOR BG PERFORMERS IF THEY GET ELECTED? NOTHING IS GOING TO CHANGE.** **LH:** I would hope a new president would set a better example for members by not executive producing a show in another country.

**GC: MATTHEW MODINE HAS PRODUCED.**

**LH:** Not while he is president of this union.

**GC: IF YOU OR MATTHEW WERE OFFERED A JOB THAT REQUIRED YOU TO FILM IN ANOTHER COUNTRY, YOU'D TAKE IT. I HAVE TO EARN HEALTH BENEFITS FOR MY FAMILY, TOO.**

**LH:** How come Peggy Lane O'Rourke who is writing, directing, & producing a series on her i-phone and has not earned a penny from it but, in fact, it has cost her money to do, was told she could not attend a W&W meeting because she is producing, but you as president are executive producing a series in another country while you're negotiating contracts for us?

**GC: DO YOU KNOW WHAT AN EXECUTIVE PRODUCER DOES? THAT TITLE ONLY GIVES ME CREATIVE CONTROL OVER MY CHARACTER - I'M THE ONE WHO DECIDED TO MAKE HER GAY - AND I HAVE NO RESPONSIBILITY OVER HIRING OR WHERE THE SHOW IS FILMED.**

- **GC: WHY DIDN'T YOU TELL THE BG PERFORMERS ABOUT THE TALKS WE'VE BEEN HAVING? (CARTERIS & WHITE HAVE HAD 2 MEETINGS WITH A FEW OF US FROM BG WHICH I REQUESTED 8/18 AND THE FIRST TALK OCCURRED 2/19 - 6 months later.)**

**LH:** We were told everything discussed there was confidential, and I don't want brought up on charges the way Jane Austin, Louis Herthum, and others have been. You know that everything in this union is confidential and the members are not allowed to know anything.

**GC: YOU COULD HAVE SAID WE WERE TALKING**

**LH:** And what would that mean - just more talk and no action.

- **GC: I SPOKE OUT FOR BG PERFORMERS AT THE SAG AWARDS.**

**LH:** No, you didn't. Mandy Moore and the lead actress from The Marvelous Mrs. Maisel thanked the BG Performers from their shows for their contributions.

**GH: I SAID WASN'T IT NICE THAT THEY WERE RECOGNIZING THE BG PERFORMERS.**

**LH:** That's not the same thing as the president of SAG-AFTRA recognizing the BG Performers who are a huge percentage of the Union population and without whom the shows cannot be made. I've never once heard you speak in a meeting of members nor have seen you say anything in print about the contributions of BG Performers. You are the highest elected leader in this Union and White is the highest hired official - you two set the tone and the example. Actually, the buck stops with you as you are White's boss. You set the tone and example, White follows, and the rest of the elected board and all the members follow the tone you set. The tone you have set is that BG are not worthy of coverage or any contractual improvements. Both you and White do this. White threw a hissy fit at the Neflix Informational meeting when a NY member asked

why this contract had nothing for BG actors. BG Actors are treated like the ugly step-children, not deserving of the attention and benefits of the other members. And, you are responsible for this. If you'd publicly say that BG Actors are an important part of this Union and put an end to the discrimination toward BG from other member work groups, you could stop this. But, you make it worse.

**GC: I THINK IT IS IMPORTANT THAT PEOPLE OWN THEIR OWN TRUTH AND THAT IS WHY WE TELL BG THESE THINGS - THAT WE'LL NEVER BE ABLE TO GET INCREASED COVERAGE FOR YOU IN NEGOTIATIONS BECAUSE THE PRODUCERS DON'T THINK YOU ARE WORTH MORE. I WASN'T AT THE NETFLIX INFORMATIONAL MEETING.**

**LH:** And, it is your responsibility as president of this union which covers BG Actors, too, to stop nodding in agreement with those producers but, instead, to stand up for and make sure the producers know the value of your BG Actor members.

At some point during this exchange, Parvesh Cheena stopped and gave GC a kiss, completely ignoring me. After he left, I asked her his name and said: He's a perfect example of your UFS cronies treatment toward anyone who is not part of UFS. Everytime I speak at the mic in a board meeting, he laughs out loud or makes a snide comment from his seat. I have never nor ever would do that to anyone else. If I had a comment to share, I'd wait until I had time at the mic. That's the respectful thing to do.

Two actresses interrupted the conversation later on to speak with GC and I did not interrupt, but when an actor (Pedro Lopez) stopped to speak with me, GC interrupted to introduce herself to him.



## Violation No. 9. Defamation of Matthew Modine

### GC COMMENT IN DEADLINE

"These aren't just flagrant violations of our union election rules, but of federal labor law as well," Carteris told the Times. "It says a lot about Mr. Modine and Membership First's poor decision-making, something we clearly can't afford in our upcoming contract negotiations."

<https://deadline.com/2019/08/sag-aftra-candidates-matthew-modine-and-gabrielle-carteris-exchange-dubious-allegations-of-federal-labor-law-violations-1202703267/>

Begin forwarded message:

**From:** "Rebecca Damon" <data-delivery@icontact.com>  
**Subject:** SAG-AFTRA Election Campaign Literature  
**Date:** August 22, 2019 at 5:18:54 PM EDT

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**To:** <caddoco@mindspring.com>  
**Reply-To:** data-delivery@icontact.com

This e-mail is not an official communication from SAG-AFTRA and has not been transmitted at SAG-AFTRA's expense.

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***If Matthew Modine broke the law in our election, does he deserve your vote?***

If you haven't voted yet, you MUST read these stories in the [Los Angeles Times](#) and [Variety](#) before mailing your ballot by this weekend's deadline. If you don't want to click through, at least read this LA Times excerpt:

Veteran labor lawyer Michael Wolly said the use of the NYFA videos on Membership First's campaign website and YouTube pages— where the videos were co-branded for the slate and the school — is a "per se violation" of federal law, using a legal term that means "inherent" or "automatic." Wolly, a union-side attorney at Zwerdling, Paul, Kahn & Wolly in Washington, D.C., added that **"the law does not allow employer funds or support to be used in a union election."**

These stories demonstrate once again that Matthew and Membership First just aren't ready to lead the world's largest entertainment union. If, as alleged, they can't follow something as clear as federal labor law – putting our union at costly risk of re-running the entire election – can you trust them to know what they are doing in hard-fought legal negotiations over our billion-dollar contracts?

That's a risk we cannot afford. The last time they tried negotiating the TV/Theatrical Contracts, their unreadiness LOST members over \$100 million in wages and benefit contributions.

We cannot afford to send inexperience and poor judgement into our crucial negotiations. The bargaining tables where SAG-AFTRA does business will punish those who aren't ready.

**I am ready.**

I'm ready because I've successfully negotiated all our major contracts, winning gains each time and bringing our member earnings to an all-time high.

I'm ready because I've sat at those bargaining tables – as president, negotiating chair, or committee member – for a decade. I'm ready to leverage that experience to get more contract gains where you need them most.

I'm ready because I know how to strategically handle challenges outside the negotiating room, like our recent strike victories over BBH and the video game industry. Wins like those don't happen by accident.

Matthew Modine has never sat at one of our bargaining tables. He's never served on a negotiating committee or ANY of our union's committees. **With our TV/Theatrical Contract negotiations just months away, his inexperience could cost us millions. He isn't ready.**

I am ready. And I would deeply appreciate your vote for me and my team so we can keep fighting for you.

Gabrielle Carteris on behalf of Camryn Manheim, Rebecca Damon and the USAN Team

**MAIL YOUR BALLOT BY AUGUST 24th!**

**New York President**

02. Rebecca Damon

**New York Vice Presidents (Vote for only these four)**

04. Liz Zazzi

06. Maureen Donnelly

07. Jim Kerr

08. Ezra Knight

**New York Local Board**

10. Rick Zahn

11. Liz Zazzi

12. Marc Baron

13. Evan Bass

14. Avis Boone

16. Christine Bruno

19. Rebecca Damon

20. Nick Fondullis

21. Janette Gautier

23. Traci Godfrey

24. Ed Heavey

25. Anita Hollander

26. Lillian Isabella

27. Phoebe Jonas

29. Verania Kenton

30. Gerald M. Kline

31. Ezra Knight

33. Elaine LeGaro

35. Adrian Martinez

36. Joseph Melendez

37. Vanessa Morales

38. Jack Mulcahy

40. Jay Potter

41. Linda Powell

43. Kevin Scullin

44. Sarah Seeds

45. leslie Shreve

50. Samantha Macivor

**National Board**

53. Liz Zazzi

55. Nitasha Bhambree

60. Rebecca Damon

62. Traci Godfrey

63. Stephen McKinley Henderson

64. Phoebe Jonas

66. Elaine LeGaro

69. John Rothman

**Convention Delegates**

75. Joan Valentina

76. Tania Villanueva

77. Rick Zahn

78. Liz Zazzi

79. Michael Arkin
80. Adam Auslander
81. Dave Bachman
82. Marc Baron
83. Evan Bass
84. Thomas J. Bellezza
85. Sandra M. Bloom
86. David Bodenschatz
87. Avis Boone
88. Jacqui Bradley
90. Christine Bruno
91. Bryan Burton
94. Athena Colon
95. Tom Crockett
96. Rebecca Damon
97. Janice Danielle
98. Raymond DeForest
99. Josh Evans
100. Venida Evans
101. Nick Fondulis
102. Erin Fritch
103. Marie Gabrielle
104. Janette Gautier
105. Andrew Gelles
107. Nancy Giles
108. Traci Godfrey
109. Stuart Green
111. Ed Heavey
112. Paul Hecht
113. Stephen McKinley Henderson
114. Anita Hollander
115. France Iann
116. Lillian Isabella
117. Phoebe Jonas
119. Vivienne Jurado
121. Verania Kenton
122. Peter Kilcommons
123. Gerald M. Kline
124. Jeff Knapp
125. Joyce Korbin
126. Ilene Kristen
128. Elaine LeGaro
130. Cathy Lilly
131. Becca Lish
132. Doug Lory
133. Michael Lorz
134. James Lurie
135. Antonia Marrero
136. Joseph Melendez
137. Vanessa Morales

- 138. Jack Mulcahy
- 139. Robert Newman
- 141. Lorna Pruce
- 142. Doryan X Robinson
- 143. Buzz Roddy
- 144. John Rothman
- 145. Nick Sakai
- 147. Kevin Scullin
- 148. Sarah Seeds
- 149. Aaron Serotsky
- 151. leslie Shreve
- 152. Alice Spivak
- 154. Nancy Sutherland
- 156. Terrence Glenn Thomas
- 157. Vanessa Thorpe
- 158. Jim Kerr
- 162. Nitasha Bhambree

SAG-AFTRA is required by federal law to comply with all reasonable requests by candidates from union office regarding the distribution of campaign literature at the candidate's expense. The preceding message has been prepared by the candidate and is not endorsed or reviewed by SAG-AFTRA. The candidate has not been provided with your email address and will not receive any responses. This message is being transmitted by an independent electronic communications company that has signed an agreement with SAG-AFTRA which requires the company to guarantee the confidentiality of your email address.

