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August 9, 2022

VIA E-MAILFederal Election Commission
Office of Complaints Examination
& Legal Administration
Attn: Kathryn Ross, Paralegal
1050 First Street, NE
Washington, DC 20463*Re: MUR 8009: Campaign Legal Center, et al. v. Protect Ohio Values PAC, et al.*

Dear Ms. Ross:

The complaint filed by the Campaign Legal Center and End Citizens United is without merit. It has no factual basis, it attempts to criminalize common political practices, misapplies existing law, and asks the Commission to adopt a novel interpretation that would have disastrous consequences for the First Amendment. The complaint was based on a single article published in Politico, and it ignores the widespread distribution of the public Medium.com blog that found its way not only into the hands of the national press, but also into the hands of J.D. Vance's opponents in the Republican Primary for the United States Senate in Ohio and into the hands of Mr. Vance's general-election opponent, Tim Ryan. In a new approach, the complaint is not founded in 11 C.F.R. § 109.21—the word coordination does not appear in its 94 pages. Instead, it is based on an allegation that Protect Ohio Values PAC (“POV”) subsidized campaign-related activities and made an in-kind contribution of polling data and other analyses to J.D. Vance for Senate, Inc. (the “Vance Campaign”) by posting information to a widely viewed, and publicly available, website.

The Federal Election Commission has never found that an in-kind contribution has occurred when an individual or a group of individuals, however constituted, place information—including strategy suggestions and ideas—on a publicly available website, especially when there is no evidence a campaign knew about the information before it was published, asked the outside group to perform the analysis, or actually saw, and used, the information on the site. Importantly, there is not a single allegation that POV delivered any information or items *privately or directly* to the Vance campaign. In addition, leading legal minds, most notably on Professor Rick Hasen's Election Law Blog, opined that POV posting information on a widely available blog was not prohibited by law or regulation. In addition, the Blog surmised that even Congress could not find

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a way to limit the activity engaged in by POV. As Professor Rick Pildes explained, “As long as independent spending is constitutionally protected — and it’s *Buckley v. Valeo* that establishes that it is — it is difficult to see how regulation could effectively limit the kind of implicit coordination, including the new form of implicit coordination, that the Vance example illustrates.”¹

On behalf of Protect Ohio Values PAC, and Vicki J. Hoffmann, Treasurer, we respectfully request that the Commission dismiss this complaint.

I. Background

The complaint filed by the Campaign Legal Center and End Citizens United PAC² alleged that POV made a “prohibited, excessive, and unreported in-kind contribution” to the Vance Campaign by secretly sharing thousands of pages of electorally influential information on a website that was an “intentionally concealed delivery mechanism.” See Complaint at ¶46. In turn, complainants allege that the Vance Campaign accepted the fruits of this information by airing a commercial that mirrored an idea that POV posted online. Complainants sought to garner significant media attention for their complaint, and they issued a press statement featuring a quote from Tiffany Muller, President of End Citizens United, declaring that their allegations point to “one of the clearest and most flagrant examples of a candidate and a super PAC skirting campaign finance laws.”³ The Complainants made every effort to set this narrative in place before POV even received a copy of the complaint.

But complainants’ narrative, despite making splashy headlines for a few days, is obviously false and collapses under even a cursory examination of the facts. POV created the Medium blog to communicate effectively with, *inter alia*, donors, potential donors, influencers, and supporters directly, rather than working through the large teams of surrogates and advisors retained by several POV donors and donor prospects.⁴ The presence of surrogates and advisors rendered a private mailing list or invite-only website insufficient to reach the audience POV needed to reach, leading POV to opt for a public-facing website.⁵ Notably, each Medium post was fully accessible to the

¹ See <https://electionlawblog.org/?p=129141> (last accessed August 6, 2022).

