FEDERAL ELECTION COMMISSION
Washington, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 7465
Freedom Vote, Inc.	)	

STATEMENT OF REASONS OF CHAIR SHANA M. BROUSSARD AND COMMISSIONERS STEVEN T. WALTHER AND ELLEN L. WEINTRAUB

On November 9, 2021 – nearly three months before the statute of limitations was set to expire – the Commission failed to support the recommendation of our Office of General Counsel (OGC) to find probable cause to believe that Freedom Vote, Inc. ("Freedom Vote") violated the Federal Election Campaign Act of 1971, as amended ("Act"), by engaging in primarily federal campaign activity for several years without registering and reporting as a political committee.[1] We strongly supported OGC's recommendation. However, because three of our colleagues voted against it, the public will never see a complete and accurate accounting of Freedom Vote's receipts and disbursements.

Looking back at "political committee" cases that have come before the Commission over the past several years, a clear pattern has emerged. Typically, a sworn complaint is filed with the Commission that contains allegations related to an unregistered entity's political committee status. The respondent entity – usually an incorporated non-profit organization – will receive notice from Commission and provided an opportunity to respond to the complaint. OGC will then conduct a thorough review of the available information. If OGC determines that there is "reason to believe" that the entity has violated the law by failing to register as a political committee and to fully disclose its financial activity, OGC will submit to the Commission a factual and legal analysis along with a recommendation to find that a violation may have occurred and that an investigation should be conducted. Next, the Commissioners will meet and debate the merits of the case. Ultimately, it is historically *very unlikely* that four Commissioners – the minimum number required to take action – will support OGC's recommendations, thereby preventing our staff from conducting an investigation to determine whether there is "probable

[1] *See* OGC's Notice to the Commission Following the Submission of Probable Cause Brief, dated Oct. 15, 2021, and Certification ("Cert.") dated Nov. 14, 2021. We voted to find probable cause to believe that Freedom Vote violated 52 U.S.C. §§ 30102; 30103; and 30104(a), (b), and (g)(2) by failing to organize, register, and report as a political committee; Vice Chair Dickerson and Commissioners Cooksey and Trainor voted against.

cause to believe" the organization violated the Act.[2]

So when the Commission takes the rare step of actually finding that the low reason-to-believe standard has been satisfied and authorizes an investigation – as it did in this case – there is cause for optimism that, should the investigation confirm the Commission's initial findings, the violator may be held to account and voters may learn the identities of donors and other useful information to which they are entitled. Here, the investigation conducted by our professional staff, which included a subpoena for documents and a deposition of Freedom Vote's Executive Director, substantially bolstered the information presented to the Commission at the reason-to-believe stage, easily satisfying the Act's probable-cause-to-believe standard.

The Commission obtained overwhelming evidence that Freedom Vote, an incorporated 501(c)(4) organization, spent more than the statutory threshold for qualifying as a political committee and had the "major purpose" of nominating or electing a federal candidate.[3] The investigation revealed that, from 2014 until its termination as an entity in 2019, over 71% of

[2] *See, e.g.*, MUR 7860 (Jobs and Progress Fund, Inc. *et al.*) (OGC recommends finding reason to believe respondent violated the Act by not registering and reporting as a political committee, but there is an insufficient number of Commissioners to support OGC's recommendations; *see* First General Counsel's Report (FGCR) dated Aug. 27, 2021and Cert. dated Oct. 28, 2021); MUR 7513 (Community Issues Project) (same; *see* FGCR dated Sept. 18, 2019 and Cert. dated Sept. 2, 2021); MUR 7405 (Iowans for a Progressive Tomorrow) (same; *see* FGCR dated May 30, 2019 and Cert. dated Apr. 6, 2021 (settled in ADR 1013 on other violations)); MUR 7479 (Keeping America in Republican Control PAC, *et al*.) (same; *see* FGCR dated Aug. 26, 2019 and Cert. dated Mar. 9, 2021); MUR 7181 (Independent Women's Voice) (same; see FGCR dated Jan. 21, 2020 and Cert. dated Feb. 9, 2021); MUR 6596 (Crossroads Grassroots Policy Strategies) (same; *see* FGCR dated Mar. 10, 2014 and Certs. dated Oct. 29, 2015, Nov. 17, 2015, Dec. 17, 2015, and Mar. 26, 2019); MUR 6872 (New Models) (same; *see* FGCR dated May 21, 2015 and Cert. dated Nov. 14, 2017); MURs 6391 and 6471 (Commission on Hope, Growth and Opportunity) (same; *see* FGCR dated Mar. 10, 2014 and Cert. dated Sept. 16, 2014); MUR 6402 (American Future Fund) (same; *see* FGCR dated Jan. 17, 2013 and Cert. dated Nov. 18, 2014); MUR 6538 (Americans for Job Security) (same; *see* FGCR dated May 2, 2013 and Cert. dated June 24, 2014); MUR 6589 (American Action Network) (same; *see* FGCR dated Jan. 17, 2013 and Cert. dated June 24, 2014). In MUR 6538 (Americans for Job Security), in an action brought by the administrative complainant (CREW), a court found the Commission's dismissal to be contrary to law and remanded the matter. *See CREW v. FEC (CREW I)*, 209 F. Supp. 3d 77 (D.D.C. 2016). The Commission ultimately entered into a conciliation agreement requiring Americans for Job Security to register as a political committee and file disclosure reports. In MUR 6589 (American Action Network), the Commission twice dismissed the complaint and, in actions brought by CREW against the Commission, the court found both dismissals to be contrary to law. *See CREW I*; *CREW v. FEC (CREW II)*, 299 F. Supp. 3d 83 (D.D.C. 2018). CREW ultimately sued American Action Network under the Act's "citizen-suit" provision. 52 U.S.C. § 30109(a)(8)(C).

