







1 strict parliamentary procedure on recognition by  
2 speaking the words Madam Chair and then waiting for  
3 the Chair to recognize you by name. If you have  
4 technical issues, please let me know. Jim and Tiffany  
5 are also available to troubleshoot. Anyone, including  
6 our non-FEC guests, may use the chat feature at the  
7 bottom of the screen to request technical assistance.  
8 However, please note that the chat feature is only  
9 available for technical assistance.

10 If you are participating by telephone dial-  
11 up, please wait for a break. If you are having  
12 trouble hearing what is being said, maybe because  
13 someone is talking too quietly, please make sure that  
14 your device's volume is turned up. If you are a  
15 Commissioner, the Acting General Counsel, the staff  
16 director, a presenter, counsel for the Respondent, the  
17 recording secretary, or the moderator, please use the  
18 parliamentary procedure we just spoke of. Seek  
19 recognition from the Chair and, when recognized, ask  
20 the speaker to speak louder or get closer to their  
21 microphone.

22 Please keep in mind that there will be no  
23 opportunities for sidebars within this session. For  
24 FEC staff, we suggest using your FEC email. If we  
25 lose contact with a Commissioner or with counsel for

1 the Respondent, I will inform the Chair.

2 Zoom has incorporated a new notification  
3 system related to recordings. You will now see a  
4 notification alerting you that the meeting is being  
5 recorded. You will no longer hear the notification.  
6 You will be prompted to select "Got It" to participate  
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8 reminder that the meeting is being recorded as they  
9 always are. The notification does not change any of  
10 the rules about recording. Only the Commission  
11 Secretary's office and court reporter can record this  
12 hearing.

13 Madam Chair, I can confirm that  
14 Commissioners and counsel for the Respondent are  
15 online. Are you ready to begin the hearing?

16 CHAIR BROUSSARD: Yes, thank you.

17 MS. BENNETT: Madam Chair, I can confirm  
18 that the recording has started, and you may gavel in  
19 the hearing when ready.

20 CHAIR BROUSSARD: Thank you. Good morning.  
21 The probable cause hearing for Matter Under Review  
22 7465, Freedom Vote, Incorporated, will now come to  
23 order. I want to say welcome to everyone.  
24 Representing the Respondent is Charlie Spies of  
25 Dickinson Wright. In addition to the Commissioners

1 who are here today, we have from the Office of General  
2 Counsel Acting General Counsel Lisa Stevenson, along  
3 with Charles Kitcher, Jin Lee, Justine di Giovanni.  
4 Staff Director Alec Palmer is also present.

5 On September 20, 2021, the Office of General  
6 Counsel sent a probable cause brief to counsel for the  
7 Respondent notifying them that APC is prepared to  
8 recommend that the Commission find probable cause to  
9 believe that Freedom Vote, Incorporated violated 52  
10 U.S.C. §§ 30102, 30103, 30104(a), (b), and (g)(2) by  
11 failing to organize, register, and report as a  
12 political committee.

13 On October 5, the Respondent filed its reply  
14 brief and notified the Office of General Counsel that  
15 Respondent was requesting a probable cause hearing.  
16 On October 8, the Commission granted the request and  
17 scheduled today's hearing shortly thereafter.

18 Mr. Spies, for today's hearing, you were  
19 notified by OGC on October 13 that we will follow the  
20 procedure steps set forth in the Commission's policy  
21 statements on probable cause hearings. You will be  
22 allowed 15 minutes to make an opening statement. You  
23 will have five minutes to make a closing statement.  
24 Your opening statement should only present issues,  
25 arguments, and evidence that you have already briefed

1 or brought to the attention of the Office of General  
2 Counsel, and, of course, you may reserve time for a  
3 closing statement if you desire.

4 Following your presentation, the  
5 Commissioners, the General Counsel, and the Staff  
6 Director will have the opportunity to ask questions.  
7 Our probable cause hearing procedures also permit the  
8 Commissioners to ask clarifying questions to the  
9 General Counsel and the Staff Director. I would like  
10 to remind everyone that only Commissioners and not  
11 Respondent's counsel may direct questions to the  
12 General Counsel and Staff Director. The Commission  
13 will make a transcript of this hearing available to  
14 Respondent which will become a part of the record in  
15 this matter.

16 Again, we say welcome, Mr. Spies, and please  
17 proceed with your opening statement.

18 MR. SPIES: Thank you, Madam Chair and  
19 Mr. Vice Chair. I appreciate the opportunity to talk  
20 about Freedom Vote with you a little bit this morning.  
21 A little bit of the history on Freedom Vote is they  
22 were founded almost a decade ago as a 501(c)(4) public  
23 policy advocacy organization in Ohio and over the, I  
24 almost would say the past decade, but they actually  
25 terminated in 2019, but, over the nine years of their

1 existence, Freedom Vote maintained over its life cycle  
2 its IRS status and never went over 50 percent on its  
3 political activity or political campaign activity from  
4 an FEC perspective in their own accounting and in  
5 their paperwork, and it's important to note what I'm  
6 saying of in their own accounting because this case is  
7 relatively confusing, and I'm going to address three  
8 things here. I'm going to start with the complicated  
9 issue, move to the contentious issue, and then go to  
10 the clear-cut issue.

11 Starting with the complicated issue is  
12 Freedom Vote's accounting. First of all, Freedom Vote  
13 didn't keep its books on a calendar year basis, and  
14 that has made doing direct comparisons with what OGC  
15 has come up with on an election year basis difficult,  
16 and it means that you're seeing really two sets of  
17 numbers in front of you.

