



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA ELECTRONIC MAIL

September 20, 2021

Charles R. Spies
Dickinson Wright PLLC
1825 Eye St. NW
Washington, DC 20006
cspies@dickinson-wright.com

RE: MUR 7465
Freedom Vote, Inc.

Dear Mr. Spies:

Based on a complaint filed with the Federal Election Commission on August 9, 2018, the Commission, on July 25, 2019, found that there is reason to believe that your client, Freedom Vote, Inc., violated 52 U.S.C. §§ 30102, 30103, 30104(a), (b), (g)(2), and 30120(a), (d) of the Federal Election Campaign Act of 1971, as amended (the "Act"), and instituted an investigation of this matter.

After considering all the information available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file a brief stating your position on the issues and replying to the General Counsel's Brief.¹ The General Counsel's Brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of

¹ You may submit the brief electronically to cela@fec.gov, or to the staff attorney assigned to the matter as applicable. Enforcement-related materials submitted only by mail will be deemed received when actually received by OGC staff, subject to delays due to the intermittent processing of mail. See https://www.fec.gov/resources/cms-content/documents/status_of_fec_operations_8-10-2020.pdf.

General Counsel ordinarily will not give extensions beyond 20 days. The Office of General Counsel will not give extensions absent an agreement to toll the applicable statute of limitations.

You may also request additional information gathered by the Commission in the course of its investigation in this matter. *See* Agency Procedure for Disclosure of Documents and Information in the Enforcement Process, 76 Fed. Reg. 34,986 (June 15, 2011).

In addition, you may also request an oral hearing before the Commission. *See* Procedural Rules for Probable Cause Hearings, 72 Fed. Reg. 64,919 (Nov. 19, 2007); Amendment of Agency Procedures for Probable Cause Hearings, 74 Fed. Reg. 55,443 (Oct. 28, 2009). Hearings are voluntary, and no adverse inference will be drawn by the Commission based on a respondent's decision not to request such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address. A request for a probable cause hearing will require the Respondent to toll the applicable statute of limitations. *See* Procedural Rules for Probable Cause Hearings, 72 Fed. Reg. at 64,920. The Commission will notify you within 30 days of your request for a hearing as to whether or not the request has been granted.

A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than 30, but not more than 90, days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Justine A. di Giovanni, the attorney assigned to this matter, at (202) 694-1574 or jdigiovanni@fec.gov.

Sincerely,

A handwritten signature in cursive script that reads "Lisa J. Stevenson / by Jd".

Lisa J. Stevenson
Acting General Counsel

Enclosure
General Counsel's Brief

BEFORE THE FEDERAL ELECTION COMMISSION

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

GENERAL COUNSEL’S BRIEF

I. STATEMENT OF THE CASE

This matter was generated by a complaint filed with the Federal Election Commission (the “Commission”) against Freedom Vote, Inc. (“Freedom Vote”) alleging that Freedom Vote spent the majority of its funds on federal political activity and failed to organize, register, and report as a political committee in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). Based on the available information, on July 25, 2019, the Commission found reason to believe that Freedom Vote violated 52 U.S.C. §§ 30102; 30103; and 30104(a), (b), (g)(2) by failing to organize, register, and report as a political committee, and authorized the use of compulsory process.¹

This Office commenced an investigation to ascertain the extent, nature, and cost of Freedom Vote’s federal campaign activity, and whether Freedom Vote received funds that would have constituted contributions, triggering reporting requirements under the Act. The record derived from this investigation confirmed that, by 2014, Freedom Vote’s major purpose had become the nomination or election of a federal candidate and further revealed that, from 2014 until its termination as an entity in 2019, over 71% of its expenditures aggregating over \$3.4 million constituted federal campaign activity. Accordingly, this Office is prepared to recommend that the Commission find probable cause to believe that Freedom Vote violated

¹ Certification (“Cert.”) ¶ 2 (July 29, 2019).

52 U.S.C. §§ 30102; 30103; and 30104(a), (b), and (g)(2) by failing to organize, register, and report as a political committee.

II. FACTS

A. Establishment and Corporate Structure of Freedom Vote

According to its Articles of Incorporation and filings with the Internal Revenue Service (“IRS”), Freedom Vote was incorporated as an Ohio non-profit organization in 2010 and treated as a section 501(c)(4) tax-exempt corporation by the IRS.² According to those documents, the organization’s stated purpose was “[t]o further the common good and general welfare of the people of Ohio.”³

James S. Nathanson was Freedom Vote’s Executive Director from January 1, 2011 until Freedom Vote’s dissolution in 2019.⁴ As Executive Director, Nathanson’s responsibilities involved the day-to-day management of the organization, including keeping records of its receipts and spending.⁵ Nathanson had extensive political experience before joining Freedom

² FREEDOM VOTE, INITIAL ARTICLES OF INCORPORATION (July 6, 2010); Letter from IRS to Freedom Vote (Aug 20, 2010) (confirming acceptance of application for tax-exempt status under § 501(c)(4) of the Internal Revenue Code).

³ FREEDOM VOTE, INITIAL ARTICLES OF INCORPORATION (July 6, 2010); *e.g.*, Freedom Vote, IRS Form 990, Return of Organization Exempt from Income Tax for FY 2013 (Aug. 11, 2015) [hereinafter Freedom Vote 2013 Tax Return].

⁴ Freedom Vote, IRS Form 990, Return of Organization Exempt from Income Tax for FY 2010 at 7 (Aug. 19, 2012) [hereinafter Freedom Vote 2010 Tax Return] (naming Nathanson as Executive Director “effective 1/1/11”); Freedom Vote, IRS Form 990, Return of Organization Exempt from Income Tax for FY 2011 at 7 (July 25, 2013) [hereinafter Freedom Vote 2011 Tax Return]; Freedom Vote, IRS Form 990, Return of Organization Exempt from Income Tax for FY 2012 at 7 (Aug. 1, 2014) [hereinafter Freedom Vote 2012 Tax Return]; Freedom Vote 2013 Tax Return at 7; Freedom Vote, IRS Form 990-EZ, Short Form Return of Organization Exempt from Income Tax for FY 2014 at 2 (Aug. 11, 2016) [hereinafter Freedom Vote 2014 Tax Return]; Freedom Vote, IRS Form 990, Return of Organization Exempt from Income Tax for FY 2015 at 7 (Aug. 14, 2017) [hereinafter Freedom Vote 2015 Tax Return]; Freedom Vote, IRS Form 990-EZ, Short Form Return of Organization Exempt from Income Tax for FY 2016 at 2 (Aug. 9, 2018) [hereinafter Freedom Vote 2016 Tax Return]; Freedom Vote, IRS Form 990-EZ, Short Form Return of Organization Exempt from Income Tax for FY 2017 at 2 (May 8, 2019) [hereinafter Freedom Vote 2017 Tax Return]; Freedom Vote, IRS Form 990-EZ, Short Form Return of Organization Exempt from Income Tax for FY 2018 at 2 (June 12, 2019) [hereinafter Freedom Vote 2018 Tax Return].

⁵ *See* Nathanson Dep. Tr. at 109:8-14 (May 12, 2021).

Vote. Nathanson was a long-time Republican political consultant who served as the executive director for George H.W. Bush's 1988 presidential campaign in Ohio before becoming a political director for the Republican National Committee ("RNC") in the early 1990s.⁶ He testified that he had "done a great number of statewide races, and in more recent years . . . , it's been more kind of a task within a campaign than involvement fully, A to Z, in the campaign itself," including one of the "specialties of [his] firm, door-to-door work."⁷

Prior to taking on the Executive Directorship, Nathanson's consulting firm, James S. Nathanson and Associates, LLC ("Nathanson & Associates"),⁸ raised \$530,000 for Freedom Vote in its first fiscal year, for which it was paid \$22,500.⁹ Once he became Executive Director, Nathanson & Associates received \$245,000 in payments for Nathanson's salary;¹⁰ \$143,800 for "project management;"¹¹ and \$658,542 for fundraising, with an additional \$413,059 paid to Nathanson directly for consulting and fundraising.¹²

⁶ Nathanson Dep. Tr. at 14:8-23; *see also* Paul Taylor, *GOP Strategist "Carpet-Bombs" Buckeye State*, WASH. POST (Nov. 4, 1988), <https://www.washingtonpost.com/archive/politics/1988/11/04/gop-strategist-carpet-bombs-buckeye-state/efc3214c-6871-4327-8b3f-234aab29051e/> (describing Nathanson as a political operative who "manages the campaign of Republican presidential nominee George Bush in [Ohio]"); *GOP Director to Speak*, BALT. SUN (Dec. 2, 1990), <https://www.baltimoresun.com/news/bs-xpm-1990-12-02-0503030427-story.html> (describing Nathanson's education and political campaign work).

