



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

VIA ELECTRONIC MAIL

Charlie Spies
Dickinson Wright PLLC
1825 Eye Street NW, Suite 900
Washington, DC 20006
cspies@dickinson-wright.com

April 15, 2025

RE: MUR 7465R
Freedom Vote, Inc.

Dear Mr. Spies:

On March 19, 2025, the Federal Election Commission notified you of the U.S. District Court for the District of Columbia's decision in *CREW v. FEC*, No. 22-cv-00035 (D.D.C.), which concerned the Commission's action relating to your client, Freedom Vote, Inc., in MUR 7465. In accordance with that decision, on March 27, 2025, the Commission considered the allegations in MUR 7465, but was unable to garner sufficient votes to find probable cause to believe that Freedom Vote, Inc., violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize, register, and report as a political committee with the Commission, or to dismiss the Complaint. Accordingly, the Commission has closed the file in this matter.

The Commission will place documents related to the case on the public record today. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

We enclose any applicable Statements of Reasons available at the time of this letter's transmittal. If you have any questions, please contact Adrienne C. Baranowicz, the attorney assigned to this matter, at (202) 694-1650 or abaradowicz@fec.gov.

Sincerely,

Lisa Stevenson
Acting General Counsel

Adrienne C. Baranowicz

BY: Adrienne C. Baranowicz
Deputy Associate General Counsel
Enforcement Division

Enclosures



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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BEFORE THE FEDERAL ELECTION COMMISSION

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

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STATEMENT OF REASONS OF COMMISSIONER SHANA M. BROUSSARD

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This matter came before the Commission again on remand from the U.S. District Court of the

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District of Columbia.¹ On remand, I voted consistently with my original votes in this matter² and the

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reasoning I provided in the corresponding Statement of Reasons.³

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April 9, 2025

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Date

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Shana M. Broussard
Commissioner

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¹ Order at 1, *CREW v. FEC*, 22-cv-35 (CRC) (Mar. 17, 2025), <https://www.fec.gov/resources/cms-content/documents/usdc-dc-order-03-17-2025.pdf>.

² Certification, MUR 7465 (Freedom Vote, Inc.) (Nov. 9, 2021), https://www.fec.gov/files/legal/murs/7465/7465_33.pdf.

³ Statement of Reasons of Chair Shana M. Broussard and Commissioners Steven T. Walther and Ellen L. Weintraub, MUR 7465 (Freedom Vote, Inc.) (Dec. 16, 2021), https://www.fec.gov/files/legal/murs/7465/7465_38.pdf.



FEDERAL ELECTION COMMISSION
Washington, DC 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Freedom Vote, Inc., <i>et al.</i>)	MUR 7465R
)	

STATEMENT OF REASONS OF COMMISSIONER DARA LINDENBAUM

This matter was remanded to the Commission, not for any error on the merits, but because the controlling Statement of Reasons was issued a few months after the file closed. I voted to dismiss for prosecutorial discretion because, at this point, more than seven years after the Complaint was filed and eleven years after the first activity occurred, the statute of limitations has fully expired, and the Commission's scarce resources are better devoted to more current matters.¹

Like many matters remanded to the Commission following litigation in federal court, this matter has a lengthy procedural history, which almost entirely predates my tenure on the Commission.² The Complaint, filed on August 9, 2018, alleged that Freedom Vote, Inc., an Ohio 501(c)(4) non-profit corporation, failed to register and report as a political committee because, from 2014-2016, it had the major purpose of federal election activity.³ On July 25, 2019, a unanimous Commission found reason to believe that Freedom Vote violated the law and authorized an investigation.⁴ The investigation almost immediately hit a roadblock – the Commission lost quorum from August 2019 through most of 2020. Although the Commission

¹ Certification ("Cert.") at 1 (Mar. 28, 2025); *Heckler v. Chaney*, 470 U.S. 821 (1985).

² In fact, none of the current commissioners were here for the initial reason-to-believe vote. Cert. at 2 (July 29, 2019).

³ Compl. at 1 (Aug. 9, 2018). The Complaint also alleged that Freedom Vote failed to include a disclaimer and misreported an independent expenditure. *Id.* at 11-15.

⁴ Cert. at 2 (July 29, 2019). Specifically, the Commission found by a vote of 4 to 0, reason to believe that Freedom Vote failed to "organize, register, and report as a political committee," and failed "to include a disclaimer" on an advertisement entitled "Third Largest." *Id.*

had issued a subpoena just before losing quorum,⁵ Freedom Vote was uncooperative,⁶ and the Commission could not move to enforce the subpoena, nor could it issue new subpoenas.⁷

After regaining quorum at the end of 2020, the Commission authorized a subpoena to Freedom Vote's Executive Director.⁸ Over the next several months, the Office of General Counsel ("OGC") finished its investigation and, on September 20, 2021, OGC submitted a brief recommending that the Commission find probable cause to believe that Freedom Vote violated the law.⁹ On November 9, 2021, with only a few months left before the statute of limitations fully expired, the Commission split on OGC's recommendations and closed the file.¹⁰

