June 15, 2016

The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

By electronic mail (IRS.Commissioner@IRS.gov) and First Class mail

Re: Complaint against Freedom Vote, Inc.

Dear Commissioner Koskinen:

Citizens for Responsibility and Ethics in Washington ("CREW") respectfully requests the Internal Revenue Service ("IRS") investigate whether Freedom Vote, Inc. ("FV"), a non-profit organization exempt from taxation pursuant to section 501(c)(4) of the Internal Revenue Code ("Code"), is operated primarily to influence political campaigns in violation of the Code.¹ During the time period covered by FV’s 2013 tax return, October 1, 2013 to September 30, 2014, the group spent nearly $175,000 on independent expenditures. FV’s political spending accounted for 61% of its total spending that year, apparently making politics the group’s primary activity.

**Freedom Vote, Inc.’s Political Activity**

FV is a non-profit corporation established in 2010 in Ohio.² It 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].”³ As a section 501(c)(4) tax-exempt organization, FV is required to file annual Form 990 tax returns. Tax-exempt organizations engaged in any “direct or indirect political campaign activities on behalf of or in opposition to candidates for public office” also must file a Schedule C with their tax returns, which requires disclosure of the amount spent on “political expenditures.”⁴ “Political expenditures” include all “political campaign activities” – defined as “[a]ll activities that support or oppose candidates for elective federal, state, or local public office.”⁵

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¹ CREW submits this letter in lieu of Form 13909; a copy is being sent to the Dallas office.
² Freedom Vote, Inc. 2013 Form 990, at 1 (excerpts attached as Exhibit A); Freedom Vote, Inc., Articles of Incorporation, Ohio Secretary of State, July 2, 2010, available at http://www2.sos.state.oh.us/reports/rwservlet?imgc12g&Did=201018700812.
⁴ Form 990, Part IV, Question 3; 2014 Instructions for Form 990, at 12; 2014 Instructions for Schedule C, at 1, 3.
⁵ Id. at 1; 2014 Instructions for Form 990, at 64.
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According to FV’s 2013 Form 990 tax return, the group spent $174,607 on political activity in the year covered,\(^6\) describing its activities as a “grassroots advocacy effort independently supporting and opposing candidates.”\(^7\) Specifically, FV paid for canvassers, campaign literature, and robocalls to support then-House Speaker John Boehner in his 2014 primary election.\(^8\)

According to FV’s 2013 tax return, the group spent a total of $284,754 between October 1, 2013 and September 30, 2014.\(^9\)

**Political Activity Under Section 501(c)(4)**

Section 501(c)(4) provides tax-exempt status to organizations “not organized for profit but operated exclusively for the promotion of social welfare.”\(^10\) IRS regulations interpret the statute to mean a section 501(c)(4) organization must be “primarily engaged in promoting in some way the common good and general welfare of the people of the community.”\(^11\) The regulations further provide that “direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office” does not promote social welfare.\(^12\)

The IRS has not further defined the “primary activity” standard, and provides only that all the facts and circumstances are to be taken into account in determining the “primary activity” of a section 501(c)(4) organization.\(^13\) Internal IRS training materials, however, assert section 501(c) organizations (other than section 501(c)(3) charities) “may generally make expenditures for political activities as long as such activities, in conjunction with any other non-qualifying activities, do not constitute the organization’s primary activity (51%).”\(^14\)

\(^6\) Freedom Vote, Inc. 2013 Form 990, Schedule C, Parts I-A and I-C.

\(^7\) Id., Schedule C, Parts I-C and IV.


\(^11\) Treas. Reg. § 1.501(c)(4)-1(a)(2)(i). By allowing section 501(c)(4) organizations to be only “primarily” engaged in social welfare, the regulation misinterprets the plain meaning of the word “exclusively” in the statute. This complaint analyzes FV’s conduct using the “primarily” standard. Under a correct interpretation of the statute, FV’s political spending unquestionably would violate its tax-exempt status.

\(^12\) Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii).


