

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON,**

[REDACTED]

Plaintiff,

v.

**FEDERAL ELECTION COMMISSION,
1050 First Street, N.E.
Washington, D.C. 20463,**

Defendant.

Civil Action No.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. Citizens for Responsibility and Ethics in Washington (“CREW”) brings this action for injunctive and declaratory relief against the Federal Election Commission (“FEC” or “Commission”) under the Federal Election Campaign Act of 1971 (“FECA” or “the Act”), 52 U.S.C. § 30109(a)(8)(C), challenging as arbitrary, capricious, an abuse of discretion, and contrary to law the dismissal by the FEC of an administrative complaint by CREW against Freedom Vote, Inc. for failing to comply with the disclosure requirements the FECA imposes on “political committees.” Political committees are entities subject to continuous disclosure obligations because they spend or receive at least \$1,000 to influence elections in a year and have a major purpose to influence federal elections as demonstrated by, for example, their devoting more than half of their spending in a year to electioneering. CREW alleged Freedom Vote met these requirements but failed to comply with its disclosure obligations. This action seeks to remedy the injuries to CREW and the public caused by Freedom Vote’s failure to

disclose its expenses and contributors, thereby denying CREW and the public information that the FECA entitles CREW and the public to receive.

2. Before the unlawful dismissal, the Commission unanimously voted to find that CREW's complaint raised a reason to believe Freedom Vote violated the law; a rare consensus at an agency known for perpetual deadlock. The FEC's Office of General Counsel ("OGC") then conducted a thorough investigation. The voluminous evidence collected not only validated CREW's allegations but showed Freedom Vote's violations were greater than CREW alleged. According to the investigation, Freedom Vote spent about 83% of its funds in a single year on federal elections, and spent more than 66% and 77% on elections in following years. It further showed that Freedom Vote apparently had no non-electioneering activities. Additionally, at least one donor of a half a million dollars to the group explicitly stated the donation's purpose was for "the reelection of [U.S. Senator] Rob Portman." Freedom Vote also solicited funds by showing its efforts were "working" to damage a candidate's polling.

3. Notwithstanding its prior unanimous decision, the overwhelming evidence, and the recommendation of the FEC's general counsel to proceed, the Commission failed to enter into a conciliation with Freedom Vote or to pursue a civil enforcement action. Rather, on November 9, 2021, the Commission deadlocked three-to-three on whether to proceed by finding the investigation showed probable cause to believe violations of law occurred.

4. The Commission also expressly considered whether to dismiss the action as an exercise of prosecutorial discretion, and rejected that possibility.

5. Nevertheless, unable to procure sufficient votes to proceed, the Commission voted to close the file by a vote of four-to-one, with one commissioner abstaining. One commissioner who voted to find probable cause and proceed joined the dissenting commissioners to close the

file. That commissioner later joined a statement explaining her vote to close, stating that she continued to believe probable cause existed but voted to close due to the intransigence of a non-majority of her colleagues blocking further proceedings in the face of law and fact.

6. The commissioners who voted against finding probable cause provided no contemporary explanation for that action at the time of the Commission's consideration. To date, they have issued no explanation for their vote to terminate proceedings against Freedom Vote over the conclusive weight of the evidence of wrongdoing.

JURISDICTION AND VENUE

6. This Court has personal and subject matter jurisdiction over the parties pursuant to 52 U.S.C. § 30109(a)(8)(A) and 5 U.S.C. § 702. This Court also has jurisdiction pursuant to 28 U.S.C. § 1331, 2201(a), and 2202. Venue lies in this district under 52 U.S.C. § 30109(a)(8)(A) and 28 U.S.C. § 1391(e).

PARTIES

7. Plaintiff CREW is a non-profit, non-partisan corporation organized under section 501(c)(3) of the Internal Revenue Code.

8. CREW is committed to protecting the rights of citizens to be informed about the activities of government officials, ensuring the integrity of those officials, protecting our political system against corruption, and reducing the influence of money in politics. CREW works to advance reforms in the areas of campaign finance, lobbying, ethics, and transparency. Further, CREW seeks to ensure that campaign finance laws are properly interpreted, enforced, and implemented.

9. To advance its mission, CREW uses a combination of research, litigation, advocacy, and public education to disseminate information to the public about public officials and their actions, as well as the outside influences that have been brought to bear on those

actions. A core part of this work is examining and exposing the special interests that have influenced our elections and elected officials and using that information to educate voters regarding the integrity of public officials, candidates for public office, the electoral process, and our system of government.

10. Toward this end, CREW monitors the activities of those who run for federal office as well as those groups financially supporting candidates for office or advocating for or against their election. CREW regularly reviews campaign finance reports that groups, candidates, and political parties file with the FEC disclosing their expenditures and contributors. Using the information in those reports, CREW, through its website, press releases, reports, and other methods of distribution, publicizes the role of these individuals and entities in the electoral process and the extent to which they have violated federal campaign finance laws.

11. CREW also files complaints with the FEC when it discovers violations of the FECA. Publicizing violations of the FECA and filing complaints with the FEC serve CREW's mission of keeping the public, and voters in particular, informed about individuals and entities that violate campaign finance laws and deterring future violations of campaign finance laws.

12. CREW is hindered in carrying out its core programmatic activities when those individuals and entities that attempt to influence elections and elected officials are able to keep their identities hidden. Likewise, the FEC's refusal to properly administer the campaign finance laws, particularly the FECA's reporting requirements, hinders CREW in its programmatic activity, as compliance with those reporting requirements often provides CREW with the only source of information about those individuals and groups funding the political process.

13. As part of CREW's work in carrying out its central mission, CREW focuses on so-called "pay-to-play" schemes. Toward that end, CREW looks for correlations between

donations to the campaign of a member of Congress or candidate and that member's subsequent congressional activities, including advocating for policies and legislation that serve the interests of the member's donors. Information that an individual or entity made a large-dollar contribution may be very revealing about the influences that donor has brought to bear on the member post-election. Without information about the individuals and entities funding the political activities of organizations and individuals, CREW is stymied in fulfilling its central mission.

14. As an example, CREW published a report that revealed the sources of funding of over \$1.5 million dollars in campaign ads that propped up an otherwise underfunded candidate, propelling him to win his primary election. Matt Corley, *Hensel Phelps donations to pro-Buck dark money group finally revealed*, Nov. 19, 2019, <https://perma.cc/XNC6-37W8>. At the time, voters only knew the maker of the ads was a nondescript entity called Americans for Job Security. The group was eventually required to register and report as a political committee and disclose its donors after a complaint and litigation by CREW. That information revealed for the first time the sources of the group's funds, which included Peter Thiel, Sheldon and Miriam Adelson, and Robert McNair, and major corporations like Wynn Resorts, Bass Pro Shops, and Quicken Loans. One of the largest donors was Hensel Phelps Construction, which was also the candidate's former employer. Hensel Phelps made contributions shortly before the group would run its campaign ads to influence the candidate's election. Further, as a government contractor, Hensel Phelps was prohibited from making contributions to influence federal elections but was able to surreptitiously fund ads to do so by utilizing a 501(c)(4) entity that unlawfully failed to register and report as a political committee.

15. As another example, starting in June 2021, CREW published an ongoing report titled *This sedition is brought to you by....*, available at <https://perma.cc/S9M4-VM9M>. In that

report, CREW collected and contextualized data reported by the FEC on contributions to political committees controlled by or allied with members of Congress who voted against certifying the 2020 election. CREW has so far found that more than 717 corporations and industry group PACs have given approximately \$18 million to these members of Congress, despite initial public pledges not to donate to these members.

