

OFFICE OF
GENERAL COUNSEL

FEDERAL ELECTION COMMISSION

2018 AUG -9 PM 2:19

In the matter of:

Freedom Vote, Inc.
Fighting for Ohio Fund
Christopher Marston, Treasurer, Fighting for Ohio Fund
Unknown Respondents

MUR

7465

COMPLAINT

1. Citizens for Responsibility and Ethics in Washington (“CREW”) and Noah Bookbinder bring this complaint before the Federal Election Commission (“FEC” or “Commission”) seeking an immediate investigation and enforcement action against Freedom Vote, Inc. (“FV”), Fighting for Ohio Fund, Christopher Marston, and Unknown Respondents for direct and serious violations of the Federal Election Campaign Act (“FECA”).

2. Freedom Vote, Inc. is ostensibly a tax-exempt social welfare organization established in Ohio in 2010. During most of its existence, however, it has acted as a political committee, spending the majority of its money on federal political activity. For example, between October 1, 2015 and September 30, 2016 – FV’s fiscal year which covered much of the 2016 election cycle – about 80% of FV’s spending was political. That spending included \$1.7 million the group gave to a super PAC, Fighting for Ohio Fund, and at least \$1.1 million for an advertisement opposing a candidate in the 2016 Ohio Senate race. FV similarly spent most of its funds on politics during the 2014 election, and the majority of FV’s spending since October 2011 has been dedicated to politics.

3. In conducting their political activity, Freedom Vote, Inc., Fighting for Ohio Fund, and one or more unknown respondents violated the FECA. Despite its heavy political spending, FV never registered as a political committee with the FEC, failed to file reports disclosing its

contributors, and failed to disclose its spending on the political ad it ran in the 2016 Ohio Senate race. In addition, FV, Fighting for Ohio Fund, and unknown respondents engaged in a conduit contribution scheme that kept secret the names of donors by laundering their contributions to Fighting for Ohio Fund through FV. The FEC should investigate these allegations and take appropriate action to enforce the FECA.

Complainants

4. Complainant CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the right of citizens to be informed about the activities of government officials and to ensuring the integrity of government officials. CREW is dedicated to empowering voters to have an influential voice in government decisions and in the governmental decision-making process. CREW uses a combination of research, litigation, and advocacy to advance its mission.

5. In furtherance of its mission, CREW seeks to expose unethical and illegal conduct of those involved in government. One way CREW does this is by educating citizens regarding the integrity of the electoral process and our system of government. Toward this end, CREW monitors the campaign finance activities of those who run for federal office and publicizes those who violate federal campaign finance laws through its website, press releases, and other methods of distribution. CREW also files complaints with the FEC when it discovers violations of the FECA. Publicizing campaign finance violators and filing complaints with the FEC serve CREW's mission of keeping the public informed about individuals and entities that violate campaign finance laws and deterring future violations of campaign finance law.

6. In order to assess whether an individual, candidate, political committee, or other regulated entity is complying with federal campaign finance law, CREW needs the information

contained in receipts and disbursements reports political committees and others must file pursuant to the FECA, 52 U.S.C. § 30104; 11 C.F.R. §§ 104.1–22, 109.10. CREW is hindered in its programmatic activity when an individual, candidate, political committee, or other regulated entity fails to disclose campaign finance information in reports of receipts and disbursements required by the FECA.

7. CREW relies on the FEC's proper administration of the FECA's reporting requirements because the FECA-mandated disclosure reports are the only source of information CREW can use to determine if an individual, candidate, political committee, or other regulated entity is complying with the FECA. The proper administration of the FECA's reporting requirements includes mandating that all disclosure reports required by the FECA are properly and timely filed with the FEC. CREW is hindered in its programmatic activity when the FEC fails to properly administer the FECA's reporting requirements.

8. Complainant Noah Bookbinder is the executive director of Citizens for Responsibility and Ethics in Washington. At all times relevant to the complaint, he has been and remains a citizen of the United States and a registered voter and resident of Maryland. As a registered voter, Mr. Bookbinder is entitled to receive information contained in disclosure reports required by the FECA, 52 U.S.C. § 30104; 11 C.F.R. §§ 104.1–22, 109.10. Mr. Bookbinder is harmed in exercising his right to vote when an individual, candidate, political committee, or other regulated entity fails to report campaign finance activity as required by the FECA. *See FEC v. Akins*, 524 U.S. 11, 19 (1998), *quoting Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976) (political committees must disclose contributors and disbursements help voters understand who provides which candidates with financial support). Mr. Bookbinder is further harmed when the FEC fails

to properly administer the FECA's reporting requirements, limiting his ability to review campaign finance information.