² End Citizens United PAC endorsed Tim Ryan for Ohio Senate on May 26, and Mr. Ryan noted, “I’m proud to be endorsed by End Citizens United // Let America Vote and am excited to work with them to win this race for the people of Ohio,” said **Congressman Tim Ryan**.” (Emphasis in original). See End Citizens United Press Release, *End Citizens United / Let Citizens Vote Endorses Congressman Tim Ryan for U.S. Senate*, May 26, 2022, at <https://endcitizensunited.org/latest-news/press-releases/end-citizens-united-let-america-vote-endorses-congressman-tim-ryan-for-u-s-senate/> (last accessed August 5, 2022) (attached as **Exhibit A**). On or about June 2, 2022, End Citizens United made a \$5,000 (i.e., maximum) contribution to Tim Ryan’s campaign for Senate. See www.fec.gov. On June 6, End Citizens United, in coordination with the Campaign Legal Center, filed this complaint.

³ End Citizens United, *End Citizens United Files FEC Complaint Against JD Vance Campaign and Protect Ohio Values PAC For Illegal In-Kind Contribution Scheme*, June 9, 2022, <https://endcitizensunited.org/latest-news/press-releases/end-citizens-united-files-fec-complaint-against-jd-vance-campaign-and-protect-ohio-values-pac-for-illegal-in-kind-contribution-scheme/> (visited Aug. 8, 2022) (attached as **Exhibit B**). This press statement was issued four days before the FEC forwarded a copy of the Complaint to Protect Ohio Values. Coincidentally, this Complaint also found its way into the hands of *The Daily Beast*, where Mr. Ghosh flaunted his former role as an FEC attorney to give credibility to this political-motivated complaint.

⁴ See Declaration of Lucas Thompson at ¶ 2 (attached hereto as **Exhibit H**).

⁵ See Ex. H at ¶ 3.

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public, and POV posted links to each Medium post to a Twitter account called “pov2022” which, like the Medium blog, was publicly accessible.⁶ This made POV’s content available to POV’s donors, potential donors, influencers, supporters, and the public through two different internet platforms. POV did not pay any fees to Medium or to Twitter for the posting of any of the blog’s content.⁷

POV’s approach to communicating with donors (and their teams), and to convincing prospects that POV was the right place to invest money to support J.D. Vance, began casually, as a review of the Medium blog posts confirms. The first post attempted to make the case that Jane Timken was no longer a viable opponent to take on Josh Mandel. Timken was a formidable threat because of her deep donor ties and significant ground game resulting from her time as Chairman of Ohio Republican Party. To that end, on July 29, 2021, POV used the first post on the site to argue that J.D. Vance was a better bet than Jane Timken.⁸ A month later, the blog covered a hypothetical matchup between Mr. Vance and Josh Mandel, the frontrunner at the time, as evidenced by the post headline claiming, “It’s a two man race” and providing top-level polling results.⁹

The use of the Medium blog grew substantially in October 2021, after circumstances required POV to publish sensitive internal information to this publicly accessible blog.¹⁰ On September 28, 2021, POV Executive Director Mr. Lucas Thompson circulated a confidential memorandum to key donors and other stakeholders interested in the race showing that Mr. Vance had an inside track to securing the nomination.¹¹ Within days of that memorandum’s circulation, significant donors to POV learned that the Club For Growth planned to run millions of dollars of negative ads against J.D. Vance in an effort to keep him from securing the Republican nomination for United States Senate in Ohio.¹² In response, donors to POV pushed POV to do more to support Vance immediately, including but not limited to conducting more polling and running television advertisements. In response to this pressure, Mr. Thompson decided to distribute the donor memorandum to a broader audience.¹³

On October 4, 2021, POV posted to the Medium blog and wrote, “A number of people have asked what POV is doing to break from the same-old, same-old approach of traditional Super PACs. After all, we received the largest single primary election contribution in campaign history. It was an opportunity to do new things and break new ground. With that in mind, we’re publishing an updated version of a memo we sent to key supporters.”¹⁴ Mr. Thompson was able to use this

⁶ See generally, POV2022 Twitter Feed, <https://twitter.com/pov2022> (visited Aug. 9, 2022).

