



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

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JUL 31 2019

RE: MUR 7465
Freedom Vote, Inc.

Dear Mr. Langdon:

On August 13, 2018, the Federal Election Commission notified your client, Freedom Vote, Inc. ("Freedom Vote"), of a complaint, MUR 7465, alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon review of the allegations contained in the complaint and information provided by Freedom Vote, the Commission, on July 25, 2019, found that there is reason to believe that Freedom Vote violated 52 U.S.C. §§ 30102, 30103, 30104(a), (b), (g)(2), and 30120(a), (d), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel within 15 days of your receipt of this notification. Statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 U.S.C. § 30109(a)(4).

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

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

MUR 7465
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the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondent.

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

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

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B), (a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Justine A. di Giovanni, the attorney assigned to this matter, at (202) 694-1574 or jdigiovanni@fec.gov.

On behalf of the Commission,



Ellen L. Weintraub
Chairman

Enclosure
Factual and Legal Analysis

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

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Freedom Vote, Inc. and James S. Nathanson individually **MUR: 7465**
and in his capacity as executive director of Freedom
Vote, Inc.

I. INTRODUCTION

In 2010, Freedom Vote, Inc. (“FV”) established itself as a non-profit corporation whose stated mission was to educate the people of Ohio on economic policy issues. The Complaint in this matter, however, alleges that FV failed to register and report as a political committee in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). Further, the Complaint alleges that FV failed to report an independent expenditure to the Commission and include the appropriate disclaimer in that advertisement. In addition, the Complaint alleges that FV knowingly acted as a conduit for contributions made by unknown respondents to an independent expenditure-only political committee, Fighting for Ohio Fund (“FFO PAC”), and that FFO PAC knowingly accepted contributions in the name of another and failed to report earmarked contributions.

For the reasons set forth below, the Commission finds reason to believe that FV violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize, register, and report as a political committee and, as a result, violated 52 U.S.C. § 30120(d)(2) by failing to include an appropriate disclaimer on a public communication.

II. FACTUAL BACKGROUND**A. Respondents**

FV was an Ohio non-profit corporation that incorporated in 2010, and which was recognized by the IRS in 2010 as tax-exempt under section 501(c)(4) of the Internal Revenue

1 Code.¹ From January 2011 through at least June 2017, James S. Nathanson was FV's executive
2 director.² In its annual tax returns filed with the IRS, FV described its mission as "to further the
3 common good and general welfare of the people of Ohio."³

4 A 2010 article cited in the Complaint states that FV was established as an entity "with the
5 express purpose of raising money to help pay for the type of turnout operations traditionally
6 underwritten by the RNC."⁴ Tom Whatman, then-advisor to FV, was reported as stating, "I
7 understood that the lack of resources from the RNC was going to have a severe impact on what
8 the parties were going to be able to do."⁵

9 FFO PAC is an independent expenditure-only political committee that registered with the
10 Commission in February 2015.⁶ In the 2016 election cycle, it raised \$9,874,220 and spent
11 \$9,808,186.54, of which \$9,256,439.42 was spent on independent expenditures opposing former
12 Ohio Governor Ted Strickland, a candidate for U.S. Senate from Ohio in 2016.⁷ In 2018, FFO

¹ See Freedom Vote, Inc., Ohio Initial Articles of Incorporation (July 7, 2010); Form 990, 2009 Tax Return of Freedom Vote, Inc. (Aug. 12, 2011) [*hereinafter* "FV 2010 Tax Return"].

² The Complaint also mentions James S. Nathanson, individually, but does not include any allegations that he violated the Act. Compl. (Aug. 9, 2018). Nathanson did not file a separate response.

³ See, e.g., FV 2010 Tax Return. Freedom Vote references and relies on its tax returns from 2010 through 2017 in its response. See Freedom Vote Resp. at 7-9 (Oct. 19, 2018).