9. Mr. Bookbinder also is harmed in his ability to communicate to the public and to other voters information about the source of funds used for political activities.

Respondents

10. FV is a tax-exempt organization established in 2010, organized under section 501(c)(4) of the Internal Revenue Code, and based in Dayton, OH. James S. Nathanson is the executive director of FV. FV 2015 Form 990, <https://bit.ly/2HdyBoH>.

11. FV was formed "with the express purpose of raising money to help pay for the type of turnout operations traditionally underwritten by the [Republican National Committee]." Jeanne Cummings, State Parties Look Past RNC for Cash, *Politico*, Sept. 3, 2010, <http://politi.co/2FjFJj3>. Tom Whatman, a former executive director of the Ohio Republican Party who advised FV when the group was formed, explained the formation of FV by saying he "understood that the lack of resources from the [Republican National Committee] was going to have a severe impact on what the parties were going to be able to do." *Id.*

12. As of June 7, 2018, FV was not a registered political committee.

13. Fighting for Ohio Fund is an independent-expenditure only committee ("super PAC") formed in 2015. Fighting for Ohio Fund, FEC Form 1, Statement of Organization, February 18, 2015.

14. Christopher Marston is the treasurer of Fighting for Ohio Fund. *Id.*

15. Unknown respondents are the true source or sources of funds FV transferred to Fighting for Ohio Fund, as well as the conduit or conduits, if any, through which such funds passed before being contributed to FV.

Factual allegations

16. On January 1, 2011, James S. Nathanson took over as executive director of FV. FV 2010 Form 990, Part VII, Section A, <https://bit.ly/2qIfsW>.
17. On its 2011 tax return, filed under penalty of perjury, FV reported spending a total of \$191,416 between October 1, 2011 and September 30, 2012. FV 2011 Form 990, Part I, Line 18, <https://bit.ly/2HyhOrM>.
18. On its 2012 tax return, filed under penalty of perjury, FV reported spending a total of \$150,430 between October 1, 2012 and September 30, 2013. FV 2012 Form 990, Part I, Line 18, <https://bit.ly/2HCYIOS>.
19. In March, April, and May 2014, FV reported to the FEC spending \$174,607 on independent expenditures supporting then-Speaker of the House John Boehner (R-OH) and opposing two of his primary opponents, J.D. Winteregg and Eric Gurr. FV, [FEC Form 5, 2014 April Quarterly Report, Amended](#), July 15, 2014; FV, [FEC Form 5, 2014 July Quarterly Report](#), July 15, 2014. Specifically, FV paid for “door hangers,” “canvassers and consulting,” “iPads for canvassing,” “map books for canvassing,” “door-to-door literature,” and “robocalls” all supporting Speaker Boehner’s re-election. *Id.*
20. On its 2013 tax return, filed under penalty of perjury, FV reported spending a total of \$284,754 between October 1, 2013 and September 30, 2014. FV 2013 Form 990, Part I, Line 18, <https://bit.ly/2vvIUmA>. FV’s political spending during that year thus amounted to 61.3% of its total spending.
21. FV’s total spending dropped significantly following the 2014 election. FV reported on its 2014 tax return spending a total of \$58,578 between October 1, 2014 and September 30, 2015. FV 2014 Form 990-EZ, Part I, Line 17, <https://bit.ly/2HKzYw4>.

22. On its 2015 tax return, filed under penalty of perjury, FV reported spending a total of \$3,575,475 between October 1, 2015 and September 30, 2016. FV 2015 Form 990, Part I, Line 18.

23. Of that total, FV reported spending \$1,744,267 on “direct and indirect political campaign activities,” including \$1,700,000 given to an independent expenditure-only political action committee, also known as a super PAC, registered with the FEC. *Id.*, Schedule C, Part I-A, Line 2 and Part I-C, Line 5. Specifically, FV deposited or gifted \$1,700,000 to Fighting for Ohio Fund between December 29, 2015 and September 21, 2016, with \$1,500,000 of those occurring in 2016. *Id.*; Fighting for Ohio Fund, FEC Form 1, Statement of Organization, February 18, 2015; Fighting for Ohio Fund, FEC Form 3X, 2015 Year-End Report, Jan. 31, 2016; Fighting for Ohio Fund, FEC Form 3X, 2016 April Quarterly Report, Amended, Oct. 27, 2016; Fighting for Ohio Fund, FEC Form 3X, 2016 October Quarterly Report, Amended, Oct. 27, 2016.