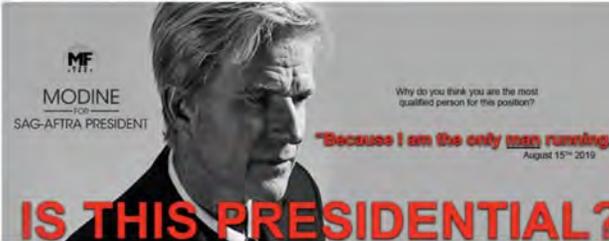
 **An Actor Complains** @ActorComplains · Aug 16  
 How is this possible?? A 60 year old man proudly proclaims his [#sexism](#) to a room full of [#SAGAFTRA](#) members. How can anyone support this GARBAGE and how can you be so tone deaf [@MatthewModine](#)?

[#WTFmodine](#) [#NoModine](#) [#VoteJane](#) [#metoo](#) [#timesup](#) [#ArtistsUnited](#)



Deadline Hollywood and 9 others

 **An Actor Complains** @ActorComplains · Aug 16  
 Replying to [@stewart\\_fed](#) and [@MembershipFirst](#)



1         

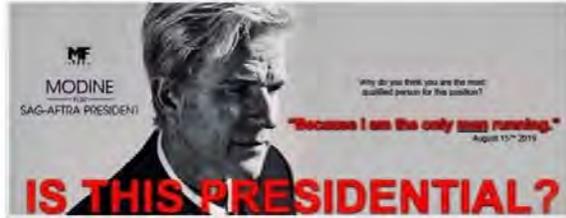
← Los Angeles Union Background Actors



Vincent Amaya ▸ Los Angeles Union Background Actors  
3 hrs · 🌐

If you haven't voted yet and still undecided. Consider this quote from Modine states last night at the Town Hall.

If you think this was just a joke, no one was laughing when he said this.



An Actor Complains @ActorComplains · Aug 16

Hey @Frances\_Fisher @prichardsonla Every day you promote this unfit man to lead #SAGAFTRA you undermine your all women. This is the man to take up the #metoo 🙄 #TimesUp movements??

This on top of his demeaning words to a survivor and his penis jokes at board meetings

Shame on you



Rob Archer @RobArcher · Aug 17

Replying to @workhousepr and @unite4strength

I'll take that as a YES, Membership First thinks anti-woman jokes are okay. Still waiting to find out if you're also okay with racist jokes. If Modine makes such a tone-deaf "joke" in public, what kind of jokes does he tell in private? Are there tapes?

🗨️ 1 🔄 🍷 📤

🔄 Rob Archer 🗨️ Retweeted



Bertila Damas 🗨️ ❤️ @bertiladamas · Aug 16

Replying to @robertkeniston

Jokes are always the weapon if men who demean women and need an excuse #MeToo 🙄

🗨️ 🔄 1 🍷 3 📤



Rob Archer @RobArcher · Aug 16

Modine is not a leader. Vote GABRIELLE CARTERIS and the entire @unite4strength and @USANLeadership slate. #SAGAFTRAElections

🗨️ 1 🔄 🍷 2 📤

Show this thread

🔄 Rob Archer 🗨️ Retweeted



Bertila Damas 🗨️ ❤️ @bertiladamas · Aug 17

Replying to @RobArcher and @unite4strength

Personally - jokes have historically been used by misogynistic men to deflect their acts & speech. "Honey, that was a hug", "Why don't you smile more", "Aw come on that's not groping, I just touched you" We're tired of jokes at our expense #MeToo 🙄 #NoJoke #TimesUp

🗨️ 1 🔄 3 🍷 12 📤

## Violation No. 10. Illegal and Unethical Electioneering

**15. EMPLOYER VIOLATION** We have questions about Ilyssa Fradin use of email blasts sent to members through her company Eye Contact

<http://www.buzzfile.com/business/Eye-Dentify-Inc.-312-543-4025>

### Contact Information

#### Eye-Dentify Inc.

2818 W Balmoral Ave  
Chicago, IL 60625

**Contact:** Ilyssa Fradin

**Title:** Principal

**Phone:** (312)  
543-4025

#### Website:

Eye-Dentify Inc. is the only company located at 2818 W Balmoral Ave, Chicago, IL 60625

### Where did Ilyssa get Paul Edney's phone number?

\*\*I wonder if this e-mail was paid for by the members of Ilyssa's Committee of Mid-size Locals or if her personally owned company in Chicago (Eye-Dentify) did this gratis. This company (her company) is the one used by Gabby to send out previous blasts according to the research done by a San Diego candidate. In tweets underneath this, Ilyssa said:

"We are elected leaders who hold the highest offices in our 23 locals outside LA and NY. We are alerting members that their VOTE matters. Our titles are only there to show we are not

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some rogue group. We are elected to serve and protect our locals mbrs. Actually we speak for our locals and local mbrs. That's what we are elected to do. Like y our state senator. That's what a natl board mbr does. Speaks for their local. The 23 locals represented here independently came together to urge our mbrs to #votegabby. It's our little way of saying, we got you ..... and for the love of our union, VOTE FOR @The Gabrielle\_C and @CamrynManheim. Please RT and share. Linda

**Robert E. Allen**

Partner

Pierce Bainbridge Beck Price & Hecht LLP

355 S. Grand Avenue, 44<sup>th</sup> Floor

Los Angeles, CA 90071

rallen@piercebainbridge.com

(213) 516-8351

September 10, 2019

**Via Email Michelle.Bennett@sagaftra.org**

Michelle Bennett

Executive Director, Governance, SAG-AFTRA

5757 Wilshire Boulevard, 7th Floor

Los Angeles, CA 90036-3600

RE: **Protest to the 2019 SAG-AFTRA Election**

Dear Ms. Bennett:

I refer to my September 9, 2019 letter I previously sent to you. Please note that I did not include a link to the video at issue in Violation No. 2. Please see

<https://www.youtube.com/watch?v=u3EnoisFNrg>

Second, the following Election Violations supplement my earlier letter.

**Violation No. 12. Failure to Ensure Adequate Safeguards**

During the counting and tabulation of the election ballots, observers on behalf of MF Candidates were specifically and expressly denied access to discussions about irregularities in the counting process held by union officials and representatives. Specifically, Duncan Crabtree-Ireland (General Counsel of SAG-AFTRA), Michelle Bennett (SAG-AFTRA Executive Director of Governance), National Election Committee members met with an independent ballot counting company employee in the Frank Maxwell Room at approximately 11:30pm on August 28, 2019 to discuss a “glitch” with one of the batches of ballots. When Richard Hadfield, a designated observer, asked what was going on, he was told that the others were in a “private meeting” and was not allowed to observe. This private meeting lasted for approximately twenty minutes, after which the group announced that they would have to rerun this batch through the ballot counting machines, thereby confirming that the content of the “private meeting” directly related to the counting of the ballots.

In order to insure a fair election, Title IV requires each union to provide adequate safeguards, “including the right of any candidate to have an observer at the polls and at the counting of the ballots.” 29 U.S.C. § 481(c). There is no exception for conversations among union officials and representatives that directly relate to the counting of ballots.

Once a violation of Title IV has been shown, the existence of that violation establishes a prima facie case that the violation may have affected the outcome of the election. *Wirtz v. Hotel, Motel & Club Employees Union*, 391 U.S. 492, 506-07 (1968). Further, the union’s failure to

ensure adequate safeguards to the counting and tabulation of the ballots may have affected the election by causing the results to not accurately reflect the votes cast by all union members.

### **Violation No. 13. Unlawful Reprisals for Supporting MF Candidates**

Through the election cycle, union officials and representatives punished members who supported Mr. Modine and other MF candidates. For example, Joseph Pearlman is a member and has taught countless acting and marketing workshops and classes for the union for over ten years. The moment Mr. Pearlman publicly supported Mr. Modine, the union cancelled all of his classes. When Mr. Pearlman inquired, he was told directly by Serena Kung (SAG-AFTRA Associate Executive Director, Los Angeles Local Operations) that Ms. Carteris' legal team ordered the cancellation "due to scrutiny of presenters due to the contentious election." In another example, Jessica Barth is part of the Voices in Action ("VIA") organization. Ms. Barth presented VIA to Ms. Carteris as an initiative to holistically approach the prevention and eradication of sexual harassment and assault. Despite the union's interest in VIA, Ms. Barth was told in June (during the election season) by Michelle Bennett (SAG-AFTRA Executive Director, Governance) that the union could not consider VIA (at least until after the election) because Ms. Barth had endorsed Mr. Modine. These are just two examples of what is likely a pattern of reprisal.

Title IV precludes any union or any of its members from subjecting to "penalty, discipline, or improper interference or reprisal of any kind" any member for supporting any candidate of his/her choice. 29 U.S.C. § 481(e). We are aware of at least these two members who were subjected to reprisal by the union for supporting Mr. Modine, a candidate the union did not like. There is likely to be many more.

Once a violation of Title IV has been shown, the existence of that violation establishes a prima facie case that the violation may have affected the outcome of the election. *Wirtz*, 391 U.S. at 506-07. Further, the union's intimidation of members who openly supported MF candidates, including Mr. Modine, may have affected the outcome of the election by creating the false perception that MF Candidates would not act in the best interest of the union and that the union was endorsing Ms. Carteris and other UFS candidates to the exclusion of others.

### **Conclusion**

We continue to investigate additional elections violations by Ms. Carteris and other UFS union officials. Nevertheless, the thirteen violations listed above and in my September 9, 2019 letter, represent significant and egregious election violations by Ms. Carteris and other UFS union officials that undoubtedly and materially affected the outcome of the 2019 Election for President of SAG-AFTRA. Accordingly, in accordance with the Constitution and the Policy, the Election for President of SAG-AFTRA must be rerun.

Sincerely,



Robert E. Allen

# **EXHIBIT B**

**DECISION OF THE NATIONAL OFFICER ELECTION COMMITTEE  
ON POST-ELECTION PROTESTS OF SAG-AFTRA PRESIDENTIAL ELECTION**

On July 29, 2019, Integrity Voting Services (“IVS”), the independent agency SAG-AFTRA retained to conduct the 2019 National and Local elections, mailed ballots to SAG-AFTRA members. IVS counted the ballots for the President, Secretary-Treasurer, and the New York and Los Angeles Local Boards, Local Officers, National Board members and Convention delegates on August 28, 2019.

Fourteen members filed post-election protests in connection with the election of the President of SAG-AFTRA. Peter Antico filed a post-election protest on August 29, 2019. Susan Kathryn Hefti and Jamie Theurich filed post-election protests on August 31, 2019. Jennae Hoving, Dimitrios Koutsomitis, Renee Boakes, Abraham Justice, and Brian Hamilton filed post-election protests on September 3, 2019. Anthony Marciona and Michael Woods filed post-election protests on September 9, 2019. Adam Nelson filed a post-election protest on September 9, 2019 and additional allegations on September 10, 2019.<sup>1</sup> Jodi Long and Queen AllJAHyé Searles (“AllJAHyé”) filed post-election protests on September 11, 2019. Richard Hadfield filed a post-election protest on September 12, 2019.<sup>2</sup> Copies of these protests are attached as Exhibit A.