⁴ Compl. ¶¶ 11, 58 (citing Jeanne Cummings, *State Parties Look Past RNC for Cash*, POLITICO, Sept. 3, 2010, <http://politi.co/2FjFJj3>).

⁵ *Id.*

⁶ FEC Form 1, FFO PAC Statement of Organization (Feb. 23, 2015).

⁷ FEC, *Fighting for Ohio Fund – Spending*, FEC.GOV, <https://www.fec.gov/data/committee/C00573014/?cycle=2016&tab=spending> (last accessed July 1, 2019).

1 PAC raised \$25,229.28 and spent \$22,454.48, none of which was reported as independent
 2 expenditures.⁸

3 **B. Spending by FV**

4 According to FV's tax returns, which use a fiscal year beginning in October and ending
 5 the September of the following year, FV states that most of its spending since its formation has
 6 been for "education to [the] Ohio public regarding economic policy issues, including state and
 7 local government fiscal responsibility, job growth, and retention, and employment."⁹ FV also
 8 reported on its fiscal years 2010 and 2011 tax returns spending \$461,742 on "voter registration
 9 efforts."¹⁰ Its fiscal year 2013 tax return stated that some of its money was also spent on
 10 "advocacy related to voting rights under the Ohio and United States Constitutions."¹¹

⁸ FEC, *Fighting for Ohio Fund – Spending*, FEC.GOV, <https://www.fec.gov/data/committee/C00573014/?tab=spending&cycle=2018> (last accessed July 1, 2019) [*hereinafter* "FFO PAC 2018 Funds Spent"]; FEC, *Fighting for Ohio Fund – Raising*, FEC.GOV, <https://www.fec.gov/data/committee/C00573014/?tab=raising&cycle=2018> (last accessed July 1, 2019). FFO PAC described its expenditures as legal services, compliance consulting, website expenses, and two contributions totaling \$9,500 to the "Fighting for Ohio Institute," a now-terminated Virginia 501(c)(4) organization of which James Nathanson was the corporate secretary. FFO PAC 2018 Funds Spent; *see* Form 990, 2016 Tax Return of Fighting for Ohio Institute (Nov. 5, 2017).

⁹ FV 2010 Tax Return (reporting July 6, 2010 – Sept. 30, 2010); Form 990, 2010 Tax Return of Freedom Vote, Inc. (Aug. 14, 2012) (reporting Oct. 1, 2010 – Sept. 30, 2011) [*hereinafter* "FV 2011 Tax Return"]; Form 990, 2011 Tax Return of Freedom Vote, Inc. (July 17, 2013) (reporting Oct. 1, 2011 – Sept. 30, 2012) [*hereinafter* "FV 2012 Tax Return"]; Form 990, 2012 Tax Return of Freedom Vote, Inc. (July 30, 2014) (reporting Oct. 1, 2012 – Sept. 30, 2013) [*hereinafter* "FV 2013 Tax Return"]; Form 990-EZ, 2014 Tax Return of Freedom Vote, Inc. (Aug. 11, 2016) (reporting Oct. 1, 2014 – Sept. 30, 2015) [*hereinafter* "FV 2015 Tax Return"]; Form 990, 2015 Tax Return of Freedom Vote, Inc. (Aug. 14, 2017) (reporting Oct. 1, 2015 – Sept. 30, 2016) [*hereinafter* "FV 2016 Tax Return"]; Form 990-EZ, 2016 Tax Return of Freedom Vote, Inc. (Aug. 9, 2018) (reporting Oct. 1, 2016 – Sept. 30, 2017) [*hereinafter* "FV 2017 Tax Return"]. In its 2014 Return, FV described itself as having "[p]rovided education to the Ohio public on economic policy issues including Obamacare and the federal budget." *See* Form 990, 2013 Tax Return of Freedom Vote, Inc., (Aug. 11, 2015) (reporting Oct. 1, 2013 – Sept. 30, 2014) [*hereinafter* "FV 2014 Tax Return"] (collectively, "Tax Returns").