24. The super PAC reported receiving FV’s funds as “contributions” – gifts or other transfers of money made “for the purpose of influencing any election or Federal office.” 52 U.S.C. § 30101(8)(A)(i) (definition of contribution).

25. Fighting for Ohio Fund also reported receiving an additional \$275,000 from FV that was not included on FV’s 2015 tax return since the transfer was made on Oct. 5, 2016, after the close of the fiscal year covered by FV’s 2015 tax return. Fighting for Ohio Fund, FEC Form 3X, 2016 Pre-General Report, Oct. 27, 2016; FV 2015 Form 990, Schedule C, Part I-A, Line 2 and Part I-C, Line 5.

26. FV may have solicited and received contributions with the intent that the funds would be transferred to Fighting for Ohio Fund. The two organizations employed the same

fundraising firm, MMM Consulting. FV 2015 Form 990, Schedule G, Part I; Fighting for Ohio Fund, FEC Form 3X, 2015 Year-End Report, Jan. 31, 2016; Fighting for Ohio Fund, FEC Form 3X, 2016 April Quarterly Report, Amended, Oct. 27, 2016; Fighting for Ohio Fund, FEC Form 3X, 2016 July Quarterly Report, Amended, Oct. 27, 2016; Fighting for Ohio Fund, FEC Form 3X, 2016 October Quarterly Report, Amended, Oct. 27, 2016; Fighting for Ohio Fund, FEC Form 3X, 2016 Pre-General Report, Oct. 27, 2016; Fighting for Ohio Fund, FEC Form 3X, 2016 Post-General Report, Dec. 6, 2016.

27. On its 2015 tax return, FV reported that MMM Consulting raised \$2,090,000 for FV, a sum sufficient to cover all FV's transfers to Fighting for Ohio Fund during the 2016 election cycle. FV 2015 Form 990, Schedule G, Part I. MMM Consulting was paid \$35,000 for its services. *Id.*

28. Five of the six transfers FV made to Fighting for Ohio Fund during its 2015 tax year correspond to exact amounts FV reported receiving on its Schedule of Contributors. FV 2015 Form 990, Schedule B, Part 1, Lines 3, 8, 9, 12, and 15 (2015 return covers much of the 2016 election cycle).

29. Specifically,

- FV reported receiving a \$500,000 contribution between October 1, 2015 and September 30, 2016. *Id.*, Schedule B, Part 1, Line 12. On July 5, 2016, FV transferred \$500,000 to Fighting for Ohio Fund. Fighting for Ohio Fund, FEC Form 3X, 2016 October Quarterly Report, Amended, Oct. 27, 2016.
- FV reported receiving two separate \$250,000 contributions between October 1, 2015 and September 30, 2016. FV 2015 Form 990, Schedule B, Part 1, Lines 3 and 9. On August 25, 2016 and September 21, 2016, FV made two separate \$250,000 transfers to Fighting for Ohio Fund. Fighting for Ohio Fund, FEC Form 3X, 2016 October Quarterly Report, Amended, Oct. 27, 2016.

- FV reported receiving two separate \$200,000 contributions between October 1, 2015 and September 30, 2016. FV 2015 Form 990, Schedule B, Part 1, Lines 8 and 15. On December 29, 2015 and September 14, 2016, FV made two separate \$200,000 transfers to Fighting for Ohio Fund. Fighting for Ohio Fund, FEC Form 3X, 2015 Year-End Report, Jan. 31, 2016; Fighting for Ohio Fund, FEC Form 3X, 2016 October Quarterly Report, Amended, Oct. 27, 2016.

30. Fighting for Ohio Fund engaged in extensive political activity influencing a federal election in 2016. The super PAC spent more than \$9.2 million on independent expenditures opposing former Gov. Ted Strickland, who was then a Democratic candidate in the Ohio Senate race. OpenSecrets.org, Fighting for Ohio Fund, Independent Expenditures, Targeted Candidates, 2016, *available at* <https://bit.ly/2Hv0BHZ>.

31. Fighting for Ohio Fund's ads against Strickland all contained an economic critique of Strickland's record as governor. Specifically, Fighting for Ohio Fund posted on its YouTube page 10 anti-Strickland videos that appear to be ads. Each of these criticize Strickland because Ohio lost 350,000 jobs while he was in office. YouTube, Fighting for Ohio, Uploads, *available at* <https://bit.ly/2F0R5ae>.