18 So starting point is Freedom Vote's books  
19 show that it stayed within its major purpose  
20 allocation and, also, Freedom Vote did their  
21 calculations on an election cycle basis, so they were  
22 looking at combining 2013 and 2014 and they were  
23 looking at combining 2014 and 20 -- I'm sorry,  
24 combining 2015 and 2016, and they also looked at the  
25 life cycle of the organization, all of which, any one



1 of those calculations keeps them well under 50 percent  
2 for a major purpose test.

3           However, if you were determined to find a  
4 way to make them look like they went over 50 percent  
5 on political activity, you can do that by playing  
6 games with numbers, and if you wanted to do that, what  
7 you would do is you would ignore 2013. You would just  
8 start with 2014, which was the election year, where  
9 there was more political activity, loop that, lump  
10 that together with 2015 and 2016 so that way you're  
11 doing a two-to-one election year and off year, which  
12 gets that number up higher and gets your political  
13 activity over 50 percent. So, if you wanted to prove  
14 they went over 50 percent on political activity,  
15 that's what you would do, and, in fact, that's exactly  
16 what OGC has done in their briefing to try to come up  
17 with a rationale for treating the organization as a  
18 political committee.

19           As we explain in our July 6, 2021,  
20 supplemental response on page 3, we walk through this,  
21 but a lot of -- and this is the complicated part. So  
22 a lot of the I guess I'll say confusion here that has  
23 then led to this matter is that Freedom Vote, in their  
24 IRS Form 990s, has a category that they call political  
25 activity, and they consider that political activity to

1 be a subcategory of their program services total and  
2 not a separate subcategory of total expenses. And so  
3 what that means is, for example, in 2016, Freedom Vote  
4 spent a total of about 3.5 million. Of that total,  
5 Freedom Vote spent 3.5, basically, the whole amount on  
6 program services, and then, out of that, they spent  
7 1.74 million on activities that could aggressively be  
8 categorized as political activity.

9 So, when you look at the total expenses  
10 incurred by Freedom Vote, you should be and what  
11 Freedom Vote did internally is adding the program  
12 services column with the management and general  
13 services column and fundraising expenses column, and  
14 then, if you look at the activities that could be  
15 considered political activity, they come in right  
16 under 50 percent.

17 What OGC did with the numbers here was  
18 included the political activity spending in  
19 calculating the total amount spent, and that caused  
20 their numbers to get Freedom Vote above the 50 percent  
21 threshold, and that's not how Freedom Vote did its  
22 internal books and we believe it's not correct. So  
23 that's the complicated issue.

24 Moving to the what I will describe as  
25 contentious issue and that is what is the correct

1 category, you know, what's the correct time period to  
2 be looking at for determining whether the political  
3 committee status and, also, part of that is what  
4 activities count for this determination. As I noted,  
5 in this case, OGC has cherry-picked a three-year time  
6 line, 2014 to 2016, to find that Freedom Vote  
7 triggered political committee status. Well, in the  
8 past, they have determined political committee status  
9 based on a whole range of different time lines,  
10 calendar year, election cycle, multiple years.

11 Multiple commissioners have pointed out in  
12 the past that separating out single years of an  
13 election cycle to create the illusion that an  
14 organization is a political committee is not fair.  
15 It's not the right determination. And if you were to  
16 take this approach, we believe it would be  
17 unprecedented. We direct you to the statement of  
18 reasons in MUR 6872, that's New Models, where Vice  
19 Chair Hunt, current Commissioner Goodman eloquently  
20 described OGC's myopic focus on one year of spending,  
21 and we would suggest that they're doing the same thing  
22 here by, out of the nine years of a life cycle of an  
23 organization, cherry-picking three calendar years  
24 which are not even the time periods that the  
25 organization uses.

1           The fundamental flaw of this approach is  
2           that it ignores the organization's history and the  
3           other activities of the organization. I think this  
4           problem has also been eloquently stated in MUR 7181  
5           where Commissioner Dickerson, then Vice Chair  
6           Dickerson, and Commissioner Trainor explained that the  
7           simplest, cleanest, and fairest standard for  
8           determining whether an organization has the major  
9           purpose of nominating and electing federal candidates  
10          is to analyze its total spending on federal campaigns.

11           If that approach that was taken in  
12          Independent Women's Voice there, if that was taken  
13          here, Freedom Vote would be well under 50 percent. In  
14          fact, in their lifetime calculations, they're under 30  
15          percent on political activity. So, within this sort  
16          of, my contentious category of how you calculate  
17          political committee status, first of all, the time  
18          period and then, second of all, our concern is with  
19          categories of information or of activity that are  
20          being counted towards this.

21           We believe that OGC's analysis on Freedom  
22          Vote's spending is misleading and not consistent with  
23          Commission or court precedent. So OGC's spending  
24          analysis, while, in their briefing, they claim it  
25          comes from Freedom Vote's internal ledgers, in fact,

1 it varies significantly from Freedom Vote's 990s that  
2 were filed by Freedom Vote and were based on their  
3 internal ledgers. OGC's significant inflation of the  
4 numbers are -- and we're going to touch on a few  
5 instances where they did explain how they inflated the  
6 numbers, but they also -- it's just conclusory and  
7 they don't go through and explain what the real  
8 difference is between the internal ledgers, and that  
9 makes it very difficult for us to respond to those  
10 differences.