16. CREW requires access to information detailing the true sources of the money used to fund the political activities of federal candidates and outside groups. As a result, CREW is harmed when the FEC fails to properly administer the FECA, particularly the statute's reporting requirements, thereby limiting CREW's ability to obtain and review campaign finance information.

17. Defendant FEC is the federal agency established by Congress to oversee the administration and civil enforcement of the FECA. *See* 52 U.S.C. §§ 30106, 30106(b)(1).

STATUTORY AND REGULATORY FRAMEWORK

Registration and Reporting Requirement for Political Committees

18. The FECA defines the term “political committee” as “any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.” 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5(a). Expenditures include “any ... payment ..., deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for federal office.” 52 U.S.C. § 30101(9)(A)(i); 11 C.F.R. § 100.111. In addition, the Supreme Court in *Buckley v. Valeo* carved out from this definition organizations that, while meeting one of the statutory thresholds, are (1) not under the control of a candidate and (2) do not have a “major purpose” of “nominat[ing] or elect[ing] ...

candidate[s].” 424 U.S. 1, 79 (1976). A group that “extensive[ly]” spends on elections has a major purpose to influence elections and cannot be excused from reporting. *FEC v. Massachusetts Right to Life, Inc.*, 479 U.S. 238, 262 (1986). Neither the courts nor the FEC has defined the threshold of spending that qualifies as “extensive,” but a group devoting half of its yearly expenses to electioneering is sufficient.

19. All political committees must file a statement of organization within ten days after becoming a political committee within the meaning of 52 U.S.C. § 30101(4). 52 U.S.C. § 30103(a); 11 C.F.R. 102.1.

20. All registered political committees are required to file periodic reports with the FEC that, among other things, (1) identify all individuals who contribute an aggregate of more than \$200, (2) identify all political committees that made a contribution to the political committee at issue, (3) detail a political committee’s debts and obligations, and (4) list all of a political committee’s expenditures. 52 U.S.C. § 30104(b)(2)–(8); 11 C.F.R. § 104.3.

21. A political committee’s duty to file reports is continuous until the political committee terminates its status with the FEC. Each failure to file a required report on the date it is due is a continuation of the unlawful behavior or, in the alternative, a new violation. A political committee may only terminate its status and end its reporting obligation when it ceases making any expenditure or accepting any contributions to influence federal elections. 52 U.S.C. § 30103(d). Moreover, political committees are under a continuous duty to supplement or correct any missing or erroneous reports. FEC, Filing Amendments, <https://perma.cc/A9SC-3D8Y> (last visited Jan. 5, 2022) (“The committee must file an amended report if it: [d]iscovers that an earlier report contained erroneous information, [or] [d]oes not obtain all of the required information concerning a particular transaction”); *see also* FEC, AO 1999-33 at 3 (MediaOne PAC) (Jan. 28,

2000) (political committee “must amend” prior erroneous reports that omitted contributor information).

22. Political committees are also required to identify themselves as the source of public communications they make through disclaimers that appear in the communication. 52 U.S.C. § 30120(a)(3), (d)(2); 11 C.F.R. § 110.11. A “public communication” includes “broadcast, cable or satellite communication, ... to the general public, or any other form of general public political advertising.” 52 U.S.C. § 30101(22); 11 C.F.R. § 100.26. The disclaimer “must clearly state the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication, and that the communication is not authorized by any candidate or candidate’s committee.” 11 C.F.R. § 110.11(b), (d).

Enforcement Procedures and Administrative Exhaustion

23. Under the FECA, any person who believes there has been a violation of the Act may file a sworn complaint with the FEC. 52 U.S.C. § 30109(a)(1). Based on the complaint, the response from the person or entity alleged to have violated the Act, facts developed by the Office of General Counsel (“OGC”), and any OGC recommendation, the FEC then votes on whether there is “reason to believe” a violation of the FECA has occurred. 52 U.S.C. § 30109(a)(2). A “reason to believe” exists where a complaint “credibly alleges” a violation of the FECA “may have occurred.” FEC, *Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process*, 72 Fed. Reg. 12545, 12545 (Mar. 16, 2007). If four commissioners find there is “reason to believe” a violation of the FECA has occurred, the FEC must notify the respondents of that finding and “shall make an investigation of such alleged violation.” 52 U.S.C. § 30109(a)(2). Upon the basis of that investigation, the OGC recommends whether there is a “probable cause” to believe a violation occurred. 52 U.S.C. § 30109(a)(3). If four commissioners vote to find probable cause exists, the Commission “shall attempt” to

conciliate with the respondent, 52 U.S.C. § 30109(a)(4), failing which the Commission may institute a civil action in federal court upon the affirmative vote of four commissioners, 52 U.S.C. § 30109(a)(6).

24. If four commissioners fail to find reason to believe or probable cause to believe a violation of the FECA has occurred and the Commission then dismisses the matter, the complainant, as a “party aggrieved” by the dismissal, may seek judicial review in the United States District Court for the District of Columbia. 52 U.S.C. § 30109(a)(8)(A). All petitions from the dismissal of a complaint by the FEC must be filed “within 60 days after the date of the dismissal.” 52 U.S.C. § 30109(a)(8)(B).

25. The district court reviewing the FEC’s dismissal of a complaint may declare the FEC’s actions “contrary to law.” 52 U.S.C. § 30109(a)(8)(C). The court also may order the FEC “to conform with such declaration within 30 days.” *Id.* If the FEC fails to abide by the court’s order, the FECA provides the complainant with a private right of action, brought in the complainant’s own name, “to remedy the violation involved in the original complaint.” *Id.* The statute of limitations on that private right of action only begins to run when the FEC fails to conform with the court’s order after thirty days.

FACTUAL BACKGROUND

26. CREW filed an administrative complaint against Freedom Vote with the FEC on August 8, 2018, alleging Freedom Vote qualified as a political committee no later than 2016, but failed to report as required. Exhibit 1, *available at* <https://perma.cc/YPF2-7CT2>. Freedom Vote was registered as a section 501(c)(4) tax-exempt social welfare organization and was established in Ohio in 2010. *Id.* ¶ 2. The FEC designated the matter MUR 7465.

27. Specifically, CREW’s complaint alleged Freedom Vote spent more than \$1 million in the summer of 2016 to make and air a television advertisement expressly advocating

the defeat of Ohio United States Senate candidate Ted Strickland, titled “Third Largest.” Ex. 1 ¶¶ 32–37 (ad asserted Strickland “lost jobs,” that he “want[ed] to bring his job-killing policies to Washington,” and stated “we can’t afford more lost jobs” superimposed over image of U.S. Capitol; disclaimer said only “paid for by Freedom Vote”). CREW alleged this advertisement was an independent expenditure, and that Freedom Vote failed to file the required disclosure reports with the FEC. *Id.* ¶¶ 42–48. CREW further alleged the communication did not include the required disclaimers, in violation of the FECA and FEC regulations. *Id.* ¶¶ 49–50.