[3] The Act and Commission 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 in excess of $1,000 during a calendar year." 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5. The Supreme Court concluded that the term "political committee" "need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." *Buckley v. Valeo*, 424 U.S. 1, 79 (1976). Accordingly, under the statute as thus construed, an organization that is not controlled by a candidate must register as a political committee only if it (1) crosses the $1,000 threshold and (2) has as its "major purpose" the nomination or election of federal candidates. Under the Commission's case-by-case approach, the Commission considers an organization's "overall conduct," including public statements about its mission, organizational documents, government filings, and the proportion of spending related to "Federal campaign activity (i.e., the nomination or election of a Federal candidate." *See* Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5602 (Feb. 7, 2007) ("Supplemental E&J"). The Commission has stated that it compares how much of an organization's spending is for "federal campaign activity" relative to "activities that [a]re not campaign related." *Id*. at 5597, 5605-06.

Freedom Vote's expenditures aggregating over $3.4 million constituted federal campaign activity.[4] Our staff's thorough review of Freedom Vote's financial activity over this period concluded that the organization made *no* specific policy, issue advocacy, or education expenditures.

It is important for the public to understand the depth and range of the evidence the Commission had before it when our colleagues rejected OGC's recommendation to find probable cause to believe:

- In 2014, Freedom Vote reported that it spent $174,608 on independent expenditures supporting John Boehner, which, by definition, contain express advocacy.[5] Therefore, Freedom Vote's expenditures well exceeded the Act's $1,000 statutory threshold.

- Under the Commission's case-by-case approach, Freedom Vote's "overall conduct" indicates that its major purpose became the nomination or election of federal candidates in 2014.[6] In that year Freedom Vote reported $174,608 in independent expenditures supporting federal candidate John Boehner, but the record indicates that it in fact spent $239,878 (83% of its 2014 expenses) on express advocacy.

- Freedom Vote's unreported 2014 expenses included additional sums to produce and distribute the Boehner communications, such as invoices that explicitly mention Ohio's 8th District, which is Boehner's Congressional District in Ohio.[7] Freedom Vote also made unreported payments that year to Nathanson & Associates, the consulting firm of Executive Director James Nathanson; invoices show that these expenses were billed explicitly as "OH 8 IE Expenditures."[8]

- Freedom Vote incurred other 2014 expenses associated with the reported independent expenditures that provide further evidence of its purpose. For example, it made unreported payments to The Strategy Group Company for materials relating to the two candidates running against Boehner and opposed in Freedom Vote's independent expenditures.[9] Nathanson admitted under oath that Freedom Vote's payments to the Strategy Group Company were for "opposition research" for the Boehner race.[10] Aggregating these unreported 2014 expenses with those that Freedom Vote already reported to the Commission, the total of Freedom Vote's political spending in support of Boehner's candidacy was at least $239,878, or 83% of its total expenditures in 2014.