On September 18, 2019, SAG-AFTRA advised Gabrielle Carteris (“Carteris”) and all presidential candidates of their right to submit evidence to the National Officer Election Committee (the “Election Committee”).<sup>3</sup>

**SUBSTANTIVE ALLEGATIONS IN THE PROTESTS**

Because many of the protests contain identical or overlapping allegations, we will describe the issues raised by the various protesters, and then separately analyze each substantive issue. Antico, Hoving, Marciona, Woods, and Nelson raise a number of issues concerning the

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<sup>1</sup> Robert Allen, a partner at Pierce Bainbridge Beck Price & Hetch LLP, submitted the protest in a letter on behalf of Nelson. Since Allen’s letter on September 9, 2019 clearly identifies Nelson, a SAG-AFTRA member, as the protestor, we have accepted and reviewed this protest.

<sup>2</sup> Hadfield’s protest is untimely since he submitted it on September 12, 2019, more than 14 days after the election. *See* SAG-AFTRA Constitution, Article V(G)(2)(ii)(a). For this reason, we dismiss this protest. However, as Hadfield raises the same allegations as Nelson regarding a meeting of the Election Committee during the ballot count, the substance of his claim is addressed in the discussion of this issue, *infra* at p. 23.

<sup>3</sup> Evidence was submitted on behalf of Carteris several hours after the submission deadline. Carteris’s representatives advised us that the submissions were late due to an unavoidable technological computer problem. The Committee does not believe, however, that it is appropriate for us to waive fixed deadlines under any circumstances. Accordingly, we have decided not to accept this evidence. The response submitted by AllJAHyé is attached as Exhibit B.

use of SAG-AFTRA resources to promote the candidacy of President Gabrielle Carteris. *First*, they allege that SAG-AFTRA improperly promoted Carteris’s candidacy through a union-sponsored podcast, a video loop in the lobby of Ken Howard Membership Center in the Los Angeles office, various online videos, and the SAG-AFTRA magazine. With respect to the SAG-AFTRA podcast, Antico, Hoving, Marciona and Woods highlight an episode of the podcast that featured an interview between Carteris and 2019 SAG Life Achievement Award recipient Alan Alda. *Second*, Antico, Hoving, Marciona and Woods allege that Carteris improperly used a union membership list in order to obtain endorsements from SAG-AFTRA National and Local Board members and officers. *Third*, Antico, Hoving, Marciona and Woods allege that Carteris’s travel in connection with the negotiation and ratification of the recently negotiated Commercials Contract constituted electioneering financed by SAG-AFTRA.<sup>4</sup>

The protests of Hamilton, Long, Nelson and AllJAHyé include allegations regarding Carteris’s involvement in the show Beverly Hills 90210 and the negotiation of a collective bargaining agreement with Netflix. *First*, the protesters allege that Carteris received an improper employer contribution through her role as an executive producer and cast member on the “reboot” of Beverly Hills 90210 (“BH90210”). *Second*, Nelson and Long allege that Carteris violated internal union rules by participating in union committees while serving as an executive producer on this show. *Third*, Hamilton, Long, Nelson and AllJAHyé allege that SAG-AFTRA improperly allowed Carteris to revise her candidate statement for National President after the submission deadline in order to include information about the recently negotiated collective bargaining agreement between SAG-AFTRA and Netflix. In the alternative, these protestors allege that Carteris “breached confidentiality” by including details regarding this agreement in her statement prior to its presentation to the National Board.

Nelson alone raises a number of issues. *First*, he alleges that the Election Committee is biased because Carteris’s political party appointed its members; he also requests that the Election Committee issue all post-election protest decisions before the Convention. *Second*, Nelson alleges that Carteris improperly used union resources, including the SAG-AFTRA logo, SAG-AFTRA graphics and design, and a union-owned photograph in a campaign video. *Third*, Nelson alleges that Carteris and other candidates harassed and verbally assaulted member Linda Harcharic in order to prevent her from distributing MembershipFirst campaign materials. *Fourth*, Nelson alleges that Carteris knowingly defamed Modine in public statements. *Fifth*, Nelson alleges that National Board Member Illyssa Fradin used employer resources to endorse Carteris in text messages sent to members, and that the Union discriminated in favor of Carteris by providing member contact information to Fradin to allow her to distribute these text messages. *Sixth*, Nelson alleges that attorney Pamela Jeffrey violated the Election Policy, federal law, and rules of professional conduct in sending a letter asking MembershipFirst supporters to

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<sup>4</sup> Antico, Hoving, Marciona, and Woods also claim that any producer bonds garnered by SAG-AFTRA constitute an unlawful employer contribution to promote Carteris. However, the protestors provide no facts or evidence to support the assertion that producer bonds were used to endorse Carteris. Pursuant to Article VI(B)(2)(c)(i) of the Election Policy, a “protest shall set forth with reasonable specificity the nature of the alleged violation, the facts underlying it and how it may have affected the outcome of the election.” Absent any facts or evidence to support this claim, we find no violation.

cease and desist from making false allegations against Carteris. *Seventh*, Nelson alleges that SAG-AFTRA failed to ensure adequate safeguards when it allowed the Election Committee to confer in private on the day of the vote tabulation. *Finally*, Nelson alleges that SAG-AFTRA retaliated against members who endorsed MembershipFirst candidates.

AllJAHy  alone claims that members were not provided a reasonable opportunity to vote because the election was conducted by mail ballot.

Hefti, Justice, AllJAHy , Koutsomitis and Theurich allege that the exclusion of two presidential candidates from an August 15, 2019 “Presidential Town Hall” violates federal law and the SAG-AFTRA Constitution, and constitutes a failure on the part of SAG-AFTRA to provide adequate safeguards to ensure a fair election. Hefti and Justice additionally allege that SAG-AFTRA failed to provide adequate notice of a meeting regarding a collective bargaining agreement.

We have carefully considered the protests, the parties’ submissions, the Election Policy, the SAG-AFTRA Constitution, and applicable federal election law. For the reasons discussed below, we conclude that there was no violation of the SAG-AFTRA Constitution, the Election Policy, or federal election law. Accordingly, we dismiss all post-election protests.

## DISCUSSION

### I. Coverage of Carteris in SAG-AFTRA Publications and Other Union Media

#### A. The Applicable Legal Standard

Section 401(g) of the LMRDA, 29 U.S.C. § 481(g), prohibits the use of union or employer resources to promote or denigrate any candidate for union office. Department of Labor (the “DOL”) regulations (the “DOL Regulations”) provide that a union may neither attack nor urge the nomination or election of a candidate in a union-financed publication. 29 C.F.R. § 452.75. However, the DOL and the courts have consistently recognized that incumbent officers must be able to carry out union business during an election, and that unions have a right to publicize the business being conducted by their officers. Thus, regular coverage of incumbents in union publications or other union-sponsored media is permissible during an election period, as long as the union does not promote an incumbent’s candidacy or denigrate the candidacy of a challenger.

In order to determine whether a particular communication constitutes promotion of a candidate in violation of Section 401(g), the DOL evaluates the timing, tone and content of the communication. For example, the DOL found no Section 401(g) violation where a union journal article published just prior to the election contained a laudatory statement by the incumbent president about the work that two candidates on his slate had done over prior years. In so finding, the DOL found determinative the fact that the article contained no mention of the election or campaign rhetoric.<sup>5</sup> Similarly, the DOL held that two union publications and a union

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<sup>5</sup> *Operative Plasterers’ & Cement Masons’ International Association (OPCMIA)* (December 3, 2015).

convention video that covered the past activities of an incumbent national president did not constitute a violation where the communications contained no explicit endorsement or promotion of the president, no reference was made to the personal campaign goals of the president, and the content was similar to previous publications and convention videos.<sup>6</sup> In another case, the DOL found no violation where a local newsletter included a statement complimenting one of the candidates for office, but did so in the context of a recent newsworthy action taken by the candidate and did not mention her candidacy.<sup>7</sup> The DOL similarly found no 401(g) violation where a union newsletter included pictures of incumbents and mentioned their accomplishments in the context of newsworthy union activities, because the newsletter made no mention of their candidacies.<sup>8</sup>

In a decision issued earlier this year, the DOL found no violation where a local union magazine contained articles written by incumbent officers and pictures of incumbent officers in the context of coverage of union events of interest to the membership.<sup>9</sup> The DOL emphasized the fact that the articles contained no reference to the election or express campaign statements. In another decision, the DOL found no violation where a local union newsletter focused its coverage of incumbents on contemporaneous union topics such as contract negotiations, and neither attacked nor promoted any candidate.<sup>10</sup> Likewise, the DOL found no violation where a union distributed a newsletter signed by an incumbent candidate on the same day the union mailed election ballots because the union had previously issued such letters in its regular course of business and the newsletter contained factual information valuable to members.<sup>11</sup>

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<sup>6</sup> *National Treasury Employees Union* (May 2, 2012).

<sup>7</sup> *International Brotherhood of Electrical Workers Local Union (IBEW) Local 46* (December 9, 2014).

<sup>8</sup> *Laborers International Union of North America Local 261* (June 24, 2015).

<sup>9</sup> *International Union of Operation Engineers, Local 3* (August 6, 2019).

<sup>10</sup> *Transport Workers, Local 234* (September 22, 2017).

<sup>11</sup> *Teamsters, Local 420, 72-10152, 72-10164, 84-(LM)-118, 84-(LM)-123* (1984). *See also American Postal Workers Union (APWU) Local 458* (August 13, 2014) (no violation where union newsletter included information regarding grievances filed, the names of incumbent officers who handled the grievances and the amount of money won as grievances were a matter of legitimate interest to the membership and publication contained no reference to the election or the candidacies of the incumbent candidates); *American Federation of Government Employees (AFGE), District 14* (April 17, 2015) (no violation where union newsletter included quotes from candidate regarding recent Washington D.C. primary election and upcoming general elections); *International Association of Machinists and Aerospace Workers District Lodge 837* (January 30, 2012) (no violation where Christmas issue of union publication included color photographs of incumbents with holiday messages); *International Association of Machinists and Aerospace Workers, Local Lodge 2339N* (August 12, 2010) (no violation where newsletter provided

Decisions from courts also have consistently found that as long as a union publication or communication does not promote an incumbent's candidacy, it does not run afoul of Section 401(g). For example, a district court found no violation of Section 401(g) where a union published a magazine that included substantial coverage of incumbent officers and a monthly column under the incumbent president's signature.<sup>12</sup> In so holding, the court noted that the magazine covered incumbents in connection with their active participation in issues of importance to the union's membership, and did not promote or denigrate any candidate's candidacy. The court stated,

So long as such coverage is addressed to the regular functions, policies and activities of such incumbents as officers involved in matters of interest to the membership, and not as candidates for reelection, there is no violation of [the LMRDA].<sup>13</sup>

Another district court found no violation after reviewing six issues of a union's newspaper that contained numerous articles and photographs of incumbent officers including coverage of the officers attending industry events, local workshops, seminars, and union scholarship awards.<sup>14</sup> The court found that the "press exposure received by the incumbent officers is substantially attributable to their participation in newsworthy events of interest to the Union and that the Union paper had not been used a campaign organ in violation of the LMRDA."<sup>15</sup> The court noted that it was "not unusual for the publication to publish pictures of incumbent officers in the performance of their related activities."<sup>16</sup>

In contrast, courts and the DOL have found 401(g) violations where unions have used their publications to promote incumbents and, in the same publication, attack challengers. For example, a district court found a Section 401(g) violation where a union published a book that included various charts and graphs showing how the incumbent president had outperformed previous presidents and, in the same publication, criticized the incumbent's opponents in his race

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information about union business and affairs, did not reference upcoming election, and did not include statements that would constitute an endorsement of incumbent candidate).