28. CREW’s complaint further alleged Freedom Vote failed to register and report as a political committee in violation of the FECA and FEC regulations. *Id.* ¶¶ 51–67. CREW alleged Freedom Vote’s actions qualified it as a political committee as early as 2014 and no later than 2016. *Id.* ¶¶ 19–41, ¶¶ 51–67. In particular, CREW alleged that Freedom Vote made more than \$1,000 in expenditures in 2014, 2015, and 2016, satisfying the FECA’s statutory test. *Id.* ¶ 19, 32–37, 53–56. CREW further alleged that Freedom Vote’s major purpose in these years was to elect or defeat federal candidates, as exhibited by the public statements of an advisor to Freedom Vote and the fact that its spending on electioneering was more than 50% of its total expenditures each year. *Id.* ¶¶ 19–41, 57–64.

29. Based on CREW’s complaint, the OGC recommended the Commission find reason to believe Freedom Vote failed to organize, register, and report as a political committee. *See* First General Counsel’s Report 25, MUR 7465 (Freedom Vote), July 1, 2019, <https://perma.cc/8A8D-3D34>. The OGC also recommended finding the “Third Largest” ad failed to include the required disclaimer. *Id.*¹

¹ In the alternative, the OGC recommended finding that, if Freedom Vote was not a political committee, that it nonetheless failed to report the “Third Largest” ad as an independent

30. On July 25, 2019, the Commission unanimously voted to find reason to believe Freedom Vote failed to organize, register, and report as a political committee and include the required disclaimer on its “Third Largest” ad. The Commission also unanimously voted to approve compulsory process. Certification, MUR 7465 (Freedom Vote), July 25, 2019, <https://perma.cc/YW4X-JQTY>.

31. CREW learned of these developments in late 2019, after it sued the FEC over its failure to act on CREW’s complaint. *See CREW v. FEC*, 19-cv-1650 (D.D.C.). As FEC matters are confidential until closed, CREW had been unaware of the FEC’s actions. CREW agreed to dismiss its complaint in reliance on the FEC’s representation that matters were proceeding expeditiously.

32. In light of the Commission’s vote, the OGC began an investigation into Freedom Vote which not only confirmed CREW’s allegations, but indeed demonstrated Freedom Vote’s violations exceeded even the amount of political spending that CREW alleged. In particular, the investigation showed Freedom Vote’s electioneering in 2014, 2015, and 2016 amounted to more than 82%, 66%, and 77% of its total spending, respectively. In total, these expenditures amounted to about 71% of Freedom Vote’s spending from 2014 through the remainder of its lifetime.

33. Additionally, the FEC’s investigation showed Freedom Vote’s spending on express advocacy in 2014 was more than previously reported or known, amounting to \$239,878. General Counsel’s Brief 10, MUR 7465 (Freedom Vote), Sept. 20, 2021, <https://perma.cc/4AAV-M9MJ>. It also showed that Freedom Vote made electioneering expenses

expenditure. *Id.* The alternative finding is because political committees do not separately report independent expenditures, *see* 52 U.S.C. § 30104(c), but rather report them along with all of their other expenses.

in 2014 in conducting opposition research. *Id.* at 9. The investigation revealed that Freedom Vote’s Executive Director explained to a donor that Freedom Vote’s work was to make “maximum effort[s] through election day,” *id.* at 10, and that same Executive Director could not recall any non-electioneering work Freedom Vote performed, *id.* at 11.

34. Freedom Vote’s 2015 electioneering expenses were also more than previously known, amounting to \$217,539, including contributions to super PACs and research and polling on a federal candidate. *Id.* at 12.

35. Similarly, Freedom Vote’s 2016 electioneering expenses were more than previously known, amounting to \$2,987,563 in independent expenditures (including \$1.1 million on the “Third Largest” ad that Freedom Vote’s Executive Director admitted was targeted at candidate Strickland’s Senate campaign), contributions to super PACs, analytics, and polling. *Id.* at 16–17. In addition, an unknown 2016 donor to Freedom Vote stated the donated funds were for “the reelection of [U.S. Senator] Rob Portman,” Strickland’s opponent in the campaign. *Id.* at 26. Freedom Vote also informed donors that its efforts were “working” to lower candidate Strickland’s poll numbers. *Id.* at 26–27.

36. The investigation also revealed that Freedom Vote paid approximately \$23,000 to the Internal Revenue Service in 2018 to settle an investigation into whether Freedom Vote violated its section 501(c)(4) status by devoting its activities primarily to electioneering. *Id.* at 19.

37. While revealing, the investigation was ultimately delayed by Freedom Vote’s failure to timely respond to the FEC’s subpoenas. The FEC served subpoenas on Freedom Vote and its Executive Director on October 15, 2019. *See* Notification to Freedom Vote, MUR 7465 (Freedom Vote), Oct. 31, 2019, <https://perma.cc/JR2D-CLW8> (referring to “attached

subpoena”); Notification to James S. Nathanson, MUR 7465 (Freedom Vote), Oct. 31, 2019, <https://perma.cc/J7NL-G9F2> (same). Shortly before that, one of the FEC commissioners resigned his seat, leaving the Commission with only three members. Three commissioners are an insufficient number to achieve quorum and permit the FEC to seek legal remedies for the disregard of the subpoenas. It was not until quorum was restored in December 2020 and Mr. Nathanson was issued a deposition subpoena that documents were finally produced. *See* Statement of Reasons of Chair Shana M. Broussard and Commissioners Steven T. Walther and Ellen L. Weintraub 6, MUR 7465 (Freedom Vote), Dec. 16, 2021, <https://perma.cc/LG9H-HPSV>.

38. Notwithstanding this obstruction, the FEC’s General Counsel notified Freedom Vote that, based on its investigation, it intended to recommend the Commission find probable cause to believe that Freedom Vote violated the FECA and FEC regulations by failing to organize, register, report, and provide disclaimers as a political committee. General Counsel’s Brief 1–2.

39. The Commission considered the General Counsel’s recommendation on November 9, 2021. Despite the conclusive evidence collected, the Commission, now with a full slate of six commissioners, deadlocked three-to-three on the vote to find probable cause to believe Freedom Vote violated the FECA. The Commission considered whether to dismiss the proceedings as an exercise of prosecutorial discretion, but declined to invoke that power.

40. Nonetheless, with proceedings unable to move forward, four commissioners, including one commissioner who voted to proceed with an investigation and voted against exercising prosecutorial discretion, voted to close the case. Only upon doing so was CREW

alerted to the fact the matter had been closed without remedy, and only then did CREW have an opportunity to seek review of the dismissal in court.

41. Shortly after the vote, the three commissioners who voted to find probable cause of a violation—including one commissioner who voted to close the case—issued a statement of reasons recounting the FEC’s investigation, the voluminous evidence amassed to support CREW’s allegations, and rejecting possible grounds for terminating the case.

42. The three other commissioners who voted to find the evidence did not give rise to a probable cause to believe a violation occurred did not issue any contemporary justification for their action for either the Commission or this Court to consider. To date, those three commissioners have not issued even a *post-hoc* explanation.

PLAINTIFF’S CLAIM FOR RELIEF

The FEC’s Dismissal of CREW’s Complaint Was Arbitrary, Capricious, an Abuse of Discretion, and Contrary to Law

43. CREW re-alleges and incorporates by reference all preceding paragraphs as fully set forth herein.

44. This action is timely as it was filed within sixty days of the FEC’s closure of MUR 7465. 52 U.S.C. § 30109(a)(8)(B).

45. The FEC’s dismissal of CREW’s complaint was arbitrary, capricious, an abuse of discretion, and contrary to law in violation of 52 U.S.C. § 30109(a)(8)(C).