- When asked about Freedom Vote's issue-related work, Nathanson was unable to recall

[4] In most instances the numbers in the text have been rounded to the nearest dollar or percent; in its General Counsel's Brief, OGC generally calculates them to the precise cent or decimal. *See* General Counsel's Brief in MUR 7465, dated Sept. 20, 2021 ("GC Brief").
[5] *See* 52 U.S.C. § 30101(17) ("The term 'independent expenditure' means an expenditure by a person … expressly advocating the election or defeat of a clearly identified candidate.").
[6] Supplemental E&J at 5602.
[7] GC Brief at 8.
[8] *Id.*
[9] *Id.* at 9.
[10] *Id*.

any specific examples of such advocacy and responded that Freedom Vote was concerned with issues that "affected Speaker Boehner."[11] Freedom Vote's internal communications further reflect that its advocacy during the 2014 cycle was electoral rather than issue-related, as its agents and vendors discussed the organization's work in terms of election cycles and races – in particular, John Boehner's re-election in the 8th Congressional District of Ohio.[12]

- Writing to a donor in April 2014, Nathanson described Freedom Vote's anticipated expenses, totaling $90,000, and explained that he was assuming "maximum effort through election day."[13] When asked about what this meant, and why election day was important for his work for Freedom Vote, Nathanson did not have a clear recollection, but based upon the date of the email, he assumed that this email concerned the date for the primary election in the 8th Congressional District of Ohio, i.e., the date of John Boehner's primary election.[14] He added that Freedom Vote's work on its issues was closely tied to elections, stating: "If what we were concerned about were economic issues affecting Ohio as they were explained in election campaigns, those issues tend to die one way or another once there's no longer a campaign. Then it turns in to the policymakers, and with policymakers, the citizens of Ohio have less to do."[15] When asked whether Freedom Vote ever advocated for its issues with policymakers after an election had concluded, Nathanson stated, "I don't think we ever did."[16]

- In 2015, Freedom Vote made a $200,000 contribution to an independent expenditure-only political committee (i.e., a "super PAC" registered with the Commission), Fighting for Ohio Fund, and spent $17,539 on research and polling regarding federal candidate Thomas Massie.[17] In total, Freedom Vote spent $217,539, or 66% of its expenses, on federal election activity in 2015.

- In 2016, Freedom Vote made $1.8 million in contributions to Fighting for Ohio Fund and spent $109,850 on analytics and polling "in the context of the issues raised in the 2016 Senate race," according to Nathanson.[18] It also spent $1.1 million on a television advertisement that Nathanson admitted was about Ted Strickland's 2016 Senate campaign.[19] Together, Freedom Vote spent $2,987,563 (77% of its expenses) on activity indicating a major purpose of nominating or electing a federal candidate in 2016.

- Freedom Vote's contributions and solicitations also evinced an electoral purpose. One 2016 donor who gave half a million dollars explicitly stated that the funds were for "the reelection of [U.S. Senator] Rob Portman."[20] In one solicitation, a key adviser to

[11] *Id.* at 10.
[12] *Id*.
[13] *Id*.
[14] *Id.* at 10-11.
[15] *Id.* at 11.
[16] *Id*.
[17] *Id.* at 12.
[18] *Id.* at 23.
[19] *Id*.
[20] *Id.* at 28.

Freedom Vote successfully convinced a donor to make a contribution by attaching a poll indicating that Portman's opponent Ted Strickland was doing poorly and stating that "what we [Freedom Vote] are doing is working."[21] Such statements directly connect Freedom Vote's activities to the purpose of electing a federal candidate.

- In 2019, Freedom Vote paid $20,000 to settle an Internal Revenue Service inquiry into the time period the organization used to determine its major purpose.

To describe OGC's investigation in this matter as "thorough" is actually an understatement. In order to ascertain the extent, nature, and cost of Freedom Vote's federal campaign activity, OGC sought and ultimately obtained a trove of financial documents. In finding that the reason-to-believe standard was satisfied, the Commission possessed little financial documentation other than Freedom Vote's publicly available tax returns, which were all filed on a fiscal year basis (Oct. 1st through Sept. 30th). However, prior to the probable-cause-to-believe vote, the Commission was able to review financial ledgers obtained from Freedom Vote via subpoena that documented *every cent* the organization received and spent on a calendar year basis from 2014 to 2019.[22] Nathanson testified under oath that he personally prepared the ledgers and that they were true and accurate to the best of his knowledge. OGC based its calculations in the General Counsel's Brief entirely upon these documents; our staff was able to connect every disbursement by Freedom Vote to the ledgers and the associated invoices and receipts obtained during the investigation.