⁷ Nathanson Dep. Tr. at 13:15-24.

⁸ Nathanson stated that he has run Nathanson & Associates since the "earl[y] mid-'80s" and has served as "a general consultant. I've been brought onboard to consult on specific areas, things like the ground game, voter contact You want me to do it, I'll do it." *Id.* at 14:8-23.

⁹ Freedom Vote, IRS Form 990, Return of Organization Exempt from Income Tax for FY 2009, Sched. G (Aug. 12, 2011) [hereinafter Freedom Vote 2009 Tax Return].

¹⁰ Freedom Vote 2011 Tax return at 7 (reporting \$60,000 salary); Freedom Vote 2012 Tax Return at 7 (reporting \$24,000 salary); Freedom Vote 2013 Tax Return at 7 (reporting \$12,000 salary); Freedom Vote 2014 Tax Return at 2 (reporting \$30,000 salary); Freedom Vote 2015 Tax Return at 7 (reporting \$24,000 salary); Freedom Vote 2016 Tax Return at 2 (reporting \$30,000 salary); Freedom Vote 2017 Tax Return at 2 (reporting \$30,000 salary); Freedom Vote 2018 Tax Return at 2 (reporting \$35,000 salary).

¹¹ Ledger of 2014 Freedom Vote Receipts and Expenses, FV01147-48 at FV01148

¹² Freedom Vote 2010 Tax Return at 8 & Sched. L at 2.

Freedom Vote's only other employees over its lifetime were its Directors.¹³ These were Jeremy Hughes, who served as Executive Director from Freedom Vote's incorporation until December 31, 2010;¹⁴ David W. Johnson, who served as Director/Chairman in fiscal year 2009;¹⁵ Richard A. Cochran, who served as Director/Treasurer in fiscal years 2009 through partial fiscal year 2014;¹⁶ James B. McGregor, Sr., who served as Director/Secretary in fiscal years 2009 through partial fiscal year 2011, when he died;¹⁷ Ralph Harper, who served as a director in fiscal year 2011;¹⁸ and Mitch Given, who served as Director/Treasurer/Secretary in fiscal year 2014 through the organization's dissolution in calendar year 2019.¹⁹ From 2014 through 2019, Nathanson and Given were Freedom Vote's sole directors and officers.²⁰

One of Freedom Vote's key advisers was Tom Whatman, the former Executive Director of the Ohio Republican Party and former Executive Director of Republican House member John Boehner's campaign.²¹ A press report from 2010 quotes Whatman as stating, in the context of creating Freedom Vote to raise money for turnout operations generally paid for by the RNC, that he "understood that the lack of resources from the RNC was going to have a severe impact on

¹³ Nathanson Dep. Tr. at 17:23-18:4 ("We had a Board but no other employees [beside Nathanson].").

¹⁴ Freedom Vote 2009 Tax Return at 7; Freedom Vote 2010 Tax Return at 7.

¹⁵ Freedom Vote 2009 Tax Return at 7. Freedom Vote's fiscal years ran from October to September. *See, e.g., id.* at 1.

¹⁶ *Id.* at 7; Freedom Vote 2010 Tax Return at 7; Freedom Vote 2011 Tax Return at 7; Freedom Vote 2012 Tax Return at 7; Freedom Vote 2013 Tax Return at 7; Freedom Vote 2014 Tax Return at 2.

¹⁷ Freedom Vote 2009 Tax Return at 7; Freedom Vote 2010 Tax Return at 7; Freedom Vote 2011 Tax Return at 7.

¹⁸ Freedom Vote 2011 Tax Return at 7.

¹⁹ Freedom Vote 2014 Tax Return at 2; Freedom Vote 2015 Tax Return at 7; Freedom Vote 2016 Tax Return at 2; Freedom Vote 2017 Tax Return at 2; Freedom Vote 2018 Tax Return at 2.

²⁰ *See supra* notes 4 through 19 and accompanying text.

²¹ This Office made numerous attempts to contact Whatman throughout the investigation but was unable to establish contact.

what the parties were going to be able to do.”²² Though Whatman had no formal role as an employee or director of Freedom Vote, he was involved in its operations throughout its existence: Whatman provided consulting services to the organization for which it paid at least \$177,500, primarily in 2016.²³ Whatman was also involved in Freedom Vote’s management, fundraising, and spending.²⁴ Further, Whatman asked Nathanson to assume Freedom Vote’s Executive Directorship in 2011.²⁵

B. Freedom Vote’s Activities

Between its incorporation on July 6, 2010, and September 30, 2013, Freedom Vote raised and spent more than \$3.4 million, which its tax returns indicate was expended on issue-related advocacy; the investigation did not reveal information that contradicts this point.²⁶ Beginning no later than 2014, however, the majority of Freedom Vote’s spending was related to federal campaign activity, and as described below, from 2014 onward, over 71% of Freedom Vote’s

²² Jeanne Cummings, *State Parties Look Past RNC for Cash*, POLITICO (Sept. 3, 2010), <https://www.politico.com/story/2010/09/state-parties-look-past-rnc-for-cash-041733>.

²³ Ledger of 2014 Freedom Vote Receipts and Expenses, FV01147-48 at FV01148 (showing disbursement of \$15,000 to Tom Whatman for “Consulting”); Ledger of 2016 Freedom Vote Receipts and Expenses, FV01155-59 at FV01158-59 (showing disbursements totaling \$162,500 to Tom Whatman for “Consulting”). We did not request, and Freedom Vote did not produce, records from before 2014, so the extent of Whatman’s compensation from Freedom Vote prior to 2014 is not part of the available record.

²⁴ Nathanson Dep. Tr. at 93:6-9, 95:20-24, 97:1-2 (“Q[:] Do you know who would have been the front line of contact? A[:] Mr. Whatman was our consultant that year, and Tom would have probably been very much involved. . . . Q[:] Was [fundraising] part of what [Whatman] was doing for Freedom Vote in 2016? A[:] . . . Tom was at involved at least in the strategy of fundraising.”); *id.* at 35:7-25, 37:20-21 (“Q[:] [W]ho asked [Freedom Vote] to take on projects, and what were they? . . . A[:] I know Mr. Whatman asked at times, and I think there were others.”); *id.* at 97:4-6 (“Q[:] And how did Freedom Vote select MMM for this fundraising work? A[:] Whatman suggested MMM to us.”); *id.* at 108:5-12 (“My consultant [Mr. Whatman] . . . would have played a role in suggesting that [contributing \$1.8 million to Fighting for Ohio Fund in 2016] was a good thing to [do].”).

²⁵ *Id.* at 18:18-23 (“So how did you become involved with Freedom Vote? A[:] I was asked to take over the Executive Directorship. Q[:] Who asked you? A[:] Thomas Whatman.”).

²⁶ Freedom Vote 2009 Tax Return; Freedom Vote 2010 Tax Return; Freedom Vote 2011 Tax Return; Freedom Vote 2012 Tax Return. As discussed in note 15, *supra*, because Freedom Vote’s fiscal years ran from October to September and the limited information the respondent provided in its returns, it is not possible to calculate its receipts and expenditures on a calendar year basis. We did not request, and Freedom Vote did not produce, financial records from before 2014. *See* note 23, *supra*.

total spending was for this purpose. Further, the ledgers of Freedom Vote's financial activity reviewed by this Office, which cover 2014 to 2019, show no specific policy, issue advocacy, or education expenditures.²⁷

1. The 2014 Election Cycle

In calendar year 2014, Freedom Vote raised \$255,000 and spent a total of \$290,161.09.²⁸ That year, it reported to the Commission making \$174,607.55 in independent expenditures supporting John Boehner's candidacy in the 8th Congressional District in Ohio, representing 60.18% of Freedom Vote's total expenses.²⁹ These reported expenditures included disbursements for "canvassers and consulting;"³⁰ robocalls that stated "Our Republican candidate is Congressman John Boehner. He is the nation's leading conservative and has a record of standing up to the liberals in Washington. . . . Please don't forget to vote;"³¹ and door hangers that urged voters to vote for Boehner in the Republican primary, such as the one below.³²

²⁷ Ledger of 2014 Freedom Vote Receipts and Expenses, FV01147-48; Ledger of 2015 Freedom Vote Receipts and Expenses, FV01151-52; Ledger of 2016 Freedom Vote Receipts and Expenses, FV01155-59; Ledger of 2017 Freedom Vote Receipts and Expenses, FV01162-63; Ledger of 2018 Freedom Vote Receipts and Expenses, FV01191-92; Ledger of Partial 2018 and 2019 Freedom Vote Receipts and Expenses, FV01195-96; Ledger of Partial 2018 and 2019 Freedom Vote Receipts and Expenses, FV01199-1200.