11 If this becomes material in any sort of  
12 determination by the Commission, that difference, I  
13 would encourage that, you know, getting an explanation  
14 out of the OGC about why their numbers are so  
15 different and then giving us a response, an  
16 opportunity to very briefly send you a response on  
17 that point.

18 So a few examples that they did elucidate  
19 how they came up with their numbers on that we believe  
20 show the problem with their approach is that they  
21 included in their analysis of Freedom Vote's federal  
22 campaign activity expenses for poll ride calls and  
23 also support fees and any spending that mentioned the  
24 Eighth Congressional District of Ohio, so anything  
25 that mentioned the district they lumped in as federal

1 campaign activity.

2 As everyone here knows, there are issue ads  
3 and issue advocacy issues that can mention a district  
4 and policies that makes the focus on a district that  
5 would not, in fact, be federal campaign activity.  
6 None of the expenses we're talking about ever  
7 expressly advocated for or against or even mentioned  
8 clearly identifiable candidates for office, and you  
9 can take OGC's word for that. They acknowledge that  
10 in their briefing.

11 OGC also incorrectly includes as federal  
12 campaign activity Freedom Vote's issue advertisement  
13 about the number of jobs lost in Ohio during  
14 Ted Strickland's tenure as Ohio governor despite the  
15 fact that the ad contains no express advocacy and was  
16 consistent with similar or numerous past examples of  
17 advertisements which were substantially the same and  
18 the Commission determined no RTB on.

19 I would direct you to MUR 6612, that's  
20 Crossroads GPS, and MUR 5854, Lantern Project, and  
21 also MUR 6311, AFP, and these are all MURs that dealt  
22 with advertisements, talking about policies and  
23 criticizing specific members but were not -- did not  
24 contain express advocacy, and we would suggest that,  
25 you know, the Strickland ad is important because it's

1 a huge percentage of the spending in 2016, and their  
2 interpretation here of automatically treating it as  
3 federal campaign activity really tends to skew the  
4 numbers. So those are contentious issues that, you  
5 know, over the years Commissioners have taken  
6 different approaches on.

7 My third subject to talk about is not  
8 contentious. It's, in fact, clear-cut, and that is  
9 the statute of limitations here. As a reminder,  
10 Freedom Vote's last arguable political activity was on  
11 October 5, 2016. For those of you doing quick math,  
12 that's more than five years ago, and, you know, the  
13 procedural history here is that a complaint was filed  
14 in 2018 against Freedom Vote for their activities in  
15 2014 and 2016. In October of 2018, Freedom Vote filed  
16 its response to the matter.

17 The Commission found RTB about seven months  
18 later, in July of '19, and then the Commission lost  
19 its quorum, and it was without a quorum, as you know,  
20 for, you know, well over a year, close to a year and a  
21 half, and that caused delays, apparently, in this  
22 case. I became -- you know, our team became counsel  
23 on this earlier this year, so I wasn't involved over  
24 the years preceding 2021, but it's apparent to me that  
25 the lack of a quorum with the Commission combined with

1 the filing a complaint years after the activity has  
2 driven this activity past the statute of limitation,  
3 and, while that may be frustrating for those that  
4 would like to, you know, push an expansive legal  
5 theory here, the reality is that the Commission has a  
6 clear statute of limitation for five years.

7 I'm not going to go through the cites. You  
8 guys, you know, the Commission is aware of that, but I  
9 will remind you that the Commission has consistently  
10 followed the statute of limitations even when the  
11 statute of limitations had not technically run but is  
12 imminent. So, if OGC has some sort of creative theory  
13 about a lag in activity to get you, you know, right up  
14 to the statute, I think Chair Broussard and  
15 Commissioner Weintraub described this well in MUR  
16 7395, Heller, where they said under the circumstances  
17 and in light of the imminent statute of limitations  
18 and other priorities on the Commission's docket, we  
19 vote to dismiss the allegations as a matter of  
20 prosecutorial discretion.

21 The statute of limitations has a reason for  
22 why it's in the law, and it exists against the exact  
23 sort of -- as a protection against the exact sort of  
24 situation here. For those of you that took the time  
25 to look at Mr. Nathanson's deposition, the



1 representative of the organization, he consistently  
2 could not remember very specific questions the OGC  
3 asked him about, you know, specific ads run seven  
4 years ago. I submit to you that that's entirely  
5 understandable. I wouldn't understand -- sorry, I  
6 wouldn't recall advertisements that clients or  
7 organizations ran six or seven years ago, and that's  
8 why you have a statute. But what makes this case  
9 remarkable is that OGC attempts to use his lack of  
10 historic recollection against him.

11 So not only are they not respecting the  
12 statute, but then they're flipping the presumption and  
13 they're saying that the fact he couldn't recall  
14 specific policy advocacy work the group did creates a  
15 presumption somehow against the organization while at  
16 the same time discrediting repeated sworn statements  
17 from Mr. Nathanson about the purpose of the  
18 organization which are much more clear-cut on paper  
19 and were consistently described.

20 It's not, you, know, a situation where sworn  
21 statements are disregarded, but then you ignore the  
22 precedent on the statute of limitations is incredibly  
23 troubling, and so no matter what you think on the  
24 procedural history or any of the sort of specifics on  
25 which activities and time periods matter here, the

1 reality is that we are past the statute, and I  
2 encourage you to use your and I respectfully encourage  
3 you to use your prosecutorial discretion to dismiss  
4 this matter. Thank you for your time.