<sup>12</sup> *Camarata v. Int'l Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 478 F. Supp. 321 (D.D.C 1979).

<sup>13</sup> *Id.* at 330.

<sup>14</sup> *New Watch-Dog Committee v. New York City Taxi Drivers Union, Local 3036*, 438 F. Supp. 1242 (S.D.N.Y. 1977).

<sup>15</sup> *Id.* at 1250.

<sup>16</sup> *Id.* at 1251. *See also Conery v. Niccollai*, No. CIV.A. 92-840 (JAG), 1998 WL 34076966, at \*4 (D.N.J. Feb. 2, 1998) (no violation where union letter did not promote anyone's candidacy).

for re-election.<sup>17</sup> Similarly, the Second Circuit found a violation of Section 401(g) where a union distributed a newsletter that strongly praised the incumbent president, who was running for re-election, and strongly criticized the candidate running against him.<sup>18</sup> In another decision, a district court found a violation where the incumbent president used the union's newspaper to publicize severe criticism of opposing candidates and to provide verbose descriptions of his campaign promises.<sup>19</sup> In each of these cases, the violation arose from the express promotion of an incumbent candidate and, at the same time, the denigration of the incumbent's opponent.

## B. SAG-AFTRA Podcast

Antico, Hoving, Marciona, and Woods allege that SAG-AFTRA improperly promoted Carteris's candidacy on the SAG-AFTRA podcast. The protestors highlight one specific podcast episode that contained an interview with Alan Alda, a high-profile actor who was the winner of the 55<sup>th</sup> (2019) SAG Life Achievement Award. The protestors do not allege that the episode at issue ever mentioned the election or Carteris's candidacy. It did not. The fact that Alda allegedly previously endorsed Carteris is of no moment, as he did not say anything in the interview that even remotely could be construed as promoting Carteris individually or her campaign. Union members are free to endorse candidates for office as long as they do not do so using union resources.<sup>20</sup> Alda's prior endorsement of Carteris certainly did not preclude him from participating in a podcast interview discussing union-related events where, as was the case here, the interview made no mention whatsoever of the election or Carteris's candidacy.

Additionally, the tone and content of the Alda episode is virtually identical to the other episodes that SAG-AFTRA produced and aired prior to the election. The episode discusses Alda's career as an actor and his recent receipt of the 55<sup>th</sup> SAG Life Achievement Award, a topic of keen interest to the membership. The episode was part of a long-standing practice of "Actor-to-Actor" interviews with the SAG Life Achievement Award winners. For example, in 2016, Carteris conducted a similar interview with Lily Tomlin, the 53<sup>rd</sup> SAG Life Achievement

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<sup>17</sup> *Guzman v. Local 32B-32J, Service Employees Intern. Union*, No. 95 Civ. 5713 (LMM), 1995 WL 562187 (S.D.N.Y. Sept. 21, 1995).

<sup>18</sup> *Usery v. Masters, Mates and Pilots*, 538 F.2d 946 (2d Cir. 1976).

<sup>19</sup> *Hodgson v. Liquor Salesman's Union, Local No. 2*, 335 F. Supp. 1369, 1371-73 (S.D.N.Y.), *aff'd*, 444 F.2d 1344 (2d Cir. 1971).

<sup>20</sup> *McLaughlin v. Am. Fed'n of Musicians of U.S. & Canada, AFL-CIO*, 700 F. Supp. 726, 734 (S.D.N.Y. 1988) ("Section 401(g) does not restrict the rights of union members and officials to use their private resources to campaign themselves or to support another candidate in any way they see fit."); *Air Line Pilots Association (ALPA)* (August 4, 2017) (LMRDA allows union officers and members to support candidates of their choice so long as no union funds are used in doing so), *Local Election Council 54 (LEC 54)* (August 4, 2017) (same).

Winner.<sup>21</sup> The Special Digital Winter 2017 issue of the SAG-AFTRA magazine, distributed to members electronically on January 2, 2017, included a multiple-page article on Tomlin including footage from the interview.<sup>22</sup> Similarly, the Fall/Winter 2017 issue, distributed to members by mail on November 15, 2017 and electronically on November 22, 2017, included a cover picture and article featuring the 54<sup>th</sup> SAG Life Achievement Winner, Morgan Freeman, and footage from an interview Freeman gave at a SAG-AFTRA Foundation event.<sup>23</sup> Former SAG-AFTRA and SAG president Ken Howard also conducted Actor-to-Actor interviews with numerous SAG Life Achievement award winners.<sup>24</sup>

We also find that Carteris's co-hosting (with Executive Director David White) the podcast series as a whole did not violate the Election Policy or applicable law. As discussed above, a union is not prohibited from including coverage of incumbent candidates in the course of regular union business. As the highest elected officer of SAG-AFTRA, Carteris, through the podcast, discussed numerous issues of significant and legitimate concern to the SAG-AFTRA membership. Neither she, her co-host, nor any guest ever mentioned the election. Nor did the co-host or any guest say anything to promote Carteris's candidacy or denigrate any other candidate.

Neither the timing, tone, nor content of the podcast raises any concerns. The first episode of the SAG-AFTRA podcast was released on January 7, 2019, nearly 8 months before the election. Production of the podcast series started even earlier, in or around May 2018, more than a year before the election.<sup>25</sup> In the first episode of the podcast, co-hosts White and Carteris

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<sup>21</sup> Actor-to-Actor Interview with Lily Tomlin by Carteris (2016), available at <https://www.youtube.com/watch?v=WQr2RawTMTA&t=44s>.

<sup>22</sup> Available at: <http://digital.copcomm.com/i/766812-special-edition-2017/0?>

<sup>23</sup> Available at: <http://digital.copcomm.com/i/904648-fall-winter-2017/0?>

<sup>24</sup> See e.g. Actor-to-Actor Interview of Carol Burnett by former SAG-AFTRA President Ken Howard (2016), available at <https://www.youtube.com/watch?v=AAnmwDHU-vc&t=216s>; Actor-to-Actor Interview of Rita Moreno by former SAG-AFTRA President Ken Howard (2013), available at [https://www.youtube.com/watch?v=0YbcoER83iE&list=PLINVuwP\\_s5m4JYdcdP2ryNC0ZLwpN3ao&index=2](https://www.youtube.com/watch?v=0YbcoER83iE&list=PLINVuwP_s5m4JYdcdP2ryNC0ZLwpN3ao&index=2); Actor-to-Actor Interview of Dick Van Dyke by former SAG-AFTRA President Ken Howard (2012), available at <https://www.youtube.com/watch?v=f5QIx6Szt8>; Actor-to-Actor Interview of Ernest Borgnine by former SAG-AFTRA President Ken Howard (2010), available at [https://www.youtube.com/watch?v=zHTU3IfC2KA&list=PL105CDA760EC794B1&feature=plp\\_play\\_all](https://www.youtube.com/watch?v=zHTU3IfC2KA&list=PL105CDA760EC794B1&feature=plp_play_all); Actor-to-Actor Interview of Betty White by former SAG-AFTRA President Ken Howard (2009), available at <https://www.youtube.com/watch?v=6ywhT1XP5eg>.

<sup>25</sup> The Spring 2019 issue of the SAG-AFTRA magazine, distributed to members by mail on April 29, 2019 and electronically on May 16, 2019, notes that production for the podcast began in May 2018. Available at: <http://digital.copcomm.com/i/1114369-spring-2019/0?>. The Fall 2018 issue of SAG-AFTRA magazine, distributed to members by mail on November 12, 2018

explained that the purpose of the podcast was to explore issues that affected members working in the entertainment industry. They expressed their hope that the podcast episodes would provide members with a greater understanding of the wide variety of work performed by SAG-AFTRA members and increase member engagement.

Since January 2019, SAG-AFTRA has released an episode of the podcast on approximately a bi-monthly basis. Episodes have covered a range of contemporaneous union topics, including contract negotiations and performers' digital property rights. As was the case with the Alda episode, a topically-relevant guest generally accompanies co-hosts Carteris and White. For example, during an episode on stunt performers, Jane Austin, a stunt performer, SAG-AFTRA Secretary-Treasurer and presidential candidate who ran against Carteris, and Cort Hessler, Chair of the National Stunt Committee, were the guests who joined White and Carteris. During an episode on the newly-negotiated Commercials Contract, Carteris and White were accompanied by Ray Rodriguez, SAG-AFTRA Chief Contracts Officer, Lori Hunt, Executive Director of Commercials and Corporate/Educational & Non-Broadcast Contracts, and Kathy Keane, an actor.

The other episodes focused on similarly topical issues for SAG-AFTRA members:

- First episode-“Making the Revolution” released January 7, 2019
  - As discussed above, this episode provided a short introduction for the series and established its goal: to provide information on issues that affect members, particularly on Union events and developments, and to build member engagement.
- Second episode- “A Real-Life Telenovela Drama,” released February 5, 2019
  - Covered SAG-AFTRA’s groundbreaking collective bargaining agreement with Telemundo Television Studios. The collective bargaining agreement was the first agreement covering Spanish-speaking television actors in the Union’s history.
- Third episode- “The Attack on the Free Press,” released February 5, 2019
  - Discussed threats against reporters at political rallies, an issue of critical importance to the Union’s broadcast members.
- Fourth episode- “Social Media Superstars on the Future of Entertainment,” released on February 19
  - Covered a SAG-AFTRA agreement with Zeus, a subscription based video-on-demand content production company.
- Fifth episode- “Sexual Harassment: Have We Reached a Turning Point?,” released March 5, 2019

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and electronically on November 21, 2018, also includes a reference to the upcoming podcast. *Available at:* <http://digital.copcomm.com/i/1054784-fall-2018/0?m4=>.