Based on its detailed financial review, OGC compiled the following chart showing Freedom Vote's spending on federal campaign activity as compared to its total spending; the figures demonstrate that Freedom Vote's major purpose had become the nomination or election of a federal candidate by 2014.

Year[23]	Total Expenses	Federal Campaign Activity	% of Total Spending
2010	$1,265,384.00	$0.00	0.00%
2011	$1,886,457.00	$0.00	0.00%
2012	$191,416.00	$0.00	0.00%
2013	$150,430.00	$0.00	0.00%
2014	$290,161.09	$239,877.81	82.67%
2015	$328,223.80	$217,539.00	66.28%
2016	$3,862,274.37	$2,987,563.45	77.35%
2017	$134,868.53	$0.00	0.00%

[21] *Id.* at 15, 27.
[22] OGC was limited to the information contained in Freedom Vote's tax returns for the years 2010-13, which were based on fiscal year.
[23] *Id*. The figures in the chart are based on calendar year; however, the total expenses listed for years 2010 through 2013 reflect fiscal year expenses – of which nine months were spent in the named calendar year.

2018	$187,222.63	$0.00	0.00%
2019	$20,407.85	$0.00	0.00%

These figures, backed up by a wealth of documentary evidence, clearly demonstrate that between 2014 and Freedom Vote's termination in 2019, it spent $3.4 million (71% of its total expenses[24]) on federal campaign activity.[25]

Turning to the statute of limitations issue – which is apparently the primary basis of our colleagues' refusal to support OGC's recommendation – it is important to consider the obstacles faced, and overcome, by the Commission over the course of this matter. Shortly after unanimously approving the reason-to-believe findings, the Commission lost a quorum from August 2019 through most of 2020, rendering it unable to take further enforcement action. The Commission received no cooperation from Freedom Vote during that period and, lacking a quorum, was unable to take legal action to enforce compliance with its document subpoena. It was not until a quorum was restored in December 2020, followed by the Commission's authorization of a deposition subpoena to Nathanson the next month, that OGC began to receive the documents it had been requesting from Freedom Vote since 2019.

As with any case in which portions of the activity at issue occurred well in the past, we are keenly aware that we risked losing substantial amounts in violation in this matter to an impending five-year statute of limitations. As an initial matter, regardless of whether the applicable statute impedes the Commission's ability to seek a civil penalty, it does not prevent the Commission from pursuing equitable remedies – including requiring Freedom Vote's disclosure of its receipts and disbursements as a political committee – and it certainly does not prevent us from making a probable cause to believe finding.[26] But that is really a moot point.

[24] Seventy-one percent may actually be on the conservative side because OGC's analysis focuses solely on Freedom Vote's "programmatic" activities. Since there were no other such activities uncovered by the investigation, it is not unreasonable to conclude that the majority of overhead and administrative expenses during this period (e.g., phone bills, consulting fees, and salary payments) were in service of Freedom Vote's federal campaign spending.

[25] Some Commissioners have argued that the "simplest, cleanest, and fairest standard for determining whether an organization has the major purpose of nominating and electing federal candidates is to analyze its total spending on federal campaigns." Statement of Reasons of Vice Chair Dickerson and Commissioner Trainor, MUR 7181 (Independent Women's Voice). However, the court in *CREW I* ruled that a lifetime-only rule is contrary to law where the Commission fails to consider the totality of the circumstances and whether the facts indicate that an organization's major purpose has changed over time. 209 F. Supp. 3d at 94. That was the Commission's approach on remand in MUR 6538R (Americans for Job Security), Factual & Legal Analysis at 14-15, and we agree with OGC's same approach here. The same precedent instructs that the Commission consider not only spending on express advocacy but also spending on communications that indicate a "campaign-related purpose" when determining an organization's major purpose. 209 F. Supp. 3d at 11; MUR 6538R Factual and Legal Analysis at 11-13.

[26] 28 U.S.C. § 2462 states that "an action, suit or proceeding for the enforcement of any civil *fine, penalty, or forfeiture*, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued …." (emphasis added). *See FEC v. Christian Coalition*, 965 F. Supp. 66, 71 (D.D.C. 1997) (holding that injunctive relief is not a penalty); *FEC v. Nat'l Republican Senatorial Comm*., 877 F. Supp. 15, 20-21 (D.D.C. 1995) (same). The court in *Christian Coalition* distinguished Supreme Court precedent regarding the withholding of equitable relief where the legal remedy was barred by the statute of limitations, *Cope v. Anderson*, 331U.S. 461 (1947) and *Russell v. Todd*, 309 U.S. 280 (1940), by noting that neither *Cope* nor *Russell* "involved a limitation on an action by the United States," and that "both cases involved the interplay between federal rights and state statutes of limitations – issues not present in a suit brought under the FECA." 965 F. Supp. at 71.