46. The FEC’s general counsel amassed conclusive evidence that Freedom Vote qualified as a political committee as early as 2014 and as late as December 31, 2016, which status Freedom Vote thus continues to possess from the point of qualification through today. Notwithstanding this qualification, Freedom Vote never registered with the FEC as a political committee, nor filed the required reports, which reports continue to be due today. Nor did

Freedom Vote include required disclaimers on its communications. Moreover, Freedom Vote has never terminated its political committee status.

47. The evidence the FEC collected would itself satisfy some of Freedom Vote's disclosure obligations under the FECA if it were to be made public. Other information, such as the identity of donors, is available in the records produced to the FEC, which apparently were redacted on production, in bank records, and in documents filed with the IRS.

48. Notwithstanding the conclusive evidence and the readily available remedies, three commissioners voted to find no probable cause existed to believe Freedom Vote violated the FECA by not organizing, registering, reporting, and making disclaimers as a political committee. That vote led to the closure of this matter when another commissioner, disagreeing with her colleagues on the merits, nonetheless joined them to close the case, permitting CREW to receive notice of the FEC's actions and permitting this lawsuit to challenge that closure.

49. The FEC declined to exercise prosecutorial discretion to dismiss this matter, which exercise requires the concurrence of four commissioners.

50. The three commissioners who voted to find no probable cause provided no contemporaneous explanation of their vote for either the agency or for this Court to consider. To date, those three commissioners have not issued even a *post-hoc* explanation. The only commissioner who voted to close the file who has issued a statement has explained that the case should have proceeded and not been closed, and therefore that the dismissal she voted for was contrary to law.

51. An agency action unsupported by a contemporaneous explanation is *per se* arbitrary and capricious, and the FEC's dismissal without one is contrary to law.

Exhibit 1

OFFICE OF
GENERAL COUNSEL
FEDERAL ELECTION COMMISSION
2018 AUG -9 PM 2:19

In the matter of:

Freedom Vote, Inc.
Fighting for Ohio Fund
Christopher Marston, Treasurer, Fighting for Ohio Fund
Unknown Respondents

MUR 7465

COMPLAINT

1. Citizens for Responsibility and Ethics in Washington (“CREW”) and Noah Bookbinder bring this complaint before the Federal Election Commission (“FEC” or “Commission”) seeking an immediate investigation and enforcement action against Freedom Vote, Inc. (“FV”), Fighting for Ohio Fund, Christopher Marston, and Unknown Respondents for direct and serious violations of the Federal Election Campaign Act (“FECA”).

2. Freedom Vote, Inc. is ostensibly a tax-exempt social welfare organization established in Ohio in 2010. During most of its existence, however, it has acted as a political committee, spending the majority of its money on federal political activity. For example, between October 1, 2015 and September 30, 2016 – FV’s fiscal year which covered much of the 2016 election cycle – about 80% of FV’s spending was political. That spending included \$1.7 million the group gave to a super PAC, Fighting for Ohio Fund, and at least \$1.1 million for an advertisement opposing a candidate in the 2016 Ohio Senate race. FV similarly spent most of its funds on politics during the 2014 election, and the majority of FV’s spending since October 2011 has been dedicated to politics.

3. In conducting their political activity, Freedom Vote, Inc., Fighting for Ohio Fund, and one or more unknown respondents violated the FECA. Despite its heavy political spending, FV never registered as a political committee with the FEC, failed to file reports disclosing its

contributors, and failed to disclose its spending on the political ad it ran in the 2016 Ohio Senate race. In addition, FV, Fighting for Ohio Fund, and unknown respondents engaged in a conduit contribution scheme that kept secret the names of donors by laundering their contributions to Fighting for Ohio Fund through FV. The FEC should investigate these allegations and take appropriate action to enforce the FECA.

Complainants

4. Complainant CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the right of citizens to be informed about the activities of government officials and to ensuring the integrity of government officials. CREW is dedicated to empowering voters to have an influential voice in government decisions and in the governmental decision-making process. CREW uses a combination of research, litigation, and advocacy to advance its mission.

5. In furtherance of its mission, CREW seeks to expose unethical and illegal conduct of those involved in government. One way CREW does this is by educating citizens regarding the integrity of the electoral process and our system of government. Toward this end, CREW monitors the campaign finance activities of those who run for federal office and publicizes those who violate federal campaign finance laws through its website, press releases, and other methods of distribution. CREW also files complaints with the FEC when it discovers violations of the FECA. Publicizing campaign finance violators and filing complaints with the FEC serve CREW's mission of keeping the public informed about individuals and entities that violate campaign finance laws and deterring future violations of campaign finance law.

6. In order to assess whether an individual, candidate, political committee, or other regulated entity is complying with federal campaign finance law, CREW needs the information

contained in receipts and disbursements reports political committees and others must file pursuant to the FECA, 52 U.S.C. § 30104; 11 C.F.R. §§ 104.1–22, 109.10. CREW is hindered in its programmatic activity when an individual, candidate, political committee, or other regulated entity fails to disclose campaign finance information in reports of receipts and disbursements required by the FECA.

7. CREW relies on the FEC's proper administration of the FECA's reporting requirements because the FECA-mandated disclosure reports are the only source of information CREW can use to determine if an individual, candidate, political committee, or other regulated entity is complying with the FECA. The proper administration of the FECA's reporting requirements includes mandating that all disclosure reports required by the FECA are properly and timely filed with the FEC. CREW is hindered in its programmatic activity when the FEC fails to properly administer the FECA's reporting requirements.

8. Complainant Noah Bookbinder is the executive director of Citizens for Responsibility and Ethics in Washington. At all times relevant to the complaint, he has been and remains a citizen of the United States and a registered voter and resident of Maryland. As a registered voter, Mr. Bookbinder is entitled to receive information contained in disclosure reports required by the FECA, 52 U.S.C. § 30104; 11 C.F.R. §§ 104.1–22, 109.10. Mr. Bookbinder is harmed in exercising his right to vote when an individual, candidate, political committee, or other regulated entity fails to report campaign finance activity as required by the FECA. *See FEC v. Akins*, 524 U.S. 11, 19 (1998), *quoting Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976) (political committees must disclose contributors and disbursements help voters understand who provides which candidates with financial support). Mr. Bookbinder is further harmed when the FEC fails

to properly administer the FECA's reporting requirements, limiting his ability to review campaign finance information.

9. Mr. Bookbinder also is harmed in his ability to communicate to the public and to other voters information about the source of funds used for political activities.

Respondents

10. FV is a tax-exempt organization established in 2010, organized under section 501(c)(4) of the Internal Revenue Code, and based in Dayton, OH. James S. Nathanson is the executive director of FV. FV 2015 Form 990, <https://bit.ly/2HdyBoH>.

11. FV was formed "with the express purpose of raising money to help pay for the type of turnout operations traditionally underwritten by the [Republican National Committee]." Jeanne Cummings, State Parties Look Past RNC for Cash, *Politico*, Sept. 3, 2010, <http://politi.co/2FjFJj3>. Tom Whatman, a former executive director of the Ohio Republican Party who advised FV when the group was formed, explained the formation of FV by saying he "understood that the lack of resources from the [Republican National Committee] was going to have a severe impact on what the parties were going to be able to do." *Id.*

12. As of June 7, 2018, FV was not a registered political committee.

13. Fighting for Ohio Fund is an independent-expenditure only committee ("super PAC") formed in 2015. Fighting for Ohio Fund, FEC Form 1, Statement of Organization, February 18, 2015.

14. Christopher Marston is the treasurer of Fighting for Ohio Fund. *Id.*

15. Unknown respondents are the true source or sources of funds FV transferred to Fighting for Ohio Fund, as well as the conduit or conduits, if any, through which such funds passed before being contributed to FV.