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When an advertisement explicitly advocates the election or defeat of an individual to public office, the expenditure unquestionably is political campaign activity.\textsuperscript{15} Get-out-the-vote activity conducted in a way that favors or opposes one candidate similarly is political.\textsuperscript{16}

As FV admitted, the $174,607 it spent on independent expenditures in 2014 constituted political activity. This spending accounted for 61.3\% of its total spending that year.

\textbf{Violation}

26 U.S.C. \textsection 501(c)(4)

Even under the IRS’s misinterpretation of section 501(c)(4), and certainly under the plain language of the statute, FV’s political activity in 2014 exceeded the amount permitted. Based on the amount FV reported spending on political activity, 61.3\% of its expenditures during that year were political, apparently violating the organization’s tax-exempt status.

\textbf{Conclusion}

Based on the publicly available information, FV’s activities do not comport with its claimed status as a section 501(c)(4) tax-exempt organization. Therefore, the IRS should investigate FV and, should it find that FV has violated its tax-exempt status, take appropriate action, which may include revoking its section 501(c)(4) status, imposing any applicable excise taxes under section 4958 for excess benefit transactions, and treating FV as a taxable corporation or a section 527 political organization.

Thank you for your prompt attention to this matter.

Sincerely,

\begin{flushright}
Noah Bookbinder  
Executive Director  
Citizens for Responsibility and Ethics in Washington
\end{flushright}

Encls.

cc: IRS-EO Classification

\textsuperscript{15} Rev. Rul. 2004-06; see also Judith E. Kindell and John Francis Reilly, \textit{Election Year Issues}, 2002 EO CPE Text, at 349, 388.

\textsuperscript{16} Rev. Rul. 2007-41.
**Return of Organization Exempt From Income Tax**

**Part I - Summary**

1. **Briefly describe the organization's mission or most significant activities**
   
   TO FURTHER THE COMMON GOOD AND GENERAL WELFARE OF THE PEOPLE OF OHIO

2. **Check this box if the organization discontinued its operations or disposed of more than 25% of its net assets**

3. **Number of voting members of the governing body (Part VI, line 1a)**

4. **Number of independent voting members of the governing body (Part VI, line 1b)**

5. **Total number of individuals employed in calendar year 2013 (Part V, line 2a)**

6. **Total number of volunteers (estimate if necessary)**

7a. **Total unrelated business revenue from Form 990-T, column (C), line 12**

7b. **Net unrelated business taxable income from Form 990-T, line 34**

8. **Contributions and grants (Part VIII, line 1h)**

9. **Program service revenue (Part VIII, line 2d)**

10. **Investment income (Part VIII, column (A), lines 3, 4, and 6d)**

11. **Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)**

12. **Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)**

13. **Grants and similar amounts paid (Part IX, column (A), lines 1-3)**

14. **Benefits paid to or for members (Part IX, column (A), line 4)**

15. **Salaries, other compensation, employee benefits (Part IX, column (A), lines 5-10)**

16a. **Professional fundraising fees (Part IX, column (A), line 11e)**

b. **Total fundraising expenses (Part IX, column (D), line 25)**

17. **Other expenses (Part IX, column (A), lines 11a-11d, 11f-24e)**

18. **Total expenses (must equal Part IX, column (A), line 25)**

19. **Revenue less expenses (Subtract line 10 from line 12)**

**Part II - Signature Block**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

**Sign Here**

Signature of officer

JAMES S NATHANSON EXECUTIVE DIRECTOR

Date: 2015-08-11

**Paid Preparer Use Only**

Firm's EIN: 31-0800000

Firm's Address: ONE EAST FOURTH ST SUITE 1200 CINCINNATI, OH 45202
**Political Campaign and Lobbying Activities**

*For Organizations Exempt From Income Tax Under section 501(c) and section 527*

- Complete if the organization is described below. Attach to Form 990 or Form 990-EZ.
- See separate instructions. Information about Schedule C (Form 990 or 990-EZ) and its instructions is at [www.irs.gov/form990](https://www.irs.gov/form990).