32. In June and July 2016, FV broadcast its own television advertisement in Ohio attacking Strickland, who was then a Democratic candidate for the Senate but had not been a government official since January 2011. A copy of the advertisement that aired on station WLWT in Cincinnati, Ohio on June 20, 2016 is included on the drive attached as Exhibit A and a transcript of the ad is available at <https://bit.ly/2F4AbaM>.

33. The advertisement is titled "Third Largest." Block Communications, Inc., Political Public File, National Issue/Third-Party Federal Candidate Advertisement, Freedom Vote/MainStreet Media Group, June 16, 2016, *available at* <https://bit.ly/2HdmoEL>. The ad used the same economic critique of Strickland that Fighting for Ohio Fund's ads used. FV's ad begins

with the narrator stating, “While Ted Strickland was governor, Ohio lost jobs to Kentucky, Indiana, even Michigan. 350,000 Ohio jobs gone.” While the names of Ohio cities and their population sizes scroll on the screen, the narrator adds, “How many is that? If you assembled everyone who lost their job under Strickland, you’d have Ohio’s third largest city.” The ad closes by referring to Strickland’s Senate candidacy with the narrator stating, “Now Ted Strickland wants to bring his job-killing policies to Washington.” As the narrator says this, an image of the U.S. Capitol building is shown with text stating, “Ted Strickland: Bringing Job-Killing Policies to Washington” superimposed over it. The ad concluded by advocating the defeat of Strickland’s candidacy for Senate, stating “we can’t afford more lost jobs” over an image of Strickland. The advertisement ends with the words “Paid for by Freedom Vote” appear at the bottom.

34. FV did not file any independent expenditure reports with the FEC regarding the advertisement.

35. On information and belief, FV spent more than \$1 million on air time to broadcast this advertisement on television in Ohio.

36. The exact amount FV spent on the Strickland ad is unknown since the organization did not file any independent expenditure reports with the FEC, but an analysis by CREW of ad-buying contracts on file with the Federal Communications Commission (“FCC”) and collected by the Center for Responsive Politics estimated that FV spent between \$1,290,605 and \$1,550,935 to run the ads.¹

¹ CREW downloaded and examined every ad contract collected by the Center for Responsive Politics that identified FV as the sponsor in 2016, extracting and compiling information on how much FV contracted to spend on ads in terms of both “gross” and “net” expenditures. In order to account for duplicates, CREW removed duplicate file names and duplicate spending amounts after extracting spending data from the ad contracts. However, some duplicates, amendments, or

37. On its 2015 tax return, covering October 1, 2015 to September 30, 2016, FV reported spending \$1,121,077 on “issue advocacy.” The spending on issue advocacy, which FV reported was part of its efforts to educate “the Ohio public regarding economic policy issues, including state and local government fiscal responsibility, job growth and retention, and employment,” appears to reflect FV’s spending on the anti-Strickland advertisement. FV 2015 Form 990, Part III, Line 4a and Part IX, Line 24a.

38. Between October 1, 2015 to September 30, 2016, the time period covered by FV’s 2015 tax return, the group admitted spending \$1,744,267 on political activity, accounting for 48.8% of its total spending. As discussed above, \$1,700,000 of that activity consisted of transfers to Fighting for Ohio Fund as well as an additional \$44,267 in political activity that FV did not describe. FV did not include the amounts the organization spent on its anti-Strickland independent expenditure in its reported political activity. Including the minimum estimate of FV’s spending on the anti-Strickland Ohio advertisement, the \$1,121,077 FV reported to the IRS it spent on “issue advocacy,” would increase FV’s political spending to 80.1% of its total spending between October 1, 2015 to September 30, 2016.

39. Since FV’s fiscal year ended on September 30, 2016, it is unknown exactly how much FV spent overall or on political activity in calendar year 2016. FV spent at least an additional \$275,000 on political activity before the end of the year, however, by making another gift or deposit to Fighting for Ohio Fund on October 5, 2016, just after the end of its fiscal year

revisions may have been inadvertently included in the CREW’s analysis, rendering it an estimate rather than an exact figure. This approach found that FV spent more than \$1.2 million “net” on television ads or more than \$1.5 million “gross” on them. See CREW spreadsheet of FV FCC ad contracts, available at <https://bit.ly/2HgSXgK>.

and before the 2016 election. This gift or deposit brings FV's total transfers to the super PAC to at least \$1,975,000 in 2015 and 2016.

