



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 27, 2020

Via First Class and Electronic Mail

Mitch Given
88 E. Broad Street, Suite 1560
Columbus, OH 43215
mitch@mitchgiven.com

RE: MUR 7465
Freedom Vote, Inc.

Dear Mr. Given:

On October 15, 2019, the Commission directed a subpoena to your attention as a former representative of Freedom Vote, Inc. We received correspondence from your former counsel, David R. Langdon, on November 15, 2019, stating that you were “attempting to engage counsel” and requesting a 30-day extension of time to respond. On November 18, 2019, I replied to Mr. Langdon that the extension would be acceptable, providing that you signed an agreement to toll the statute of limitations in this matter for sixty days. We have heard nothing further from Mr. Langdon or yourself, and, even had the extension been granted, it would by now have long expired.

More than 130 days have passed since the Commission directed its subpoena to your attention. Your failure to comply with the Commission’s duly issued subpoena is inconsistent with Mr. Langdon’s prior representations that you were “in discussions with an FEC practitioner in DC” for purposes of responding to the Commission’s requests. Further, we have repeatedly sought to determine whether you have retained counsel in this matter or reengaged your former counsel, and our understanding from those efforts is that you do not have counsel at this time.

Please be advised that Freedom Vote’s refusal to comply with the Commission’s duly issued subpoena, if continued, may lead the Commission to draw adverse inferences in the next stage of the enforcement process. *See Huthnance v. District of Columbia*, 722 F.3d 371,378 (D.C. Cir. 2013) (“[W]hen a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him.” (quoting *Int’l Union (UAW) v. NLRB*, 459 F.2d 1329, 1336 (D.C. Cir. 1972))); *see also* Third General Counsel’s Rpt. at 6, Commission Certification at 2, MUR 5504 (Karloly) (Aug. 25, 2009) (drawing adverse inferences against respondents who refused to answer questions under oath); Factual & Legal Analysis at 5-6, MUR 5444 (Nat’l Democratic Congressional Comm.) (drawing adverse inferences where respondent invoked Fifth Amendment and refused to answer questions). Such inferences may be drawn where a party fails to preserve documents that are required to be maintained pursuant to the Act’s record retention requirements. *See Webb v. District of Columbia*, 146 F.3d 964, 969-70, 972-74 & n.20 (D.C. Cir. 1998) (indicating that an

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MUR 7465 (Freedom Vote, Inc.)
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adverse inference is a common sanction in response to the destruction of documents that are required to be retained); *see also Reddy v. CFTC*, 191 F.3d 109, 121-22 (2d Cir. 1999) (explaining that failure to comply with the CFTC’s reporting requirements “supports the inference that had the records been kept, they would have been unfavorable to petitioner’s defense”).

We continue to be available to engage in good faith discussions to reach an agreement on Freedom Vote’s document production. If you have retained counsel in this matter, please direct your counsel to contact me at their earliest availability, and we will communicate with them moving forward.

Please contact me at (202) 694-1574 or jdigiovanni@fec.gov by **March 12, 2020**, to schedule a telephone conference to discuss this matter. If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Justine A. Di Giovanni". The signature is written in a cursive style with a large, looped initial "J".

Attorney



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 27, 2020

Via First Class Mail

James S. Nathanson
45 W. Babbitt Street
Dayton, OH 45405

RE: MUR 7465
Freedom Vote, Inc.

Dear Mr. Nathanson:

On October 15, 2019, the Commission directed a subpoena to your attention as a former representative of Freedom Vote, Inc. We received correspondence from your former counsel, David R. Langdon, on November 15, 2019, stating that you were “attempting to engage counsel” and requesting a 30-day extension of time to respond. On November 18, 2019, I replied to Mr. Langdon that the extension would be acceptable, providing that you signed an agreement to toll the statute of limitations in this matter for sixty days. We have heard nothing further from Mr. Langdon or yourself, and, even had the extension been granted, it would by now have long expired.

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Please be advised that Freedom Vote’s refusal to comply with the Commission’s duly issued subpoena, if continued, may lead the Commission to draw adverse inferences in the next stage of the enforcement process. *See Huthnance v. District of Columbia*, 722 F.3d 371,378 (D.C. Cir. 2013) (“[W]hen a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him.” (quoting *Int’l Union (UAW) v. NLRB*, 459 F.2d 1329, 1336 (D.C. Cir. 1972))); *see also* Third General Counsel’s Rpt. at 6, Commission Certification at 2, MUR 5504 (Karoly) (Aug. 25, 2009) (drawing adverse inferences against respondents who refused to answer questions under oath); Factual & Legal Analysis at 5-6, MUR 5444 (Nat’l Democratic Congressional Comm.) (drawing adverse inferences where respondent invoked Fifth Amendment and refused to answer questions). Such inferences may be drawn where a party fails to preserve documents that are required to be maintained pursuant to the Act’s record retention requirements. *See Webb v. District of Columbia*, 146 F.3d 964, 969-70, 972-74 & n.20 (D.C. Cir. 1998) (indicating that an adverse inference is a common sanction in response to the destruction of documents that are

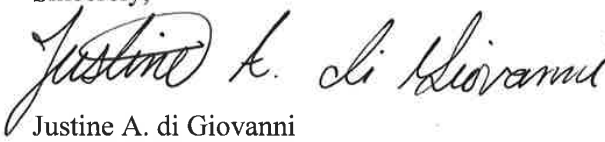
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required to be retained); *see also Reddy v. CFTC*, 191 F.3d 109, 121-22 (2d Cir. 1999) (explaining that failure to comply with the CFTC's reporting requirements "supports the inference that had the records been kept, they would have been unfavorable to petitioner's defense").

We continue to be available to engage in good faith discussions to reach an agreement on Freedom Vote's document production. If you have retained counsel in this matter, please direct your counsel to contact me at their earliest availability, and we will communicate with them moving forward.

Please contact me at (202) 694-1574 or jdigiovanni@fec.gov by **March 12, 2020**, to schedule a telephone conference to discuss this matter. If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Justine A. di Giovanni". The signature is written in a cursive style with a large initial "J".

Justine A. di Giovanni
Attorney