Factual allegations

16. On January 1, 2011, James S. Nathanson took over as executive director of FV. FV 2010 Form 990, Part VII, Section A, <https://bit.ly/2qIfsW>.
17. On its 2011 tax return, filed under penalty of perjury, FV reported spending a total of \$191,416 between October 1, 2011 and September 30, 2012. FV 2011 Form 990, Part I, Line 18, <https://bit.ly/2HyhQrM>.
18. On its 2012 tax return, filed under penalty of perjury, FV reported spending a total of \$150,430 between October 1, 2012 and September 30, 2013. FV 2012 Form 990, Part I, Line 18, <https://bit.ly/2HCYIOS>.
19. In March, April, and May 2014, FV reported to the FEC spending \$174,607 on independent expenditures supporting then-Speaker of the House John Boehner (R-OH) and opposing two of his primary opponents, J.D. Winteregg and Eric Gurr. FV, [FEC Form 5, 2014 April Quarterly Report, Amended, July 15, 2014](#); FV, [FEC Form 5, 2014 July Quarterly Report, July 15, 2014](#). Specifically, FV paid for “door hangers,” “canvassers and consulting,” “iPads for canvassing,” “map books for canvassing,” “door-to-door literature,” and “robocalls” all supporting Speaker Boehner’s re-election. *Id.*
20. On its 2013 tax return, filed under penalty of perjury, FV reported spending a total of \$284,754 between October 1, 2013 and September 30, 2014. FV 2013 Form 990, Part I, Line 18, <https://bit.ly/2vvIUmA>. FV’s political spending during that year thus amounted to 61.3% of its total spending.
21. FV’s total spending dropped significantly following the 2014 election. FV reported on its 2014 tax return spending a total of \$58,578 between October 1, 2014 and September 30, 2015. FV 2014 Form 990-EZ, Part I, Line 17, <https://bit.ly/2HKzYw4>.

22. On its 2015 tax return, filed under penalty of perjury, FV reported spending a total of \$3,575,475 between October 1, 2015 and September 30, 2016. FV 2015 Form 990, Part I, Line 18.

23. Of that total, FV reported spending \$1,744,267 on “direct and indirect political campaign activities,” including \$1,700,000 given to an independent expenditure-only political action committee, also known as a super PAC, registered with the FEC. *Id.*, Schedule C, Part I-A, Line 2 and Part I-C, Line 5. Specifically, FV deposited or gifted \$1,700,000 to Fighting for Ohio Fund between December 29, 2015 and September 21, 2016, with \$1,500,000 of those occurring in 2016. *Id.*; Fighting for Ohio Fund, FEC Form 1, Statement of Organization, February 18, 2015; Fighting for Ohio Fund, FEC Form 3X, 2015 Year-End Report, Jan. 31, 2016; Fighting for Ohio Fund, FEC Form 3X, 2016 April Quarterly Report, Amended, Oct. 27, 2016; Fighting for Ohio Fund, FEC Form 3X, 2016 October Quarterly Report, Amended, Oct. 27, 2016.

24. The super PAC reported receiving FV’s funds as “contributions” – gifts or other transfers of money made “for the purpose of influencing any election or Federal office.” 52 U.S.C. § 30101(8)(A)(i) (definition of contribution).

25. Fighting for Ohio Fund also reported receiving an additional \$275,000 from FV that was not included on FV’s 2015 tax return since the transfer was made on Oct. 5, 2016, after the close of the fiscal year covered by FV’s 2015 tax return. Fighting for Ohio Fund, FEC Form 3X, 2016 Pre-General Report, Oct. 27, 2016; FV 2015 Form 990, Schedule C, Part I-A, Line 2 and Part I-C, Line 5.

26. FV may have solicited and received contributions with the intent that the funds would be transferred to Fighting for Ohio Fund. The two organizations employed the same

fundraising firm, MMM Consulting. FV 2015 Form 990, Schedule G, Part I; Fighting for Ohio Fund, FEC Form 3X, 2015 Year-End Report, Jan. 31, 2016; Fighting for Ohio Fund, FEC Form 3X, 2016 April Quarterly Report, Amended, Oct. 27, 2016; Fighting for Ohio Fund, FEC Form 3X, 2016 July Quarterly Report, Amended, Oct. 27, 2016; Fighting for Ohio Fund, FEC Form 3X, 2016 October Quarterly Report, Amended, Oct. 27, 2016; Fighting for Ohio Fund, FEC Form 3X, 2016 Pre-General Report, Oct. 27, 2016; Fighting for Ohio Fund, FEC Form 3X, 2016 Post-General Report, Dec. 6, 2016.

27. On its 2015 tax return, FV reported that MMM Consulting raised \$2,090,000 for FV, a sum sufficient to cover all FV's transfers to Fighting for Ohio Fund during the 2016 election cycle. FV 2015 Form 990, Schedule G, Part I. MMM Consulting was paid \$35,000 for its services. *Id.*

28. Five of the six transfers FV made to Fighting for Ohio Fund during its 2015 tax year correspond to exact amounts FV reported receiving on its Schedule of Contributors. FV 2015 Form 990, Schedule B, Part 1, Lines 3, 8, 9, 12, and 15 (2015 return covers much of the 2016 election cycle).

29. Specifically,

- FV reported receiving a \$500,000 contribution between October 1, 2015 and September 30, 2016. *Id.*, Schedule B, Part 1, Line 12. On July 5, 2016, FV transferred \$500,000 to Fighting for Ohio Fund. Fighting for Ohio Fund, FEC Form 3X, 2016 October Quarterly Report, Amended, Oct. 27, 2016.
- FV reported receiving two separate \$250,000 contributions between October 1, 2015 and September 30, 2016. FV 2015 Form 990, Schedule B, Part 1, Lines 3 and 9. On August 25, 2016 and September 21, 2016, FV made two separate \$250,000 transfers to Fighting for Ohio Fund. Fighting for Ohio Fund, FEC Form 3X, 2016 October Quarterly Report, Amended, Oct. 27, 2016.

- FV reported receiving two separate \$200,000 contributions between October 1, 2015 and September 30, 2016. FV 2015 Form 990, Schedule B, Part 1, Lines 8 and 15. On December 29, 2015 and September 14, 2016, FV made two separate \$200,000 transfers to Fighting for Ohio Fund. Fighting for Ohio Fund, FEC Form 3X, 2015 Year-End Report, Jan. 31, 2016; Fighting for Ohio Fund, FEC Form 3X, 2016 October Quarterly Report, Amended, Oct. 27, 2016.

30. Fighting for Ohio Fund engaged in extensive political activity influencing a federal election in 2016. The super PAC spent more than \$9.2 million on independent expenditures opposing former Gov. Ted Strickland, who was then a Democratic candidate in the Ohio Senate race. OpenSecrets.org, Fighting for Ohio Fund, Independent Expenditures, Targeted Candidates, 2016, *available at* <https://bit.ly/2Hv0BHZ>.

31. Fighting for Ohio Fund's ads against Strickland all contained an economic critique of Strickland's record as governor. Specifically, Fighting for Ohio Fund posted on its YouTube page 10 anti-Strickland videos that appear to be ads. Each of these criticize Strickland because Ohio lost 350,000 jobs while he was in office. YouTube, Fighting for Ohio, Uploads, *available at* <https://bit.ly/2F0R5ae>.