¹⁰ FV 2010 Tax Return; FV 2011 Tax Return.

¹¹ FV 2013 Tax Return.

1 According to FV's fiscal year 2014 tax returns, FV spent \$174,607.55 in independent
2 expenditures in support of then-Speaker of the House John Boehner in the form of door hangers,
3 canvassing, and robocalls.¹² FV reported on its fiscal year 2016 tax return spending \$1.744
4 million on "political expenditures,"¹³ of which \$1.7 million consisted of contributions to FFO
5 PAC.¹⁴ Additionally, in June and July 2016, FV aired what appears to be its first television
6 advertisement, "Third Largest," criticizing Ted Strickland.¹⁵ The advertisement was broadcast
7 several months before the general election, but after Strickland had won the Democratic
8 primary.¹⁶ On its tax return for the 2017 fiscal year, FV reported that it made an additional
9 \$275,000 contribution to FFO PAC.¹⁷ FFO PAC disclosed that FV's contribution was made on
10 October 5, 2016, five days after the close of FV's 2016 fiscal year.¹⁸ The current record does not
11 include FV's tax return for the fiscal year ending in 2018.

¹² FEC Form 5, FV Amended 2014 April Quarterly Report (Apr. 14, 2014); FEC Form 5, FV 2014 July Quarterly Report (July 15, 2014). These independent expenditures were also reported on FV's 2014 Tax Return. *See* 2014 Tax Return (disclosing \$174,607 for "grassroots advocacy effort independently supporting or opposing candidates.").

¹³ FV 2016 Tax Return, sched. C, part I-A, line 2. The IRS defines "political expenditures" as "any expenditures made for political campaign activities." *See* 2018 Instructions for Schedule C, Political Campaign and Lobbying Activities, <https://www.irs.gov/pub/irs-pdf/i990sc.pdf>. This is a broader standard than the definition of "expenditure" under the Act and the definition of "federal campaign activity" articulated in the Commission's 2007 Supplemental Explanation and Justification. Political Committee Status, 72 Fed. Reg. 5595, 5602 (Feb. 7, 2007) (Supplemental Explanation and Justification) [hereinafter "Supplemental E&J"].

¹⁴ *See* FV 2016 Tax Return, sched. C, part I-C, line 2 (reporting "the amount of the filing organization's funds contributed to other organizations for section 527 exempt function activity"); FEC Form 3X, FFO PAC 2016 Pre-General Report, sched. A at 7 (Oct. 27, 2016).

¹⁵ Compl. ¶ 48, Ex. A (providing copy of "Third Largest"); FV Resp. at 2.

¹⁶ Compl. ¶ 48; *see also id.* ¶ 33, Ex. A ("Third Largest").

¹⁷ FV 2017 Tax Return.

¹⁸ FEC Form 3X, FFO PAC 2016 Pre-General Report, sched. A at 7 (Oct. 27, 2016).

1 The table below summarizes information as reported by FV in its tax returns and included
 2 in its response to the complaint:

Fiscal Year¹⁹	Gross Receipts	Total Expenses	Expenses: Program Services²⁰	Expenses: Political Campaign Activity²¹
2010	\$1,325,000	\$1,265,384	\$1,178,423	\$0
2011	\$1,848,061	\$1,886,457	\$1,648,594	\$0
2012	\$200,000	\$191,416	\$160,270	\$0
2013	\$200,000	\$150,430	\$125,347	\$0
2014	\$255,000	\$284,754	\$270,906	\$174,607
2015	\$28,000	\$58,578	\$21,839	\$0
2016	\$4,375,000	\$3,575,475	\$3,505,133	\$1,744,267
2017	\$90,000	\$721,094	\$565,056	\$275,000

3 With respect to these figures, FV appears to have counted certain expenses as expenses for both
 4 “program services” and “political campaign activity.” For instance, the combined totals reported
 5 on FV’s tax returns for fiscal years 2014 and 2016 for “program services” and “political
 6 campaign activity” exceed FV’s total reported expenses.