On January 6, 2022, the Complainant sued the Commission in federal court alleging that the dismissal was contrary to law.¹¹ After several years of procedural wrangling, a delay caused in part because the Commission (prior to my tenure) could not garner the four votes necessary to authorize our lawyers to make an appearance and defend the agency, on March 17, 2025, the District Court found that the Commission acted contrary to law, not for any reason on the merits, but because the controlling commissioners issued their statement explaining the basis for their vote four months after the file closed.¹² The District Court remanded the matter to the Commission to re-vote and issue a contemporaneous statement of reasons.¹³

At this point, nearly seven years after the Complaint was filed, and between nine and eleven years after the activity occurred, I voted to dismiss for prosecutorial discretion.¹⁴ The statute of limitations expired on the latest activity four years ago, and Freedom Vote dissolved more than five years ago. Our scarce resources are better devoted to more current matters.

This matter was always going to be a challenge to complete within the five-year statute of limitations. The Complaint was filed in August 2018 alleging activity that occurred between 2014 and 2016. Thus, at the time the Complaint was filed, the Commission had only roughly between one and three years left on the five year statute of limitations. By the time the Commission authorized an investigation in July of 2019, there were only months before the

⁵ Cert. at 1 (Sept. 3, 2019) (authorizing subpoena to Freedom Vote, Inc.).

⁶ Memorandum to the Commission, Withdrawal and Circulation of Discovery Demands at 1 (July 2, 2020) (noting that Freedom Vote did not respond to the subpoena and filed for dissolution despite notice from the Commission that it had a legal obligation to preserve all documents, records and materials relating to the Complaint).

⁷ Directive 10, Section L (Dec. 20, 2007) (setting forth a list of topics that the Commission may consider when it lacks quorum).

⁸ Cert. at 1 (Jan. 26, 2021).

⁹ Gen. Counsel's Br. (Sept. 20, 2021).

¹⁰ Cert. at 1 (Nov. 14, 2021). My three colleagues were present for this vote, while I was not. *Id.*

¹¹ Compl., *CREW v. FEC*, Case No. 22-cv-35 (Jan. 6, 2022).

¹² Mem. Op. at 1-2, 6-8, *CREW v. FEC*, Case No. 22-cv-35 (Mar. 17, 2025).

¹³ *Id.* at 13.


¹⁴ Cert. at 1 (Mar. 28, 2025); *Heckler v. Chaney*, 470 U.S. 821 (1985).

earliest activity began to expire. The Commission almost immediately lost quorum for nearly 18 months. Upon regaining quorum, there was little chance that the Commission could finish an investigation, go through the probable cause process, and file a complaint in federal court, before the vast majority, if not all of the activity, expired to the statute of limitations.¹⁵

This matter is an important reminder of why the Commission needs a full slate of six commissioners. We now have a bare quorum of four. If we lose just one more commissioner, then we will lose quorum, and we will inevitably find ourselves in this unfortunate situation again. When we lose quorum, investigations stall, resulting in needless litigation and the untimely resolution of matters, all at great expense to the parties and to the Commission. In some matters, delays may result in violations going unredressed, while in unmeritorious matters, respondents do not receive the timely dismissals that they deserve. Without a quorum, the Commission can't authorize our lawyers to defend the agency in court, it can't issue advisory opinions, and it can't start rulemakings. I hope the President nominates, and the Senate confirms, commissioners to fill the vacancies as soon as possible.

4/10/25

Date


Dara Lindenbaum
Commissioner

¹⁵ See 52 U.S.C. § 30109(a)(3), (4), (6) (setting forth the procedural requirements for finding probable cause to believe a violation occurred and filing suit in federal court).



FEDERAL ELECTION COMMISSION
1050 FIRST STREET, N.E.
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	:	
	:	MUR 7465R
Freedom Vote, Inc.	:	
	:	
	:	

STATEMENT OF REASONS OF VICE CHAIRMAN JAMES E. "TREY" TRAINOR, III AND COMMISSIONER ALLEN J. DICKERSON

I. INTRODUCTION

This Matter arose from a complaint alleging that Freedom Vote, Inc., ("Freedom Vote" or "Respondent") violated the Federal Election Campaign Act of 1971 ("FECA" or "Act") by failing to organize, register, and report as a political committee in connection with Freedom Vote's spending in 2014, 2015, and 2016.¹ The Commission issued a reason-to-believe finding, and the Commission's Office of General Counsel ("OGC") opened an investigation.² By the time this Matter was presented to the Commission for a probable cause determination, however, the five-year statute of limitations had expired on the bulk of Freedom Vote's alleged FECA violations. In an exercise of our prosecutorial discretion, we declined to pursue the alleged violations that were not time-barred. We further declined to adopt OGC's theory that the Commission has jurisdiction, in perpetuity, to require continued reporting by any organization that has ever operated as a political committee. On March 7, 2022, we issued a Statement of Reasons in this Matter explaining why we declined to support OGC's recommendations.³

¹ See generally Complaint at 1–2, MUR 7465 (Freedom Vote, Inc.), Aug. 9, 2018.