⁷ See Ex. H at ¶ 4.

⁸ <https://medium.com/@protectohiovaluesforms/pov-poll-update-948b14d8caee>

⁹ <https://medium.com/@protectohiovaluesforms/pov-poll-update-bfba87ed0619>

¹⁰ See Ex. H at ¶ 5.

¹¹ See Memorandum to Interested Parties (attached as **Exhibit C**); see also Ex. H at ¶ 6.

¹² See Ex. H at ¶ 7.

¹³ See Ex. H at ¶ 8.

¹⁴ <https://medium.com/@protectohiovaluesforms/breaking-new-ground-da38fd904920>

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post to persuade donors it was best to preserve most of POV's resources for a later date, rather than to heavily spend resources immediately.¹⁵

Thereafter, POV leveraged the public Medium platform to communicate more robustly with its donors, potential donors, and supporters.¹⁶ POV's posts after the October 4 post and until February 6, 2022, consisted of information on public impressions from earned media, publicizing the fact POV hired a film crew to cover public events for J.D. Vance, and putting up some B-roll for anybody to use and view from Vance's public events—all relatively mundane activity that Complainants ignore because it has no significance other than to let donors know that POV was busy working and preparing for the primary season.¹⁷

The first substantive Medium post after October 4, 2021 did not run until February 6, 2022. That date is no accident. Mr. Thompson had been informed by a Politico reporter that the news website would run an article the next day describing that J.D. Vance's chances for winning the Republican nomination were in a tailspin, and that Politico would publish POV's polling documents confirming that fact.¹⁸ Mr. Thompson had not released those documents to Politico, raising the prospect that a rival campaign or the press had obtained them from the Medium blog.¹⁹ That same day, POV published a blog post calling for calm, entitled, "The Senator from January" focused on the tightness of the race and advising: "This year's Ohio Senate race, by contrast, is an IndyCar slugfest. Victory goes not simply to the swiftest, but to he who masters the clock. Margins are tight. Positions can shift on a dime. Timing is everything."²⁰ The post was accompanied by an F1 car crashing, insinuating that spending money too fast could end up in a disaster.²¹

The Politico article, coupled with unrelenting spending from the Club For Growth and other allies of Mr. Mandel, pushed POV's hand. Consequently, on February 10, POV posted a note saying "bombs away" that preceded POV's first major ad buy.²² A week later, on February 17, POV posted a blog entry to Medium that outlined the state of the race in relation to an endorsement from former President Trump. The post discussed the ad POV had on-air, editorialized about different ad directions the organization might take, and proposed a commercial based on J.D. Vance's commitment to ending the opioid endemic and curbing illegal immigration.²³ The post outlined Vance's political identity for surrogates and influencers, and made a case to President Donald Trump that J.D. Vance was the right candidate to endorse.²⁴

Indeed, February 17 marked an inflection point for POV's donor messaging. After that date, the spending from the Club for Growth and the pressure from Mr. Mandel's and other

¹⁵ See Ex. H at ¶ 9.

¹⁶ See Ex. H at ¶ 10.

¹⁷ See Ex. H at ¶ 11.

¹⁸ See Ex. H at ¶ 12.

¹⁹ See Ex. H at ¶ 13.

²⁰ <https://medium.com/@protectohiovaluesforms/the-senator-from-january-bb41b658f6f7>

²¹ See Ex. H at ¶ 14.

²² <https://medium.com/@protectohiovaluesforms/bombs-away-302b2056c2fe>; see also Ex. H at ¶ 15.

²³ <https://medium.com/@protectohiovaluesforms/the-next-step-37794ddf2e8d>

²⁴ See *id.* (leading off the post's second paragraph with a statement that "[e]veryone is looking earnestly to see what President Trump will do"); see also Ex. H at ¶ 16.