¹⁹ Information regarding FV’s spending using a calendar year framework is not publicly available.

²⁰ “A program service is an activity of an organization that accomplishes its exempt purpose.” Internal Revenue Serv., 2016 Instructions for Form 990 Return of Organization Exempt from Income Tax 10, IRS.GOV, <https://www.irs.gov/pub/irs-prior/i990--2016.pdf>. For example, the promotion of social welfare has been interpreted to include educational activities. *See, e.g.* Rev. Rul. 76-81, 1976-1 C.B. 156 (“[A]n organization that informs the public on controversial subjects and attempts to influence legislation which is germane to its program may qualify for exemption under section 501(c)(4).”); Rev. Rul. 68-656, 1968-2 C.B. 216 (“The education of the public on such a subject is deemed beneficial to the community because society benefits from an informed citizenry. The seeking of legislation germane to the organization’s programs is recognized by the regulations cited above as a permissible means of attaining social welfare purposes.”).

²¹ “The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns” 26 C.F.R. § 1.501(c)(4)-1(a)(2)(ii).

1 **III. LEGAL ANALYSIS**

2 **A. Political Committee Status**

3 1. The Test for Political Committee Status

4 The Act and Commission regulations define a “political committee” as “any committee,
5 club, association or other group of persons which receives contributions aggregating in excess of
6 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000
7 during a calendar year.”²² In *Buckley v. Valeo*,²³ the Supreme Court held that defining political
8 committee status “only in terms of the annual amount of ‘contributions’ and ‘expenditures’” was
9 overbroad, reaching “groups engaged purely in issue discussion.”²⁴ To cure that infirmity, the
10 Court concluded that the term “political committee” “need only encompass organizations that are
11 under the control of a candidate or *the major purpose of which is the nomination or election of a*
12 *candidate*.”²⁵ Accordingly, under the statute as thus construed, an organization that is not
13 controlled by a candidate must register as a political committee only if (1) it crosses the \$1,000
14 threshold and (2) it has as its “major purpose” the nomination or election of federal candidates.

15 Although *Buckley* established the major purpose test, it provided no guidance as to the
16 proper approach to determine an organization’s major purpose.²⁶

²² 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

²³ 424 U.S. 1 (1976).

²⁴ *Id.* at 79.

²⁵ *Id.* (emphasis added).

²⁶ See, e.g., *Real Truth About Abortion, Inc. v. FEC (RTAA; formerly Real Truth About Obama v. FEC)*, 681 F.3d 544, 556 (4th Cir. 2012), *cert. denied*, 568 U.S. 1114 (Jan. 7, 2013) (No. 12-311).

1 After *Buckley*, the Commission adopted a policy of determining on a case-by-case basis
2 whether an organization is a political committee, including whether its major purpose is the
3 nomination or election of federal candidates. Though it has periodically considered crafting a
4 bright-line rule through rulemaking, the Commission consistently has declined to do so.²⁷
5 Instead, the Commission determined that determining an organization’s major purpose “requires
6 the flexibility of a case-by-case analysis of an organization’s conduct that is incompatible with a
7 one-size fits-all rule,” and that “any list of factors developed by the Commission would not likely
8 be exhaustive in any event, as evidenced by the multitude of fact patterns at issue in the
9 Commission’s enforcement actions considering the political committee status of various
10 entities.”²⁸

11 To determine an entity’s “major purpose,” the Commission considers a group’s “overall
12 conduct,” including, among other factors, public statements about its mission, organizational
13 documents, government filings (*e.g.*, IRS notices), and the proportion of spending related to
14 “Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).”²⁹ The
15 Commission has stated that it compares how much of an organization’s spending is for “*federal*
16 *campaign activity*” relative to “activities that [a]re not campaign related.”³⁰