- Included discussion with a member regarding her own experiences with harassment and advocacy against sexual harassment in the entertainment industry.
- Sixth episode- “Bang! Zoom! Pow! Inside the Dangerous World of Stunt Performers,” released on March 19, 2019
  - Discussed Union initiatives to ensure safe sets for stunt performers.
- Seventh episode- “Who Controls Your Digital Rights? From Deepfakes to Resurrecting the Dead”- released on April 2
  - Covered Union initiatives to protect members from new technology used to create false images and video of performers.
- Eighth episode, “A Life in Music,” released on April 16, 2019
  - Singer-songwriter and SAG-AFTRA Vice President Dan Navarro shared music and industry insights.
- Ninth episode, “How NextGen Empowers Performers,” released on April 30, 2019
  - Covered Union initiatives to engage and support younger members.
- Tenth episode- “CES Unplugged - Where Technology is Going,” released on May 14, 2019
  - Included an investigation of the CES tech show in Las Vegas and an interview with the Union’s General Counsel Duncan Crabtree-Ireland on steps the union is taking to protect and empower members in an era of new technology.
- Eleventh episode: “Actor-to-Actor with Alan Alda,” released on May 28, 2019
  - Discussed above.
- Twelfth and thirteenth episodes- “Disruption in Entertainment, Part 1: Threats and Opportunities,” and “Disruption in Entertainment, Part 2: The Future of Content,” released on June 24, 2019 and June 25, 2019
  - Included a discussion with Jeffrey Cole, a research professor and director of the Center for the Digital Future at USC, and Sanjay Sharma, co-founder and CEO of Marginal Mediaworks, on the rise of new media and its impact on performers.
- Fourteenth episode- “How the New Commercials Contracts Change the Game,” released on July 9, 2019
  - Focused on the newly negotiated Commercials Contract and included interviews with Chief Contracts Officer Ray Rodriguez, Executive Director of Commercials and Corporate/Education & Non-Broadcast Contracts Lori Hunt and actor Kathy Keane.
- Fifteenth episode- “How SAGindie Connects Actors and Filmmakers,” released on July 23, 2019
  - Provided actors with information about SAGindie, an initiative to promote a working relationship between professional actors and independent filmmakers.
- Sixteenth episode, “What Happens Behind the Voices,” released on August 6, 2019

- Included interviews with veteran voice actors discussing their craft and experience.

Since the podcast episodes relate to timely and relevant newsworthy union issues, do not reference the upcoming election, and do not include statements that would constitute the endorsement or denigration of any candidate, we find no violation of the Election Policy or applicable federal election law.

### C. SAG-AFTRA Videos

Antico, Hoving, Marciona, and Woods allege that SAG-AFTRA promoted Carteris through “various videos online,” as well as a video loop displayed in lobby of the Ken Howard Membership Center in the Los Angeles office. Other than Nelson pointing to the video loop and a video version of the “Actor to Actor” interview between Carteris and Alda on the SAG-AFTRA website,<sup>26</sup> the protestors do not specify which online videos allegedly violate the Election Policy or federal law. Additionally, the protestors do not allege that the video loop or the videos posted online ever reference the election or Carteris’s candidacy. They do not.

With regard to the video loop, SAG-AFTRA has projected a video loop in its Los Angeles membership center lobby since at least 2012, when SAG and AFTRA merged to form SAG-AFTRA. The loop typically features between six to ten short videos displayed with subtitles, but no audio. The videos cover newsworthy union events, provide updates on recent membership benefit changes, and seek to encourage member engagement.

Antico, Hoving, Marciona and Wood’s post-election protests incorporate allegations from a July 9, 2019 email that Antico sent to SAG-AFTRA. At the time of this email, a video loop posted on March 29, 2019 was playing in the membership center lobby. Carteris appears in a portion of the loop discussing SAG-AFTRA’s strike against the advertising agency BBH, in a section of the loop with fellow Beverly Hills 90210 cast members showing support for SAG-AFTRA’s “Ads Go Union” organizing campaign, and in clips of prior union actions depicted in a video called “Siempre Contigo,” aimed at showing the union’s support for its Spanish-language organizing and collective bargaining efforts.

We do not find the timing of the loop to be problematic, as the loop has consistently run since at least 2012. The union organizing campaigns highlighted in the loop -- the BBH strike and the “Ads Go Union Campaign”-- were key Union campaigns at the time of display.<sup>27</sup> Similarly, the content and tone of the loop do not raise any concerns, as no video in

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<sup>26</sup> Nelson additionally alleges that Carteris and other Unite for Strength members may have breached their fiduciary duties to the Union. This allegation does not state a violation of the Election Policy or the election provisions of the LMRDA, and thus is not within the purview of the Election Committee. Additionally, Nelson has alleged no facts supporting a breach of fiduciary duty claim.

<sup>27</sup> SAG-AFTRA removed footage regarding the BBH strike and posted a new loop shortly after a July 20, 2019 announcement that SAG-AFTRA and BBH had reached a settlement agreement.

the loop promotes Carteris's candidacy or denigrates any other candidate. Indeed, the videos in the loop make no reference whatsoever to the upcoming election.

All of the footage of Carteris is in the context of recent, newsworthy union activities, such as contemporaneous strikes and organizing campaigns. Carteris does not discuss her personal campaign goals or prior accomplishments. The clip with her Beverly Hills 90210 cast members does no more than voice support for the "Ads Go Union" campaign, and makes no mention of Carteris's candidacy. The video loop also includes a favorable clip of Jane Austin, a presidential candidate running against Carteris.

Although Nelson questions the lack of MembershipFirst candidates in clips, there is no obligation to include all candidates in union publications on issues unrelated to the election or newsworthy events.<sup>28</sup> The protesters present no evidence indicating that SAG-AFTRA excluded newsworthy events involving MembershipFirst candidates. The coverage of Carteris is clearly in her capacity as an incumbent officer engaged in union initiative and activities.

Since Antico, Hoving, Marciano and Wood provide no specificity in their protest regarding online videos, it is not clear what other videos they claim are problematic. As an entertainment union, SAG-AFTRA maintains a regular online presence with frequent video postings. All of the videos that SAG-AFTRA posted on its website and other social media channels that include footage of Carteris do so solely in the context of newsworthy events. For example, in the past year, Carteris has appeared in a video encouraging members to vote in the US midterm election, in videos encouraging members to support the strike against BBH, and in an interview with the 55<sup>th</sup> SAG Life Achievement award winner Alan Alda.<sup>29</sup> Jane Austin, one of Carteris's opponents, also appeared in newsworthy footage. None of the videos referenced Carteris's candidacy or the election, and none denigrated any other candidate.

In sum, the membership center lobby video loop and all online videos posted by SAG-AFTRA focused exclusively on events of interest to the SAG-AFTRA membership, including organizing campaigns, collective bargaining developments, and other timely issues facing the Union. Coverage of Carteris was strictly in the context of important, newsworthy events of legitimate interest to the SAG-AFTRA membership. The coverage did not promote Carteris's individual accomplishments, but instead focused exclusively on the Union's achievements. As such, we find no violation of the Election Policy or applicable federal law.

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<sup>28</sup> See e.g. *Camarata*, 478 F. Supp. at 330-31 (noting that there was no evidence that political opponents who did not receive coverage in union publication had participated in newsworthy, non-political activities that would merit coverage); *New Watch-Dog Committee*, 438 F. Supp. at 1251 (same).

<sup>29</sup> Nelson takes issue with this video, which contains the same footage of the interview that aired on the SAG-AFTRA podcast. As discussed above, the interview contains no endorsement of Carteris and no mention of her candidacy, the election, or any other candidate running for office. See *supra* at p. 6-7.

#### D. SAG-AFTRA Magazine

Antico, Hoving, Marciano, Woods and Nelson allege that the Spring 2019 issue of the SAG-AFTRA magazine improperly promoted Carteris.<sup>30</sup> Specifically, the protestors note that the issue included a number of references to Carteris and a section covering her interview with Alan Alda, discussed *supra* at p. 6-7. They also allege that the magazine included fewer mentions of Jane Austin and no mention of Matthew Modine, two other candidates for national president. The protestors do not allege that the magazine refers to Carteris's candidacy or the election. It does not. A review of the timing, content and tone of the references to Carteris does not support a finding that SAG-AFTRA promoted Carteris in violation of the Election Policy or applicable federal election law.

First, the timing of the release of the Spring 2019 issue does not raise any concerns. SAG-AFTRA distributes its magazine to members on a quarterly basis. The Spring 2019 issue of the magazine was distributed to SAG-AFTRA members by mail on April 29, 2019 and electronically on May 16, 2019, a mailing schedule similar to the release of prior issues<sup>31</sup> and more than three months prior to the election.

The tone and content of the magazine similarly are not problematic. All references to Carteris in the Spring 2019 issue relate solely to newsworthy union issues and reflect coverage of Carteris similar to earlier publications of the magazine. The number of mentions and images of Carteris in the Spring 2019 issue is similar to the average number of mentions and images of Carteris in prior issues of the magazine (excluding "Special Edition" Winter issues, which focus almost exclusively on the SAG Awards). Moreover, the number of mentions and images of Carteris in the Spring 2019 issue is nearly identical to the number of mentions and images of Carteris in the Spring 2018 issue and the Spring 2017 issue.

As an entertainment union, SAG-AFTRA must maintain a regular media presence and uses its magazine to connect with members and the larger industry regarding the activities of the union and its leaders. The Spring 2019 issue depicts Carteris attending various union and entertainment industry events. For example, Carteris, who also sits on the AFL-CIO Executive Council, is mentioned in a blurb regarding the AFL-CIO Civil and Human Rights Conference, where she served as a panelist. Carteris is also shown attending the ReelAbilities Film Festival, an event that focuses on people with different abilities, and a Power Women Summit on workplace sexual harassment. Since the Harvey Weinstein scandal broke in October 2017,

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<sup>30</sup> Nelson additionally alleges that the Spring 2019 issue improperly promoted other Unite for Strength candidates. The footage of National Board members Elaine Loh and Ben Whitehair and SAG-AFTRA member Chantal Cousineau is in the context of a video supporting the SAG-AFTRA strike against BBH, and makes no reference to the election or to their candidacies. For the reasons discussed with respect to Carteris, we find no merit to this allegation.

<sup>31</sup> The Spring 2018 issue was emailed to members by mail on April 4, 2017 and electronically on April 18, 2018. The Spring 2017 issue was distributed to members by mail on May 1, 2017 and electronically on May 10, 2017. The Spring 2016 issue was distributed to members by mail on May 17, 2016 and electronically on June 3, 2016.

Carteris has been a high-profile voice in the labor movement and entertainment industry on issues involving sexual harassment. Past issues have included similar blurbs regarding Carteris's attendance at conferences, union events and film festivals. For example, in the Spring 2017 issue, Carteris is pictured attending the Sundance Film Festival. In the Spring 2018 issue, Carteris is depicted attending the IATSE Women's Committee Networking Event, a female leadership luncheon, and an AFL-CIO leadership summit on sexual harassment in the workplace.

The Spring 2019 issue also includes quotations and pictures of Carteris in articles regarding the union's latest collective bargaining negotiations, including bargaining with Entercorn Communications Corp., and recent union actions and meetings, including rallies in support of SAG-AFTRA's strike against BBH and a report provided to the National Board. In prior issues, Carteris provided quotes for articles on similar topics. For example, in the Fall 2017 issue, Carteris is quoted in an article regarding SAG-AFTRA's strike against a group of video game corporations. In the Fall 2018 issue, Carteris is featured in a video discussing the strike against BBH. The magazine regularly covers Carteris's reports to the National Board (*see e.g.* Carteris's report to the National Board regarding the merger of the SAG and AFTRA health plans, the implementation of direct deposit of residual checks, and the Telemundo organizing campaign in the Spring 2017 issue, and Carteris's report to the National Board regarding the Network Television Code and Telemundo negotiations in the Summer 2018 issue).