32. In June and July 2016, FV broadcast its own television advertisement in Ohio attacking Strickland, who was then a Democratic candidate for the Senate but had not been a government official since January 2011. A copy of the advertisement that aired on station WLWT in Cincinnati, Ohio on June 20, 2016 is included on the drive attached as Exhibit A and a transcript of the ad is available at <https://bit.ly/2F4AbaM>.

33. The advertisement is titled "Third Largest." Block Communications, Inc., Political Public File, National Issue/Third-Party Federal Candidate Advertisement, Freedom Vote/MainStreet Media Group, June 16, 2016, *available at* <https://bit.ly/2HdmoEL>. The ad used the same economic critique of Strickland that Fighting for Ohio Fund's ads used. FV's ad begins

with the narrator stating, “While Ted Strickland was governor, Ohio lost jobs to Kentucky, Indiana, even Michigan. 350,000 Ohio jobs gone.” While the names of Ohio cities and their population sizes scroll on the screen, the narrator adds, “How many is that? If you assembled everyone who lost their job under Strickland, you’d have Ohio’s third largest city.” The ad closes by referring to Strickland’s Senate candidacy with the narrator stating, “Now Ted Strickland wants to bring his job-killing policies to Washington.” As the narrator says this, an image of the U.S. Capitol building is shown with text stating, “Ted Strickland: Bringing Job-Killing Policies to Washington” superimposed over it. The ad concluded by advocating the defeat of Strickland’s candidacy for Senate, stating “we can’t afford more lost jobs” over an image of Strickland. The advertisement ends with the words “Paid for by Freedom Vote” appear at the bottom.

34. FV did not file any independent expenditure reports with the FEC regarding the advertisement.

35. On information and belief, FV spent more than \$1 million on air time to broadcast this advertisement on television in Ohio.

36. The exact amount FV spent on the Strickland ad is unknown since the organization did not file any independent expenditure reports with the FEC, but an analysis by CREW of ad-buying contracts on file with the Federal Communications Commission (“FCC”) and collected by the Center for Responsive Politics estimated that FV spent between \$1,290,605 and \$1,550,935 to run the ads.¹

¹ CREW downloaded and examined every ad contract collected by the Center for Responsive Politics that identified FV as the sponsor in 2016, extracting and compiling information on how much FV contracted to spend on ads in terms of both “gross” and “net” expenditures. In order to account for duplicates, CREW removed duplicate file names and duplicate spending amounts after extracting spending data from the ad contracts. However, some duplicates, amendments, or

37. On its 2015 tax return, covering October 1, 2015 to September 30, 2016, FV reported spending \$1,121,077 on “issue advocacy.” The spending on issue advocacy, which FV reported was part of its efforts to educate “the Ohio public regarding economic policy issues, including state and local government fiscal responsibility, job growth and retention, and employment,” appears to reflect FV’s spending on the anti-Strickland advertisement. FV 2015 Form 990, Part III, Line 4a and Part IX, Line 24a.

38. Between October 1, 2015 to September 30, 2016, the time period covered by FV’s 2015 tax return, the group admitted spending \$1,744,267 on political activity, accounting for 48.8% of its total spending. As discussed above, \$1,700,000 of that activity consisted of transfers to Fighting for Ohio Fund as well as an additional \$44,267 in political activity that FV did not describe. FV did not include the amounts the organization spent on its anti-Strickland independent expenditure in its reported political activity. Including the minimum estimate of FV’s spending on the anti-Strickland Ohio advertisement, the \$1,121,077 FV reported to the IRS it spent on “issue advocacy,” would increase FV’s political spending to 80.1% of its total spending between October 1, 2015 to September 30, 2016.

39. Since FV’s fiscal year ended on September 30, 2016, it is unknown exactly how much FV spent overall or on political activity in calendar year 2016. FV spent at least an additional \$275,000 on political activity before the end of the year, however, by making another gift or deposit to Fighting for Ohio Fund on October 5, 2016, just after the end of its fiscal year

revisions may have been inadvertently included in the CREW’s analysis, rendering it an estimate rather than an exact figure. This approach found that FV spent more than \$1.2 million “net” on television ads or more than \$1.5 million “gross” on them. See CREW spreadsheet of FV FCC ad contracts, available at <https://bit.ly/2HgSXgK>.

and before the 2016 election. This gift or deposit brings FV's total transfers to the super PAC to at least \$1,975,000 in 2015 and 2016.

40. The high percentage of political spending by FV extends beyond its 2015 tax year and includes the time period covering the most recent two election cycles. From October 1, 2012 to September 30, 2016, FV reported spending a total of \$4,069,237. Including the at least \$1,121,077 FV appears to have spent on the anti-Strickland ads and the political spending FV acknowledged on its tax returns, more than 74.7% of FV's total spending for this period was used for political activity.

41. The pattern of significant political spending also is consistent through Mr. Nathanson's tenure as executive director. Mr. Nathanson became executive director on January 1, 2011. Since FV does not report its spending to the IRS using the calendar year, FV's 2011 tax return, covering October 1, 2011 to September 30, 2012, is the first FV tax return to completely reflect the organization under his leadership. When the \$191,416 FV reported spending between October 1, 2011 and September 30, 2012 is added to the spending detailed in paragraphs 38 and 40, above, representing all spending for periods in which Mr. Nathanson was FV's executive director for the entirety of the period, FV's total spending to influence federal elections accounts for more than 71.3% of its total expenditures.

Count I

42. The television advertisement FV broadcast in June and July 2016 was an independent expenditure, but was not reported to the Commission.

43. An "independent expenditure" is an expenditure by a person for a communication "expressly advocating the election or defeat of a clearly identified candidate" that is not coordinated with a candidate or a political party. 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16(a).

44. The commission's regulations define "expressly advocating" as any communication that either use phrases such as "Smith for Congress" or "Bill McKay in '94," 11 C.F.R. § 100.22(a), or "[w]hen taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because – (1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action," 11 C.F.R. § 100.22(b).

45. The FECA requires a person who makes independent expenditures aggregating \$10,000 or more on a given election in a calendar year up to the 20th day before the date of an election to file a report describing the expenditure with the Commission within 48 hours. 52 U.S.C. § 30104(g)(2)(A). Commission regulations specify that the report must be filed not later than "11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated." 11 C.F.R. § 109.10(c).

46. The FECA requires a person who makes independent expenditures aggregating \$1,000 or more on a given election after the 20th day before the date of an election but more than 24 hours before the day of the election to file a report describing the expenditure with the Commission within 24 hours. 52 U.S.C. § 30104 (g)(1)(A). Commission regulations specify that the report must be filed not later than "11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication is publicly distributed or otherwise publicly disseminated." 11 C.F.R. § 109.10(d).