² General Counsel's Brief ("GC Br.") at 1, MUR 7465 (Freedom Vote, Inc.), Sept. 20, 2021; Certification at 2, ¶ 2.a, MUR 7465 (Freedom Vote, Inc.), July 25, 2019.

³ See, e.g., *Nat'l Republican Senatorial Comm. v. Fed. Election Comm'n*, 966 F.2d 1471, 1476 (D.C. Cir. 1992) ("We further held that, to make judicial review a meaningful exercise, the three Commissioners who voted to dismiss must provide a statement of their reasons for so voting. Since those Commissioners constitute a controlling group for purposes of the decision,

On March 17, 2025, the United States District Court for the District of Columbia determined that the Commission’s “dismissal of [the] administrative complaint” in this Matter was “contrary to law because” the agency “failed to offer a timely explanation of its reasons for dismissal.”⁴ The court ordered us “to conform to the Court’s order by deciding whether to dismiss [the] administrative complaint and [by] issuing a contemporaneous, adequate explanation of its reasons for its actions.”⁵

Upon receipt of this order, the Commission promptly placed this remanded Matter on the next executive session agenda and voted 2-1, with one abstention, against finding probable cause.⁶ In conformance with the district court’s order and opinion, we provide this updated statement to explain our reasoning.⁷

II. FACTUAL BACKGROUND

In 2010, Freedom Vote organized as a tax-exempt corporation under Internal Revenue Code § 501(c)(4), stating that its purpose was “[t]o further the common good and general welfare of the people of Ohio.”⁸ In 2014, Freedom Vote made several

their rationale necessarily states the agency’s reasons for acting as it did”) (citation omitted); *Campaign Legal Ctr. & Democracy 21 v. Fed. Election Comm’n*, 952 F.3d 352, 355 (D.C. Cir. 2020).

⁴ Order at 1, *Citizens for Responsibility and Ethics in Wash. v. Fed. Election Comm’n*, Case No. 22-35 (D.D.C. Mar. 17, 2025).

⁵ *Id.*

⁶ Certification at 1, MUR 7465R (Freedom Vote, Inc.), Mar. 27, 2025.

⁷ Mem. Op. at 13, *Citizens for Responsibility and Ethics in Wash. v. Fed. Election Comm’n*, Case No. 22-35 (D.D.C. Mar. 17, 2025) (“The FEC will have 30 days to take further action on CREW’s complaint and, should it decide not to pursue the complaint further, dismiss it with an adequate, contemporaneous explanation for the dismissal”); *id.* at 12-13 (“After the Court enters judgment...and declares the agency’s prior dismissal of [the] complaint contrary to law, presumably all the FEC would have to do is review the already-written reasons for dismissal, update them if needed, hold another vote on probable cause and/or dismissal, and issue the controlling commissioners’ statement of reasons”). Members of the Commission have recently issued a policy statement describing the particulars of our enforcement process. Policy Statement of Vice Chairman Trainor and Comm’rs Dickerson and Lindenbaum Concerning Enforcement Procedures, Apr. 15, 2025.

⁸ GC Br. at 2 (internal quotation marks omitted, brackets in original).

independent expenditures, at least some of which it reported to the Commission.⁹ It did not, however, register as a political committee.

On August 9, 2018, Citizens for Responsibility and Ethics in Washington (“CREW”) filed a complaint with the Commission alleging, *inter alia*, that Freedom Vote’s spending in 2014, 2015, and 2016 triggered requirements to organize, register, and report as a political committee under the Act.¹⁰ On July 29, 2019, the Commission found reason-to-believe that Freedom Vote violated 52 U.S.C. §§ 30102, 30103, and 30104(a), (b), and (g)(2).¹¹ In its subsequent investigation, OGC concluded that Freedom Vote:

- spent at least \$239,877.81 on “federal campaign activity”¹² in 2014, which was 82.67% of its total spending for that year;¹³
- spent at least \$217,539.00 on “federal campaign activity” in 2015, which was 66.28% of its total spending for that year;¹⁴ and,

⁹ *Id.* at 6–8.

¹⁰ *See generally* Complaint at 1–2, MUR 7465 (Freedom Vote, Inc.), Aug. 9, 2018.

¹¹ Certification at 2, ¶ 2.a, MUR 7465 (Freedom Vote, Inc.), July 25, 2019. The Commission also found reason-to-believe that Freedom Vote violated 52 U.S.C. §§ 30120(a) and (d) and 11 C.F.R. § 110.11 by failing to include a disclaimer on its “Third Largest” advertisement, which aired in June and July of 2016. *See id.*; GC Br. at 14 n.63. This alleged violation was time-barred once this Matter reached the Commission for a probable cause finding and therefore provided no basis for further action against Freedom Vote. OGC Memorandum to the Comm’n, MUR 7465 (Freedom Vote, Inc.), Sept. 13, 2021 (acknowledging that statute of limitations had expired as to alleged failure to include a disclaimer on the “Third Largest” ad).