²⁷ See, *e.g.*, Independent Expenditures; Corporate and Labor Organization Expenditures, 57 Fed. Reg. 33,548, 33,558-59 (July 29, 1992) (Notice of Proposed Rulemaking); Definition of Political Committee, 66 Fed. Reg. 13,681, 13,685-86 (Mar. 7, 2001) (Advance Notice of Proposed Rulemaking); see also Summary of Comments and Possible Options on the Advance Notice of Proposed Rulemaking on the Definition of “Political Committee,” Certification (Sept. 27, 2001) (voting 6-0 to hold proposed rulemaking in abeyance).

²⁸ Supplemental E&J at 5602 (Feb. 7, 2007).

²⁹ *Id.* at 5597, 5605.

³⁰ *Id.* at 5597, 5605-06. This approach was subsequently challenged and upheld in federal district court. See *Shays v. FEC*, 511 F. Supp. 2d 19 (D.D.C. 2007). In 2012, in *RTAA*, the Fourth Circuit upheld the Commission’s case-by-case approach in the face of a constitutional challenge. See 681 F.3d 544; see also *Free Speech v. FEC*, 720 F.3d 788 (10th Cir. 2013) (quoting *RTAA* and upholding Commission’s case-by-case method of determining political committee status), *cert. denied*, 572 U.S. 1114 (2014).

1 Political committees must comply with certain organizational and reporting requirements
2 set forth in the Act. They must register with the Commission, file periodic reports for disclosure
3 to the public, appoint a treasurer who maintains its records, and identify themselves through
4 “disclaimers” on all of their political advertising, on their websites, and in mass e-mails.³¹

5 2. There is Reason to Believe that FV is a Political Committee

6 a. Statutory Threshold

7 To assess whether an organization has made an “expenditure,” the Commission analyzes
8 whether spending on any of an organization’s communications made independently of a
9 candidate constitute express advocacy under 11 C.F.R. § 100.22.³² In calendar year 2014, FV
10 reported that it spent \$174,607 on independent expenditures.³³ Thus, in 2014 FV well exceeded
11 the \$1,000 statutory threshold set forth in the Act’s political committee definition,³⁴ which FV
12 does not dispute.³⁵

13 b. Major Purpose

14 The available record of FV’s activities indicates that FV’s major purpose may be the
15 nomination or election of Federal candidates.³⁶ Under the Commission’s case-by-case approach,
16 the Commission considers the organization’s “overall conduct,” including, among other factors,

³¹ See 52 U.S.C. §§ 30102-30104; 11 C.F.R. §110.11(a)(1).

³² See Supplemental E&J at 5606.

³³ Compl. ¶¶ 18-19; FEC Form 5, FV Amended April Quarterly Report, (July 15, 2014); FEC Form 5, FV July Quarterly Report (July 15, 2014); FV 2014 Tax Return, part I, line 18, (Aug. 11, 2015).

³⁴ 52 U.S.C. § 30101(4)(A).

³⁵ See generally Compl.

³⁶ See *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. at 262 (“[s]hould [a corporation’s] independent spending become so extensive that the organization’s major purpose may be regarded as campaign activity, the corporation would be classified as a political committee”) (citing *Buckley*, 424 U.S. at 79).

1 public statements about its mission, organizational documents, government filings (*e.g.*, IRS
2 notices), and the proportion of spending related to “Federal campaign activity.”³⁷ In this case,
3 FV’s proportion of spending related to Federal campaign activity compared to its total spending
4 in 2014 indicates that its major purpose may be the nomination or election of federal
5 candidates.³⁸ As FV acknowledges in its response, FV reported on its 2014 fiscal year tax
6 returns spending \$174,607 on independent expenditures supporting John Boehner,³⁹ which
7 constituted more than 61% of FV’s total reported expenses (\$284,754).⁴⁰

8 Further, during FV’s 2016 and 2017 fiscal years (which cover October 2015 through
9 September 2017), FV made approximately \$2 million in contributions,⁴¹ which account for
10 nearly 47% of its total spending in that timespan.⁴² And while FV asserts that its federal
11 campaign activity never again crossed the 50% threshold after its 2014 fiscal year, there appears
12 to be an irregularity in the figures that FV provided in its response: the combined spending
13 reported by FV on its tax returns for its self-described “program services” and “political

³⁷ Supplemental E&J at 5597.