The Spring 2019 issue contains no reference to Carteris's candidacy. It does not endorse Carteris, promote her candidacy, or denigrate any candidate running against her. The tone of the portions of the magazine that refer to Carteris is not laudatory of her as an individual, but rather appropriately positive about the Union's achievements. The only reference to the election is in the Notice of Nominations and Election itself, entitled "Calling All Candidates," that provides factual details regarding the upcoming election. This section does not mention Carteris or any other candidates.

Jane Austin, who ran against Carteris, also frequently receives coverage in the magazine regarding her participation in various union and industry events. For example, the Spring 2019 issue highlighted Austin meeting with the newly-elected governor of California, quoted and pictured Austin in an article regarding the BBH strike, and mentioned Austin as a participant at the Power Women Summit. The magazine also includes coverage of Austin's regular reports to the National Board regarding the union's finances.

The protestors' complaint regarding the amount of coverage of Carteris and United for Strength ("UFS") candidates, as compared to Modine, Austin and other candidates, is unfounded. As discussed *supra* at p. 11 although the LMRDA and the Election Policy require the Union to afford all candidates an equal opportunity to distribute campaign literature at their own expense, there is no requirement that all candidates for office receive equal coverage in union publications on issues unrelated to the election or newsworthy events.<sup>32</sup> As discussed

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<sup>32</sup> *See e.g. Camarata*, 478 F. Supp. at 330-31 (noting that there was no evidence that political opponents who did not receive coverage in union publication had participated in newsworthy, non-political activities that would merit coverage); *New Watch-Dog Committee*, 438 F. Supp. at 1251 (same).

above, the DOL and the courts have regularly recognized that incumbent officers generally receive frequent coverage in union publications due to the nature of their involvement in the work of the union. The protestors present no evidence that SAG-AFTRA failed to cover newsworthy events involving Modine, Austin or other MembershipFirst candidates. In fact, Modine is included in the Spring 2019 issue in a list of high profile supporters of the BBH strike. As noted, Austin received significant coverage in the Spring 2019 issue. However, as the highest elected officer and chief spokesperson for the Union, Carteris understandably received more coverage than other SAG-AFTRA members or officers.

The final allegation of Antico, Hoving, Marciano, and Woods concerns an article about the 55<sup>th</sup> SAG Life Achievement Award winner, Alan Alda. The article includes excerpts and footage from Carteris's "Actor-to-Actor" interview of Alda, discussed *supra* at p. 6-7. Like the podcast and video, the article did not promote Carteris or her candidacy, did not mention the election, and did not denigrate any other candidates. Thus, as we concluded with respect to the podcast and video, we find no violation here.

In sum, we find no evidence of improper promotion and no violation of the Election Policy or applicable federal law.

## II. Use of Membership List

Antico, Hoving, Marciano, and Woods claim that Carteris improperly used the SAG-AFTRA membership database to electioneer. The only support that the protestors provide for this allegation is a list of endorsements from certain National Officers, Local Board members, and Local Officers on the website for Carteris's slate, Unite for Strength. However, the protestors provide no evidence that Carteris communicated with these National and Local Officers and Board members by using the SAG-AFTRA membership list. Carteris, as the incumbent president, has obviously met and interacted with these National and Local Board members throughout her presidency (and, prior to that, while she was Executive Vice President). As discussed *supra* at p. 6, endorsements by union officers made without using union resources do not constitute a violation of the Election Policy or federal election law. Since no facts, documentation, or evidence has been provided to substantiate the protestors' claim that Carteris used the SAG-AFTRA membership list, we find no violation here.

## III. Travel for Commercial Campaign

Antico, Hoving, Marciano and Woods also allege that Carteris improperly engaged in "electioneering" by traveling "around the country to support the passage of a commercial contract." Carteris was Chair of the Negotiating Committee for the Commercials Contract and, in this capacity, traveled to New York to attend negotiating sessions. The protestors provide no evidence that Carteris engaged in campaigning for the election on these trips or on any other Union-sponsored travel. As Carteris made these trips as Chair of the Negotiating Committee on official union business, we find no violation.

#### IV. BH90210

Hamilton, Long, Nelson, and AllJAHyé allege that Carteris received an improper contribution from an employer through her role as an executive producer and cast member in a reunion show of the series Beverly Hills 90210. Carteris played the role of Andrea Zuckerman in the original Beverly Hills 90210 series, which aired from 1990 to 2000. In the recently aired “BH90210,” the cast of the original show return for a six-episode self-referential parody premised on the idea that the cast members have come together to determine whether to film a reboot of Beverly Hills 90210.

Although the show aired in August 2019, production began significantly before the election. Rather than play their original 90210 characters, the cast members play fictionalized versions of their real-life selves. For example, Tori Spelling, who played the role of Donna Martin on the original series, is depicted as a character named “Tori” in the reunion version. In real life, Spelling has been the subject of a number of reality TV shows with her husband Dean McDermott such as “True Tori and Dean: Cabin Fever.” On the reunion series, Spelling’s character “Tori” is married to a man named “Nate” and is portrayed as participating in a fictionalized version of one of these shows called “Tori and Nate: Spelling the Beans.”

Consistent with the treatment of all cast members, Carteris’s character on the new series, “Gabrielle,” is partially based on her current life. In the new series, Carteris is the president of a fictional union, “Actors Guild of America,” a reference to Carteris’s position as the SAG-AFTRA president. The primary character arc of “Gabrielle,” however, focuses on her becoming a grandmother and exploring her sexuality.

We have reviewed the clips provided by the protesters, which total approximately 1 minute and 15 seconds out of a total of six 43-minute episodes. The clips do not refer to “Gabrielle” running for union office or to an internal union election. There is nothing that occurs on the series that can even remotely be considered to be promoting Carteris’s candidacy. A fictionalized reference to an incumbent candidate’s union position in the context of a dramatic television series, standing alone, simply does not violate Section 401(g).

Similarly, there is no basis for the protestors’ allegation that Carteris’s status as an executive producer constitutes an improper employer contribution. As noted, the television series does not refer to Carteris’s candidacy or the upcoming union election. All of the original Beverly Hill 90210 cast members who participated in the reboot were given executive producer status. Since the series does not promote Carteris as a candidate for office, this title is of no import.<sup>33</sup>

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<sup>33</sup> To the extent that the protestors seek to challenge Carteris’s eligibility to run in the election, this issue should have been raised as an eligibility challenge with five (5) days under Article VI.A of the Election Policy. We find that such an eligibility protest would be untimely. Moreover, there is no evidence whatsoever that Carteris was ineligible to run for office. Pursuant to Article VIII(G) of the SAG-AFTRA Constitution a “management employee” is defined as “anyone who acts primarily and continually in the interests of an employer or employers rather than in the interests of the members of the Union.” The protesters provide no

In sum, we find that Carteris's participation in the BH90210 series, both as a cast member and an executive producer, did not constitute receipt of an unlawful employer contribution.

#### V. Carteris as Alleged Management Employee on Union Committees

Nelson and Long allege that Carteris improperly served on the Union's Wages & Working Conditions ("W and W") and Negotiating Committees while also serving as an executive producer on BH90210 "in violation of union rules." However, the claim that Carteris improperly served on these internal union committees does not state a violation of the LMRDA or the Election Policy, and therefore is not within the scope of the Election Committee's jurisdiction.

#### VI. Carteris's Candidate Statement

Hamilton, Long, Nelson and AllJAHyé allege that SAG-AFTRA improperly allowed Carteris to revise her candidate statement after the submission deadline to include information about a recently negotiated contract between SAG-AFTRA and Netflix.<sup>34</sup> First, the protesters presented no evidence that Carteris revised her candidate statement after the deadline for submission of candidate statements. All candidate statements had to be submitted through the Nominations Portal by June 28, 2019 at 5:00 PM. A review of the Portal shows that Carteris submitted her candidate statement for National President on June 28, 2019 at 2:14 PM. Carteris initially submitted both her National and Local Board Member statements on June 28, 2019 at 2:15 PM and then submitted revised statements on June 28, 2019 at 4:59 PM (before the deadline). The SAG-AFTRA IT department confirmed that Carteris's statements were not altered prior to their July 24, 2019 publication.<sup>35</sup>

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evidence that Carteris works "primarily and continually in the interest of an employer," but rather only point to the fact that Carteris, along with all fellow cast members, held the title of an executive producer on a single television series. Accordingly, we find no violation.

<sup>34</sup> Nelson and AllJAHyé also claim that Carteris may have violated the SAG-AFTRA Constitution by allegedly claiming to have personally negotiated the Netflix agreement and by not putting the Netflix agreement out for ratification. These allegations, which are entirely unfounded, have no bearing on the election, and thus do not constitute a violation of the Election Policy or applicable law.

<sup>35</sup> AllJAHyé additionally alleges that SAG-AFTRA representatives improperly allowed Carteris to revise her candidate statement after the deadline, but denied AllJAHyé the opportunity to make a revision to her candidate statement. As noted, the SAG-AFTRA IT Department confirmed that Carteris did not revise her statement after the deadline. AllJAHyé's submitted candidate statements for the National Officers Election and Los Angeles Local Election exceeded the one-hundred (100) word limit for candidate statements outlined in Article III.A.1.b of the Election Policy. The National Officer Election Committee and the Los Angeles Local Election Committee reviewed the statements and agreed to publish only the first one-hundred (100) words of each statement in accordance with the Election Policy. AllJAHyé then

*Second*, there is no evidence that Carteris's reference to the Netflix agreement in her campaign statement involved an improper contribution of union or employer resources. The protestors have not alleged that Carteris used any union funds, facilities, staff or other union resources in connection with her inclusion of a reference to the Netflix Agreement in her campaign statements. Carteris, as chair of the TV/Theatrical negotiating committee, properly had access to this information. Nothing in federal election law or the Election Policy prohibits a candidate from using information acquired through his or her work as an incumbent officer to establish a campaign platform. Indeed, incumbent officers often focus their reelection materials on priorities and concerns gleaned through their experience in office. That is precisely what occurred here.

*Third*, the protestors' claim that Carteris breached union confidentiality by including a reference to the Netflix agreement in her candidate statement is also without merit. The protestors have provided no evidence that Carteris was under an official order or obligation to keep this information confidential prior to presentation to the National Board on July 20, 2019. As the chair of the TV/Theatrical negotiating committee, it follows that Carteris became aware of the final terms prior to this presentation to the National Board. In any event, this claim does not belong in this forum.<sup>36</sup>

*Finally*, Carteris's inclusion of a reference to the Netflix agreement in her candidate statement had no impact on the outcome of the election. On July 20, 2019, SAG-AFTRA issued a public press release regarding its contract with Netflix. This public announcement was made more than a week before IVS mailed ballots and candidate statements to the members. Thus, even before the members saw Carteris's campaign statement, all candidates had the opportunity to discuss and comment on the Netflix contract in their own campaign communications, mailings and online postings.

Given the fact that the IT Department confirmed that Carteris's statement was not changed after the June 28<sup>th</sup> deadline, the lack of evidence that Carteris used any union resources in connection with her reference to the Netflix agreement in her campaign statement, and the fact that all candidates and members were informed of the Netflix deal before Carteris's campaign statement was published, the Election Committee finds no violation of the Election Policy or applicable law.