¹² OGC’s references to “federal campaign activity” include “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.” GC Br. at 18. As OGC notes, the Commission never found that the “Third Largest” ad is express advocacy. *Id.* at 23, n.103.

¹³ *Id.* at 11, 18.

¹⁴ *Id.* at 12, 18.

- spent at least \$2,987,563.45 on “federal campaign activity” in 2016, which was 77.35% of its total spending for that year.¹⁵

Freedom Vote did not spend any funds on “federal campaign activity” after 2016.¹⁶ After settling an audit with the IRS and going bankrupt, Freedom Vote dissolved in 2019.¹⁷

Freedom Vote responded that it did not meet the threshold for political committee status, and that—in recommending a probable cause finding—OGC had misunderstood information that Freedom Vote provided during the investigation.¹⁸ It also contended that, rather than focus upon spending in an isolated year or years, the Commission ought to consider Freedom Vote’s spending over time (which, according to Freedom Vote, demonstrated that the organization did not satisfy the major purpose test for political committee status).¹⁹

On October 27, 2021, OGC recommended that the Commission find probable cause to believe that Freedom Vote violated 52 U.S.C. §§ 30102, 30103, and 30104(a), (b), and (g)(2) by failing to organize, register, and report as a political committee.²⁰ The Commission considered OGC’s recommendation on November 9, 2021, and we voted against finding probable cause.²¹ Commissioner Broussard joined us in voting

¹⁵ *Id.* at 16–17, 18.

¹⁶ *Id.* at 17–18.

¹⁷ *Id.* at 2, 19.

¹⁸ Freedom Vote Probable Cause Resp. at 1-2, MUR 7465 (Freedom Vote, Inc.), Oct. 5, 2021.

¹⁹ *Id.* at 2. While we need not reach the issue in this Matter, previous Commissioners have “rejected OGC’s myopic focus on one year of spending,” noting that “[t]he fundamental flaw of OGC’s one-year approach—which is a recent creation by OGC—is that it ignores an organization’s history and other activities.” Statement of Reasons of Vice Chair Hunter and Comm’r Goodman at 21, n.96, MUR 6872 (New Models), Dec. 20, 2017.

²⁰ OGC Notice to Comm’n, MUR 7465 (Freedom Vote, Inc.), Oct. 27, 2021.

²¹ Certification at 1-2, MUR 7465 (Freedom Vote, Inc.), Nov. 9, 2021. The three other Commissioners voted to find probable cause, *see id.*, and issued a Statement of Reasons. Statement of Reasons of Chair Broussard and Comm’rs Walther and Weintraub, MUR 7465 (Freedom Vote, Inc.), Dec. 16, 2021.

to close the file in this Matter.²² The controlling commissioners issued a Statement of Reasons explaining their votes four months later.²³

On March 17, 2025, the U.S. District Court for the District of Columbia determined for the first time that contemporaneous statements of reasons from controlling commissioners are necessary where the Commission disagrees with OGC's recommendation at the probable cause stage. As noted *supra*, that opinion and order granted "[t]he FEC...30 days to take further action on [the] complaint and, should it decide not to pursue the complaint further, dismiss it with an adequate, contemporaneous explanation for the dismissal."²⁴

When the Commission dismissed this Matter in October 2021, it reasoned that the statute of limitations had elapsed for most of the violations alleged, precluding the agency from pursuing activity that occurred before November 9, 2016.²⁵ The subsequent passage of three years has only compounded those issues. Indeed, at this juncture, the statute of limitations has expired for all allegations.²⁶

On remand, OGC did not circulate a new General Counsel's Report, instead updating its prior recommendation by email to advise that "Freedom Vote[s]...receipts and disbursements are now outside the statute of limitations."²⁷

²² Certification at 2, MUR 7465 (Freedom Vote, Inc.), Nov. 9, 2021.

²³ See Controlling Statement of Reasons of Chairman Dickerson and Comm'rs Cooksey and Trainor, MUR 7465 (Freedom Vote, Inc.), Mar. 7, 2022.

²⁴ Mem. Op. at 13.

²⁵ As discussed further *infra* at 9-10, the Commission does not have independent enforcement authority and must ultimately enforce violations of the Act through civil enforcement actions in the federal courts. 52 U.S.C. § 30109(a)(6).