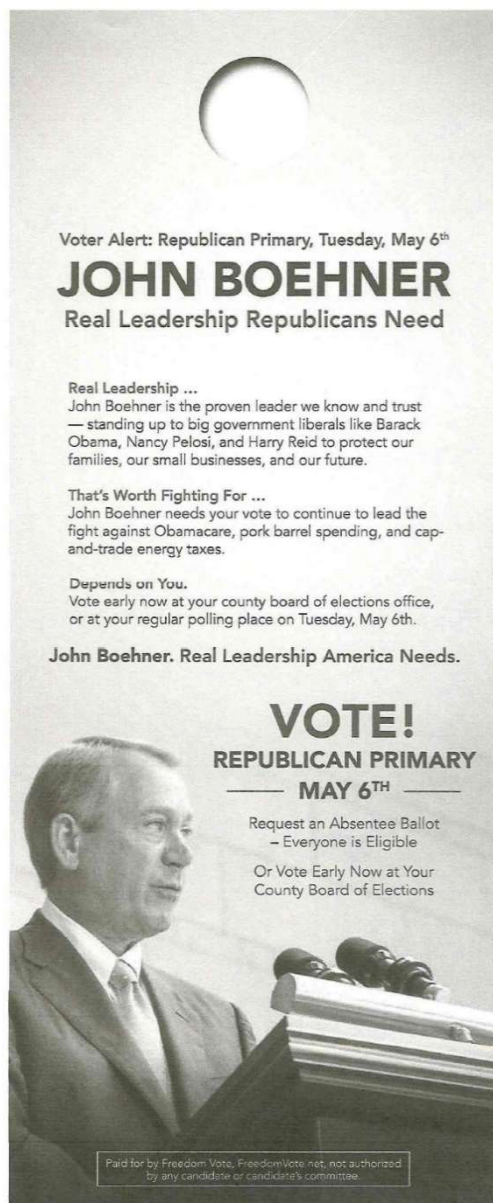
²⁸ Ledger of 2014 Freedom Vote Receipts and Expenses, FV01147-48.

²⁹ *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C90014754&is_notice=false&min_date=01%2F01%2F2013&max_date=12%2F31%2F2014 (last visited Sept. 20, 2021) (showing Freedom Vote's reported independent expenditures during the 2014 election cycle, all of which were made in calendar year 2014).

³⁰ Freedom Vote, 2014 July Quarterly Report, Sched. E (July 15, 2014).

³¹ *Id.*; Email from James Nathanson, Freedom Vote, to Elizabeth Blosser, FLS Connect, FV01328-33 at FV01328 (May 1, 2014, 2:39 PM) (including final script for robocall).

³² Freedom Vote, Door Hanger Advocating for Republican Primary Candidate John Boehner, FV01305-06 at FV01305; Freedom Vote, 2014 July Quarterly Report, Sched. E (July 15, 2014).



1 However, Freedom Vote spent additional sums to produce and distribute these
 2 communications for the purpose of influencing that election beyond those reported as
 3 independent expenditures to the Commission. For instance, though Freedom Vote reported
 4 making a single \$10,579.70 payment to Connection Strategy, LLC (“Connection Strategy”), for
 5 an independent expenditure on March 22, 2014, for “Map books for canvassing,”³³ its internal

³³ Freedom Vote, Amended 2014 April Quarterly Report, Sched. 5-E at 3 (July 15, 2014).

1 ledger indicates that it made four payments to Connection Strategy between January and August
 2 2014 totaling \$32,398.23.³⁴ Of the nine Connection Strategy invoices that Freedom Vote
 3 produced, three, aggregating \$16,342.45, explicitly mention the 8th Congressional District in
 4 Ohio.³⁵ The remaining invoices do not explicitly refer to an election, but given that one
 5 references “poll ride calls,”³⁶ and three others describe a support fee for a political canvassing
 6 tool,³⁷ the weight of the evidence suggests that that these invoices also supported Freedom
 7 Vote’s electoral activities in the 8th Congressional District, which is where Boehner was a
 8 candidate and prevailed in the election.

9 Freedom Vote also paid Nathanson & Associates for additional federal campaign activity
 10 beyond the total listed in its independent expenditure report. It disbursed a total of \$143,800 to
 11 that organization, and invoices show that these expenses were billed explicitly as “OH 8 IE
 12 Expenditures.”³⁸ Freedom Vote reported a total of \$126,187.50 in independent expenditures

³⁴ Ledger of 2014 Freedom Vote Receipts and Expenses, FV01147-48.

³⁵ Invoice 075191 from Connection Strategy to Freedom Vote, FV00929 (Apr. 14, 2014) (billing \$14,337.40 for “OH CD 08 Live ID”); Invoice 075844 from Connection Strategy to Freedom Vote, FV00932 (May 5, 2014) (billing \$1,135.85 for “Sunday GOTV Calls – OH CD 8;” Freedom Vote appears to have reported this expenditure to the Commission as a payment to FLS Connect; *see* Freedom Vote, 2014 July Quarterly Report, Sched. 5-E at 3 (July 15, 2014) (reporting independent expenditure of \$1,135.85 dated May 4, 2014, for “robocalls”); Invoice 075874 from Connection Strategy to Freedom Vote, FV00934 (May 7, 2014) (billing \$869.20 for “Election Day GOTV — OH CD 8”).

³⁶ Invoice 075875 from Connection Strategy to Freedom Vote, FV00935 (May 7, 2014) (billing \$510.20 for “Poll Ride Calls”).

³⁷ Invoice 902788 from Connection Strategy to Freedom Vote, FV00887 (Jan. 16, 2014) (billing \$7,000 for “Geo Connect Set Up Fee” and “Transaction Fee”); Invoice 077964 from Connection Strategy to Freedom Vote, FV00885 (July 31, 2014) (identifying \$250 expense for GeoConnect monthly support fee); Invoice 075871 from Connection Strategy to Freedom Vote, FV00933 (May 7, 2014) (billing \$250 for “GeoConnect Monthly Support Fee”). Geo Connect is a canvassing tool offered by FLS Connect, another of Freedom Vote’s vendors. *Geo Connect: Canvass from Anywhere*, FLS CONNECT, <http://flsconnect.com/geo-connect> (last visited Sept. 20, 2021).

³⁸ Invoice from Nathanson & Associates to Freedom Vote, FV00871 (Mar. 31, 2014) (billing \$17,000 for “OH 8 IE Expenditures”); Invoice from Nathanson & Associates to Freedom Vote, FV00873 (Apr. 25, 2014) (billing \$41,500 for “OH 8 IE Expenditures”); Invoice from Nathanson & Associates to Freedom Vote, FV00875 (Apr. 29, 2014) (billing \$45,300 for “OH 8 IE Expenditures”); Invoice from Nathanson & Associates to Freedom Vote, FV00877 (May 12, 2014) (billing \$40,000 for “OH 8 IE Expenditures”).

1 paid to Nathanson & Associates,³⁹ which means that an additional \$17,612.50 of its payments to
2 Nathanson were for the purpose of influencing the election.