There is absolutely no doubt that the Commission may seek a civil penalty and other appropriate relief based on Freedom Vote's reporting violations because there were still missing disclosure reports that were due less than five years before November 9, 2021 – the date of the Commission's probable-cause-to-believe vote.[27]

In justifying their votes against OGC's recommendation, some Commissioners may point out that the financial activity at issue occurred beyond five years from the date that OGC would have needed to file suit, regardless of the filing deadlines. This is plain wrong, factually and legally. First, a portion of activity covered by the later report would have occurred within five years of the Commission's vote, even when considering the minimum 30-day conciliation period before which the Commission would need to file suit (if necessary).[28] Second, the dates that any financial activity occurred are irrelevant for purposes of a reporting violation; such an approach erroneously conflates a committee's filing deadlines with the timing of its receipts and disbursements. The Commission has always considered a "failure-to-disclose" violation to accrue on the filing deadline of the subject report; in this matter those dates occur *after* the Commission's vote. We are aware of no instance in the history of the Commission when that has not been the case – it would defy common sense to peg the five-year statute of limitations to any date other than a report's due date.[29]

Reduced to simple terms, had there been one more vote for probable cause on November 9, the Commission would have commenced probable cause conciliation with Freedom Vote over its failure, at a minimum, to file a 2016 Year-End Report in which it was required to disclose that it received $3.915 million in total annual receipts and made $3.862 million in total annual disbursements. That report was due on January 31, 2017, which would have given the Commission until January 31, 2022 – or *83 days* – to reach a mutually acceptable settlement prior to the expiration of the statute of limitations.[30]

Our colleagues may also highlight the fact that, at the time of the vote, Freedom Vote was a defunct organization. Freedom Vote drastically reduced its spending right after the 2016 election (which is also indicative of its major purpose[31]) and ultimately filed for dissolution in

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[27] Specifically, Freedom Vote's 2016 Post-General Report was due on December 8, 2016, and its Year-End Report on January 31, 2017. *See* 2 U.S.C. § 30104(a)(4).

[28] *See* 52 U.S.C. § 30109(a)(4)-(6). The 2016 Post-General Report would have covered amounts received or spent from 10/20/16 to 11/28/16, and the 2016 Year-End Report would have covered 11/29/16 to 12/31/16.

[29] Committee filing deadlines provide the very basis of the penalty structure in the Commission's Administrative Fine Program, under which Congress authorized the Commission to assess fines for violations of the Act's requirements for the timely reporting of receipts and disbursements. *See* 52 U.S.C. § 30109(a)(4)(C)(v); 11 C.F.R. § 111.43. In an analogous context, the federal tax code generally allows the Internal Revenue Service three years to assess taxes after the filing of a tax return; the statute of limitations is pegged to the due date of the return, which is usually April 15. *See* 26 U.S.C. § 6501. It is not tied to when the taxpayer received the taxable income during the prior year, and it is not adjusted should the tax return be filed earlier than the due date.

[30] To reiterate, the expiration of the statute of limitations would only foreclose the Commission's ability to seek a civil penalty; if the Commission were to file suit after that date, a court still may grant non-monetary relief, such as an order for Freedom Vote to file a disclosure report with the Commission.

[31] *See* Supplemental E&J at 5605 (including MUR 5754 (MoveOn.org Voter Fund) among the examples of Political Committee Status Matters reflecting the Commission's analysis to determine an organization's major purpose). In MUR 5754, the Commission found reason to believe, and noted, among other facts indicative of satisfying *Buckley's*

May 2019. When asked why the organization dissolved, Nathanson stated that an audit by the IRS resulted in a settlement which bankrupted Freedom Vote, and that the reputational harm from the settlement made it difficult to continue operations.[32]

Both in a legal and practical sense, the dissolution of Freedom Vote's corporate form posed no enforcement barrier to the Commission and certainly should not excuse the organization from being held accountable for a serious violation of the Act. First, in Ohio, where Freedom Vote was incorporated, legal proceedings against corporations within five years of dissolution are not barred by state law.[33] Second, we have been here before, and in fact quite recently: In a matter similarly involving political committee allegations against an unregistered non-profit organization, the Commission made reason-to-believe findings seven months after the entity's corporate status was revoked and following several years of inactivity (and after a court rebuked the Commission for initially dismissing the complaint).[34] The Commission reached a settlement that waived the civil penalty in light of the entity's defunct status and inability to raise funds, but required it to register as a political committee; the sole (former) employee agreed to use his "best efforts" to obtain relevant financial information and to report it to the Commission.[35]