³⁸ Information regarding FV’s spending using a calendar year framework is not publicly available; the analysis conducted here is based on the fiscal year data as reported in FV’s tax returns.

³⁹ Compl. ¶¶ 18-19; FV, FEC Form 5, FV Amended April Quarterly Report, (July 15, 2014); FEC Form 5, FV July Quarterly Report (July 15, 2014); FV 2013 Tax Return, part I, line 18.

⁴⁰ Compl. ¶ 59; FV Resp. at 8 (“Granted, in one year (fiscal year 2014), FV’s political spending exceeded its non-political spending.”). While the total amount at issue during this time period is comparatively less than what FV spent in certain earlier years and what FV went on to spend in future years, the Commission’s major purpose analysis has always focused on the proportion of its spending related to “Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate),” Supplemental E&J at 5597, 5605, rather than its amount.

⁴¹ FV reported making \$1.7 million in contributions to FFO PAC. FV 2016 Tax Return., sched. C. FV also made a \$275,000 contribution to FFO PAC on October 5, 2016, which was not reported on its FV 2016 Tax Return because it took place after the end of its 2016 fiscal year. FV 2017 Tax Return, sched. C.

⁴² As noted above, information regarding FV’s spending using a calendar year framework is not publicly available; the analysis conducted here is based on the fiscal year data as reported in FV’s tax returns.

1 campaign activities,” which are mutually exclusive categories, appears to exceed its *total*
2 expenses for those fiscal years.

3 Based on the foregoing, the available record indicates that FV met the Act’s statutory
4 definition of “political committee” and also may have the major purpose of nominating or
5 electing federal candidates. Accordingly, the Commission finds reason to believe that FV failed
6 to organize, register, and report with the Commission in violation of 52 U.S.C. §§ 30102, 30103,
7 and 30104.

8 **B. Proper Disclaimer of “Third Largest” Television Advertisement**

9 The Act requires that, whenever a political committee makes a disbursement for the
10 purpose of financing a public communication, such communication must include a disclaimer.⁴³
11 If the communication is not authorized by a candidate or an authorized committee, then the
12 disclaimer must clearly state the name and permanent street address, telephone number, or web
13 address of the person who paid for the communication and state that the communication was not
14 authorized by any candidate or candidate’s committee.⁴⁴ Furthermore, a television advertisement
15 must also include both audio and clearly readable written statements that the political committee
16 “is responsible for the content of this advertising.”⁴⁵

17 In June and July 2016, FV aired a television advertisement titled “Third Largest.”⁴⁶ The
18 advertisement was broadcast several months before the general election, but after Strickland had

⁴³ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a). A “public communication” includes any broadcast, cable, or satellite communication, including television advertisements. 11 C.F.R. § 100.26.

⁴⁴ 52 U.S.C. § 30120(a)(3); 11 C.F.R. § 110.11(b)(3).

⁴⁵ 52 U.S.C. § 30102(d)(2); 11 C.F.R. § 110.11(c)(4).

⁴⁶ Compl. ¶ 48, Ex. A (“Third Largest”); FV Resp. at 2.