²⁶ Even if one assumes that a complainant's suit pursuant to 52 U.S.C. § 30109(a)(8)—a suit against the FEC, not Freedom Vote—could function to toll the statute of limitations applicable to a non-party, the Commission would still be in the same position as in October 2021 and we would still have voted against finding probable cause for the reasons given in our prior Statement of Reasons. Moreover, such an approach to tolling would render the statute of limitations "largely irrelevant," at least for those with the misfortune to draw a complaint from the small group of organizations responsible for the overwhelming bulk of § 30109(a)(8) litigation. *Citizens for Responsibility and Ethics in Wash. v. Fed. Election Comm'n*, 236 F. Supp. 3d 378, 393 (D.D.C. 2017), *aff'd*, 892 F.3d 434 (D.C. Cir. 2018).

²⁷ Email from Justine diGiovanni, Office of Gen'l Counsel, Mar. 20, 2025 ("OGC Recommendations").

OGC therefore conceded that no civil penalty could be sought in this case.²⁸ Nevertheless, OGC recommended that the Commission still find probable cause and pursue an equitable remedy—namely the filing of corrected reports to “vindicate[] the Commission’s interest in disclosure.”²⁹

At the next executive session, OGC’s recommendations were considered and rejected, 2-1, with one commissioner abstaining.³⁰ The Commission then unanimously agreed to close the file effective April 15, 2025, a date chosen to conform with the district court’s instruction that it act within 30 days.³¹

III. AUTHORITY AND ANALYSIS

a. The five-year statute of limitations precludes further enforcement by the Commission.

Congress gave the Commission “exclusive” jurisdiction over civil enforcement of the Act.³² But exclusive jurisdiction is not perpetual jurisdiction. Because “FECA itself contains no explicit limitations period. . . courts have applied the catch-all five-year limitations period set forth in 28 U.S.C § 2462 to FECA enforcement actions brought by the Commission.”³³ Under 28 U.S.C. § 2462, “[e]xcept as otherwise

²⁸ *Id.*

²⁹ *Id.*

³⁰ Certification at 1, MUR 7465R (Freedom Vote, Inc.), Mar. 27, 2025.

³¹ *Id.* at 2.

³² 52 U.S.C. § 30107(e) (“Except as provided in section 30109(a)(8) of this title [providing for persons aggrieved by Commission dismissal of or failure to act on a complaint to pursue litigation under certain circumstances], the power of the Commission to initiate civil actions under subsection (a)(6) shall be the exclusive civil remedy for the enforcement of the provisions of this Act”); (a)(6) (“The Commission has the power . . . to initiate (through civil actions for injunctive, declaratory, or other appropriate relief), defend (in the case of any civil action brought under section 30109(a)(8) of this title) or appeal any civil action in the name of the Commission to enforce the provisions of this Act and chapter 95 and chapter 96 of Title 26, through its general counsel”).

³³ *Citizens for Responsibility and Ethics in Wash. v. Am. Action Network*, 410 F. Supp. 3d 1, 23 (D.D.C. 2019) (citing *Citizens for Responsibility and Ethics in Wash. v. Fed. Election Comm’n*, 236 F. Supp. 3d 378, 392 (D.D.C. 2017)); *see also, e.g., Fed. Election Comm’n v. Christian Coal.*, 965 F. Supp. 66, 69 (D.D.C. 1997) (“FECA does not contain an internal statute of limitations. The applicable statute of limitations is provided under 28 U.S.C. § 2462—a point the parties do not, nor could they, reasonably dispute”) (citations omitted); *Beam v. Mukasey*, No. 07 C 1227, 2008 WL 4614324, at *4 (N.D. Ill. Oct. 15, 2008) (collecting

provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained *unless commenced within five years from the date when the claim first accrued . . .*”³⁴

Thus, when the Commission voted on OGC’s probable cause recommendation on November 9, 2021,³⁵ the five-year limitations period prevented us from pursuing enforcement based on activity before November 9, 2016. This is consistent with the statutes and the caselaw³⁶ (as well as our votes in previous Matters),³⁷ and disposed of the bulk of Freedom Vote’s alleged violations.

cases; noting that, “[a]lthough FECA does not contain a statute of limitations for civil liability, courts that have considered the question have found that the five-year default statute of limitations provided by 28 U.S.C. § 2462 applies”) (citations omitted).

³⁴ 28 U.S.C. § 2462 (emphasis supplied). The statute of limitations applicable to the Commission’s civil enforcement of FECA parallels the statute governing the Department of Justice’s authority over criminal enforcement of the Act. *See* 52 U.S.C. § 30145(a) (“No person shall be prosecuted, tried, or punished for any violation of” the Act “unless the indictment is found or the information is instituted within 5 years after the date of the violation”); *see also Fed. Election Comm’n v. Lance*, 617 F.2d 365, 371–72 (5th Cir. 1980), *supplemented*, 635 F.2d 1132 (5th Cir. 1981) (stating, in context of predecessor to 52 U.S.C. § 30145(a), that “[t]he statute refers to the institution of an ‘information’ or an ‘indictment,’ but not to the pursuit of a civil remedy. Thus, the statutory language indicates that the period of limitations applies only to the criminal prosecutions for violations of the FECA . . .”).

³⁵ Certification, MUR 7465 (Freedom Vote, Inc.), Nov. 9, 2021.