5 CHAIR BROUSSARD: Thank you, Mr. Spies.

6 Are there any questions for Respondent's  
7 counsel?

8 COMMISSIONER TRAINOR: Madam Chair?

9 CHAIR BROUSSARD: Commissioner Trainor.

10 COMMISSIONER TRAINOR: So, Mr. Spies, I  
11 really appreciate your presentation this morning. The  
12 question I have for you is, is there any specific  
13 regulation or guidance that the Commission has given  
14 to an organization like Freedom Vote for how to  
15 calculate the time frame for which they would have to  
16 determine their major purpose?

17 MR. SPIES: Thank you for the question,  
18 Commissioner, and I think my inability to give you a  
19 good answer on this illustrates the problem here.  
20 There has, to my knowledge, not been clear guidance on  
21 what the correct time period to use is, which is why,  
22 when an organization in good faith, especially we're  
23 talking about years ago, well before, for example, you  
24 know, the more recent court decisions, we're talking  
25 about in 2013 and '14 an organization in good faith

1 was using a two-year time period for its calculations,  
2 I believe that's understandable.

3 COMMISSIONER TRAINOR: And is there  
4 anything -- are there any Internal Revenue Service  
5 guidelines with regard to what your fiscal year looks  
6 like that Freedom Vote followed?

7 MR. SPIES: They did file -- I mean, again,  
8 thank you for the question, Commissioner, and they --  
9 Freedom Vote had an accountant that complied with the  
10 IRS guidelines, and, you know, you have an option of  
11 treating -- of either taking a calendar year or a  
12 fiscal year approach to accounting, and Freedom Vote  
13 took a fiscal year approach and they complied with the  
14 guidelines on how to do that.

15 COMMISSIONER TRAINOR: So, all in all,  
16 there's no guideline from the Commission with regard  
17 to how to do this, but you did follow standard  
18 accounting practices to comply with the Internal  
19 Revenue Services?

20 MR. SPIES: That is correct, Commissioner.

21 COMMISSIONER TRAINOR: Okay. Thank you.

22 CHAIR BROUSSARD: I have a question, Mr.  
23 Spies. In the FLA that was forwarded to Freedom Vote  
24 after the Commission found RTB, I believe there's a  
25 chart that's included in it that shows that the Office

1 of General Counsel considered the fiscal year,  
2 correct?

3 MR. SPIES: The -- I believe our July 6,  
4 2021, supplemental response that we filed addresses  
5 that chart that OGC used and the -- while O -- while  
6 you -- while the office said they used the fiscal  
7 year, the problem with that chart is that it  
8 miscategorized the different activities --

9 CHAIR BROUSSARD: So my question is --

10 MR. SPIES: -- and we go through an  
11 explanation of that.

12 CHAIR BROUSSARD: Mr. Spies, so OGC, and  
13 then maybe we can ask OGC to clarify this. In their  
14 FLA, they contend they used the fiscal year, and then,  
15 in response, in their GC brief, they analyze this  
16 based on a calendar year. So OGC has taken into  
17 account two different ways and in both of those ways  
18 it's concluded that the major purpose was for federal  
19 election activity. Under those two analyses, and I  
20 understand your contention of different accounting,  
21 how is it that both of them failed? Just can you just  
22 put it down in the simplest way possible, tell me how  
23 you think they failed.

24 MR. SPIES: Thank you, Madam Chair. The two  
25 issues are the time period that they use for making

1 their calculations, so when they switched to -- when  
2 they used a fiscal year, they were including the wrong  
3 information in the categories they used. When they  
4 switched to a calendar year, they carried that time  
5 period from 2014 to 2016. That has two problems,  
6 well, three really. One is it's an artificially  
7 created time period. The second is by ignoring 2013  
8 and the first part of an election cycle, they pumped  
9 the numbers up. And the third issue is that it's  
10 including activity well beyond the statute of  
11 limitations.

12 CHAIR BROUSSARD: Okay. I understand the  
13 statute of limitations point that you made on that,  
14 but your argument on the cherry-picking, so what do  
15 you -- you said there's no clear guidance for you.  
16 What does the Respondent contend should be the time  
17 period that we should be looking at?

18 MR. SPIES: The lifetime of the  
19 organization.

20 CHAIR BROUSSARD: The lifetime of the  
21 organization, and so that would be looking at from  
22 2010 to 2019, correct?

23 MR. SPIES: Yes, Madam Chair.

24 CHAIR BROUSSARD: And if we use the  
25 calculations that have been provided by the General

1 Counsel's brief and you make that calculation, do you  
2 have a number of what the percentage would be that  
3 would be the total spending for federal campaign  
4 activity?

5 MR. SPIES: We can't understand the  
6 categorization in the General Counsel's brief.

7 CHAIR BROUSSARD: Uh-huh.

8 MR. SPIES: I can tell you that the  
9 organization's internal accounting -- and you'll see  
10 that on page 2 of our supplemental briefing from the  
11 summer -- shows over the lifetime of the organization  
12 24.8 percent of the organization's activities spent on  
13 political campaign activity.

14 CHAIR BROUSSARD: Thank you.

15 Ms. Stevenson, if we could have some  
16 clarification in regards to OGC's contention for  
17 looking at the calendar years provided and can you  
18 clarify again for me the calculation and what the  
19 percentage is if you consider the 2010 through 2019?