3 Freedom Vote further incurred other expenses associated with the independent
4 expenditures that provide evidence of its purpose. For instance, Freedom Vote paid a consultant,
5 Missy Mae Waters, a total of \$3,618.43 over two payments in April 2014.⁴⁰ Invoices Freedom
6 Vote produced indicate that this work was related to the canvassing independent expenditure
7 partially reported to the Commission and discussed above. The invoices note Waters's expenses,
8 including mileage costs for "DTD [door-to-door] Effort[s]" across Ohio in April 2014; the cost
9 of iPads used in the canvassing efforts; covers for and configuration of the iPads; canvassing
10 literature carrying bags; advertisements for recruiting canvassers; and gift cards with which to
11 reward canvassers.⁴¹ Freedom Vote also paid \$7,240 to The Strategy Group Company for
12 materials relating to Gurr and Winteregg, the two candidates running against Boehner and
13 opposed in Freedom Vote's independent expenditures.⁴² When asked, Nathanson testified that
14 Freedom Vote's payments to the Strategy Group Company were for "opposition research" for
15 the Boehner race.⁴³ Aggregating the above expenses with those Freedom Vote reported to the

³⁹ Freedom Vote, Amended 2014 April Quarterly Report, Sched. E (July 15, 2014); Freedom Vote, 2014 July Quarterly Report, Sched. E (July 15, 2014).

⁴⁰ Ledger of 2014 Freedom Vote Receipts and Expenses, FV01147-48.

⁴¹ Invoice 34 from Missy Mae Walters to Freedom Vote, FV00132-33 (Apr. 6, 2014); Invoice 37 from Missy Mae Walters to Freedom Vote, FV00129 (Apr. 28, 2014).

⁴² Ledger of 2014 Freedom Vote Receipts and Expenses, FV01147; Invoice 857 from The Strategy Group Company to Freedom Vote, FV00879 (Jan. 20, 2014); Invoice 917 from The Strategy Group Company to Freedom Vote, FV00881 (Feb. 12, 2014); Invoice 948 from The Strategy Group Company to Freedom Vote, FV00883 (Feb. 26, 2014); *see also* Nathanson Dep. Tr. at 58:2-63:6 (confirming that, to the best of Nathanson's recollection, the payments to The Strategy Group Company were for the same project as the independent expenditures reported to the Commission).

⁴³ Nathanson Dep. Tr. at 58:2-6.

1 Commission, the total of Freedom Vote's political spending in support of Boehner's candidacy
2 in 2014 was at least \$239,877.81, or 82.67% of its total expenditures.

3 During Nathanson's deposition, when asked about the organization's issue-related work,
4 Nathanson was unable to recall any specific examples of such advocacy and responded that
5 Freedom Vote was concerned with issues that "affected Speaker Boehner," noting, "We rarely
6 did a single specific policy issue. We weren't — you're asking — the reason I'm being vague is
7 we weren't focused necessarily ongoing [sic] with a single issue. They were on a set of related
8 issues that related to economic development often, relating to economic development and
9 economic health."⁴⁴ When asked if it was important for Freedom Vote to elect John Boehner to
10 advance its support of economic issues, Nathanson replied, "I think that we felt that John
11 Boehner being Speaker was good for Ohio."⁴⁵

12 Freedom Vote's internal communications further reflect that its advocacy during the 2014
13 cycle was electoral rather than issue-related, as its agents and vendors discussed the
14 organization's work in terms of election cycles and races — in particular, John Boehner's re-
15 election in the 8th Congressional District of Ohio. Writing to a donor in April 2014, Nathanson
16 described Freedom Vote's anticipated expenses, totaling \$90,000, and explained that he was
17 assuming "maximum effort through election day."⁴⁶ When asked about what this meant, and
18 why election day was important for his work for Freedom Vote, Nathanson did not have a clear
19 recollection, but based upon the date of the email, he assumed that this email concerned the date
20 for the primary election in the 8th Congressional District of Ohio — *i.e.*, the date of John

⁴⁴ *Id.* at 23:4-25:12.

⁴⁵ *Id.* at 75:6-10.

⁴⁶ Email from James Nathanson to redacted donor, FV01520-21 at FV01520 (Apr. 16, 2014, 6:17 PM).

Boehner's primary election.⁴⁷ He added that Freedom Vote's work on its issues was closely tied to elections, stating:

If what we were concerned about were economic issues affecting Ohio as they were explained in election campaigns, those issues tend to die one way or another once there's no longer a campaign. Then it turns in to the policymakers, and with policymakers, the citizens of Ohio have less to do.⁴⁸

When asked whether Freedom Vote ever advocated for its issues with policymakers after an election had concluded, Nathanson stated, "I don't think we ever did."⁴⁹

In sum, in 2014, Freedom Vote spent at least \$239,877.81 on federal campaign activity, which constituted 82.67% of its total spending for that year.

2. The 2016 Election Cycle

i. 2015

In calendar year 2015, Freedom Vote raised \$578,187.41 and spent a total of \$328,223.80.⁵⁰ That year, it made a \$200,000 contribution to Fighting for Ohio Fund, a Commission-registered independent expenditure-only political committee, which itself spent 94.37% (\$9.26 million) of its expenses on independent expenditures opposing Ted Strickland, a 2016 candidate for U.S. Senate in Ohio.⁵¹ Freedom Vote's contribution to Fighting for Ohio Fund alone comprised 60.93% of Freedom Vote's total spending in 2015.⁵²

⁴⁷ Nathanson Dep. Tr. at 72:8-15.

⁴⁸ *Id.* at 73:3-8.

⁴⁹ *Id.* at 73:11.

⁵⁰ Ledger of 2015 Freedom Vote Receipts and Expenses, FV01151-52.

⁵¹ *Filtered Results: FEC Independent Expenditures*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?committee_id=C00573014&two_year_transaction_period=2016&cycle=2016&data_type=processed&is_notice=true (last visited Sept. 20, 2021) (showing all independent expenditures by Fighting for Ohio Fund during the 2016 election cycle).

⁵² Ledger of 2015 Freedom Vote Receipts and Expenses, FV01151-52; Fighting for Ohio Fund, 2015 Year-End Report, Sched. A at 11 (Jan. 31, 2016).

Moreover, Freedom Vote spent additional funds on federal election activity including \$5,000 for “Kentucky 4th District Congressman Thomas Massie . . . Research and consulting service”⁵³ and \$12,539.00 for a poll described as a “survey of Republican voter attitudes in the 4th Congressional District of Kentucky.”⁵⁴ Though Nathanson testified that Freedom Vote ultimately did not pursue any further work in Kentucky’s 4th Congressional District,⁵⁵ the substance of the polls and research conducted related purely to the nomination or election of federal candidates rather than issue advocacy. The work performed by the Tarrance Group, for instance, focused solely on Thomas Massie’s candidate favorability in that district and did not address any issues or policy questions.⁵⁶ As described in the memorandum reporting its work, the survey’s key findings were related to the impact of “Presidential Consideration[s],” candidate “Name Identifications,” and statistics specifically relating to Congressman Massie, such as “Job Approval” and “Comparative Candidates.”⁵⁷ In sum, when combining Freedom Vote’s \$200,000 contribution to Fighting for Ohio Fund with the \$17,539 spent on the election in the 4th Congressional District of Kentucky, Freedom Vote’s total federal campaign activity in 2015 was at least \$217,539.00, which was 66.28% of its total expenditures.

⁵³ Invoice from John Wasilchick LLC to Freedom Vote, FV00260 (Sept. 21, 2015); *accord* Ledger of 2015 Freedom Vote Receipts and Expenses, FV01151-52.

⁵⁴ Invoice 0011600-IN from The Tarrance Group to Freedom Vote, FV00262 (July 31, 2015); *accord* Ledger of 2015 Freedom Vote Receipts and Expenses, FV01151-52.

⁵⁵ Nathanson Dep. Tr. at 81:14-82:22.

⁵⁶ Memorandum from the Tarrance Group to Freedom Vote RE: Key Findings from a Survey of Republican Primary Voters in Kentucky’s 4th CD (Aug. 3, 2015).

