

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](mailto: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.<sup>1</sup> 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.<sup>2</sup> 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].”<sup>3</sup> 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.”<sup>4</sup> “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.”<sup>5</sup>

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<sup>1</sup> CREW submits this letter in lieu of Form 13909; a copy is being sent to the Dallas office.

<sup>2</sup> 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&Din=201018700812>.

<sup>3</sup> Jeanne Cummings, *State Parties Look Past RNC for Cash*, *Politico*, Sept. 3, 2010, available at <http://www.politico.com/story/2010/09/state-parties-look-past-rnc-for-cash-041733>.

<sup>4</sup> Form 990, Part IV, Question 3; 2014 Instructions for Form 990, at 12; 2014 Instructions for Schedule C, at 1, 3.

<sup>5</sup> *Id.* at 1; 2014 Instructions for Form 990, at 64.

According to FV's 2013 Form 990 tax return, the group spent \$174,607 on political activity in the year covered,<sup>6</sup> describing its activities as a "grassroots advocacy effort independently supporting and opposing candidates."<sup>7</sup> Specifically, FV paid for canvassers, campaign literature, and robocalls to support then-House Speaker John Boehner in his 2014 primary election.<sup>8</sup>

According to FV's 2013 tax return, the group spent a total of \$284,754 between October 1, 2013 and September 30, 2014.<sup>9</sup>

### **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."<sup>10</sup> 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."<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup> 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%)."<sup>14</sup>

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<sup>6</sup> Freedom Vote, Inc. 2013 Form 990, Schedule C, Parts I-A and I-C.

<sup>7</sup> *Id.*, Schedule C, Parts I-C and IV.

<sup>8</sup> Freedom Vote, FEC Form 5, 2014 April Quarterly Report, Amended, July 15, 2014, *available at* <http://docquery.fec.gov/pdf/565/14941815565/14941815565.pdf>; Freedom Vote, FEC Form 5, 2014 July Quarterly Report, July 15, 2014, *available at* <http://docquery.fec.gov/pdf/967/14941817967/14941817967.pdf>.

<sup>9</sup> Freedom Vote, Inc. 2013 Form 990, Part I, Line 18.

<sup>10</sup> 26 U.S.C. § 501(c)(4).

<sup>11</sup> 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.

<sup>12</sup> Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii).

<sup>13</sup> Rev. Rul. 68-45, 1968-1 C.B. 259.

<sup>14</sup> Exempt Organizations Determinations Unit 2, Student Guide, Training 29450-002 (Rev. 9-2009), at 7-19 (emphasis added), *available at* [http://www.taxanalysts.com/www/freecfiles.nsf/Files/EO%204.pdf/\\$file/EO%204.pdf](http://www.taxanalysts.com/www/freecfiles.nsf/Files/EO%204.pdf/$file/EO%204.pdf).

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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.<sup>15</sup> Get-out-the-vote activity conducted in a way that favors or opposes one candidate similarly is political.<sup>16</sup>

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.

### Violation

#### 26 U.S.C. § 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.

### 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,



Noah Bookbinder  
Executive Director  
Citizens for Responsibility and Ethics in Washington

Encls.

cc: IRS-EO Classification

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<sup>15</sup> Rev. Rul. 2004-06; *see also* Judith E. Kindell and John Francis Reilly, Election Year Issues, 2002 EO CPE Text, at 349, 388.

<sup>16</sup> Rev. Rul. 2007-41.

**EXHIBIT A**

Form **990**  
 Department of the Treasury  
 Internal Revenue Service

# Return of Organization Exempt From Income Tax

OMB No 1545-0047  
**2013**  
 Open to Public Inspection

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)  
 Do not enter Social Security numbers on this form as it may be made public. By law, the IRS generally cannot redact the information on the form.  
 Information about Form 990 and its instructions is at [www.irs.gov/form990](http://www.irs.gov/form990)

**A For the 2013 calendar year, or tax year beginning 10-01-2013, 2013, and ending 09-30-2014**

**B** Check if applicable:  
 Address change  
 Name change  
 Initial return  
 Terminated  
 Amended return  
 Application pending

**C** Name of organization: FREEDOM VOTE INC  
 Doing Business As: \_\_\_\_\_  
 Number and street (or P O box if mail is not delivered to street address) Room/suite: 131 NORTH LUDLOW STREET NO 315  
 City or town, state or province, country, and ZIP or foreign postal code: DAYTON, OH 45402

**D** Employer identification number: 27-3004397  
**E** Telephone number: (937) 222-0131  
**G** Gross receipts \$ 255,000

**F** Name and address of principal officer: JAMES S NATHANSON, 131 NORTH LUDLOW STREET NO 315, DAYTON, OH 45402

**H(a)** Is this a group return for subordinates?  Yes  No  
**H(b)** Are all subordinates included?  Yes  No  
 If "No," attach a list (see instructions)  
**H(c)** Group exemption number ▶ \_\_\_\_\_