20 MS. STEVENSON: Absolutely, Madam Chair. I  
21 may need to call on the team to walk through the  
22 finances.

23 CHAIR BROUSSARD: Please. I'd appreciate  
24 that, thank you.

25 MS. STEVENSON: To answer your question

1 broadly, the General Counsel's brief relies on a  
2 calendar year calculation which is based on Freedom  
3 Vote's internal ledgers that Mr. Spies described as  
4 being calendar year-based, but I believe Ms. Giovanni  
5 is the one that can walk the Commission through the  
6 math more accurately.

7 CHAIR BROUSSARD: Thank you, Ms. Stevenson.  
8 Ms. Giovanni, if you would, please.

9 MS. di GIOVANNI: Good morning,  
10 Commissioners.

11 CHAIR BROUSSARD: Good morning.

12 MS. di GIOVANNI: Thank you for the  
13 opportunity. While we did not calculate this based on  
14 a lifetime percentage of the organization's spending  
15 as the court precedent -- I won't get into that. We  
16 can discuss the legal issues in this matter at another  
17 date. It is our understanding that the total amount  
18 spent over the lifetime of the organization is in the  
19 area of 8.4 million. I can do the math if you'll be  
20 able to bear with me for a moment. That's not how we  
21 calculated this, but, here, their total federal  
22 campaign activity was in excess of 3.4 million of that  
23 total amount spent. So, on the lifetime basis, it is  
24 less than 50 percent.

25 CHAIR BROUSSARD: But, if it's less than 50

1 percent of the other spending, what was that activity?  
2 If there's federal campaign activity, what was the  
3 rest?

4 MS. di GIOVANNI: Our investigation, Madam  
5 Chair, did not reveal activity beyond sort of  
6 operating expenses of the organization. There were  
7 the -- Freedom Vote produced all of its financial  
8 documentation, including ledgers on a calendar year  
9 basis, which Mr. Nathanson testified that he had  
10 prepared and were accurate to the best of his  
11 knowledge. They accounted for every dollar that  
12 Freedom Vote received and spent during that time  
13 period.

14 The spending did not reveal any issue-  
15 related advocacy, any sort of policy activity of that  
16 matter. There were significant disbursements to Mr.  
17 Nathanson and his own consulting firm, but much of the  
18 work that it did was included, for instance, in the  
19 committee's reported 2014 independent expenditures.  
20 So Mr. Nathanson's consulting firm was paid  
21 significantly for that work.

22 In terms of its other expenditures, we did  
23 not identify significant nonpolitical activity. The  
24 record, of course, as we mentioned in our brief, due  
25 to the statute of limitations, we did not request and



1 Freedom Vote did not provide calendar year breakdowns  
2 prior to 2014, so exactly what Freedom Vote spent its  
3 money on during that time is not part of the available  
4 record beyond its Form 990s.

5 That said, for the years for which we had  
6 complete information, which is 2014 to 2019, every  
7 dollar that we considered to constitute federal  
8 campaign activity is explained and listed in the  
9 brief. There are no expenses that are not documented  
10 or referenced with Bates stamps and explanations in  
11 the brief.

12 CHAIR BROUSSARD: Thank you. That's all the  
13 questions that I have right now. Any other  
14 Commissioner questions? Commissioner Cooksey.

15 COMMISSIONER COOKSEY: Thank you, Madam  
16 Chair. Mr. Spies, I have a question about the statute  
17 of limitations issue. You said that the last  
18 political activity or federal political activity or  
19 spending that Freedom Vote engaged in was the first  
20 week of October of 2016, is that correct?

21 MR. SPIES: Yes, Commissioner, October 5.

22 COMMISSIONER COOKSEY: What is your response  
23 to the argument that if Freedom Vote is a political  
24 committee, that this creates an ongoing obligation to  
25 report or to update reports and that that, you know,

1 that is a violation of sorts that extends, you know,  
2 up to the present day and that that is, you know, for  
3 example, that the Commission, you know, perhaps they  
4 wouldn't be able to seek a monetary penalty but that  
5 they might be able to, for example, seek some kind of  
6 specific performance in the form of mandatory reports  
7 and disclosure from Freedom Vote because of this sort  
8 of ongoing violation?

9 MR. SPIES: Thank you for asking that  
10 question, Commissioner, and my concern with that  
11 approach is it basically reads the statute of  
12 limitations out of the law. I mean, the language of  
13 52 U.S.C. 30145 is that no person shall be prosecuted,  
14 tried, and/or punished for any violation of this  
15 chapter unless the indictment is found for the  
16 information instituted within five years after the  
17 date of the violation, and that's there for a reason,  
18 because you can't -- there's a reliance argument and a  
19 due process argument for the defendants which we have  
20 seen exactly in play here when you've got OGC deposing  
21 people on activities seven years ago, and that's very  
22 difficult to defend.

23 And if you're doing, I think what we would  
24 say, a continuing pattern argument or sort of a long  
25 trail argument linked to that, it essentially reads

1 the statute out of the law. I mean, there's no --  
2 there would be -- there's no purpose for the statute  
3 to provide those protections if you can go back prior  
4 to the statute and look at activity prior to the  
5 statute.