⁵⁷ *Id.*

1 *ii. 2016*

2 In calendar year 2016, Freedom Vote's spending increased to \$3.86 million, and its
 3 receipts to \$3.92 million.⁵⁸ Nathanson stated multiple times during his deposition that the Ohio
 4 Senate race was Freedom Vote's "primary activity in 2016,"⁵⁹ and that, "in 2016, we did not
 5 proactively advocate specific policies for the future."⁶⁰

6 Of Freedom Vote's \$3.86 million in expenses, it made \$1,775,000.00 in contributions to
 7 Fighting for Ohio Fund,⁶¹ which alone represented 45.96% of Freedom Vote's total expenditures
 8 in 2016. However, Freedom Vote spent significant additional funds on federal campaign
 9 activity. For instance, Nathanson testified that Freedom Vote's payments to Deep Root
 10 Analytics (\$75,000) and TargetPoint Consulting (\$34,850) were for "large-number analytics"
 11 and "straightforward polling" "in the context of the issues raised in the 2016 Senate race."⁶²

⁵⁸ Ledger of 2016 Freedom Vote Receipts and Expenses, FV01155-59, at FV01155, 59.

⁵⁹ Nathanson Dep. Tr. at 94:22-23 ("The Senate race was our primary activity in 2016."); *id.* at 131:4-6 ("The main thing we did in 2016 was concerned about what was happening in the Senate race."); *id.* at 137:16-18 ("I'm assuming it would have been about our activities in 2016, which were primarily those involved around the Senate race.").

⁶⁰ *Id.* at 115:5-6.

⁶¹ Ledger of 2016 Freedom Vote Receipts and Expenses, FV01155-59 at FV01159. As stated above, 94.37% of Fighting for Ohio Fund's expenses during the 2016 election cycle were for independent expenditures opposing Ted Strickland. *Supra* note 51 and accompanying text.

⁶² Nathanson Dep. Tr. at 89:1-91:5; Ledger of 2016 Freedom Vote Receipts and Expenses, FV01155-59 at FV01158.

Further, Freedom Vote spent \$1,102,713.45 to produce and air a television advertisement entitled “Third Largest,” which targeted federal candidate Ted Strickland.⁶³ The content of the advertisement was as follows:⁶⁴

Narration	Text on Screen	Visual
While Ted Strickland was governor, Ohio lost jobs to Kentucky, Indiana, even Michigan.	OHIO LOST JOBS TO KENTUCKY INDIANA MICHIGAN	Ted Strickland, speaking, on left; map of the United States with Ohio in red on right
350,000 Ohio jobs gone.	350,000 JOBS GONE	
How many is that? If you assembled everyone who lost their job under Strickland, you'd have Ohio's third largest city.	OHIO'S LARGEST CITIES COLUMBUS 787,033 CLEVELAND 396,815 JOBS LOST UNDER STRICKLAND 350,000 CINCINNATI 296,943 TOLEDO 287,208	Ted Strickland on right
And you could fill the OSU Horseshoe more than three times.	STRICKLAND LOST JOBS: COULD FILL THE HORSESHOE 3 TIMES	The Ohio Stadium of The Ohio State University
Now Ted Strickland wants to bring his job-killing policies to Washington.	TED STRICKLAND: BRINGING JOB-KILLING POLICIES TO WASHINGTON PAID FOR BY FREEDOM VOTE	The United States Capitol

⁶³ *Id.*; Invoice FV61516 from Main Street Media Group to Freedom Vote, FV00405 (June 15, 2016) (showing media buy expenses for airing the ad from June 17 to June 23, 2016, on television, cable, and satellite); Invoice FV63016 from Main Street Media Group to Freedom Vote, FV01203 (June 30, 2016) (showing media buy expenses for airing the ad from July 16 to July 22, 2016, on television, cable, and satellite); Invoice 13117 from McCarthy Hennings Whalen, Inc. to Freedom Vote, FV01206 (June 21, 2016) (invoicing expenses for production of the ad); Invoice 13118 from McCarthy Hennings Whalen, Inc. to Freedom Vote, FV01204 (July 18, 2016) (same). Though the total expenses for the ad were originally Freedom Vote received a partial refund from Main Street Media Group of \$18,363.48, making the final total \$1,102,713.45. Ledger of 2016 Freedom Vote Receipts and Expenses, FV01155-59 at FV01159.

⁶⁴ Compl., Ex. A (“Third Largest”) (Aug. 9, 2018).

Narration	Text on Screen	Visual
We can't afford more lost jobs.	WE CAN'T AFFORD MORE LOST JOBS PAID FOR BY FREEDOM VOTE	Ted Strickland at podium

1 When asked about the “Third Largest” advertisement, Nathanson testified that the
 2 advertisement was about Strickland’s campaign for U.S. Senate, and that Freedom Vote aired the
 3 ad because “his performance [as governor . . .] raised questions about what he would be as a U.S.
 4 Senator. . . . Yeah, I mean, he had been governor, and he was going to — and he was running
 5 for the Senate.”⁶⁵ When asked if it was important to Freedom Vote that Strickland lose this
 6 election, Nathanson responded as follows:

7 Q: Was it important to Freedom Vote that Strickland lose this election because he
 8 advanced these issues that were antithetical to Freedom Vote’s purpose?
 9

10 A: We thought it was important to Ohio.
 11

12 Q: Mm-hmm. And so that was why Freedom Vote was involved, because it was
 13 important to Ohio that he lose the election?
 14

15 A: Yeah. We thought that those issues had a very — would have a very negative
 16 impact on Ohio if that was what was brought from — brought to his position as a
 17 U.S. Senator. We were all about the economic issues that Ted Strickland
 18 represented.⁶⁶

19 Further, the investigation showed that, in communications with donors, Freedom Vote
 20 solicited and received funds to support its activities in connection with the 2016 Senate race. For
 21 example, Whatman made at least one fundraising request on Freedom Vote’s behalf that was
 22 explicitly linked to Strickland’s performance. In a June 2016 email to a donor, Whatman began
 23 by stating, “Attached is a polling memo that shows what we are doing is working,” and pointing

⁶⁵ Nathanson Dep. Tr. at 124:16-23.

⁶⁶ *Id.* at 125:20-126:3.

1 out that Strickland was polling 22 points lower than he had the year before.⁶⁷ The email chain
2 concludes with the donor asking for the address to which he could send his contribution and
3 Nathanson providing Freedom Vote's address.⁶⁸

4 Other donors to Freedom Vote also understood the organization's work in terms of its
5 impact on federal elections during this cycle. In August 2016, Freedom Vote received a
6 \$500,000 donation accompanied by a letter stating, "Please note this is an Anonymous donation
7 for the reelection of Rob Portman," Strickland's opponent in the 2016 Senate race.⁶⁹ In
8 response, Nathanson sent a letter to this donor, writing that Freedom Vote, a "501(c)(4)," did not
9 "accept contributions earmarked to support or oppose candidates for public office" as a matter of
10 policy.⁷⁰ Notwithstanding Nathanson's statement, Freedom Vote did not refund the \$500,000
11 provided by the anonymous funder, and the record indicates that donors understood that Freedom
12 Vote focused much of its activities on opposing Strickland, Portman's opponent, during the 2016
13 Senate race in Ohio, which in fact it did.

14 Accordingly, the investigation established that a vast majority of Freedom Vote's
15 spending during the 2016 election cycle was on federal elections. In 2015, Freedom Vote spent
16 \$17,539.00 on its research in the 4th Congressional District of Kentucky, in addition to a
17 \$200,000 contribution to Fighting for Ohio Fund, which constituted 66.28% of its total spending
18 for that year. Similarly, in 2016, between expenses for its "Third Largest" advertisement and

⁶⁷ Email from Tom Whatman to redacted donor, FV01452-55 (June 22, 2016, 11:29 AM). The referenced memo was not included with the version of the email Freedom Vote produced.

⁶⁸ *Id.* When asked why he provided his address, Nathanson told this Office, "I am assuming in order to receive the donation." Nathanson Dep. Tr. at 135:25-136:1. In producing documents, Freedom Vote redacted the names of its donors on the basis of its position that the Commission's determination regarding its status as a political committee has not yet been resolved.

⁶⁹ Letter from redacted donor to Freedom Vote, FV00370 (Aug. 31, 2016).

⁷⁰ Letter from Nathanson to redacted donor, FV01394 (Sept. 16, 2016).

those for polls and analytics, Freedom Vote spent at least \$1,212,563.45 on the 2016 Senate race in Ohio, which, in addition to its contributions to Fighting for Ohio Fund, total \$2,987,563.45, which was 77.35% of its total 2016 spending.