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campaigns' supporters on President Trump to issue an endorsement forced the blog to increase the amount of information it was sharing on POV's activities.²⁵ Specifically, the blog focused entirely on providing information to POV's network of potential donors and supporters so they could convince President Trump that Mr. Vance was the best candidate to win in November.²⁶ The blog entries, with significant information about the internal workings of POV, were posted with awareness that Politico and other campaigns were likely watching the blog closely.²⁷

On April 15, 2022, President Trump endorsed Vance, and POV received significant contributions of over \$6 million.²⁸ After the Trump endorsement, Mr. Thompson only posted top line polling results in a publicly reviewed and accessible blog. The blog had walked the fine line of appealing to donors and President Trump, along with the team of individuals advising them. Although POV and J.D. Vance took significant hits from donors, the press, and the Ohio public because POV publicly released a trove of sensitive information (which were used by campaigns and the press alike), the risk was worth the reward. In the final blog post, POV thanked Ohio voters for choosing J.D. Vance as the Republican Party nominee. Against all odds, the POV team had successfully accomplished POV's mission to help J.D. Vance secure the Republican nomination for U.S. Senator in Ohio.

Based on this factual record, the FEC has never found that the use of a public blog to reassure donors, obtain contributions, and persuade a former President of the United States to endorse a candidate—with no consultation or coordination with a candidate or candidate's committee—is a violation of the Federal Election Campaign Act of 1971. Based on the below analysis, this Complaint should be dismissed.²⁹

II. Medium.com is one of the highest traffic websites in the world, and the Public Had Access

Complainants make much of the claim that their Internet researchers could not find POV's page on Medium.com. They refer to Medium.com as “obscure,” “secret,” “hidden from public view,” and “an intentionally concealed delivery mechanism.” See Complaint at ¶¶ 1, 7, 9, and 46. Setting aside the fact that there are a number of ways to search for the POV site other than using Google and that Medium.com is one of the heaviest trafficked websites in the world, the record makes it clear that the public did have access to POV's Medium.com site. Likewise, the public had access to the “pov2022” Twitter feed that tweeted links to the Medium blog posts.

As an initial matter, there was no effort to hide the POV site. The name included the full name of Protect Ohio Values, no settings were used to intentionally hide the site from public view, and the site still remains live today—it is in fact being used by Democratic PACs like End Citizens

²⁵ See Ex. H at ¶ 17.

²⁶ See Ex. H at ¶ 18.

²⁷ See Ex. H at ¶ 19.

²⁸ See Ex. H at ¶ 20.

²⁹ Contrary to Complainants' allegations, POV was not concerned about a “mole.” It was initially unclear whether the draft presentation given to Politico was the same as the presentation on the blog. POV did not believe it was the same presentation as on the blog post, so POV was concerned an employee of a vendor leaked the presentation.

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United PAC and Tim Ryan’s supporters to work against J.D. Vance’s election.³⁰ The site was available for any member of the public to find and read, and the public did find and read it.

The Politico article Complainants rely upon readily acknowledges that “[a]ll of it [the Medium website] was out in the open for the world to see.”³¹ And the public did find and read the site. Not only did the public read the site, so did at least one of Vance’s rivals’ campaigns—that of Josh Mandel. The Politico article reported that “Mandel’s campaign had discovered the Medium site and was plumbing it for intel,” and “Mandel[’s] team had been spending months poring over the reams of polling data, the detailed state-of-the race memos, and advertising spending plans, using all of it to adjust their own strategy.”³² The Mandel campaign then shared that information with other campaigns opposing J.D. Vance for the nomination. In addition, Politico began publishing material from the site in early February 2022, including a polling memorandum that Politico’s reporting viewed as a “warning” that Vance was in trouble.³³

The expert reporters at Politico and the opposing Republican campaigns could, and acknowledged using and analyzing, the information on the blog. The publication of POV’s information on the Medium blog more often was used to try to end J.D. Vance’s campaign for U.S. Senate, not to promote it.

The February Politico article almost ended J.D. Vance’s run for Senate; as Politico reported later, “[d]onors started closing their wallets.”³⁴ This problem of anxious donors reared its head again, directly in response to public material on the website, pressuring POV to start spending money. Consequently, on February 10, POV posted its “bombs away” post before POV’s first major ad buy, and shifted the focus and strategy of POV and the Medium blog thereafter.