**I** Tax-exempt status:  501(c)(3)  501(c)(4) (insert no)  4947(a)(1) or  527

**J** Website: WWW.FREEDOMVOTE.NET

**K** Form of organization:  Corporation  Trust  Association  Other ▶ \_\_\_\_\_  
**L** Year of formation: 2010 **M** State of legal domicile: OH

**Part I Summary**

Activities & Governance	<b>1</b> Briefly describe the organization's mission or most significant activities TO FURTHER THE COMMON GOOD AND GENERAL WELFARE OF THE PEOPLE OF OHIO				
	<b>2</b> Check this box <input type="checkbox"/> if the organization discontinued its operations or disposed of more than 25% of its net assets				
	<b>3</b> Number of voting members of the governing body (Part VI, line 1a)	<b>3</b>	1		
	<b>4</b> Number of independent voting members of the governing body (Part VI, line 1b)	<b>4</b>	1		
	<b>5</b> Total number of individuals employed in calendar year 2013 (Part V, line 2a)	<b>5</b>	0		
	<b>6</b> Total number of volunteers (estimate if necessary)	<b>6</b>	0		
	<b>7a</b> Total unrelated business revenue from Part VIII, column (C), line 12	<b>7a</b>	0		
<b>7b</b> Net unrelated business taxable income from Form 990-T, line 34	<b>7b</b>	0			
Revenue	<b>8</b> Contributions and grants (Part VIII, line 1h)	Prior Year	200,000	Current Year	255,000
	<b>9</b> Program service revenue (Part VIII, line 2g)		0		0
	<b>10</b> Investment income (Part VIII, column (A), lines 3, 4, and 7d)		0		0
	<b>11</b> Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)		0		0
	<b>12</b> Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)		200,000		255,000
Expenses	<b>13</b> Grants and similar amounts paid (Part IX, column (A), lines 1–3)		0		5,000
	<b>14</b> Benefits paid to or for members (Part IX, column (A), line 4)		0		0
	<b>15</b> Salaries, other compensation, employee benefits (Part IX, column (A), lines 5–10)		20,000		21,000
	<b>16a</b> Professional fundraising fees (Part IX, column (A), line 11e)		0		0
	<b>b</b> Total fundraising expenses (Part IX, column (D), line 25) ▶ 3,823				
	<b>17</b> Other expenses (Part IX, column (A), lines 11a–11d, 11f–24e)		130,430		258,754
	<b>18</b> Total expenses Add lines 13–17 (must equal Part IX, column (A), line 25)		150,430		284,754
<b>19</b> Revenue less expenses Subtract line 18 from line 12		49,570		-29,754	
Net Assets or Fund Balances	<b>20</b> Total assets (Part X, line 16)	Beginning of Current Year	79,374	End of Year	49,620
	<b>21</b> Total liabilities (Part X, line 26)		0		0
	<b>22</b> Net assets or fund balances Subtract line 21 from line 20		79,374		49,620

**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: \_\_\_\_\_ Date: 2015-08-11  
 JAMES S NATHANSON EXECUTIVE DIRECTOR  
 Type or print name and title

**Paid Preparer Use Only**  
 Print/Type preparer's name: JOHN T LIND Preparer's signature: \_\_\_\_\_ Date: 2015-08-11  
 Firm's name: CLARK SCHAEFER HACKETT & CO Firm's EIN: 31-0800053  
 Firm's address: ONE EAST FOURTH ST SUITE 1200 Phone no: (513) 241-3111  
 CINCINNATI, OH 45202

May the IRS discuss this return with the preparer shown above? (see instructions)  Yes  No

SCHEDULE C (Form 990 or 990-EZ)

Political Campaign and Lobbying Activities

OMB No 1545-0047

2013

Open to Public Inspection

Department of the Treasury Internal Revenue Service

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.

- If the organization answered "Yes" to Form 990, Part IV, Line 3, or Form 990-EZ, Part V, line 46 (Political Campaign Activities), then
- Section 501(c)(3) organizations Complete Parts I-A and B Do not complete Part I-C
- Section 501(c) (other than section 501(c)(3)) organizations Complete Parts I-A and C below Do not complete Part I-B
- Section 527 organizations Complete Part I-A only
If the organization answered "Yes" to Form 990, Part IV, Line 4, or Form 990-EZ, Part VI, line 47 (Lobbying Activities), then
- Section 501(c)(3) organizations that have filed Form 5768 (election under section 501(h)) Complete Part II-A Do not complete Part II-B
- Section 501(c)(3) organizations that have NOT filed Form 5768 (election under section 501(h)) Complete Part II-B Do not complete Part II-A
If the organization answered "Yes" to Form 990, Part IV, Line 5 (Proxy Tax) or Form 990-EZ, Part V, line 35c (Proxy Tax), then
- Section 501(c)(4), (5), or (6) organizations Complete Part III