47. The FECA and FEC regulations further require a person who makes independent expenditures aggregating more than \$250 in a calendar year to file quarterly reports regarding the expenditures. 52 U.S.C. §§ 30104(b)(4), (b)(5)(A), (c)(2) (referencing 52 U.S.C. § 30104(a)(2)); 11 C.F.R. § 109.10(b). Those reports must describe the expenditure. 52 U.S.C. § 30104(b)(5)(A), (c)(2)(A) (referencing 52 U.S.C. § 30104(b)(6)(B)(iii)); 11 C.F.R. § 109.10(e)(1). The FECA further requires these reports to identify each person who made a contribution in excess of \$200 to the person filing the report “which was made for the purpose of furthering an independent expenditure,” 52 U.S.C. § 30104(c)(2)(C), and the identity of each person “who makes a contribution” to the person filing the report “whose contribution or contributions have an aggregate amount of value in excess of \$200 within a calendar year,” *id.* § 30104(c)(1) (incorporating by reference 52 U.S.C. § 30104(b)(3)(A)). FEC regulations require the reports to identify each person who made a contribution in excess of \$200 to the person filing the report which “was made for the purpose of furthering the reported independent expenditure.” 11 C.F.R. § 109.10(e)(1)(vi).²

48. The advertisement titled “Third Largest” is an independent expenditure because, taken as a whole, it could only be interpreted by a reasonable person as advocating for the defeat of a clearly identified candidate, former Gov. Strickland. The advertisement clearly identified Mr. Strickland by name, photograph, and video. The ad did not focus on any pending legislation or policy, but rather focused on Mr. Strickland’s qualifications for office and past performance, exhibiting the purpose of creating a negative impression of Mr. Strickland by suggesting that his

² The FEC’s interpretation fails to give full effect to the statutory provisions and conflicts with the statute. Nevertheless, notwithstanding the limited disclosure required by the FEC regulations, those making independent expenditures are obligated by the FECA to disclose the information described by the statute.

policies as governor were responsible for the loss of 350,000 jobs in Ohio during his time in office. The advertisement did not encourage viewers to contact Mr. Strickland or provide any way to contact him. The ad did refer, however, to former Gov. Strickland's candidacy, saying he "wants to bring his job-killing policies to Washington" while showing an image of the U.S. Capitol – where he would serve if elected senator. The ad then advocated the defeat of Mr. Strickland's candidacy for Senate, suggesting voters should not send Mr. Strickland to Washington as a senator representing Ohio because "[w]e can't afford more lost jobs." Though the advertisement was broadcast several months before the election, it aired after former Gov. Strickland, who had not held office since January 2011, had won the Democratic primary. The advertisement could only be reasonably interpreted as containing advocacy of the election or defeat of the candidate.

Count II

49. An independent expenditure in the form of a communication transmitted through television must include a disclaimer. 52 U.S.C. § 30120(d)(2); 11 C.F.R. §§ 110.11(a)-(b), (c)(4). The communication "must clearly state the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication," 11 C.F.R. § 110.11(b)(3), and must include the audio statement that "[the person paying for the communication] is responsible for the content of this advertising," conveyed by a representative of the person paying for the communication either in an unobscured, full-screen view of the representative or in a voiceover, 52 U.S.C. § 30120(d)(2); 11 C.F.R. § 110.11(c)(4)(i)-(ii). The communication must also include this statement in a "clearly readable manner." 52 U.S.C. § 30120(d)(2); 11 C.F.R. § 110.11(c)(4)(iii).

50. The television advertisement broadcast in June and July 2016 and paid for by FV was an independent expenditure, but it did not include either the audio or written disclaimer stating FV is responsible for the content of the advertising. By failing to include the disclaimer, FV violated 52 U.S.C. § 30120(d)(2) and 11 C.F.R. §§ 110.11(a)-(b), (c)(4).

Count III

51. FV was a political committee starting in 2014 and certainly no later than 2016, but failed to register as one with the FEC.

52. The FECA and FEC regulations define a “political committee” as “any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.” 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5(a). An “expenditure” includes “any . . . payment, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(9)(A)(i); 11 C.F.R. § 100.111 (a). A “contribution” includes “any gift . . . or deposit of money or anything of value made by any person for the purpose of furthering any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

53. FV made expenditures aggregating in excess of \$1,000 in 2014 and again in 2016, and accepted contributions in excess of \$1,000 in 2014 and again in 2016.

54. FV spent \$174,607 in 2014 on independent expenditures supporting then-Speaker Boehner in his primary election.

55. In 2015, FV gifted to or deposited \$200,000 with Fighting for Ohio Fund, which is a super PAC. In 2016, FV further gifted or deposited \$1,775,000 with Fighting for Ohio Fund. As a federal super PAC, Fighting for Ohio Fund makes independent expenditures in federal

racers. *SpeechNow.org v. FEC*, 599 F.3d 686, 694 (D.C. Cir. 2010); *see also, e.g.*, AO 2010-11 (Commonsense Ten) (authorizing organization that “intends to make only independent expenditures”). PACs registered with the FEC are, “by definition, campaign related.” *Buckley v. Valeo*, 424 U.S. 1, 79 (1976). Further, the PAC reported the transfers from FV as “contributions,” meaning they were provided “for the purpose of influencing [an] election for Federal office,” 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.25(a). FV’s gifts to or deposits with this super PAC are payments, gifts, or deposits made for the purpose of influencing an election for federal office, and therefore are expenditures.

56. FV also spent at least \$1,121,077 in June and July 2016 on an independent expenditure advocating the defeat of Strickland. Though FV failed to report its spending on the anti-Strickland Ohio ad to the Commission as an independent expenditure, the advertisement could only be interpreted as one by a reasonable person.

57. In addition, only organizations whose “major purpose” is the nomination or election of federal candidates can be “political committees.” *Buckley*, 424 U.S. at 79. The FEC conducts a fact-intensive, case-by-case analysis of an organization to determine if its major purpose is the nomination or election of federal candidates. Federal Election Commission, Political Committee Status, Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5601 (Feb. 7, 2007) (“Supplemental E&J”). An organization can exhibit a qualifying major purpose through its organizational planning documents, *id.*, or through sufficiently extensive spending on federal campaign activity. *See FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986); Supplemental E&J, 72 Fed. Reg. at 5601. Under the FECA, an organization’s political committee status is determined by viewing the activities and spending of the organization in the relevant “calendar year.” 52 U.S.C. § 30101(4)(A). Accordingly, an organization’s major

purpose must be evaluated on the same time frame. It is not proper to determine major purpose by looking at the lifetime activities of the organization, as the purpose of an organization can change over time. *See Citizens for Responsibility and Ethics in Washington v. FEC*, 209 F. Supp. 3d 77, 94 (D.D.C. 2016).

58. In 2010, an advisor to FV confirmed that FV's organizational purpose was to elect or nominate candidates for federal office. Cummings, *Politico*, Sept. 3, 2010.

59. Furthermore, between October 1, 2013 and September 30, 2014, FV's independent expenditures amounted to 61.3% of the organization's spending that year. That spending is sufficiently "extensive" to conclude the organization's major purpose was to elect or nominate federal candidates. Supplemental E&J, 72 Fed. Reg. at 5605 (noting group devoting at least "50-75%" of spending to campaign activity in a calendar year qualified as political committee).

60. In addition, FV's devoted at least 80.1% of its spending between October 1, 2015 and September 30, 2016 to political expenditures. FV's \$1,700,000 in gifts or deposits to Fighting for Ohio Fund – a super PAC that only engages in independent expenditures in federal races – were made for the purpose of influencing the 2016 Ohio Senate election. FV also disclosed spending an additional \$44,267 on political activity on its 2015 tax return. That spending alone accounted for 48.8% of FV's total spending during its 2015 fiscal year between October 1, 2015 and September 30, 2016.³ Adding the minimum of \$1,121,077 FV appears to have spent on the anti-Strickland ad, which was an independent expenditure, FV's political

³ This spending does not include the additional \$275,000 FV transferred to Fighting for Ohio Fund between the end of FV's 2015 fiscal year and the end of 2016.

spending increases to at least 80.1% of its total spending.⁴ Accordingly, FV's major purpose in 2016 was the election of candidates for federal office.