2013

Open to Public Inspection

### Part IA - Complete if the organization is exempt under section 501(c) or is a section 527 organization.

<table>
<thead>
<tr>
<th>Name of the organization</th>
<th>Employer identification number</th>
</tr>
</thead>
<tbody>
<tr>
<td>FREEDOM VOTE INC</td>
<td>27-3004397</td>
</tr>
</tbody>
</table>

1. Provide a description of the organization's direct and indirect political campaign activities in Part IV
2. Political expenditures
3. Volunteer hours

### Part IB - Complete if the organization is exempt under section 501(c)(3).

1. Enter the amount of any excise tax incurred by the organization under section 4955
2. Enter the amount of any excise tax incurred by organization managers under section 4955
3. If the organization incurred a section 4955 tax, did it file Form 4720 for this year?
   - Yes ☑
   - No 

### Part IC - Complete if the organization is exempt under section 501(c), except section 501(c)(3).

1. Enter the amount directly expended by the filing organization for section 527 exempt function activities
2. Enter the amount of the filing organization's funds contributed to other organizations for section 527 exempt function activities
3. Total exempt function expenditures: Add lines 1 and 2. Enter here and on Form 1120-POL, line 17b
   - $174,607
4. Did the filing organization file Form 1120-POL for this year?
   - Yes ☑
   - No 

5. Enter the names, addresses and employer identification number (EIN) of all section 527 political organizations to which the filing organization made payments. For each organization listed, enter the amount paid from the filing organization's funds. Also enter the amount of political contributions received that were promptly and directly delivered to a separate political organization, such as a separate segregated fund or a political action committee (PAC). If additional space is needed, provide information in Part IV.

<table>
<thead>
<tr>
<th>(a) Name</th>
<th>(b) Address</th>
<th>(c) EIN</th>
<th>(d) Amount paid from filing organization's funds if none, enter -0-</th>
<th>(e) Amount of political contributions received and promptly and directly delivered to a separate political organization if none, enter -0-</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

For Paperwork Reduction Act Notice, see the instructions for Form 990 or 990-EZ.
## Schedule C (Form 990 or 990-EZ) 2013

### Part II-A

Complete if the organization is exempt under section 501(c)(3) and filed Form 5768 (election under section 501(h)).

**A** Check □ if the filing organization belongs to an affiliated group (and list in Part IV each affiliated group member's name, address, EIN, expenses, and share of excess lobbying expenditures)

**B** Check □ if the filing organization checked box A and "limited control" provisions apply

### Limits on Lobbying Expenditures

(The term "expenditures" means amounts paid or incurred.)

<table>
<thead>
<tr>
<th>1a</th>
<th>Total lobbying expenditures to influence public opinion (grass roots lobbying)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1b</td>
<td>Total lobbying expenditures to influence a legislative body (direct lobbying)</td>
</tr>
<tr>
<td>1c</td>
<td>Total lobbying expenditures (add lines 1a and 1b)</td>
</tr>
<tr>
<td>1d</td>
<td>Other exempt purpose expenditures</td>
</tr>
<tr>
<td>1e</td>
<td>Total exempt purpose expenditures (add lines 1c and 1d)</td>
</tr>
<tr>
<td>1f</td>
<td>Lobbying nontaxable amount Enter the amount from the following table in both columns</td>
</tr>
</tbody>
</table>

If the amount on line 1e, column (a) or (b) is: The lobbying nontaxable amount is:

<table>
<thead>
<tr>
<th>Amount</th>
<th>Nontaxable Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $500,000</td>
<td>20% of the amount on line 1e</td>
</tr>
<tr>
<td>Over $500,000 but not over $1,000,000</td>
<td>$100,000 plus 15% of the excess over $500,000</td>
</tr>
<tr>
<td>Over $1,000,000 but not over $1,500,000</td>
<td>$175,000 plus 10% of the excess over $1,000,000</td>
</tr>
<tr>
<td>Over $1,500,000 but not over $17,000,000</td>
<td>$225,000 plus 5% of the excess over $1,500,000</td>
</tr>
<tr>
<td>Over $17,000,000</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

| g | Grassroots nontaxable amount (enter 25% of line 1f) |
| h | Subtract line 1g from line 1a If zero or less, enter -0- |
| i | Subtract line 1f from line 1c If zero or less, enter -0- |
| j | If there is an amount other than zero on either line 1h or line 1i, did the organization file Form 4720 reporting section 4911 tax for this year? Yes □ No □ |

### 4-Year Averaging Period Under Section 501(h)

(Some organizations that made a section 501(h) election do not have to complete all of the five columns below. See the instructions for lines 2a through 2f on page 4.)