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requested to revise her candidate statements after the June 28, 2019 deadline. There was no violation of the Election Policy.

<sup>36</sup> The allegation that Carteris violated a SAG-AFTRA rule concerning confidentiality does not implicate the Election Policy or the federal law governing elections. In fact, the DOL Regulations do not allow unions to regulate the content of a candidate's campaign literature or materials. Specifically, the DOL Regulations provide that a union may not alter or censure statements of candidates in any way. 29 C.F.R. § 452.70. Similarly, Article III(A)(1)(b)(viii) of the Election states that, with the exception of certain formatting requirements, the Union will print candidate campaign statements exactly as submitted.

## VII. Alleged Election Committee Bias and Timing of Decision Issuance

Nelson alleges that the Election Committee is biased because all members were “selected and seated by UFS, Ms. Carteris’ political party.” Nelson requests the appointment of a “truly independent Election Committee.”<sup>37</sup>

The Election Committee was appointed pursuant to the procedures in Article VI(G)(2)(g) of the SAG-AFTRA Constitution, which provides, in relevant part:

- i. The National Board shall appoint a National Officer Election Committee to oversee the conduct of all National Officer elections and to hear and determine election protests in accordance with the procedures and polices established by the National Board.
- ii. The Election Committee shall be made up of at least three (3) members in good standing, who may not be candidates for National Officer, National Board or Local Board positions.

The members of this Election Committee were, accordingly, appointed by the National Board, and not, as alleged, by any political party. The appointment was the result of a unanimous decision by the National Board. We find no violation.

Nelson next requests that the Election Committee issue decisions prior to the date of the Convention in order to avoid costs to the Union to rerun the Convention should the election be set aside. Nelson does not allege any violation of the Election Policy or of applicable federal law.

Article IV(g)(2)(h)(iii) of the SAG-AFTRA Constitution and Article (VI)(B)(1)(e) of the Election Policy require the Election Committee to render its written decision on all election protests “as promptly as possible, but in no event more than forty-five (45) days following the date of the election.” As our decision is in accord with this provision, we find no violation.

## VIII. Alleged Use of Union Resources in Carteris Campaign Video

Nelson alleges that Carteris improperly created a campaign video using union resources. In support of his protest, Nelson provides a link to the video at issue.<sup>38</sup> Nelson alleges that, in the video, Carteris uses official SAG-AFTRA graphics and design, and union-owned photographs of Carteris conducting union business beneath the SAG-AFTRA logo.

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<sup>37</sup> AllJAHyé similarly alleges that Bill Charlton was appointed Chair of the “LA Governance Review Committee” by Carteris through the use of “skullduggery.” She provides no evidence for this assertion, nor any connection between this claim and the election process. Accordingly, we find no violation.

<sup>38</sup> Available at: <https://www.youtube.com/watch?v=u3EnoisFNrg>.

Nelson further alleges that Carteris then posted the video via Twitter and other social media platforms.

A. Use of SAG-AFTRA Graphics and Design

Nelson's claim that Carteris used union graphics and design in her campaign video is devoid of any factual or evidentiary support. Nelson makes no allegation that the graphics and design used in the video are trademarked by SAG-AFTRA, nor that the graphics and design were made using union computers, facilities, staff, or other union resources. As Nelson has failed to meet the burden of proof, we find no violation of the Election Policy or applicable federal law.

B. Use of Union-Owned Photos

Nelson next alleges that Carteris used a Union-owned photo in the campaign video. Nelson again provides no evidence that the photo appearing at the beginning of the video is the property of the Union. SAG-AFTRA confirmed that the photo at issue was not a Union photo. In a virtually identical case, the DOL found no violation where a candidate displayed photos on his campaign website which were taken at union facilities and union sponsored events, contained the union logo, and were previously used in Union publications.<sup>39</sup> The DOL found determinative the fact that no union resources had been used to create the photos, even though the union, unlike here, may have used the same photos on its website and in its publications. Since there is no evidence that union resources were used to create the photo, we find no violation of the Election Policy or applicable federal law.

C. Use of SAG-AFTRA Logo

The DOL has held that the LMRDA prohibits the use of a union logo in campaign materials only if its use creates the impression that the union supports or endorses a candidate.<sup>40</sup> Similarly, Article IV(A)(1)(d) of the Election Policy prohibits use of the Union's logo "in a manner which would reasonably be construed as an endorsement by the Union." In a 2017 SAG-AFTRA election protest involving the New England Local, the DOL found no violation of applicable law or the Election Policy where a candidate used the SAG-AFTRA logo in his personal campaign Facebook and Twitter accounts because the posts at issue were clearly those of the candidate, and did not create the impression that SAG-AFTRA endorsed his campaign.<sup>41</sup>

Here, the only depiction of the SAG-AFTRA logo was in a photo of Carteris shown at the beginning of the video, where Carteris is seated in a room with the logo situated on the wall behind her. The photo appears in the context of a video wherein Carteris asks for

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<sup>39</sup> *Painters District Council 5 (DC 5) of the International Union of Painters and Allied Trades* (Sept. 9, 2016).

<sup>40</sup> *National Association of Letter Carriers (NALC)* (Dec. 4, 2014); see also *SAG-AFTRA New England Local* (March 9, 2018).

<sup>41</sup> *SAG-AFTRA New England Local* (March 9, 2018).

member support in the SAG-AFTRA election. The video also contains the logo and web address of Carteris’s campaign, Unite for Strength, and its New York-affiliated slate, USAN. The video ends in a disclaimer “Not Paid for by SAG-AFTRA Funds.” Because the video unmistakably belongs to the campaign, not the Union, the photo showing the SAG-AFTRA logo cannot reasonably be construed as an endorsement by SAG-AFTRA of Carteris.

The fact the Carteris is shown in front of the logo is of no moment, as nothing in the video suggests that the Union endorsed her. The DOL has consistently held that the mere appearance in a photo of a candidate and a union logo, on a t-shirt or otherwise, does not constitute an endorsement.<sup>42</sup> Accordingly, we find that the photo in the campaign video depicting Carteris does not constitute a violation of the Election Policy or applicable federal law.

#### D. Video Posted on Social Media

Nelson’s final allegation is that Carteris posted the video on various social media platforms. Nelson provides no evidence that the video was posted on any SAG-AFTRA platform. He also does not allege that the Union operated any of the pages on the platforms on which it was posted, or that the posting involved any Union resources. The posting of a campaign video online, without any evidence that union resources were used in connection with the posting, does not constitute a violation of the Election Policy or applicable federal law. Accordingly, we find no violation.

#### IX. Alleged Verbal Assault of Member Harcharic

Nelson alleges that Carteris and other UFS candidates “verbally assaulted, intimidated, [and] harassed” member Linda Harcharic (“Harcharic”) in order to prevent Harcharic from distributing campaign literature in support of the MembershipFirst slate in front of the Union’s Los Angeles office.

As the only evidence supporting this claim, Nelson provides an email from Harcharic recounting an incident that allegedly occurred on August 12 between 10 AM and 11 AM outside the Los Angeles SAG-AFTRA office. Harcharic describes an encounter with Carteris in which Carteris supposedly yelled at Harcharic and expressed her disappointment that Harcharic attacked Carteris on social media. Harcharic claims that the two then engaged in a prolonged conversation regarding Carteris’s support for background actors and Harcharic’s support for the MembershipFirst slate.

Harcharic, in her email, provides screenshots of two Twitter posts which each state, “Hot Gossip! We Hear #GabrielleCarteris Was Caught Screaming on a Hollywood Sidewalk At An Opposing Candidate In Her Hotly Contested #SagAftra Election!” Harcharic herself acknowledges, however, that although the conversation was heated at the beginning, it

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<sup>42</sup> *Painters District Council 5 (DC 5) of the International Union of Painters and Allied Trades* (Sept. 9, 2016); *International Brotherhood of Electrical Workers, Local 1900* (Apr. 13, 2010).

quickly quieted down. Harcharic does not allege that Carteris cursed or made any threats against her. Nor does she claim that Carteris prevented her from distributing her campaign literature.

Neither Nelson nor Harcharic allege that any Union resources were used to denigrate MembershipFirst candidates. Nor is there any allegation that Carteris or any other UFS candidate acted in his or her capacity as a union official to prevent Harcharic from distributing campaign literature.

The conduct alleged does not state a violation of the Election Policy or applicable federal law. Carteris's remarks, as alleged, constitute nothing more than campaign speech. Therefore, without any allegation or evidence that union resources were used to denigrate a particular candidate or slate of candidates, or that Carteris (or anyone else) prevented Harcharic from distributing campaign literature, we find no violation.

#### X. Alleged Defamation of Modine by Carteris

Nelson alleges that on August 22nd and 23rd, Carteris defamed candidate Modine through comments published in news articles, on Twitter and by email sent to union members when she alleged that the Modine campaign had violated union election rules and federal labor law by receiving employer contributions, including free film production services from the New York Film Academy. Nelson alleges that Carteris, in making these statements, knowingly made false allegations against member Modine in violation of federal law.

The underlying issue of Modine accepting unlawful campaign contributions was discussed at length in an August 21, 2019 article in the Los Angeles Times entitled "Film school's ties with Matthew Modine face scrutiny in heated SAG-AFTRA election."<sup>43</sup> The crux of the article was that New York Film Academy, an employer, had promoted Modine's candidacy through posts on social media and videos that it produced. An experienced labor lawyer quoted in the article noted that the videos, which were co-branded for the slate and the film academy, constituted a per se violation of federal labor law.

Nelson does not claim that Carteris made any of the comments in the Los Angeles Times article or elsewhere in her capacity as a union official. The DOL Regulations make clear that a union may not "censor the statements of the candidates in any way, even though the statement may include derogatory remarks about other candidates." 29 C.F.R. § 452.70. We find that Nelson's allegations do not state a violation of the Election Policy or applicable federal law.

Nelson also alleges that Carteris violated Title V of the LMRDA, 29 U.S.C. § 501(a), requiring that officers act as fiduciaries of the union. Although this issue is not within our purview, we note that Nelson has not provided any evidence that Carteris violated her duty as a fiduciary of SAG-AFTRA.

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<sup>43</sup> Available at: <https://www.latimes.com/entertainment-arts/business/story/2019-08-21/matthew-modine-sag-aftra-election-new-york-film-academy>.

## XI. Fradin Text Messages to Members

Nelson alleges that National Board Member and UFS Chicago Local candidate Illyssa Fradin contracted with employer Eye-Dentify, Inc. to send text messages to union members containing a photograph of Carteris and the message “I support reelecting Gabrielle Carteris President of SAG-AFTRA.” Nelson alleges that this text message violates various provisions of the Election Policy -- including Article III(B) on mailing and emailing campaign literature, Article III(B)(4) requiring disclaimers in campaign literature, Article IV(B) prohibiting the use of employer resources to promote a candidate or slate of candidates -- as well as Titles IV and V of the LMRDA and the Telephone Consumers Protection Act (“TCPA”). We will address each of these in turn.