61. Finally, FV's combined spending on political activity between October 1, 2012 to September 30, 2016, the time period covering the 2014 and 2016 election cycles, accounts for at least 74.7% of FV's total spending in that time period. In fact, political spending accounts for the majority of FV's total spending since Mr. Nathanson has been the organization's executive director. Adding together FV's reported spending between October 1, 2011 and September 30, 2016, FV has spent \$4,260,653 in total during Mr. Nathanson's tenure as executive director. Political activity accounted for at least 71.3% of FV's total spending in that time period.

62. FECA and FEC regulations require all political committees to register with the FEC within 10 days of becoming a political committee. 52 U.S.C. § 30103(a); 11 C.F.R. § 102.2 (d).

63. FV is not, and has never been, registered as a political committee with the FEC.

64. By failing to register as a political committee, FV violated 52 U.S.C. § 30103(a) and 11 C.F.R. § 102.1(d).

Count IV

65. As a political committee, FV was required to file periodic reports with the FEC that, among other things: (1) identified all individuals who contributed an aggregate of more than \$200 in a year to FV, the amount each individual contributed, and the date of the contribution; (2) identified all political committees that made a contribution to FV, the amount each committee

⁴ The sums FV spent on the anti-Strickland ad count towards a finding that FV's major purpose was to nominate or elect candidates in 2016 even if the ad were not found to be an independent expenditure. *See* Supplemental E&J, 72 Fed. Reg. at 5601.

contributed, and the date of the contribution; (3) detailed FV's outstanding debts and obligations; and (4) listed all of FV's expenditures. 52 U.S.C. § 30104(a)(4); 52 U.S.C. § 30104(b); 11 C.F.R. §§ 104.1(a), 104.8.

66. FV failed to file any of these reports with the FEC.

67. By failing to file these reports, FV violated 52 U.S.C. § 30104(a)(4), 52 U.S.C. § 30104(b), and 11 C.F.R. §§ 104.1(a), 104.8.

Count V

68. FV acted as a conduit for one or more of the contributions to Fighting for Ohio Fund for which FV was reported as the true source. Accordingly, FV permitted its name to be used for a contribution in the name of another.⁵

69. The FECA and FEC regulations prohibit knowingly permitting one's name to be used to effect a contribution in the name of another person and knowingly helping or assisting any person in making a contribution in the name of another. 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b).

70. FV gave \$1,975,000 to Fighting for Ohio Fund, a super PAC, in 2015 and 2016. During that time period, Fighting for Ohio Fund employed the same fundraising consultant as FV, MMM Consulting. On its 2015 tax return, FV reported that MMM Consulting raised \$2,090,000 for FV, a sum almost equal to and sufficient to cover all of FV's transfers to Fighting for Ohio Fund during the 2016 election cycle. Moreover, five of the six transfers FV made to Fighting for Ohio Fund during the time period covered by the organization's 2015 tax return

⁵ Even if FV merely acted as a conduit for the 2016 contributions to Fighting for Ohio Fund, the contributions would still qualify FV as a political committee. Furthermore, FV's 2014 activity alone is sufficient to qualify it as a political committee, which status remains in effect until FV files the appropriate paperwork with the FEC to terminate its status.

correspond to exact amounts FV reported receiving on its Schedule of Contributors. For example, FV received a contribution of \$500,000 and in turn made a transfer of \$500,000, and FV received two separate contributions of \$250,000 and in turn made two separate transfers of \$250,000.

71. As a result, on multiple occasions, FV knowingly permitted its name to be used to effect the contribution and knowingly helped the undisclosed donor make the contribution, in violation of 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b). If FV's violations were knowing and willful, they also are subject to criminal penalties and referral to the Department of Justice. 52 U.S.C. §§ 30109(a)(5)(C), (d)(1).

Count VI

72. The FECA and FEC regulations also prohibit knowingly accepting a contribution made by one person in the name of another. 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b). The FECA and FEC regulations further require political committees to report the identity of those who make contributions, as well as anyone who acted as a conduit for a contribution. 52 U.S.C. § 30104(b)(2); 11 C.F.R. § 104.3(a)(2), (j) (political committees must report "earmarked contributions"); *see also Instructions for FEC Form 3X and Related Schedules* at 11 (revised May 2016), <https://bit.ly/2F19VxP> (any political committee receiving an earmarked contribution through conduit entities must "report each conduit through which the earmarked contribution passed, including the name and address of the conduit, and whether the contribution was passed on in cash, by the contributor's check, or by the conduit's check"); 52 U.S.C. § 30107(a)(8) (FEC forms have force of law).

73. As discussed above, Fighting for Ohio Fund employed the same fundraising consultant as FV, and five of the six transfers FV made to Fighting for Ohio Fund during the

time period covered by the organization's 2015 tax return correspond to exact amounts FV reported receiving on its Schedule of Contributors. As a result, Fighting for Ohio Fund by and through its treasurer, Christopher Marston, knowingly accepted a contribution made by one person in the name of another in violation of 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b). If Fighting for Ohio Fund and Mr. Marston's violations were knowing and willful, they also are subject to criminal penalties and referral to the Department of Justice. 52 U.S.C. §§ 30109(a)(5)(C), (d)(1).

74. Fighting for Ohio Fund by and through its treasurer, Christopher Marston, failed to report the identities of the true source of contributions and the identities of each conduit for the contributions falsely attributed to FV. Accordingly, Fighting for Ohio Fund and Christopher Marston violated 52 U.S.C. § 30104(b)(2) and 11 C.F.R. § 104.3(a)(2) and (j). If Fighting for Ohio Fund and Mr. Marston's violations were knowing and willful, they also are subject to criminal penalties and referral to the Department of Justice. 52 U.S.C. §§ 30109(a)(5)(C), (d)(1).

Count VII

75. The FECA and FEC regulations further prohibit making a contribution in the name of another person. 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b).

76. The Unknown Respondents provided to FV the money it in turn transferred to Fighting for Ohio Fund. By making one or more contributions to Fighting for Ohio Fund in the name of FV, the Unknown Respondents violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b). If the Unknown Respondent's violations were knowing and willful, they also are subject to criminal penalties and referral to the Department of Justice. 52 U.S.C. §§ 30109(a)(5)(C), (d)(1).

Conclusion

WHEREFORE, Citizens for Responsibility and Ethics in Washington and Noah Bookbinder request that the FEC conduct an investigation into these allegations; declare the respondents to have violated the FECA and applicable FEC regulations; and order respondents to correct these violations by filing the disclosure reports required for FV's 2016 independent expenditure, filing disclosure reports for FV required of political committees that, among other things, identify and make public each person who made contributions aggregating more than \$200, and file reports identifying the true source of and any conduits for any contributions to Fighting for Ohio Fund improperly attributed to FV. In addition, the complainants request that the FEC impose sanctions appropriate to these violations, and take such further action as may be appropriate, including referring this matter to the Department of Justice for criminal prosecution.



ON BEHALF OF COMPLAINANTS
Noah Bookbinder
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Citizens for Responsibility and Ethics
in Washington
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(202) 588-5020 (fax)

Verification

Citizens for Responsibility and Ethics in Washington and Noah Bookbinder hereby verify that the statements made in the attached Complaint are, upon information and belief, true. Sworn pursuant to 18 U.S.C. § 1001.

Noah Bookbinder

Noah Bookbinder

Sworn to and subscribed before me this 8 day of Aug, 2018

C. Cola

Notary Public

