FEDERAL ELECTION COMMISSION
Washington, DC 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Freedom Vote, Inc., *et al.*	)	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

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[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

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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 US.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).