40. The high percentage of political spending by FV extends beyond its 2015 tax year and includes the time period covering the most recent two election cycles. From October 1, 2012 to September 30, 2016, FV reported spending a total of \$4,069,237. Including the at least \$1,121,077 FV appears to have spent on the anti-Strickland ads and the political spending FV acknowledged on its tax returns, more than 74.7% of FV's total spending for this period was used for political activity.

41. The pattern of significant political spending also is consistent through Mr. Nathanson's tenure as executive director. Mr. Nathanson became executive director on January 1, 2011. Since FV does not report its spending to the IRS using the calendar year, FV's 2011 tax return, covering October 1, 2011 to September 30, 2012, is the first FV tax return to completely reflect the organization under his leadership. When the \$191,416 FV reported spending between October 1, 2011 and September 30, 2012 is added to the spending detailed in paragraphs 38 and 40, above, representing all spending for periods in which Mr. Nathanson was FV's executive director for the entirety of the period, FV's total spending to influence federal elections accounts for more than 71.3% of its total expenditures.

Count I

42. The television advertisement FV broadcast in June and July 2016 was an independent expenditure, but was not reported to the Commission.

43. An "independent expenditure" is an expenditure by a person for a communication "expressly advocating the election or defeat of a clearly identified candidate" that is not coordinated with a candidate or a political party. 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16(a).

44. The commission's regulations define "expressly advocating" as any communication that either use phrases such as "Smith for Congress" or "Bill McKay in '94," 11 C.F.R. § 100.22(a), or "[w]hen taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because – (1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action," 11 C.F.R. § 100.22(b).

45. The FECA requires a person who makes independent expenditures aggregating \$10,000 or more on a given election in a calendar year up to the 20th day before the date of an election to file a report describing the expenditure with the Commission within 48 hours. 52 U.S.C. § 30104(g)(2)(A). Commission regulations specify that the report must be filed not later than "11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated." 11 C.F.R. § 109.10(c).

46. The FECA requires a person who makes independent expenditures aggregating \$1,000 or more on a given election after the 20th day before the date of an election but more than 24 hours before the day of the election to file a report describing the expenditure with the Commission within 24 hours. 52 U.S.C. § 30104 (g)(1)(A). Commission regulations specify that the report must be filed not later than "11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication is publicly distributed or otherwise publicly disseminated." 11 C.F.R. § 109.10(d).

47. The FECA and FEC regulations further require a person who makes independent expenditures aggregating more than \$250 in a calendar year to file quarterly reports regarding the expenditures. 52 U.S.C. §§ 30104(b)(4), (b)(5)(A), (c)(2) (referencing 52 U.S.C. § 30104(a)(2)); 11 C.F.R. § 109.10(b). Those reports must describe the expenditure. 52 U.S.C. § 30104(b)(5)(A), (c)(2)(A) (referencing 52 U.S.C. § 30104(b)(6)(B)(iii)); 11 C.F.R. § 109.10(e)(1). The FECA further requires these reports to identify each person who made a contribution in excess of \$200 to the person filing the report “which was made for the purpose of furthering an independent expenditure,” 52 U.S.C. § 30104(c)(2)(C), and the identity of each person “who makes a contribution” to the person filing the report “whose contribution or contributions have an aggregate amount of value in excess of \$200 within a calendar year,” *id.* § 30104(c)(1) (incorporating by reference 52 U.S.C. § 30104(b)(3)(A)). FEC regulations require the reports to identify each person who made a contribution in excess of \$200 to the person filing the report which “was made for the purpose of furthering the reported independent expenditure.” 11 C.F.R. § 109.10(e)(1)(vi).²

48. The advertisement titled “Third Largest” is an independent expenditure because, taken as a whole, it could only be interpreted by a reasonable person as advocating for the defeat of a clearly identified candidate, former Gov. Strickland. The advertisement clearly identified Mr. Strickland by name, photograph, and video. The ad did not focus on any pending legislation or policy, but rather focused on Mr. Strickland’s qualifications for office and past performance, exhibiting the purpose of creating a negative impression of Mr. Strickland by suggesting that his

² The FEC’s interpretation fails to give full effect to the statutory provisions and conflicts with the statute. Nevertheless, notwithstanding the limited disclosure required by the FEC regulations, those making independent expenditures are obligated by the FECA to disclose the information described by the statute.

policies as governor were responsible for the loss of 350,000 jobs in Ohio during his time in office. The advertisement did not encourage viewers to contact Mr. Strickland or provide any way to contact him. The ad did refer, however, to former Gov. Strickland's candidacy, saying he "wants to bring his job-killing policies to Washington" while showing an image of the U.S. Capitol – where he would serve if elected senator. The ad then advocated the defeat of Mr. Strickland's candidacy for Senate, suggesting voters should not send Mr. Strickland to Washington as a senator representing Ohio because "[w]e can't afford more lost jobs." Though the advertisement was broadcast several months before the election, it aired after former Gov. Strickland, who had not held office since January 2011, had won the Democratic primary. The advertisement could only be reasonably interpreted as containing advocacy of the election or defeat of the candidate.