3. Spending After 2016

Freedom Vote began winding up its operations after the 2016 election, and it did not spend funds on its programmatic activities, either issue or campaign-related, after that cycle. The investigation indicated that Freedom Vote was under an IRS audit that appeared to have begun no later than April 2017, when Freedom Vote first incurred expenses related to “IRS Audit.”⁷¹ In calendar year 2017, Freedom Vote spent a total of \$134,868.53;⁷² in 2018, \$187,222.63;⁷³ and in 2019, the year it dissolved, only \$20,407.85.⁷⁴ Across these three years, the majority of Freedom Vote’s funds were spent on payments to its primary legal counsel, Langdon Law, which received \$148,391.50; Nathanson & Associates, which received \$95,000; the IRS, which received \$23,380.85; and Clark Schaefer Hackett, Freedom Vote’s accounting and tax services provider, which received \$12,182.⁷⁵ The remainder was spent on payments to AT&T for phone services, additional legal costs, and Director and Officer insurance fees.⁷⁶

⁷¹ Ledger of 2017 Freedom Vote Receipts and Expenses, FV01162-63.

⁷² *Id.*

⁷³ Ledger of 2018 Freedom Vote Receipts and Expenses, FV01191-92.

⁷⁴ Ledger of Partial 2018 and 2019 Freedom Vote Receipts and Expenses, FV01195-96; Ledger of Partial 2018 and 2019 Freedom Vote Receipts and Expenses, FV01199-1200.

⁷⁵ Ledger of 2017 Freedom Vote Receipts and Expenses, FV01162-63; Ledger of 2018 Freedom Vote Receipts and Expenses, FV01191-92; Ledger of Partial 2018 and 2019 Freedom Vote Receipts and Expenses, FV01195-96; Ledger of Partial 2018 and 2019 Freedom Vote Receipts and Expenses, FV01199-1200.

⁷⁶ *Supra* note 75.

Further, Freedom Vote recorded no receipts in these years: From 2017 to 2019, its only deposit was \$6.58 in interest earned on its account balance at Huntington Bank.⁷⁷

The table below summarizes Freedom Vote's total expenditures from 2010 to 2019, and the percent of these expenditures that constituted federal campaign activity, which encompasses Freedom Vote's contributions to political committees, its own express advocacy, expenses associated with the "Third Largest" advertisement (to the extent it is not, itself, express advocacy), and other expenses described above such as polling done to support Freedom Vote's express advocacy.⁷⁸

**Summary of Freedom Vote's Spending
2010-2019**

Year	Total Expenses	Federal Campaign Activity	% of Total Spending
2010 ⁷⁹	\$1,265,384.00	\$0.00	0.00%
2011 ⁷⁹	\$1,886,457.00	\$0.00	0.00%
2012 ⁷⁹	\$191,416.00	\$0.00	0.00%
2013 ⁷⁹	\$150,430.00	\$0.00	0.00%
2014	\$290,161.09	\$239,877.81	82.67%
2015	\$328,223.80	\$217,539.00	66.28%
2016	\$3,862,274.37	\$2,987,563.45	77.35%
2017	\$134,868.53	\$0.00	0.00%
2018	\$187,222.63	\$0.00	0.00%
2019	\$20,407.85	\$0.00	0.00%

⁷⁷ *Id.*

⁷⁸ Freedom Vote contends that the Commission's analysis in its Factual and Legal Analysis ("F&LA") is based on a misinterpretation of the facts, as Freedom Vote did not intend to imply that its political spending was separate from and in addition to its issue-related advocacy. *See* Supp. Resp. of Freedom Vote at 2-3 (July 6, 2021). While this assertion disregards the note in the Commission's F&LA that Freedom Vote "appears to have counted certain expenses as expenses for both 'program services' and 'political campaign activity,'" F&LA at 5 (Freedom Vote, Inc.), the analysis provided in this Report is based solely on Freedom Vote's own ledgers of expenditures produced in the course of the investigation.

⁷⁹ As discussed *supra* note 26, Freedom Vote's fiscal years ran from October 1 to September 30, and based on the limited information provided in its tax returns, it is not possible to calculate its receipts and expenditures on a calendar year basis. As a result, the figures for years 2010 through 2013 refer to the expenses for the fiscal years of which nine months were spent in the named calendar year.

1 **C. Freedom Vote's Termination**

2 As discussed above, Freedom Vote significantly reduced its spending following the 2016
 3 election cycle, spending in 2017 less than 3.5% of what it had spent the year before. After
 4 receiving the Complaint in this matter in August 2018 and submitting its response in October
 5 2018,⁸⁰ Freedom Vote filed for dissolution in May 2019.⁸¹ When asked why the organization
 6 dissolved, Nathanson stated that the IRS audit resulted in a settlement which bankrupted
 7 Freedom Vote, and that the reputational harm from the settlement made it difficult to continue
 8 operations.⁸² Freedom Vote's internal financial documents indicate that it settled with the IRS
 9 for \$23,095.61 in December 2018.⁸³

10 **II. LEGAL ANALYSIS**

11 **A. Relevant Law**

12 Political committees must register with the Commission, file periodic reports for
 13 disclosure to the public, appoint a treasurer who maintains their records, and identify themselves
 14 through disclaimers on all of their public communications.⁸⁴ The Act and Commission
 15 regulations define a "political committee" as "any committee, club, association or other group of

⁸⁰ Compl. Notif. Letter (Aug. 13, 2018); Resp. of Freedom Vote (Oct. 19, 2018).

⁸¹ FREEDOM VOTE, INC., CERTIFICATE OF DISSOLUTION (NONPROFIT, DOMESTIC CORPORATION) (May 29, 2019). Though Freedom Vote has dissolved, legal proceedings against it are permitted under Ohio law as "[t]he voluntary dissolution of a corporation . . . shall not eliminate or impair any remedy available to or against the corporation or its directors . . . for any right or claim existing . . . prior to the dissolution" so long as the claimant brings suit within five years of the date of the dissolution. Ohio Rev. Code Ann. § 1701.88 (West 2021-22); *see Village of Camden, Ohio v. Cargill, Inc.*, No. 3:20-cv-273, 2021 WL 1940235, at *2-3 (S.D. Ohio May 14, 2021) (holding that claim against dissolved corporation could be prosecuted to judgment with right of appeal so long as the claim was initially brought within five years of the corporation's dissolution).

⁸² Nathanson Dep. Tr. at 146:7-147:20 ("Our decision to dissolve was a function of having no money or having so little money that there was nothing that we could do with it, legally or otherwise. Dissolving Freedom Vote, to the best of my recollection, was exclusively a function of out of money and an inability to raise money because of the [IRS audit].").

⁸³ Ledger of 2018 Freedom Vote Receipts and Expenses, FV01191-92 at FV01192.

⁸⁴ *See* 52 U.S.C. §§ 30102-30104; 11 C.F.R. § 110.11(a)(1).

persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures in excess of \$1,000 during a calendar year.”⁸⁵ In *Buckley v. Valeo*,⁸⁶ the Supreme Court held that defining political committee status “only in terms of the annual amount of ‘contributions’ and ‘expenditures’” was overbroad, reaching “groups engaged purely in issue discussion.”⁸⁷ To cure that infirmity, the Court concluded that the term “political committee” “need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.”⁸⁸ Accordingly, under the statute as thus construed, an organization that is not controlled by a candidate must register as a political committee only if it (1) crosses the \$1,000 threshold and (2) has as its “major purpose” the nomination or election of federal candidates.

Although *Buckley* established the major purpose test, it provided no guidance as to the proper approach to determine an organization’s major purpose.⁸⁹ After *Buckley*, the Commission adopted a policy of determining on a case-by-case basis whether an organization is a political committee, including whether its major purpose is the nomination or election of federal candidates. Though it has periodically considered crafting a bright-line rule through rulemaking, the Commission has consistently declined to do so.⁹⁰ Instead, the Commission concluded that

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

⁸⁶ 424 U.S. 1 (1976).

⁸⁷ *Id.* at 79.

⁸⁸ *Id.*

⁸⁹ See, e.g., *Real Truth About Abortion, Inc. v. FEC* (formerly *Real Truth About Obama v. FEC*), 681 F.3d 544, 556 (4th Cir. 2012) [hereinafter *RTAA*], *cert. denied*, 568 U.S. 1114 (2013).