Importantly, these posts were made to communicate, inter alia, with donors and supporters, and each was made knowing Vance’s opponents would read them and would be able to react. As Mr. Thompson made clear in the Politico article, “We knew we were going to have less to work with from the start, so we had to take risks and be innovative to keep our donors and supporters engaged That included risking having all of our research in public. But if we hadn’t taken those risks, we would never be in a position to contend for the lead and for a presidential endorsement.”³⁵

The bottom line is that POV made no effort to hide its posts from the public, from Politico, or from opposing campaigns, even after Politico began reporting information from the

³⁰ See Ex. H at ¶ 21.

³¹ Alex Isenstadt, *A mole hunt, a secret website and Peter Thiel’s big risk: How J.D. Vance won his primary*, POLITICO, May 3, 2022, <https://www.politico.com/news/2022/05/03/jd-vance-win-ohio-primary-00029881> (accessed Aug. 8, 2022) (attached as **Exhibit D**).

³² *Id.*

³³ Alex Isenstadt, *'Precipitous decline': J.D. Vance pollster issues warning on Ohio Senate race*, POLITICO, Feb. 7, 2022, <https://www.politico.com/news/2022/02/07/jd-vance-warning-ohio-senate-race-00006310> (accessed Aug. 8, 2022) (attached as **Exhibit E**).

³⁴ Isenstadt, May 3, 2022, *supra* n.14.

³⁵ *Id.*

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Medium.com blog. The information was, and is, available to the public, rival campaigns, and the press.³⁶

III. The Information Posted by POV Does not Qualify as an In-kind Contribution

The polling and other information posted by POV does not qualify as an in-kind contribution. Generally speaking, in-kind contributions are not amorphous or hard to value. According to 11 CFR § 100.52(d)(1), the “provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a[n in-kind] contribution. Examples of such goods or services include, but are not limited to: Securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists.” In-kind contributions are typically tangible and specific—staff, computers, equipment, rent, discounts, and similar concrete, valuable items. Here, the Complainants argue that ideas and information are in-kind contributions, with no evidence any of the information was actually given to, or received by, the campaign.

To support the conclusion that the ideas and information on the blog are not in-kind contributions, the best analysis of whether an in-kind contribution occurred is the framework employed in 11 C.F.R. § 106.4. Contributions cannot be accidental—they have to be deliberate and accepted by a campaign to be a contribution—especially when considering the contribution is an in-kind contribution. Specifically, with respect to polling data, not only must the poll be purchased, but it also has to be accepted. *See id.* To determine whether a poll was accepted, one of three factors must be satisfied: 1) the campaign must have requested the poll results before their receipt; 2) the committee must use the poll results; and 3) does not notify the contributor that the results are refused.” *See id.* Even if one of these factors is satisfied, the law makes clear that “The acceptance of any part of a poll's results which part, prior to receipt, has been made public without any request, authorization, prearrangement, or coordination by the candidate-recipient or political committee-recipient, shall not be treated as a contribution in-kind and expenditure under paragraph (b) of this section.” *See* 11 C.F.R. § 106.4 (c). No in-kind contribution of polling results, or any other goods or services, was made to the Vance Campaign

No in-kind contribution of goods or services was made to the Vance Campaign. At no time did the Vance Campaign request that POV conduct a poll or provide any other goods or services. POV never discussed the results of any polling with Vance Campaign officials and never provided the Campaign any goods or services. POV had no indication that the Vance Campaign used the polling data or other material on the Medium website, and there is no evidence on the record that the Vance Campaign did so.³⁷ Indeed, available information indicates that the Vance Campaign did not follow the strategy laid out by POV.

In fact, the sole allegation of an “acceptance” by the Vance Campaign of a so-called in-kind contribution from POV in the complaint consisted of a commercial run by the Vance

³⁶ It is telling that only political actors filed a complaint against POV.