Name of the organization FREEDOM VOTE INC

Employer identification number

27-3004397

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

- 1 Provide a description of the organization's direct and indirect political campaign activities in Part IV
2 Political expenditures \$ 174,607
3 Volunteer hours

Part I-B 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
4a Was a correction made? [ ] Yes [ ] No
b If "Yes," describe in Part IV

Part I-C 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 \$ 174,607
2 Enter the amount of the filing organization's funds contributed to other organizations for section 527 exempt function activities \$ 0
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 [x] 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 with 5 columns: (a) Name, (b) Address, (c) EIN, (d) Amount paid from filing organization's funds, (e) Amount of political contributions received and promptly and directly delivered to a separate political organization.

**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.)

	(a) Filing organization's totals	(b) Affiliated group totals
<b>1a</b> Total lobbying expenditures to influence public opinion (grass roots lobbying)		
<b>b</b> Total lobbying expenditures to influence a legislative body (direct lobbying)		
<b>c</b> Total lobbying expenditures (add lines 1a and 1b)		
<b>d</b> Other exempt purpose expenditures		
<b>e</b> Total exempt purpose expenditures (add lines 1c and 1d)		
<b>f</b> Lobbying nontaxable amount Enter the amount from the following table in both columns		

If the amount on line 1e, column (a) or (b) is:	The lobbying nontaxable amount is:
Not over \$500,000	20% of the amount on line 1e
Over \$500,000 but not over \$1,000,000	\$100,000 plus 15% of the excess over \$500,000
Over \$1,000,000 but not over \$1,500,000	\$175,000 plus 10% of the excess over \$1,000,000
Over \$1,500,000 but not over \$17,000,000	\$225,000 plus 5% of the excess over \$1,500,000
Over \$17,000,000	\$1,000,000

- g** Grassroots nontaxable amount (enter 2.5% 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.)

Lobbying Expenditures During 4-Year Averaging Period					
Calendar year (or fiscal year beginning in)	(a) 2010	(b) 2011	(c) 2012	(d) 2013	(e) Total
<b>2a</b> Lobbying nontaxable amount					
<b>b</b> Lobbying ceiling amount (150% of line 2a, column (e))					
<b>c</b> Total lobbying expenditures					
<b>d</b> Grassroots nontaxable amount					
<b>e</b> Grassroots ceiling amount (150% of line 2d, column (e))					
<b>f</b> Grassroots lobbying expenditures					

**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.

	(a)		(b)
	Yes	No	Amount
<b>1</b> 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			
<b>a</b> Volunteers?			
<b>b</b> Paid staff or management (include compensation in expenses reported on lines 1c through 1i)?			
<b>c</b> Media advertisements?			
<b>d</b> Mailings to members, legislators, or the public?			
<b>e</b> Publications, or published or broadcast statements?			
<b>f</b> Grants to other organizations for lobbying purposes?			
<b>g</b> Direct contact with legislators, their staffs, government officials, or a legislative body?			
<b>h</b> Rallies, demonstrations, seminars, conventions, speeches, lectures, or any similar means?			
<b>i</b> Other activities?			
<b>j</b> Total. Add lines 1c through 1i			
<b>2a</b> Did the activities in line 1 cause the organization to be not described in section 501(c)(3)?			
<b>b</b> If "Yes," enter the amount of any tax incurred under section 4912			
<b>c</b> If "Yes," enter the amount of any tax incurred by organization managers under section 4912			
<b>d</b> 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).**

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

**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."**

<b>1</b> Dues, assessments and similar amounts from members	<b>1</b>	
<b>2</b> Section 162(e) nondeductible lobbying and political expenditures (do not include amounts of political expenses for which the section 527(f) tax was paid).		
<b>a</b> Current year	<b>2a</b>	
<b>b</b> Carryover from last year	<b>2b</b>	
<b>c</b> Total	<b>2c</b>	
<b>3</b> Aggregate amount reported in section 6033(e)(1)(A) notices of nondeductible section 162(e) dues	<b>3</b>	
<b>4</b> 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?	<b>4</b>	
<b>5</b> Taxable amount of lobbying and political expenditures (see instructions)	<b>5</b>	

**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.

Return Reference	Explanation
PART I-A, LINE 1	THE ORGANIZATION ENGAGED IN A GRASSROOTS ADVOCACY EFFORT INDEPENDENTLY SUPPORTING AND OPPOSING CANDIDATES



**Part IV Supplemental Information (continued)**

Return Reference	Explanation