We are confident that conciliation negotiations would have been rather brief and efficient, given that OGC has already reviewed voluminous financial information and tallied up all of Freedom Vote's receipts and disbursements from the time the organization achieved political committee status; what we would mainly need from Freedom Vote at this juncture are names of its donors. Although it is too late to inform voters prior to the elections at issue, the public still deserves to know, for example, who donated $500,000 in advance of the 2016 general election with instructions to use the funds for "the reelection of Rob Portman," and who cut a $200,000 check to Freedom Vote on September 6, 2016, and so on.[36] None of the donors were listed in the IRS forms filed by Freedom Vote; these individuals or entities may not want their names publicly disclosed, but as Justice Scalia famously stated, "Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed."[37]

Had we proceeded to conciliation, Freedom Vote could have simply resubmitted unredacted versions of donor records that it had already produced earlier this year. Commission

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major purpose test, that "MoveOn.org Voter Fund has been virtually inactive since the 2004 general election"). Factual and Legal Analysis at 13, MUR 5754 (MoveOn.org Voter Fund).

[32] GC Brief at 19.

[33] The voluntary dissolution of a corporation "shall not eliminate or impair any remedy available to or against the corporation or its directors ... for any right or claim existing ... prior to the dissolution" so long as the claimant brings suit within five years of the date of the dissolution. Ohio Rev. Code Ann. § 1701.88 (West 2021-22); *see Village of Camden, Ohio v. Cargill, Inc.*, No. 3:20-cv-273, 2021 WL 1940235, at *2-3 (S.D. Ohio May 14, 2021) (holding that claim against dissolved corporation could be prosecuted to judgment with right of appeal so long as theclaim was initially brought within five years of the corporation's dissolution).

[34] MUR 6538R (Americans for Job Security), *see supra* fn. 2. In the preceding litigation, the court rejected an argument that the Commission cannot pursue equitable remedies after five years on the basis that no "authoritative policy or rule" barring equitable enforcement was before the court. *CREW I*, 209 F.Supp.3d 77, n.3.

[35] *See* Conciliation Agreement in MUR 6538R (Americans for Job Security), dated Sept. 9, 2019.

[36] GC Brief at 28.

[37] *Doe v. Reed*, 561 U.S. 186, 228 (2010).

staff would have been ready to assist in facilitating Freedom Vote's registration and disclosure obligations, as we have done in past settlements that required further reporting by a respondent.[38] Regarding any civil penalty, if Freedom Vote's funds were truly depleted, we would have considered departing from the penalty the Commission would normally seek, as we have done numerous times when respondents have been unable to pay.[39] And, of course, if negotiations were not successful, we would have a very strong case to litigate.

It is extremely frustrating that the Commission would invest considerable resources and come so close to achieving a satisfactory outcome in this matter, only to have three Commissioners shut it down with almost three months "left on the clock." This matter had all the hallmarks of a successful exercise of our statutory enforcement responsibilities: an egregious violation of core provisions of the Act in a high dollar amount (almost $8 million), backed up by compelling documentary evidence, powerful sworn testimony, and strong supporting precedent. Instead, by abdicating our enforcement and disclosure obligations, unregistered groups like Freedom Vote that are formed with generic stated purposes (here, "[t]o further the common good and general welfare of the people of Ohio"[40]) are allowed to morph into electoral vehicles that primarily support federal candidates over one or more election cycles, and then quietly pass from existence with no hint as to who funded their campaign-related activities. The Commission had an excellent opportunity to reverse this trend and send a strong pro-transparency message but failed to take advantage of it; we sincerely hope this agency can do better in the future.

December 16, 2021
Date

Shana M. Broussard
Chair

December 16, 2021
Date

Steven T. Walther
Commissioner

December 16, 2021
Date

Ellen L. Weintraub
Commissioner

[38] *See, e.g.,* Negotiated Settlement in ADR 699 (P-MUR 521) (LoBiondo for Congress), dated June 24, 2014 (Committee "amended reports under the guidance of the Reports Analysis Division").
[39] *See*, *e.g.*, fn. 35.
[40] Freedom Vote Initial Articles of Incorporation (July 10, 2010).