Count II

49. An independent expenditure in the form of a communication transmitted through television must include a disclaimer. 52 U.S.C. § 30120(d)(2); 11 C.F.R. §§ 110.11(a)-(b), (c)(4). The communication "must clearly state the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication," 11 C.F.R. § 110.11(b)(3), and must include the audio statement that "[the person paying for the communication] is responsible for the content of this advertising," conveyed by a representative of the person paying for the communication either in an unobscured, full-screen view of the representative or in a voiceover, 52 U.S.C. § 30120(d)(2); 11 C.F.R. § 110.11(c)(4)(i)-(ii). The communication must also include this statement in a "clearly readable manner." 52 U.S.C. § 30120(d)(2); 11 C.F.R. § 110.11(c)(4)(iii).

50. The television advertisement broadcast in June and July 2016 and paid for by FV was an independent expenditure, but it did not include either the audio or written disclaimer stating FV is responsible for the content of the advertising. By failing to include the disclaimer, FV violated 52 U.S.C. § 30120(d)(2) and 11 C.F.R. §§ 110.11(a)-(b), (c)(4).

Count III

51. FV was a political committee starting in 2014 and certainly no later than 2016, but failed to register as one with the FEC.

52. The FECA and FEC regulations define a “political committee” as “any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.” 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5(a). An “expenditure” includes “any . . . payment, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(9)(A)(i); 11 C.F.R. § 100.111 (a). A “contribution” includes “any gift . . . or deposit of money or anything of value made by any person for the purpose of furthering any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

53. FV made expenditures aggregating in excess of \$1,000 in 2014 and again in 2016, and accepted contributions in excess of \$1,000 in 2014 and again in 2016.

54. FV spent \$174,607 in 2014 on independent expenditures supporting then-Speaker Boehner in his primary election.

55. In 2015, FV gifted to or deposited \$200,000 with Fighting for Ohio Fund, which is a super PAC. In 2016, FV further gifted or deposited \$1,775,000 with Fighting for Ohio Fund. As a federal super PAC, Fighting for Ohio Fund makes independent expenditures in federal

races. *SpeechNow.org v. FEC*, 599 F.3d 686, 694 (D.C. Cir. 2010); *see also, e.g.*, AO 2010-11 (Commonsense Ten) (authorizing organization that “intends to make only independent expenditures”). PACs registered with the FEC are, “by definition, campaign related.” *Buckley v. Valeo*, 424 U.S. 1, 79 (1976). Further, the PAC reported the transfers from FV as “contributions,” meaning they were provided “for the purpose of influencing [an] election for Federal office,” 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.25(a). FV’s gifts to or deposits with this super PAC are payments, gifts, or deposits made for the purpose of influencing an election for federal office, and therefore are expenditures.

56. FV also spent at least \$1,121,077 in June and July 2016 on an independent expenditure advocating the defeat of Strickland. Though FV failed to report its spending on the anti-Strickland Ohio ad to the Commission as an independent expenditure, the advertisement could only be interpreted as one by a reasonable person.

57. In addition, only organizations whose “major purpose” is the nomination or election of federal candidates can be “political committees.” *Buckley*, 424 U.S. at 79. The FEC conducts a fact-intensive, case-by-case analysis of an organization to determine if its major purpose is the nomination or election of federal candidates. Federal Election Commission, Political Committee Status, Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5601 (Feb. 7, 2007) (“Supplemental E&J”). An organization can exhibit a qualifying major purpose through its organizational planning documents, *id.*, or through sufficiently extensive spending on federal campaign activity. *See FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986); Supplemental E&J, 72 Fed. Reg. at 5601. Under the FECA, an organization’s political committee status is determined by viewing the activities and spending of the organization in the relevant “calendar year.” 52 U.S.C. § 30101(4)(A). Accordingly, an organization’s major

purpose must be evaluated on the same time frame. It is not proper to determine major purpose by looking at the lifetime activities of the organization, as the purpose of an organization can change over time. *See Citizens for Responsibility and Ethics in Washington v. FEC*, 209 F. Supp. 3d 77, 94 (D.D.C. 2016).