⁹⁰ 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 Reg. 2000-01, Summary of Comments and Possible Options on the Advance Notice of Proposed Rulemaking on the Definition of “Political Committee,” Cert. (Sept. 27, 2001) (voting 6-0 to hold proposed rulemaking in abeyance).

determining an organization's major purpose "requires the flexibility of a case-by-case analysis of an organization's conduct that is incompatible with a one-size fits-all rule," and that "any list of factors developed by the Commission would not likely be exhaustive in any event, as evidenced by the multitude of fact patterns at issue in the Commission's enforcement actions considering the political committee status of various entities."⁹¹

B. Statutory Threshold

First, to assess whether an organization has made an "expenditure" that satisfies the statutory threshold, the Commission analyzes whether spending on any of an organization's communications made independently of a candidate constitute express advocacy under 11 C.F.R. § 100.22.⁹² In 2014, Freedom Vote reported that it spent \$174,607.55 in independent expenditures supporting John Boehner⁹³ — which, by definition, contain express advocacy.⁹⁴ Therefore, Freedom Vote's expenditures well exceeded the \$1,000 statutory threshold set forth in the Act's political committee definition.⁹⁵

C. Major Purpose

To determine an entity's "major purpose," the Commission considers a group's "overall conduct," including, among other factors, public statements about its mission, organizational documents, government filings, and the proportion of spending related to "Federal campaign

⁹¹ Political Committee Status, 72 Fed. Reg. 5595, 5602 (Feb. 7, 2007) [hereinafter Supplemental E&J].

⁹² *Id.* at 5606.

⁹³ *FEC Independent Expenditures: Filtered Results*, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?data_type=processed&committee_id=C90014754&is_notice=false&min_date=01%2F01%2F2013&max_date=12%2F31%2F2014 (showing Freedom Vote's reported independent expenditures during the 2014 election cycle).

⁹⁴ See 52 U.S.C. § 30101(17) ("The term 'independent expenditure' means an expenditure by a person . . . expressly advocating the election or defeat of a clearly identified candidate . . .").

⁹⁵ Resp. of Freedom Vote at 7-8 ("[I]n 2014, [Freedom Vote] . . . made (and reported) independent expenditures in excess of \$1,000.").

activity (*i.e.*, the nomination or election of a Federal candidate).”⁹⁶ The Commission has stated that it compares how much of an organization’s spending is for “*federal campaign activity*” relative to “activities that [a]re not campaign related.”⁹⁷ In 2016, the United States District Court for the District of Columbia in *Citizens for Responsibility and Ethics in Washington v. FEC* (“*CREW I*”) instructed the Commission, when examining an organization’s major purpose, to look beyond express advocacy and consider whether other communications at issue indicate a “campaign-related purpose.”⁹⁸ The Court also held that the Commission’s analysis of the relevant time period for evaluating a group’s spending must retain the flexibility to account for changes in an organization’s major purpose over time.⁹⁹

Under the Commission’s case-by-case approach, Freedom Vote’s “overall conduct” indicates that its major purpose became the nomination or election of federal candidates in 2014. First, between 2014 and 2016, the vast majority of Freedom Vote’s spending was on activities reflecting this major purpose. In 2014, Freedom Vote reported \$174,607.55 in independent

⁹⁶ Supplemental E&J, 72 Fed. Reg. at 5597, 5605.

⁹⁷ *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, the 4th Circuit upheld the Commission’s case-by-case approach in the face of a constitutional challenge. *See RTAA*, 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).

⁹⁸ 209 F. Supp. 3d 77, 92 (“[T]he Court has little trouble concluding that the Commissioners’ decision . . . [to exclude] *all* non-express advocacy speech from consideration [in the major purpose analysis] was contrary to law.” (emphasis in original) (internal quotations marks omitted)).

⁹⁹ *Id.* at 94 (“The Commissioners’ refusal to give any weight whatsoever to an organizations’ [sic] relative spending in the most recent calendar year — particularly in the case of a fifteen-year-old organization like [Americans for Job Security] — indicates an arbitrary ‘fail[ure] to consider an important aspect of the [relevant] problem.’” (quoting *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 664, 658 (2007))). In its subsequent F&LA, the Commission found reason to believe that the organization violated the Act by failing to organize, register, and report as a political committee. F&LA at 14-15, MUR 6538R (Americans for Job Security). *See also, e.g., FEC v. Malenick*, 310 F. Supp. 2d 230, 237 (D.D.C. 2004) (“Accordingly, because Triad and then Triad Inc.’s major purpose was the nomination or election of specific candidates *in 1996*, and because Triad received contributions aggregating more than \$1,000 *in 1996*, I find that Triad and Triad, Inc. operated as a ‘political committee’ *in 1996*.” (emphasis added)); *FEC v. GOPAC, Inc.*, 917 F. Supp. 851, 853 (D.D.C. 1996) (discussing major purpose only in 1989 and 1990 with respect to group formed in 1979).

1 expenditures supporting federal candidate John Boehner to the Commission, but the record
 2 indicates that it in fact spent \$239,877.81 (82.67% of its 2014 expenses) on express advocacy.¹⁰⁰
 3 In 2015, Freedom Vote made a \$200,000 contribution to an independent expenditure-only
 4 political committee, Fighting for Ohio Fund, and spent \$17,539 on research and polling
 5 regarding federal candidate Thomas Massie;¹⁰¹ in total, Freedom Vote spent \$217,539 (66.28%
 6 of its 2015 expenses) on federal election activity. And in 2016, Freedom Vote made \$1.775
 7 million in contributions to Fighting for Ohio Fund; spent \$109,850 on analytics and polling “in
 8 the context of the issues raised in the 2016 Senate race;”¹⁰² and spent \$1.103 million on a
 9 television advertisement that Nathanson admitted was about Ted Strickland’s 2016 Senate
 10 campaign.¹⁰³ Together, Freedom Vote spent \$2,987,563.45 (77.35% of its expenses) on activity
 11 indicating a major purpose of nominating or electing a federal candidate in 2016. While
 12 Freedom Vote ceased to engage in programmatic activities after 2016,¹⁰⁴ between 2014 and the

¹⁰⁰ *Supra* notes 29-43 and accompanying text.

¹⁰¹ *Supra* notes 50-57 and accompanying text. *See also* Supplemental E&J, 72 Fed. Reg. at 5605 (noting that the Commission’s complaint against a 527 organization relied upon the defendant’s “expenditures for candidate research, polling, and advertising” to allege major purpose (citing Compl., *FEC v. Club for Growth, Inc.*, 432 F. Supp. 2d 87 (D.D.C. 2006) (Civ. Action No. 05-1851 (RMU)))).

¹⁰² Nathanson Dep. Tr. at 89:1-91:5.

¹⁰³ *Supra* notes 61-66 and accompanying text. Though Freedom Vote did not report “Third Largest” an independent expenditure, and the Commission has made no determination as to whether the advertisement contains express advocacy, *see* Cert. ¶¶ 1.a, 2 (July 29, 2019), courts and the Commission have held that all spending with a “campaign-related purpose,” not solely that containing express advocacy is relevant to the major purpose analysis. *See CREW I*, 209 F. Supp. 3d at 92 (“[E]xcluding *all* non-express advocacy speech from consideration [when applying the major purpose test is] contrary to law.” (emphasis in original) (internal quotation marks omitted)); F&LA at 11-12, MUR 6538R (Americans for Job Security) (considering electioneering communications as supporting “a conclusion that there is reason to believe that the group’s major purpose is the nomination or election of federal candidates”).

¹⁰⁴ *Supra* notes 72-77 and accompanying text.