1 won the Democratic primary.⁴⁷ Because there is reason to believe that FV is a political
2 committee and the “Third Largest” television advertisement is a public communication, there is
3 reason to believe that the Act’s disclaimer requirements apply to the ad. Although “Third
4 Largest” contains the written statement, “Paid for by Freedom Vote,” this disclaimer does not
5 fully comply with the provisions of the Act. It includes no permanent street address, telephone
6 number, or web address for Freedom Vote; it does not state whether the advertisement was
7 authorized by any candidate or candidate’s committee; and it does not include a spoken
8 statement that Freedom Vote is responsible for the content of the advertisement. Accordingly,
9 the Commission finds reason to believe that FV violated 52 U.S.C. § 30120(a), (d) and
10 11 C.F.R. § 110.11.

⁴⁷ Compl. ¶ 48.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Freedom Vote, Inc.)	MUR 7465
)	

**SUBPOENA TO PRODUCE DOCUMENTS AND
ORDER TO SUBMIT WRITTEN ANSWERS**

TO: Freedom Vote, Inc.
c/o David R. Langdon, Esq.
8913 Cincinnati-Dayton Road
West Chester, OH 45069-3131

Pursuant to 52 U.S.C. § 30107(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 1050 First Street, N.E., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

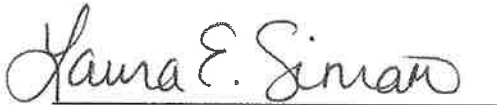
WHEREFORE, the Chair of the Federal Election Commission has hereunto set her hand in Washington, D.C., on this 14th day of September, 2019.

On behalf of the Commission,



Ellen L. Weintraub
Chair

ATTEST:



Laura E. Sinram
Acting Secretary and Clerk of the Commission

Attachments

- Instructions and Definitions
- Questions and Document Requests

INSTRUCTIONS

1. In answering these written questions and requests for production of documents, furnish all documents and other information, however obtained, including hearsay, that are in your possession, known by or otherwise available to you, including documents and information appearing in your records.
2. Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.
3. The response to each question propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the written response.
4. If you cannot answer the following questions in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.
5. Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by the following questions and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.
6. Mark each page with identification and consecutive document control numbers (*i.e.*, Bates numbers).
7. Unless otherwise specified, these requests shall refer to the time period from January 1, 2013 through the present.
8. The following questions and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which, and the manner in which, such further or different information came to your attention.
9. All responses must be submitted under oath or affirmation under penalty of perjury, including any response that you have no responsive documents.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

1. "You" shall mean Freedom Vote, Inc. and any employees, agents, and other individuals acting for or on behalf of Freedom Vote, Inc.
2. "Person" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization, group or entity.
3. "Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term "document" includes, but is not limited to, books, letters, electronic mail, social media postings, messages sent via Twitter, instant messages, text messages, contracts, notes, diaries, log books, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, financial records, calendar entries, appointment records, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained. If the document request calls for a document that is maintained on or in a magnetic, optical, or electronic medium (for example, but not limited to, computer hard drive, USB drive, or CD-ROM), provide both "hard" (*i.e.*, paper) and "soft" (*i.e.*, in the magnetic or electronic medium) copies, including drafts, and identify the name (*e.g.*, Microsoft Word for Windows, WordPerfect) and version numbers of the software by which the document(s) will be most easily retrieved.
4. "Identify" with respect to a document shall mean state the nature or type of document (*e.g.*, letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, and the number of pages comprising the document.
5. "Identify" with respect to a person shall mean state the full name, the most recent business and residential addresses and the corresponding telephone numbers, e-mail addresses, the present occupation or position of such person, the occupation or position of such person during the relevant time period, and the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

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6. "And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for production of documents any documents and materials that may otherwise be construed to be out of their scope.
7. "Communication" shall be deemed to include both singular and plural, and to include written, oral, telephonic and electronic communications.