58. In 2010, an advisor to FV confirmed that FV's organizational purpose was to elect or nominate candidates for federal office. Cummings, *Politico*, Sept. 3, 2010.

59. Furthermore, between October 1, 2013 and September 30, 2014, FV's independent expenditures amounted to 61.3% of the organization's spending that year. That spending is sufficiently "extensive" to conclude the organization's major purpose was to elect or nominate federal candidates. Supplemental E&J, 72 Fed. Reg. at 5605 (noting group devoting at least "50-75%" of spending to campaign activity in a calendar year qualified as political committee).

60. In addition, FV's devoted at least 80.1% of its spending between October 1, 2015 and September 30, 2016 to political expenditures. FV's \$1,700,000 in gifts or deposits to Fighting for Ohio Fund – a super PAC that only engages in independent expenditures in federal races – were made for the purpose of influencing the 2016 Ohio Senate election. FV also disclosed spending an additional \$44,267 on political activity on its 2015 tax return. That spending alone accounted for 48.8% of FV's total spending during its 2015 fiscal year between October 1, 2015 and September 30, 2016.³ Adding the minimum of \$1,121,077 FV appears to have spent on the anti-Strickland ad, which was an independent expenditure, FV's political

³ This spending does not include the additional \$275,000 FV transferred to Fighting for Ohio Fund between the end of FV's 2015 fiscal year and the end of 2016.

spending increases to at least 80.1% of its total spending.⁴ Accordingly, FV's major purpose in 2016 was the election of candidates for federal office.

61. Finally, FV's combined spending on political activity between October 1, 2012 to September 30, 2016, the time period covering the 2014 and 2016 election cycles, accounts for at least 74.7% of FV's total spending in that time period. In fact, political spending accounts for the majority of FV's total spending since Mr. Nathanson has been the organization's executive director. Adding together FV's reported spending between October 1, 2011 and September 30, 2016, FV has spent \$4,260,653 in total during Mr. Nathanson's tenure as executive director. Political activity accounted for at least 71.3% of FV's total spending in that time period.

62. FECA and FEC regulations require all political committees to register with the FEC within 10 days of becoming a political committee. 52 U.S.C. § 30103(a); 11 C.F.R. § 102.2 (d).

63. FV is not, and has never been, registered as a political committee with the FEC.

64. By failing to register as a political committee, FV violated 52 U.S.C. § 30103(a) and 11 C.F.R. § 102.1(d).

Count IV

65. As a political committee, FV was required to file periodic reports with the FEC that, among other things: (1) identified all individuals who contributed an aggregate of more than \$200 in a year to FV, the amount each individual contributed, and the date of the contribution; (2) identified all political committees that made a contribution to FV, the amount each committee

⁴ The sums FV spent on the anti-Strickland ad count towards a finding that FV's major purpose was to nominate or elect candidates in 2016 even if the ad were not found to be an independent expenditure. *See* Supplemental E&J, 72 Fed. Reg. at 5601.

contributed, and the date of the contribution; (3) detailed FV's outstanding debts and obligations; and (4) listed all of FV's expenditures. 52 U.S.C. § 30104(a)(4); 52 U.S.C. § 30104(b); 11 C.F.R. §§ 104.1(a), 104.8.

66. FV failed to file any of these reports with the FEC.

67. By failing to file these reports, FV violated 52 U.S.C. § 30104(a)(4), 52 U.S.C. § 30104(b), and 11 C.F.R. §§ 104.1(a), 104.8.

Count V

68. FV acted as a conduit for one or more of the contributions to Fighting for Ohio Fund for which FV was reported as the true source. Accordingly, FV permitted its name to be used for a contribution in the name of another.⁵

69. The FECA and FEC regulations prohibit knowingly permitting one's name to be used to effect a contribution in the name of another person and knowingly helping or assisting any person in making a contribution in the name of another. 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b).

70. FV gave \$1,975,000 to Fighting for Ohio Fund, a super PAC, in 2015 and 2016. During that time period, Fighting for Ohio Fund employed the same fundraising consultant as FV, MMM Consulting. On its 2015 tax return, FV reported that MMM Consulting raised \$2,090,000 for FV, a sum almost equal to and sufficient to cover all of FV's transfers to Fighting for Ohio Fund during the 2016 election cycle. Moreover, five of the six transfers FV made to Fighting for Ohio Fund during the time period covered by the organization's 2015 tax return

⁵ Even if FV merely acted as a conduit for the 2016 contributions to Fighting for Ohio Fund, the contributions would still qualify FV as a political committee. Furthermore, FV's 2014 activity alone is sufficient to qualify it as a political committee, which status remains in effect until FV files the appropriate paperwork with the FEC to terminate its status.

correspond to exact amounts FV reported receiving on its Schedule of Contributors. For example, FV received a contribution of \$500,000 and in turn made a transfer of \$500,000, and FV received two separate contributions of \$250,000 and in turn made two separate transfers of \$250,000.