Article III(B)(1)-(4) of the Election Policy deals exclusively with Union-facilitated candidate mailings and emailings at the candidate’s expense. Under these provisions, where the Union mails or emails candidate literature, as it is required to do under federal law, the literature must include a disclaimer informing members that it was not paid for using SAG-AFTRA funds. Nelson provides no evidence that the Union sent the text message at issue to members, and the Union confirms that it did not. Further, as Nelson admits in his protest, text message communications are not regulated by these provisions of the Election Policy. Accordingly, we find no violation.

Article IV(B) of the Election Policy prohibits the use of employer funds to promote the candidacy of any person. Nelson states in his protest that, “[u]nless Ms. Fradin paid Eye-Dentify at the fair market value for its distribution of the Text, such distribution constitutes a prohibited employer contribution to Ms. Carteris’ campaign.” Nelson, however, provides no evidence indicating that Eye-Dentify is, in fact, an employer or that Fradin failed to pay for the text distribution. SAG-AFTRA confirmed that it did not pay for the text distribution. Accordingly, we find no violation of the Election Policy or applicable federal law.

Nelson’s next theory is that the text messages violate Section § 481(c) of the LMRDA, which prohibits a union from discriminating among candidates in connection with its mailing of campaign literature at a candidate’s expense. As stated above, however, the evidence establishes that Fradin, not SAG-AFTRA, arranged for the distribution of the text messages. Nelson does not allege or provide evidence that the Union or any of its officers provided Fradin with the phone numbers of SAG-AFTRA members in order to distribute the text messages. Nor does he allege or provide evidence that the Union or any of its officers provided any candidate or campaign with any members’ phone numbers. SAG-AFTRA confirmed that it did not. It is not unusual for a candidate, particularly one like Fradin who has been involved in the union for decades, to have members’ phone numbers, or for a campaign to obtain personal contact information from members who sign up to receive information from the campaign. Nelson has not provided any evidence showing that anything other than this occurred here. Accordingly, we find no violation.

Finally, Nelson alleges that Fradin violated her fiduciary obligations under Title V of the LMRDA. As we concluded with respect to the identical allegation about Carteris, this issue is not within our purview. Additionally, we note that Nelson has not provided any evidence that Fradin violated her duty as a fiduciary of SAG-AFTRA.

## XII. Jeffrey's Cease and Desist Letter to MembershipFirst Slate

Nelson alleges that, on August 1, eight Union officials, including Carteris, authorized attorney Pamela Jeffrey to send a letter to twenty members supporting the MembershipFirst slate “threatening litigation if [the MembershipFirst supporters] did not cease and desist from asserting claims that Ms. Carteris had committed election violations and breached her fiduciary duties to SAG-AFTRA.” Nelson acknowledges that Jeffrey’s letter was sent in response to a letter which Nelson’s attorney, Robert Allen, sent to SAG-AFTRA alleging that Carteris had violated the Election Policy and her fiduciary duty as President of the Union. He claims that Jeffrey and/or Union officials then “leaked” the August 1st letter to news publications. Nelson also claims that Jeffrey violated California and New York rules of professional conduct by subsequently communicating with member Pamela Guest -- at Guest’s initiation -- while believing that Guest was Allen’s client.

Jeffrey clearly stated in her letter that she was representing individual candidates. Nelson does not allege that the candidates who retained Jeffrey did so while acting in their official capacities. He does not claim that they used any union resources to compensate her or facilitate reporting about the letter in any news publications. SAG-AFTRA confirms that it did not. Accordingly, we find no violation of the Election Policy or applicable federal law.

## XIII. Election Committee Meeting During Ballot Count

Nelson alleges that the Union failed to ensure adequate safeguards of its election because, during the ballot count, observers were denied access to a 20-minute meeting of the Election Committee concerning a “glitch with one of the batches of ballots.”<sup>44</sup>

Pursuant to 29 C.F.R. § 452.107:

Under the provisions of section 401(c), each candidate must be permitted to have an observer (1) at the polls and (2) at the counting of the ballots. This right encompasses every phase and level of the counting and tallying process, including the counting and tallying of the ballots and the totaling, recording, and reporting of tally sheets.

Nelson does not allege that observers were excluded from counting and tallying of the ballots or the totaling, recording, and reporting of tally sheets. There is no requirement that observers be allowed to observe internal Election Committee deliberations. Nelson’s allegations with regard to the ballot count do not constitute a violation of the Election Policy or applicable federal law.

## XIV. Alleged Retaliation by SAG-AFTRA against MembershipFirst Supporters

Nelson alleges that SAG-AFTRA officials and representatives retaliated against members who supported Modine and other MembershipFirst candidates. Nelson provides two

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<sup>44</sup> As previously noted, Hadfield, who filed an untimely protest, made the same allegations.

examples. First, he alleges that SAG-AFTRA cancelled classes taught by SAG-AFTRA member Joseph Pearlman the day after Pearlman announced his endorsement of Modine. Nelson alleges that Serena Kung, SAG-AFTRA Associate Executive Director of Los Angeles Local Operations, told Pearlman that Carteris's legal team had ordered the cancellation "due to scrutiny of presenters due to the contentious election." Second, Nelson alleges that Michelle Bennett told member Jessica Barth that the Union would not consider working with Voices in Action ("VIA"), an organization that Barth is a part of, until after the election because Barth had endorsed Modine.

With respect to the first example of alleged retaliation, we have reached out to Serena Kung regarding the statement that Nelson claims she made to Pearlman. Kung unequivocally denied making this statement. SAG-AFTRA provided internal email correspondence regarding the decision not to sponsor Pearlman's class. *See Exhibit C*. Based on the email correspondence, it appears that SAG-AFTRA cancelled a course by Joseph Pearlman called "How to Win a Series Lead Before It Goes to Casting" due to concerns regarding a video interview that Pearlman had posted. During the interview, Pearlman talks with a fellow member regarding her approach for obtaining jobs. The member states that she often presents herself as a local hire so that the production does not have to pay for travel. Pearlman appears to support the member's suggested approach, which is contrary to SAG-AFTRA's internal rules. The email correspondence confirms a bona fide reason for SAG-AFTRA's decision, which did not relate in any way to Pearlman's endorsement of Modine. In light of this, as well as the lack of any credible evidence to the contrary, we find that no retaliation occurred.

With respect to the second example, SAG-AFTRA has provided email correspondence between Michelle Bennett and Jessica Barth regarding VIA. *See Exhibit D*. In this exchange, Bennett informed Barth that SAG-AFTRA could not link to or partner with VIA during the internal election period, but would conduct a complete review of a possible partnership with and/or link to VIA after the election cycle concluded. Bennett noted that SAG-AFTRA had learned that a candidate endorsement had been promoted through a VIA social media account. Since SAG-AFTRA determined that VIA had promoted the endorsement of a candidate, it reasonably decided to avoid the possible appearance of endorsement by the Union by delaying consideration of an affiliation. There is no evidence that other organizations that endorsed different candidates were treated any differently.

Given the compelling evidence of a bona fide, non-discriminatory explanation for the cancellation of Pearlman's class and the decision not to partner with VIA during the election period, we find insufficient basis to establish any retaliation by SAG-AFTRA representatives against MembershipFirst supporters. Accordingly, we dismiss this portion of Nelson's protest.

#### XV. Voting by Mail Ballot

AllJAHy e alleges that members were not provided a "reasonable opportunity" to vote because they were not permitted to cast a vote in person, electronically, or by absentee ballot. AllJAHy e also questions the fact that members were not given a date by which ballots had to be put in the mail, but only a date by which they had to be received at the post office.

The DOL Regulations permit an election of union officials to be conducted by mail ballot. 29 C.F.R. § 452.94. Consistent with these regulations, Article V(C)(1) of the Election Policy confirms that the SAG-AFTRA election was a mail ballot election. The Election Policy provides a date for receipt of all mail ballots in order to provide a clear deadline for inclusion of ballots in the ballot count. Since the election by mail ballot was conducted in accordance with the Election Policy and applicable law, we find no violation here.

#### XVI. Exclusion of Candidates from UnionWorking Presidential Candidate Town Hall

Hefti, Koutsomitis, Theurich, Boakes and AllJAHy  allege that presidential candidates Abraham Justice and Queen AllJAHy  Searles were improperly excluded from an August 15, 2019 “Presidential Town Hall” in violation of the LMRDA and the SAG-AFTRA Constitution.<sup>45</sup> As discussed below, as SAG-AFTRA did not pay for or sponsor this event, we find no violation.

The undisputed evidence establishes that a group called UnionWorking (“UW”) hosted this “Presidential Town Hall” on August 7, 2019, between 7:00 p.m. and 9:45 p.m., at the Faith Presbyterian Church, in Valley Village, California. UW invited three presidential candidates, Carteris, Austin and Modine to participate in the event, but did not invite candidates Abraham Justice and Queen AllJAHy  Searles. The event was not in any way sponsored by or supported by SAG-AFTRA.

Jim Connor, a SAG-AFTRA member involved with UW who helped arrange the town hall, provided evidence that UW organized and publicized the event without funds, resources or other support from SAG-AFTRA. UW is not a Local of SAG-AFTRA, a subdivision of SAG-AFTRA, or otherwise affiliated with SAG-AFTRA. UW has no formal or informal relationship with SAG-AFTRA. Connor described it as a “self-funded grassroots organization.”<sup>46</sup> Although UW’s membership includes some SAG-AFTRA members, the organization has many other members who belong to other unions. SAG-AFTRA membership is not a requirement for membership in UW. SAG-AFTRA has no input into the selection of the UW leadership, and no other input or influence on UW’s governance or operations.

In support of her protest, Hefti provided three exhibits: a screenshot of the UW web page which confirms that Justice and AllJAHy  were not invited to the town hall; a quote from an article in Deadline stating that Justice and AllJAHy  were not invited to the town hall,

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<sup>45</sup> Hefti and Justice’s additional claim that SAG-AFTRA “willfully violated the rights of NY Union Background Artists” by failing to provide adequate notice of a meeting regarding a collective bargaining agreement is not within the scope of our authority, which is limited to ruling on protests arising out of the national election. For that reason, we dismiss this claim.

<sup>46</sup> The UW website (available at <https://unionworking.com/about/>) states that: “UnionWorking is a grassroots group of union members, for union members. But UnionWorking is not a union, and UnionWorking is not the union — not SAG-AFTRA, not AEA, not WGA. We are not the union, but we are members of these unions.”

and a copy of a document containing statements by SAG-AFTRA presidential candidates, including statements by AllJAHyé and Justice. None of this evidence connects UW to SAG-AFTRA or SAG-AFTRA to the UW town hall event.

Since UW has no affiliation with SAG-AFTRA, received no funds, resources, or other support from SAG-AFTRA, and SAG-AFTRA played no role whatsoever in the town hall, we find no violation of the Election Policy or applicable federal law.

### **CONCLUSION**

For the foregoing reasons, we dismiss all the post-election protests.

### **NATIONAL OFFICER ELECTION COMMITTEE**

Dated: October 4, 2019

Ray Proscia, Chair

Steve Bayorgeon

Marcy Goldman

Jim Murtaugh

Sally Weldon