³⁶ The Supreme Court has held that equitable remedies which function as a penalty fall within the temporal bounds of 28 U.S.C. § 2862. *Kokesh v. Securities and Exch’g Comm’n*, 581 U.S. 455, 457 (2017) (holding that “[d]isgorgement in the securities-enforcement context is a ‘penalty’ within the meaning of § 2462, and so disgorgement actions must be commenced within five years of the date the claim accrues”); *cf.* 52 U.S.C. § 30145(a) (“No person shall be...punished...”). Requiring an organization that dissolved in 2019 to prepare and file detailed reports covering millions of dollars of activity dating to the Obama administration could well be considered a penalty.

³⁷ Statement of Reasons of Vice Chair Dickerson and Comm’rs Cooksey and Trainor at 1–2, MURs 7859/7860 (Citizens for a Working Am./Jobs and Progress Fund), Dec. 17, 2021 (rejecting OGC’s argument that, “the passage of more than five years [since the alleged violations] notwithstanding, [the Commission] retain[s] authority over the[] Respondents”) (“Citizens for Working Am. Statement”); *see also id.* at 1 n.2 (citing 52 U.S.C. § 30145(a); 28 U.S.C. § 2462); Statement of Reasons of Vice Chair Dickerson and Comm’rs Cooksey and Trainor at 2, MUR 7181 (Indep. Women’s Voice), Mar. 18, 2021 (rejecting OGC’s suggestion that the Commission possessed jurisdiction over alleged FECA violations that occurred in “the 2010, 2012, and 2014 federal elections”).

Our colleagues who voted to find probable cause at that time published a Statement of Reasons which minimizes the statute of limitations in two ways,³⁸ neither of which changes our analysis. First, they stated that the Commission’s lack of a quorum during parts of 2019 and 2020 and Freedom Vote’s purported recalcitrance delayed progress in this Matter. But courts have repeatedly rejected the notion that uncooperative respondents or lengthy delays in the administrative process have any impact on our statute of limitations.³⁹ To the contrary, “nothing in the language of § 2462 even arguably makes the running of the limitations period turn on the degree of difficulty an agency experiences in detecting violations.”⁴⁰

Second, our colleagues argued (as did OGC) that the statute of limitations does not preclude the Commission from pursuing “equitable remedies – including requiring Freedom Vote’s disclosure of its receipts and disbursements as a political committee.”⁴¹ But as we have noted in the past, courts have rejected suggestions that the statute of limitations prevents the Commission from imposing fines while permitting suits for equitable relief.⁴² For instance, in *Federal Election Commission v. Williams*, this agency “argue[d] that § 2462 does not apply to actions for injunctive relief.”⁴³ The U.S. Court of Appeals for the Ninth Circuit rejected that argument, noting that it is “directly contrary to the Supreme Court’s holding in *Cope v. Anderson*, [which] holds that ‘equity will withhold its relief in such a case where the applicable statute of limitations would bar the concurrent legal remedy.’ In other

³⁸ See Statement of Reasons of Chair Broussard and Comm’rs Walther and Weintraub at 6, MUR 7465 (Freedom Vote, Inc.), Dec. 16, 2021.

³⁹ See, e.g., *Fed. Election Comm’n v. Nat’l Right to Work Comm.*, 916 F. Supp. 10, 14 (D.D.C. 1996) (Where “[t]he Commission did not get around to voting to find probable cause until May of 1989, a mere four months before the fifth anniversary of [the respondent’s] last known transgression,” the court could “discern no reason why the administrative process cannot easily be accomplished by the FEC within the five year limitation in § 2462, *even with discovery and subpoena enforcement delays of many months or even years*,” as encountered there) (quoting *Fed. Election Comm’n v. Nat’l Republican Senatorial Comm.*, 877 F. Supp. 15, 18–19 (D.D.C. 1995)) (emphasis supplied) (cleaned up).

⁴⁰ *3M Co. (Minn. Min. & Mfg.) v. Browner*, 17 F.3d 1453, 1461 (D.C. Cir. 1994); *Christian Coal.*, 965 F. Supp. at 70 (quoting and applying *3M Co.* in context of Commission enforcement action).

⁴¹ Statement of Reasons of Chair Broussard and Comm’rs Walther and Weintraub at 7, MUR 7465 (Freedom Vote, Inc.), Dec. 16, 2021.

⁴² See Citizens for Working Am. Statement at 3-4.