³⁷ *See* Ex. H at ¶ 22.

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Campaign that was posted to YouTube on April 5, 2022,³⁸ that hit on themes similar to themes described in Mr. Thompson’s February 17, 2022 blog post. The theme—opioids and immigration—was not unique or surprising. In fact, J.D. Vance wrote a bestselling book that turned into an award-winning movie based on this same theme—the tragic impact of drugs on Americans and the failure of political elites to do anything about drug abuse. J.D. Vance first mentioned “drug addiction” as a reason his hometown is a “hub of misery” on page 4 of *Hillbilly Elegy*, and he hasn’t stopped discussing the issue since. He discussed the problem in 2016 on NPR,³⁹ in 2017 at a conference on opioids declaring addiction to the drugs an epidemic,⁴⁰ in 2021 on Twitter,⁴¹ and in 2021 in an op-ed published in Newsweek⁴² where he also asked: “[w]hy are we promising amnesty for millions when we know the vicious transnational drug cartels use that promise to sell desperate people on the promise of crossing the border?” Finally, he told a personal story during his announcement speech that nearly brought him to tears—about how, while writing *Hillbilly Elegy*, he thought his mother would be dead from addiction within two years, but she survived.⁴³ The fact that Vance was fighting opioids and illegal immigration, and the harsh reality that his mother nearly died from opioid abuse was not just known to POV—it was known to the readers who vaulted his book to #1 on the New York Times bestseller list (where it remained for 74 weeks), the viewers of the Academy Award-nominated movie, the attendees at his conferences, listeners of NPR, and supporters of his campaign. Anybody who knew J.D. Vance existed knew he cared about the scourge of opioids.

In fact, Mr. Thompson’s blog post was published only a day before Mr. Vance’s hometown newspaper, the Cincinnati Enquirer, published an op-ed entitled “Opinion: J.D. Vance is the only candidate addressing opioid crisis.”⁴⁴ The op-ed’s author wrote that, in her view, “[w]e need leaders committed to securing the border and enforcing our laws. More importantly, we need leaders in Washington who know that fixing this crisis means giving Ohioans a second chance.”⁴⁵ These are the same themes outlined by Mr. Thompson in his blog post, but published in a nationally recognized and distributed newspaper. There is simply no evidence that Mr. Vance’s campaign

³⁸ J.D. Vance for Senate, Inc., *Are You A Racist?*, YOUTUBE, Apr. 5, 2022, <https://www.youtube.com/watch?v=K3qYJoSV0II> (visited Aug. 8, 2022).

³⁹ NPR, ‘*Hillbilly Elegy*’ Recalls A Childhood Where Poverty Was ‘The Family Tradition,’ Aug. 17, 2016, at <https://www.npr.org/2016/08/17/490328484/hillbilly-elegy-recalls-a-childhood-where-poverty-was-the-family-tradition> (visited Aug. 8, 2022).

⁴⁰ ICF, *Combating the opioid epidemic: A conversation with J.D. Vance*, Nov. 6, 2017, <https://www.icf.com/insights/health/combating-the-opioid-epidemic-jd-vance> (visited Aug. 8, 2022).

⁴¹ <https://twitter.com/jdvance1/status/1401516681449639938?s=21&t=WiFtqwi3NCMwn0T1Pq8NvA>

⁴² J.D. Vance, *True ‘Compassion’ Requires Secure Borders and Stopping Illegal Immigration*, Newsweek, Mar. 18, 2021, <https://www.newsweek.com/true-compassion-requires-secure-borders-stopping-illegal-immigration-opinion-1576943?amp=1> (visited Aug. 8, 2022).

⁴³ Forbes, *JD Vance Launches Senate Campaign, Brands Himself As ‘Conservative Outsider’*, YouTube, July 2, 2021, <https://www.youtube.com/watch?v=jJiCTr9zOaE> (visited Aug. 8, 2022).