QUESTIONS AND DOCUMENT REQUESTS

1. State the date of Freedom Vote, Inc.'s incorporation and whether its corporate registration is presently valid. Provide copies of all articles of incorporation and by-laws under which Freedom Vote, Inc. has operated since its inception.
2. For the time period from January 1, 2013, to the present, identify all persons who have been directors, officers, employees, representatives, or agents of Freedom Vote, Inc.
3. Provide copies of all of Freedom Vote, Inc.'s organizational charts and telephone directories from January 1, 2013, to the present.
4. Provide copies of all ledgers, spreadsheets, financial statements, bank statements or other documents that reflect contributions to and disbursements from Freedom Vote, Inc. from January 1, 2013, to the present.
5. Identify all contributions, disbursements, and donations to any political committees or organizations made by Freedom Vote, Inc. from January 1, 2013 to the present, and specify the amount and purpose of each contribution, disbursement, and donation. Produce all documents reflecting such contributions, disbursements, and donations.
6. For the time period from January 1, 2013, to the present, produce all communications that (i) identify or reference a candidate for federal office or a political party which nominates candidates for federal office; (ii) are distributed through any means described in 52 U.S.C. § 30101(22) or any other media (*e.g.*, internet communications); and (iii) are funded in whole or in part by Freedom Vote, Inc. As to each such communication, please state:
 - a) The costs associated with the creation, production, distribution, and transmission of the communication;
 - b) If not paid entirely by Freedom Vote, Inc., the identity of the third party(ies) that paid a portion of the costs and how much the third party(ies) paid;
 - c) The vendor(s) and/or outside consultants used to create, produce, distribute, and transmit the communication;
 - d) The election(s) and/or candidate(s), federal and nonfederal, identified or referred to in the communication; and
 - e) The date(s) on which the communication was distributed and the target audience.

7. For the time period from January 1, 2013, to the present, produce all fundraising solicitations, including, but not limited to, any plans, mission statements, brochures, organizational profiles, reports provided to potential donors, and scripts or written materials provided to those making oral solicitations, funded in whole or in part by Freedom Vote, Inc., and as to each fundraising solicitation, please state:
 - a) The costs associated with the creation, production and distribution of the communication;
 - b) If not paid entirely by Freedom Vote, Inc., the identity of the third party(ies) that paid a portion of the costs and how much the third party(ies) paid;
 - c) The amount of the funds received in response to each separate solicitation;
 - d) The vendor(s) and/or outside consultants used to create and distribute each separate solicitation;
 - e) The election(s) and/or candidate(s), federal and nonfederal, identified or referred to in the communication;
 - f) The date(s) on which each solicitation was distributed (orally and/or in writing) and the target audience; and
 - g) For written or electronic solicitations, provide the mailing or distribution list used.

8. For the time period from January 1, 2013 to the present, provide a copy of all communications from Freedom Vote, Inc. to its contributors, including, but not limited to, bulletins, candidate and political party endorsements and recommendations regarding contributions, and identify the following:
 - a) The number of contributors to whom Freedom Vote, Inc. communicated information during each election cycle about any candidate for federal office, their authorized committees, or a political party which nominates candidates for federal office;
 - b) The medium in which Freedom Vote, Inc. distributed each communication to its contributors (*e.g.*, direct mail, e-mail);
 - c) The cost of duplicating and distributing each communication;
 - d) The vendor(s) and/or outside consultants used to create, produce, distribute, and transmit the communication; and
 - e) The date(s) on which each communication was distributed.

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9. Identify the name and address of Freedom Vote, Inc.'s records custodian, describe your document retention and destruction policies, and identify the person(s) responsible for ensuring that documents are properly retained and/or destroyed. If such policies are reflected in documents, produce those documents. If any documents that would have been responsive to this subpoena, and were previously in Freedom Vote, Inc.'s possession, custody, or control, were destroyed or transferred to any third party, identify all such documents and the persons who currently are in possession, custody, or control of the requested materials.
10. Identify the following:
 - a) Persons consulted by Freedom Vote, Inc. in preparing responses to this Subpoena and Order, other than its attorneys; and
 - b) Individual(s) with the most personal knowledge regarding the communications and activities referenced in Questions 3-8.