71. As a result, on multiple occasions, FV knowingly permitted its name to be used to effect the contribution and knowingly helped the undisclosed donor make the contribution, in violation of 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b). If FV's violations were knowing and willful, they also are subject to criminal penalties and referral to the Department of Justice. 52 U.S.C. §§ 30109(a)(5)(C), (d)(1).

Count VI

72. The FECA and FEC regulations also prohibit knowingly accepting a contribution made by one person in the name of another. 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b). The FECA and FEC regulations further require political committees to report the identity of those who make contributions, as well as anyone who acted as a conduit for a contribution. 52 U.S.C. § 30104(b)(2); 11 C.F.R. § 104.3(a)(2), (j) (political committees must report "earmarked contributions"); *see also Instructions for FEC Form 3X and Related Schedules* at 11 (revised May 2016), <https://bit.ly/2F19VxP> (any political committee receiving an earmarked contribution through conduit entities must "report each conduit through which the earmarked contribution passed, including the name and address of the conduit, and whether the contribution was passed on in cash, by the contributor's check, or by the conduit's check"); 52 U.S.C. § 30107(a)(8) (FEC forms have force of law).

73. As discussed above, Fighting for Ohio Fund employed the same fundraising consultant as FV, and five of the six transfers FV made to Fighting for Ohio Fund during the

time period covered by the organization's 2015 tax return correspond to exact amounts FV reported receiving on its Schedule of Contributors. As a result, Fighting for Ohio Fund by and through its treasurer, Christopher Marston, knowingly accepted a contribution made by one person in the name of another in violation of 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b). If Fighting for Ohio Fund and Mr. Marston's violations were knowing and willful, they also are subject to criminal penalties and referral to the Department of Justice. 52 U.S.C. §§ 30109(a)(5)(C), (d)(1).

74. Fighting for Ohio Fund by and through its treasurer, Christopher Marston, failed to report the identities of the true source of contributions and the identities of each conduit for the contributions falsely attributed to FV. Accordingly, Fighting for Ohio Fund and Christopher Marston violated 52 U.S.C. § 30104(b)(2) and 11 C.F.R. § 104.3(a)(2) and (j). If Fighting for Ohio Fund and Mr. Marston's violations were knowing and willful, they also are subject to criminal penalties and referral to the Department of Justice. 52 U.S.C. §§ 30109(a)(5)(C), (d)(1).

Count VII

75. The FECA and FEC regulations further prohibit making a contribution in the name of another person. 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b).

76. The Unknown Respondents provided to FV the money it in turn transferred to Fighting for Ohio Fund. By making one or more contributions to Fighting for Ohio Fund in the name of FV, the Unknown Respondents violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b). If the Unknown Respondent's violations were knowing and willful, they also are subject to criminal penalties and referral to the Department of Justice. 52 U.S.C. §§ 30109(a)(5)(C), (d)(1).

Conclusion

WHEREFORE, Citizens for Responsibility and Ethics in Washington and Noah Bookbinder request that the FEC conduct an investigation into these allegations; declare the respondents to have violated the FECA and applicable FEC regulations; and order respondents to correct these violations by filing the disclosure reports required for FV's 2016 independent expenditure, filing disclosure reports for FV required of political committees that, among other things, identify and make public each person who made contributions aggregating more than \$200, and file reports identifying the true source of and any conduits for any contributions to Fighting for Ohio Fund improperly attributed to FV. In addition, the complainants request that the FEC impose sanctions appropriate to these violations, and take such further action as may be appropriate, including referring this matter to the Department of Justice for criminal prosecution.



ON BEHALF OF COMPLAINANTS
Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics
in Washington
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(202) 408-5565 (phone)
(202) 588-5020 (fax)

Verification

Citizens for Responsibility and Ethics in Washington and Noah Bookbinder hereby verify that the statements made in the attached Complaint are, upon information and belief, true. Sworn pursuant to 18 U.S.C. § 1001.



Noah Bookbinder

Sworn to and subscribed before me this 8 day of Aug, 2018



Notary Public