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organization's termination in 2019, Freedom Vote spent \$3.44 million (71.43% of its total expenses) on federal campaign activity.¹⁰⁵

Although the Commission has never set a threshold for the proportion of spending that would establish the major purpose of nominating or electing federal candidates, the foregoing analyses of comparative spending by Freedom Vote demonstrate that its major purpose had become the nomination or election of a federal candidate by 2014.¹⁰⁶ For example, in MUR 5753 (League of Conservation Voters 527), the Commission found that an organization had such a major purpose where between 50 and 75% of its budget "was intended for the presidential election."¹⁰⁷ In MUR 5754 (MoveOn PAC), the Commission found that an organization's major purpose was the nomination or election of federal candidates where the organization had spent 68% of its funds on advertisements opposing the election of George W. Bush.¹⁰⁸ And in MUR 6538R (Americans for Job Security), the Commission found that an organization's major purpose was the nomination or election of federal candidates where approximately 75% of the

¹⁰⁵ As a political committee, Freedom Vote would have had to file quarterly reports with the Commission. Based upon the financial activity documented above, Freedom Vote spent substantial funds on federal campaign activity through the end of 2016 that should have been reflected in the Post-General Report, due December 8, 2016, and the Year End Report, due January 31, 2017. *See 2016 Reporting Dates*, FEC.gov, https://transition.fec.gov/info/report_dates_2016.shtml#quarterly (last visited Sept. 20, 2021). Further, as a political committee, Freedom Vote had a continuing obligation to file disclosure reports until it terminated. 52 U.S.C. § 30103(d)(1); 11 C.F.R. § 102.3(a)(1); *see also* Advisory Op. 1997-47 (Hansen) ("Under the Act and Commission regulations, a political committee is a continuing organization until specific action is taken to terminate the registration of, or disband, the committee."); FEC, CAMPAIGN GUIDE FOR NONCONNECTED COMMITTEES 93 (May 2008) (noting that a "committee's reporting obligation does not end until the Commission notifies the committee that the termination report has been accepted").

¹⁰⁶ *See* F&LA at 11, MUR 6538R (Americans for Job Security).

¹⁰⁷ Conciliation Agreement ¶ IV.19, MUR 5753 (League of Conservation Voters 527 & League of Conservation Voters 527 II); *accord.* F&LA at 18, MUR 5753 (League of Conservation Voters 527).

¹⁰⁸ Conciliation Agreement ¶ IV.13, MUR 5754 (MoveOn.Org Voter Fund); *accord.* F&LA at 12, MUR 5754 (MovOn.Org Voter Fund).

organization's spending in one year leading up to an election was devoted to such purpose.¹⁰⁹
 Freedom Vote's comparative spending on activities indicating its purpose of nominating or
 electing a federal candidate, in each of 2014, 2015, and 2016, or all of these years together, is
 squarely in line with spending that the Commission has previously found to reflect a major
 purpose of being a political committee.

Further, although Freedom Vote's founding documents and tax filings indicate that it was
 formed as a social welfare organization to advance issues affecting Ohio, the Commission has
 previously determined that such statements are not dispositive.¹¹⁰ Indeed, while Freedom Vote's
 spending alone is sufficient to establish that it became a political committee,¹¹¹ other evidence
 gathered during the investigation further demonstrates that Freedom Vote's major purpose had
 become federal campaign activity. In his deposition, Nathanson attempted to frame Freedom
 Vote's work in terms of issues and policies, but he admitted that the results of elections mattered
 to Freedom Vote and much of its activities were directed towards ensuring that a particular
 candidate won or lost.¹¹² Indeed, he testified in connection with Freedom Vote's efforts to

¹⁰⁹ Conciliation Agreement ¶¶ IV.14-15, MUR 6538R; *cf.* F&LA at 15, MUR 6538R (finding reason to believe that the organization's major purpose was the nomination or election of federal candidates where the proportion of campaign-related spending originally appeared to be only 52%).

¹¹⁰ See Supplemental E&J at 5601 ("Because such statements may not be inherently conclusive, the Commission must evaluate the statements of the organization in a fact-intensive inquiry giving due weight to the form and nature of the statements, as well as the speaker's position within the organization."); F&LA at 11, MUR 6538R (citing *Real Truth About Obama v. FEC*, No. 3:08-cv-00483, 2008 WL 4416282, at *14 (E.D. Va. Sept. 24, 2008) ("A Declaration by the organization that they are *not* incorporated for an electioneering purpose is not dispositive." (emphasis in original)), *aff'd* 575 F.3d 342 (4th Cir. 2009), *vacated on other grounds*, 559 U.S. 1089 (2010), *remanded and decided*, 796 F. Supp. 2d 736, *aff'd sub nom. Real Truth About Abortion v. FEC*, 681 F.3d 544 (4th Cir. 2012), *cert. denied*, 568 U.S. 1114 (2013)).

¹¹¹ See F&LA at 9-10 ("In this case, [Freedom Vote's] proportion of spending related to Federal campaign activity compared to its total spending . . . indicates that its major purpose may be the nomination or election of federal candidates."); F&LA at 11, MUR 6538R ("In this case, AJS's proportion of spending related to federal campaign activity compared to its total spending is alone sufficient to indicate that its major purpose had become the nomination or election of federal candidates.").

¹¹² *Supra* notes 45, 66 and accompanying text (discussing Nathanson's testimony that the election of Boehner and defeat of Strickland were important to Freedom Vote).

support John Boehner's candidacy that "I think that we felt that John Boehner being Speaker" — the highest office in the U.S. House of Representatives — "was good for Ohio."¹¹³ With respect to 2016 cycle activity, Nathanson testified that the Ohio Senate race was Freedom Vote's "primary activity in 2016,"¹¹⁴ which is tantamount to saying that the organization's major purpose in 2016 was the election or defeat of a federal candidate.¹¹⁵ Thus, while Nathanson acknowledged that Freedom Vote acted with the purpose of keeping Speaker Boehner in office in 2014 and that the 2016 Senate race was its primary focus that year, he also could not identify a specific policy proposal or a single piece of legislation that Freedom Vote had supported during its lifetime.¹¹⁶

Public statements made by Freedom Vote's representatives and internal communications further establish that influencing federal elections by supporting or opposing particular candidates had become Freedom Vote's goal, and that, by 2016, donors were making contributions to support its federal campaign activity. Press reports contemporaneous with the organization's founding in 2010 indicate that Tom Whatman, one of its key advisers, saw Freedom Vote as stepping into a role previously filled by the RNC to promote voter turnout.¹¹⁷ In 2016, one donor who gave half a million dollars to the organization explicitly stated that the funds he gave were for "the reelection of Rob Portman."¹¹⁸ And in one solicitation, Whatman

¹¹³ Nathanson Dep. Tr. at 75:6-10.

¹¹⁴ *Id.* at 94:22-23 (emphasis added); *see also id.* at 131:4-6 ("The main thing we did in 2016 was concerned about what was happening in the Senate race."); *id.* at 137:16-18 ("I'm assuming it would have been about our activities in 2016, which were primarily those involved around the Senate race.").

¹¹⁵ Cf. Buckley, 424 U.S. at 79 (establishing major purpose test).

¹¹⁶ Cf. F&LA at 13-14, MUR 6538R (determining that advertisements' lack of "nexus with the legislative process" was "indicative of a major purpose to nominate or elect a federal candidate").

¹¹⁷ Cummings, *supra* note 22 and accompanying text.

¹¹⁸ Letter from redacted donor to Freedom Vote, *supra* note 69 and accompanying text.

1 successfully convinced a donor to make a contribution by attaching a poll indicating that Ted
2 Strickland was doing poorly and stating that “what we [Freedom Vote] are doing is working.”¹¹⁹
3 That statement sought to tie Freedom Vote’s activities to opposing Strickland’s candidacy.

4 As discussed above, over the course of its existence, Freedom Vote’s spending followed
5 a trajectory from spending no funds on federal campaign activity between fiscal years 2010 and
6 2013 to spending between 66% and 83% each year on such activity from calendar years 2014 to
7 2016; in total, spending for the purpose of influencing federal elections constituted over 71% of
8 Freedom Vote’s spending for the second half of its existence. Taken together with the
9 Commission’s precedent and other evidence described above and the fact that the record
10 establishes that Freedom Vote never advocated for specific legislation or policies, the
11 investigation confirms that Freedom Vote failed to organize, register, and report as a political
12 committee in violation of 52 U.S.C. §§ 30102, 30103, and 30104.

¹¹⁹ Email from Tom Whatman to redacted donor, *supra* note 67 and accompanying text.

1 **IV. CONCLUSION**

2 Based on the foregoing, the Office of General Counsel is prepared to recommend that the
3 Commission find probable cause to believe that Freedom Vote, Inc., violated 52 U.S.C.
4 §§ 30102, 30103, and 30104(a), (b), and (g)(2) by failing to organize, register, and report as a
5 political committee.

6 September 20, 2021
7 Date

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