6 So, to be very clear, for OGC to get to the  
7 calculations they're at here, they're including 2014  
8 numbers. So this isn't a five-year issue, this is a  
9 seven-year or six-and-a-half to seven years after the  
10 activity issue, and I, while I, you know, I have not  
11 briefed this out, my understanding is that in other  
12 contexts, federal courts have not allowed that sort of  
13 aggressive argument from the government, and I've  
14 certainly not seen it applied in this context.

15 COMMISSIONER COOKSEY: I guess one -- so  
16 related to the end time of the spending, let's assume  
17 for the sake of argument that I agree with OGC's  
18 position that Freedom Vote had the major purpose of  
19 electing federal candidates in 2014. Would it be your  
20 position then that regardless of whether that's true,  
21 that that major purpose ceased either, you know, more  
22 than five years ago or pretty close to five years ago,  
23 what maybe we've tied it to the last spending or maybe  
24 the election of 2016? Is that something that we  
25 should consider about, you know, notwithstanding what

1 happened more than five years ago, the major purpose  
2 ended, then, you know, there is no more -- any ongoing  
3 violation and there's no more ongoing reporting  
4 requirements?

5 MR. SPIES: That's an excellent question,  
6 and I think it also ties into Commissioner Trainor's  
7 question about what is the correct time period here.  
8 So, if you are using a lifetime-of-the-organization  
9 standard, then you might look at if, you know, one,  
10 the election cycle that you triggered political  
11 committee status. I believe that you would want that  
12 to be within the statute of limitations, but then you  
13 could continue on through the lifetime for that  
14 determination. But what I don't believe is consistent  
15 with due process or Commission practice is to cherry-  
16 pick a time period where the -- you know, sort of the  
17 worst-case time period, and let's remember, you know,  
18 you stipulated that you agreed with their argument,  
19 but let's remember that argument is that you ignore  
20 2013.

21 So it's not even the 2014 election cycle.  
22 It's calendar year 2014, and then that one time period  
23 carries you on in perpetuity is apparently what the  
24 argument is, and I vigorously disagree with that and,  
25 going to your question, would suggest that if we could

1 cherry-pick our time period of, you know, the calendar  
2 year 2015 or the calendar year 2017, we could show  
3 calendar years where they would -- they did not have,  
4 you know, even close to 50 percent political campaign  
5 activity, and, presumably, you could come back into  
6 compliance with your IRS status or -- but, if there  
7 was notice at the time and you knew you were doing  
8 that, that's the problem with us doing this  
9 retroactively, because you don't have the opportunity  
10 to cure it.

11 COMMISSIONER COOKSEY: Thank you.

12 VICE CHAIR DICKERSON: Madam Chair?

13 CHAIR BROUSSARD: Vice Chair.

14 VICE CHAIR DICKERSON: Good morning, Mr.  
15 Spies, appreciate you being here.

16 MR. SPIES: Good morning.

17 VICE CHAIR DICKERSON: So my colleagues and  
18 you have anticipated most of my questions, but one  
19 does remain. There's a reference to a settlement with  
20 the Internal Revenue Service in 2019. Is there  
21 anything in the record about the nature of the  
22 allegations in that matter?

23 MR. SPIES: Thank you for the question,  
24 Commissioner. That's a confidential settlement that  
25 the organization -- and I wasn't representing the

1 organization at the time, so I had to dig through and  
2 get some information from them on this.

3 My understanding of the issue was that the  
4 IRS questioned the time period they used for their  
5 major purpose determination for the IRS purpose, and  
6 the initial reviewer used a time period that showed  
7 the organization over 50 percent in political  
8 activity. The organization then challenged that. It  
9 went up the chain, and they confirmed and came to a  
10 settlement of -- I believe the amount is public. I  
11 believe it's 20 -- around \$20,000, which I think is an  
12 indication that, you know, for a multimillion dollar  
13 organization, they settled for a traffic ticket to  
14 avoid further litigation, but there was no  
15 determination of any sort of substantive problem.

16 Did that answer your question, Commissioner?  
17 I wasn't trying to get around it.

18 VICE CHAIR DICKERSON: No, no, it actually  
19 expanded on my question. So same question to the  
20 General Counsel. Is any aspect of this actually in  
21 the record? I've seen references to it, but has it  
22 come up in the investigation? Was it addressed?

23 MS. STEVENSON: Commissioner, Vice Chair, I  
24 believe we asked those questions in the course of the  
25 investigation, and Freedom Vote declined to answer

1       them on the basis of confidentiality.

2                   VICE CHAIR DICKERSON: Roger, thank you.

3                   CHAIR BROUSSARD: Any further questions?

4                   COMMISSIONER TRAINOR: Madam Chair, I do  
5       have one last question.

6                   CHAIR BROUSSARD: Go ahead, Commissioner  
7       Trainor.

8                   COMMISSIONER TRAINOR: So, Mr. Spies, I just  
9       want to kind of put a finer point on the questions  
10      that you were engaged with with Commissioner Cooksey.  
11      So, if Freedom Vote were to have triggered political  
12      committee status, would it be possible for them to un-  
13      trigger political committee status going forward, or  
14      is that a lifetime label, if they during, say, one  
15      election cycle or even a three-year period trigger  
16      political committee status, are they now required to,  
17      for the lifetime of the organization afterwards,  
18      continue to file with the Commission all of their  
19      activities?