<table>
<thead>
<tr>
<th>Lobbying Expenditures During 4-Year Averaging Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calender year (or fiscal year beginning in)</td>
</tr>
<tr>
<td>2a Lobbying nontaxable amount</td>
</tr>
<tr>
<td>2b Lobbying ceiling amount (150% of line 2a, column(e))</td>
</tr>
<tr>
<td>2c Total lobbying expenditures</td>
</tr>
<tr>
<td>2d Grassroots nontaxable amount</td>
</tr>
<tr>
<td>2e Grassroots ceiling amount (150% of line 2d, column(e))</td>
</tr>
<tr>
<td>2f Grassroots lobbying expenditures</td>
</tr>
</tbody>
</table>

Schedule C (Form 990 or 990-EZ) 2013
**Schedule C (Form 990 or 990-EZ) 2013**

**Part II-B** Complete if the organization is exempt under section 501(c)(3) and has NOT filed Form 5768 (election under section 501(h)).

For each "Yes" response to lines 1a through 1i below, provide in Part IV a detailed description of the lobbying activity.

<table>
<thead>
<tr>
<th></th>
<th>(a)</th>
<th>(b)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

1. During the year, did the filing organization attempt to influence foreign, national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of?
   a. Volunteers?
   b. Paid staff or management (include compensation in expenses reported on lines 1c through 1i)?
   c. Media advertisements?
   d. Mailings to members, legislators, or the public?
   e. Publications, or published or broadcast statements?
   f. Grants to other organizations for lobbying purposes?
   g. Direct contact with legislators, their staffs, government officials, or a legislative body?
   h. Rallies, demonstrations, seminars, conventions, speeches, lectures, or any similar means?
   i. Other activities?
   j. Total Add lines 1c through 1i.

2a. Did the activities in line 1 cause the organization to be not described in section 501(c)(3)?
   b. If "Yes," enter the amount of any tax incurred under section 4912
   c. If "Yes," enter the amount of any tax incurred by organization managers under section 4912
   d. If the filing organization incurred a section 4912 tax, did it file Form 4720 for this year?

**Part III-A** Complete if the organization is exempt under section 501(c)(4), section 501(c)(5), or section 501(c)(6).

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Were substantially all (90% or more) dues received nondeductible by members?</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2. Did the organization make only in-house lobbying expenditures of $2,000 or less?</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3. Did the organization agree to carry over lobbying and political expenditures from the prior year?</td>
<td>3</td>
<td></td>
</tr>
</tbody>
</table>

**Part III-B** Complete if the organization is exempt under section 501(c)(4), section 501(c)(5), or section 501(c)(6) and if either (a) BOTH Part III-A, lines 1 and 2, are answered "No" OR (b) Part III-A, line 3, is answered "Yes."

| 1. Dues, assessments and similar amounts from members |
| 2. Section 162(e) nondeductible lobbying and political expenditures (do not include amounts of political expenses for which the section 527(f) tax was paid). |
| a. Current year |
| b. Carryover from last year |
| c. Total |
| 3. Aggregate amount reported in section 6033(e)(1)(A) notices of nondeductible section 162(e) dues |
| 4. If notices were sent and the amount on line 2c exceeds the amount on line 3, what portion of the excess does the organization agree to carryover to the reasonable estimate of nondeductible lobbying and political expenditure next year? |
| 5. Taxable amount of lobbying and political expenditures (see instructions) |

**Part IV** Supplemental Information

Provide the descriptions required for Part I-A, line 1, Part I-B, line 4, Part I-C, line 5, Part II-A (affiliated group list), Part II-A, line 2, and Part II-B, line 1. Also, complete this part for any additional information.

<table>
<thead>
<tr>
<th>Return Reference</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>PART I-A, LINE 1</td>
<td>THE ORGANIZATION ENGAGED IN A GRASSROOTS ADVOCACY EFFORT INDEPENDENTLY SUPPORTING AND OPPOSING CANDIDATES</td>
</tr>
</tbody>
</table>