⁴³ 104 F.3d 237, 240 (9th Cir. 1996).

words, because the claim for injunctive relief is connected to the claim for legal relief, the statute of limitations applies to both.”⁴⁴

Nevertheless, our colleagues contended that this principle does not apply to an enforcement action by the United States, citing two opinions from the U.S. District Court for the District of Columbia.⁴⁵ Even if district court opinions could somehow outweigh contrary authority from a court of appeals, neither case is applicable. Both were “cases where there [wa]s a significant risk of future harm,” and in such instances, “the law may allow the FEC to grant equitable relief notwithstanding the expiration of the statute of limitations.”⁴⁶ Plainly, this “future harm” exception does not apply on these facts: the Respondent is a defunct, bankrupt entity accused of prior reporting violations, and there is no basis to believe that the allegedly impermissible conduct will recur.⁴⁷ Indeed, as the U.S. District Court for the District of Columbia recognized (and the Court of Appeals affirmed), the Commission’s “injunctive remedies would be moot, given [a respondent’s] defunct status,” and the “controlling commissioners almost certainly could not have found a significant risk of future harm by [the respondent] as required [to invoke the ‘future harm’ exception], because [the respondent] was defunct at the time of the decision.”⁴⁸ That reasoning squarely applies here.

⁴⁴ *Id.* (quoting *Cope v. Anderson*, 331 U.S. 461, 464 (1947)). *See also, e.g., Nat’l Right to Work Comm.*, 916 F. Supp. at 15 (“The FEC’s claim for civil penalties is barred by 28 U.S.C. § 2462...The FEC argues that even if § 2462 bars its civil penalty claims, it is nevertheless entitled to its declaratory judgment and an injunction. The Court disagrees. . . . Notions of welcome repose for ancient grievances aside, the practical concerns alone for problems of missing documents, faded memories, and absent witnesses that inevitably occur with the passage of time are no less problematic in adjudicating actions for declaratory and injunctive relief than in determining liability for monetary civil penalties”).

⁴⁵ Statement of Reasons of Chair Broussard and Comm’rs Walther and Weintraub at 6, n.26, MUR 7465 (Freedom Vote, Inc.), Dec. 16, 2021 (citing *Christian Coal.*, 965 F. Supp. at 71 and *Nat’l Republican Senatorial Comm.*, 877 F. Supp. at 20–21 for the proposition that “injunctive relief is not a penalty”).

⁴⁶ *Citizens for Responsibility and Ethics in Wash. v. Fed. Election Comm’n*, 236 F. Supp. 3d at 392–93 (discussing *Christian Coal.*, 965 F. Supp. at 71 and *Nat’l Right to Work Comm.*, 916 F. Supp. at 15).

⁴⁷ *See id.*

⁴⁸ *Id.* at 393.

Finally, our colleagues suggested that the statute of limitations “does not prevent us from making a probable cause to believe finding.”⁴⁹ Even if true, this would be irrelevant at best. Upon finding probable cause, the Commission is empowered to “attempt . . . to correct or prevent” an alleged FECA violation “by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement with any person involved.”⁵⁰ The Commission must spend no less than 30 (but no more than 90) days attempting conciliation.⁵¹ Nothing, however, requires a respondent to reach agreement (or even engage) with the Commission in the conciliation process. Instead, the Commission’s sole coercive power is derived from the courts of the United States—⁵²and thus ultimately depends upon this agency’s ability to demonstrate an actionable violation in court within the statute of limitations. Thus, even if the Commission could find probable cause to believe a time-barred violation occurred, doing so would be an exercise in futility as the Commission

⁴⁹ Statement of Reasons of Chair Broussard and Comm’rs Walther and Weintraub at 6, MUR 7465 (Freedom Vote, Inc.), Dec. 16, 2021; *but see Fed. Election Comm’n v. Furgatch*, 869 F.2d 1256, 1262 (9th Cir. 1989) (stating, with respect to injunctive relief under FECA, that “[b]ecause the Act implicates First Amendment concerns about political expression, it is important that courts avoid granting injunctive relief which is unnecessary to further the purposes of the Act”).

⁵⁰ 52 U.S.C. § 30109(a)(4)(A)(i) (“Except as provided in clause[] (ii) [establishing 15-day conciliation period where probable cause determination occurs during the 45 days preceding an election] and subparagraph (C) [setting out process Commission may follow to impose scheduled penalties for violations of qualified disclosure requirements], if the Commission determines, by an affirmative vote of 4 of its members, that there is probable cause to believe that any person has committed, or is about to commit, a violation of this Act . . . the Commission *shall attempt, for a period of at least 30 days, to correct or prevent such violation by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement with any person involved.* Such attempt by the Commission to correct or prevent such violation may continue for a period of not more than 90 days. The Commission may not enter into a conciliation agreement under this clause except pursuant to an affirmative vote of 4 of its members. A conciliation agreement, unless violated, is a complete bar to any further action by the Commission, including the bringing of a civil proceeding under paragraph (6)(A)”) (emphasis supplied).

⁵¹ *Id.*

⁵² 52 U.S.C. § 30109(a)(6)(A) (“If the Commission is unable to correct or prevent any violation of this Act . . . by the methods specified in paragraph (4) [providing for conciliation; imposition of scheduled penalties for violations of qualified disclosure requirements], the Commission may, upon an affirmative vote of 4 of its members, institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order . . . in the district court of the United States for the district in which the person against whom such action is brought is found, resides, or transacts business”).

lacks direct enforcement authority under the Act. Such a finding would be little more than name-calling.