20                  MR. SPIES: Commissioner, without intending  
21      to be disrespectful, I would suggest that's probably a  
22      better question directed to the Commission itself  
23      because there's been no guidance provided on that  
24      point. I could envision a scenario where, if an  
25      organization that considers itself to be a policy

1 advocacy organization consistent with 501(c)(4)  
2 obligations, was determined in a timely manner to be a  
3 federal political committee, that they might do what  
4 they needed to come into compliance with that, then  
5 terminate their federal registration and re-  
6 constitute, re-file, or do what they needed to do to  
7 go back to being consistent with the obligations of  
8 the (c)(4) organization if there was notice.

9 COMMISSIONER TRAINOR: Sure.

10 MR. SPIES: But that's the problem of this  
11 sort of retroactive seven years later determination  
12 is, if the answer is yes, you can cure it, they don't  
13 have an opportunity to do that.

14 COMMISSIONER TRAINOR: Okay. Well, then,  
15 Ms. Stevenson, is there a way to un-ring the bell once  
16 an organization like Freedom Vote has been declared to  
17 be a political committee? When we look at just this  
18 snapshot of time to say that they are a political  
19 committee, when do they stop being a political  
20 committee and how do they go through the process of  
21 just going back to their day-to-day activities outside  
22 of that conflict?

23 MS. STEVENSON: Commissioner Trainor, I'm  
24 happy to give a high-level answer to that question,  
25 but, of course, any detailed legal questions would be



1 best reserved for a subsequent meeting with the  
2 Commission. That being said, the committee could  
3 apply to terminate as a political committee, complete  
4 its necessary reporting, and then be terminated.

5 COMMISSIONER TRAINOR: Great, thank you.

6 COMMISSIONER DICKERSON: Madam Chair?

7 CHAIR BROUSSARD: Commissioner.

8 COMMISSIONER DICKERSON: I apologize. I  
9 thought my questions were answered, but that last one  
10 raised another one. So, Mr. Spies, I'd like your  
11 reaction to this because I suspect that I'm going to  
12 ask that you see it in another context. Let's play  
13 with a hypothetical. So statute of limitations has  
14 run under your argument, but let's say that we were to  
15 find probable cause in a case like this. My reading  
16 of the statute is we then have an obligation to  
17 conciliate or attempt conciliation. What is your view  
18 of the back end of that process? We can only enforce  
19 things by going to court. If conciliation were to  
20 fail following a probable cause determination, what's  
21 your view of the state of the law on the interaction  
22 between the statute of limitations and our eventual  
23 enforcement authority in court?

24 MR. SPIES: Mr. Vice Chair, that's a  
25 question that is of some discussion in the so-called

1 regulated community, and I believe that if there was  
2 attempted post-probable cause conciliation in a case  
3 that after the statute had run, most -- I mean, I  
4 don't want to speak for other people, but I believe  
5 that the prudent approach would be basically to, for  
6 lack of a better term, stiff-arm the Commission and  
7 say no and then go to federal court and say they don't  
8 have the ability to enforce anything.

9 COMMISSIONER DICKERSON: Thank you.

10 CHAIR BROUSSARD: Any further questions for  
11 Respondent? Ms. Stevenson?

12 MS. STEVENSON: Madam Chair, I would defer  
13 to Mr. Kitcher on a few statute of limitations based  
14 questions we wanted to ask in follow-up to Mr. Spies'  
15 presentation.

16 CHAIR BROUSSARD: Mr. Kitcher.

17 MR. KITCHER: Thank you, Madam Chair.

18 Good morning, Mr. Spies. I wanted to follow  
19 on the discussion you were having with Commissioners  
20 Cooksey and Trainor about the statute of limitation  
21 position of the Respondent, and the question I want to  
22 ask is, setting aside a continuing theory of statute  
23 of limitations, does the Respondent have any  
24 acknowledgment that there's unexpired activity that  
25 the Commission could pursue in connection with this

1 matter?

2 MR. SPIES: I'm thinking about your question  
3 and what could constitute unexpired activity and U  
4 understand under, you know, under the hypothetical  
5 Commissioner Cooksey asked the sort of trailing  
6 activity, I get that theory, but I'm not aware of any,  
7 you know, unexpired activity in this case. I mean,  
8 our analysis has sort of stopped with the political  
9 spending of the organization, which, again, was on a  
10 defined date, October 5, five years ago.

11 MR. KITCHER: Understood. Sort of returning  
12 to the assumption for the purpose of the question that  
13 Commissioner Cooksey gave, which is that let's suppose  
14 the Commission were to find that Freedom Vote was a  
15 political committee and had political committee  
16 obligations in 2016, would you agree that Freedom Vote  
17 as a political committee would have been required to  
18 file a post general report after the election and a  
19 year-end report?

20 MR. SPIES: If I understand the  
21 hypothetical, what you're asking is, if you were to go  
22 back beyond the statute of limitations and find that  
23 pre-statute political committee status was triggered,  
24 are there the things that go with that, the filings  
25 that would go with that over the -- I mean, under that

1 theory, you have years of unfiled FEC reports, so you  
2 could use that to bootstrap years of violations, all  
3 of which are unknown to, of course, the Respondent  
4 here because they didn't believe they were a political  
5 committee at the time, but to directly answer your  
6 question, yes, if in 2005 or 2010 or 2013 or 2015 it  
7 had been determined to be a political committee and  
8 then never terminated as a political committee, it  
9 would have continuing filing obligations up until it  
10 terminated.

11 MR. KITCHER: And if it were the case that  
12 there were year-end -- well, that the post general  
13 report in 2016 would have been due let's say in early  
14 December of that year and the year-end report would  
15 have been due in late January of the following year,  
16 would you have any reason to contest that the five-  
17 year period following the December 2016 and  
18 potentially January 2017 period was still within the  
19 Commission's ability to pursue even under your theory  
20 of the statute of limitations? Again, I understand  
21 this is on the assumption that it's a political  
22 committee and that the Commission were to go in that  
23 direction.

24 MR. SPIES: The short answer is absolutely  
25 would vigorously fight that theory that you could opt

1 to -- I mean, that if, you know, I'll go back to, you  
2 know, if -- if, in 2010, it had triggered political  
3 committee status, then it would have a continuing  
4 obligation up until -- I mean, you could, under the  
5 theory you just expounded, up until, you know, this  
6 year as it also missed its mid-year 2021 report, so  
7 that would allow you to expand the statute of  
8 limitations to 2026 and just keep leapfrogging forward  
9 if that were a valid theory.

10 MR. KITCHER: I understand your point. I  
11 was really just asking about two reports, the report  
12 that's the post general report that would have been  
13 due in early December 2016 and late January 2017, but  
14 I understand your position that the political  
15 committee status finding should not be made. If I  
16 could switch gears, I'll just --

17 MR. SPIES: No. If you'll forgive me --

18 MR. KITCHER: Of course.

19 MR. SPIES: -- my position is that you can't  
20 in a principled way ask the question you're asking and  
21 just -- you know, once you're going to take filing  
22 violations that stem from a determination made pre-  
23 statute of limitations, I just don't see any  
24 principled distinction in your choosing December and  
25 January as dates versus choosing July of 2021. The

1 theory is the same on all of them. They missed  
2 reports for all of them.

3 MR. KITCHER: Perhaps I'll ask a different  
4 question which is on a related subject. If Freedom  
5 Vote was required to register and report as a  
6 political committee in 2016 and filed a year-end  
7 report at the end of January 2017, how much in dollars  
8 activity would have been reflected on that report?

9 MR. SPIES: I believe it would have  
10 reflected approximately -- I think it would be  
11 approximately 4.4 million. I'm coming to that number  
12 by adding up 2015 and 2016, but I don't -- I'm going  
13 off of a chart based on IRS accounting periods and  
14 their determinations, not FEC's, you know,  
15 contributions and expenditures, so I can't -- I'm not  
16 certain of the number I've given you.

17 MR. KITCHER: Understood. I guess what's  
18 the lowest it could be with regards to say somewhere  
19 between 3 million and the 4.4 million figure you just  
20 provided?

21 MR. SPIES: I know -- it appears that  
22 approximately 3.5 million was spent in 2016.

23 MR. KITCHER: Okay, got it. So 3.5 to 4.4  
24 million, understood.

25 MR. SPIES: Yes, sir.

1 MS. STEVENSON: Thank you.

2 MR. KITCHER: Thank you very much.

3 CHAIR BROUSSARD: Are there any further  
4 questions?

5 COMMISSIONER TRAINOR: Madam Chair?

6 CHAIR BROUSSARD: Commissioner Trainor.

7 COMMISSIONER TRAINOR: So, Mr. Spies, I  
8 appreciate you answering OGC's questions, and I just  
9 want to let you know that I find the process that you  
10 just engaged in to be very disturbing. For the  
11 Commission to have to sit here and listen to opposing  
12 counsel have a debate between each other while we just  
13 watched it take place is something very unfamiliar to  
14 me in an adversarial system where we have to  
15 adjudicate this, and I know it's in our procedures to  
16 allow that to happen and I know you're not allowed to  
17 question OGC, but OGC is allowed to question you, so I  
18 want to apologize to you for having to go through that  
19 process, which I object to vehemently, but is there  
20 anything that you need, any information that you need  
21 from OGC that I could ask for from them with you here  
22 present that would answer any questions that you may  
23 have?

24 MR. SPIES: Thank you for those comments,  
25 Commissioner, and our position is that this should be

1 resolved on the statute of limitations and that  
2 further investigation in the -- in OGC's numbers is  
3 not necessary. However, if the Commission is going to  
4 go down the road of looking into calculations over the  
5 past six years or longer to make a determination of  
6 political committee status, then I would encourage the  
7 Commissioners to flat ask OGC to walk through with  
8 them exactly what categories of information they are  
9 considering to be political campaign activity,  
10 because, for the life of me, I can't figure it out.

11 COMMISSIONER TRAINOR: Thank you, Mr. Spies.

12 CHAIR BROUSSARD: Thank you. Mr. Spies, you  
13 have five minutes for a closing if you would like to?

14 MR. SPIES: Thank you, Madam Chair. Out of  
15 respect to the Commission, I don't want to end up  
16 repeating myself and wasting your time, so I am  
17 grateful to the opportunity to address some of our  
18 positions and questions here but will not take the  
19 time on a closing statement.

20 CHAIR BROUSSARD: Thank you. I want to  
21 thank you for appearing today. Thank you for asking  
22 the questions, and thank you all for your appearance  
23 and being here so quickly. We are going to conclude  
24 this hearing.

25 //



1                   (Whereupon, at 11:04 a.m., the hearing in  
2 the above-entitled matter adjourned.)  
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REPORTER'S CERTIFICATE

DOCKET NO.: MUR 7465  
CASE TITLE: Freedom Vote, Inc.  
HEARING DATE: October 14, 2021  
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Election Commission.

Date: October 14, 2021



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