To sum up, when we last considered this Matter, the Commission lacked authority to pursue activity before November 9, 2016. And, as OGC noted, only two of Freedom Vote’s alleged FECA violations were not yet time-barred: the failure to file “the Post-General Report, due December 8, 2016, and the Year End Report, due January 31, 2017.”⁵³ We thus voted to invoke our prosecutorial discretion concerning those reports while dismissing the remainder for lack of jurisdiction.

On remand, however, the statute of limitations had long since elapsed as to *all* the conduct at issue in the complaint. Lacking any legal authority to proceed with enforcement, we voted against further action.

b. The Commission does not have jurisdiction to require continuous reporting by Respondent.

Four years ago, OGC suggested that the Commission may find probable cause because “as a political committee, Freedom Vote had a continuing obligation to file disclosure reports until it terminated.”⁵⁴ It is notable that while OGC stood by the legal basis for its 2021 recommendation,⁵⁵ here the Office concedes that Freedom Vote’s spending is “now outside the statute of limitations” and did not recommend enforcement on a continuous reporting theory.⁵⁶ Thus, the only legal rationale presented was the mistaken suggestion that the FEC may pursue equitable remedies indefinitely.⁵⁷ We have explained why we disagree.

Nonetheless, we address the validity of continuous reporting liability because OGC has sought to preserve it for use against future respondents.

⁵³ GC Br. at 24, n.105; *see also* Statement of Reasons of Chair Broussard and Comm’rs Walther and Weintraub at 7, MUR 7465 (Freedom Vote, Inc.), Dec. 16, 2021 (conceding that there is “doubt” about the timeliness of enforcement action based on anything other than “disclosure reports that were due less than five years before November 9, 2021”).

⁵⁴ GC Br. at 24, n.105.

⁵⁵ OGC Recommendations (“While the Commission could assess a statutory penalty or penalties for Freedom Vote’s *ongoing* failure to file disclosure reports, we do not recommend assessing a statutory penalty”) (emphasis in original).

⁵⁶ *Id.*

⁵⁷ *Id.*

First, we note that this theory has been rejected in prior litigation; the Commission can “cite to no precedent suggesting that the reporting requirements are continuous and the text of FECA does not clearly establish that entities have a continuous obligation to report information.”⁵⁸ After all, if FECA did require continuous reporting, “the statute of limitations would be largely irrelevant in cases of alleged non-disclosure or failure-to-register.”⁵⁹ This cannot be right. The assumption of perpetual jurisdiction would gut the purpose of 28 U.S.C. § 2462: to “set[] a fixed date when exposure to the specified Government enforcement efforts ends, advancing ‘the basic policies of all limitations provisions: repose, elimination of stale claims, and certainty about a plaintiff’s opportunity for recovery and a defendant’s potential liabilities.’”⁶⁰

As the Supreme Court has noted, statutes of limitations including 28 U.S.C. § 2462 “are intended to ‘promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.’ They provide ‘security and stability to human affairs.’ We have deemed them ‘vital to the welfare of society,’ and concluded that ‘even wrongdoers are entitled to assume that their sins may be forgotten.’”⁶¹ The notion that the Commission may swoop in at any moment and pursue enforcement action against any entity that has ever operated as a political committee, regardless of how long ago the activity occurred, is at odds with the very nature of a statute of limitations.

CONCLUSION

By the time this Matter was before the Commission for a probable cause finding in 2021, the 2016 election cycle was long over and Freedom Vote was defunct and bankrupt. Most of the alleged FECA violations were time-barred, and we rejected suggestions that the Commission may perpetually extend its own jurisdiction by

⁵⁸ *Citizens for Responsibility and Ethics in Wash. v. Fed. Election Comm’n*, 236 F. Supp. 3d at 393.

⁵⁹ *Id.*

⁶⁰ *Gabelli v. Sec. & Exch. Comm’n*, 568 U.S. 442, 448 (2013) (quoting *Rotella v. Wood*, 528 U.S. 549, 555 (2000)) (declining to read a discovery rule into 28 U.S.C. § 2462 in context of Securities and Exchange Commission’s effort to pursue civil penalties).

⁶¹ *Id.* at 448–49 (quoting *Railroad Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342, 348–349 (1944); *Wood v. Carpenter*, 101 U.S. 135, 139 (1879); *Wilson v. Garcia*, 471 U.S. 261, 271 (1985)) (cleaned up).

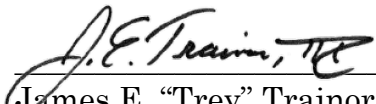
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requiring continuous reporting. By 2025, those arguments applied with still greater force.

Because the statute of limitations has fully expired in this Matter, we voted against finding probable cause and voted to close the file.


April 15, 2025

Date


James E. "Trey" Trainor, III
Vice Chairman

April 15, 2025

Date


Allen J. Dickerson
Commissioner