⁴⁴ Nancy Nix, *Opinion: J.D. Vance is the only candidate addressing opioid crisis*, Cincinnati Enquirer, Feb. 18, 2022, <https://www.cincinnati.com/story/opinion/2022/02/18/opinion-j-d-vance-only-candidate-addressing-opioid-crisis/6795719001/> (visited Aug. 8, 2022).

⁴⁵ *Id.*

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relied on or even saw the blog post by Mr. Thompson. It is, in fact, far more likely he saw the op-ed in his hometown newspaper.

The opioid issue has been conspicuously close to Mr. Vance's heart for years, well before POV existed or he even considered the possibility of running for Senate. There is simply no evidence that a blog post from Mr. Thompson influenced the commercial described in the Complaint. Considering these in-kind contributions are speculative at best, this complaint should be dismissed.

IV. All Disbursements Made By POV were for Work by POV, Not to Subsidize the Activities of Vance Campaign

The remaining allegations in the complaint involve subsidizing campaign activities of Vance Campaign. There is quite a bit of noise in the complaint about various activities that violate the Federal Election Campaign Act of 1971. But in reality, every dollar spent by POV was for the benefit of POV. As explained in the Background section of this response, every blog entry posted by Mr. Thompson related to a significant request or need by donors or supporters. As described above, the activities paid for by POV were used to communicate with donors, increase donations, and to persuade President Trump to endorse Mr. Vance for Senate. None of the activities of POV were done with the knowledge of the Vance Campaign, and no actions were performed at the request or suggestion of the campaign. At no time did POV hire any employee of the campaign—and, indeed, POV operates with a very lean staff who have performed amazingly well.

The complaint offers no evidence whatsoever that POV subsidized the activities of the Vance campaign.

V. Complainants' Overly Aggressive Theory Seeks The Suppression Of Speech That Is Protected By The First Amendment

For all the reasons set forth above, the Commission should dismiss the complaint and close its file. But the disturbing First Amendment implications of the complaint merit discussion, as they provide an equally compelling basis for dismissal. Complainants' theory, if the Commission endorses it with a reason-to-believe finding, would subject a wide swath of core political speech to uncertain regulation and violate the First Amendment rights of POV and countless others.

Boiled to its essence, complainants ask the Commission to treat purely independent speech as an in-kind campaign contribution to the candidate the speaker supports. This theory sidesteps the guardrails and limiting principles underlying the Commission's ordinary regulatory scheme that assure the scheme does not infringe protected political speech. Those existing guardrails exclude POV's speech from the definition of a "contribution" for two reasons. First, POV's speech is excluded from the definition of a "contribution" subject to the FECA under the uncompensated internet activities exemption for public communications, 11 C.F.R. §§ 100.26 and 100.94, as POV engaged in "Internet activities" within the meaning of § 100.94(b), by "blogging" and "creating, maintaining, or hosting a Web site", and complainants have not shown that POV paid any fees to publish its communications on another person's website. Second, as argued above, complainants

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fail to allege any deliberate contribution made by POV and accepted by the Vance Campaign, as POV's communications were published publicly, for all to see; complainants have *not* alleged that POV privately and directly delivered that information to the Vance Campaign, or that the Vance Campaign accepted it.⁴⁶

POV's speech cannot be considered an "expenditure" subject to FECA regulation, either. The uncompensated internet activities exemption excludes these communications from the definition of an "expenditure," 11 C.F.R. § 100.155. In addition, complainants do not allege that POV engaged in a coordinated expenditure with the Vance Campaign which would be regulated by the FECA's expenditure limits and disclosure requirements. *See* 11 C.F.R. 109.20(b).

Those guardrails require, as a precondition for regulation under the FECA, deliberate conduct by a person—in the nature of a knowing contribution to a candidate, activity coordinated with the candidate, or expenditure of funds on political advertising—to trigger the limits or disclosure requirements of the FECA. Complainants' theory sweeps those limitations aside and makes any political speech on the internet an in-kind contribution to a federal candidate provided that a federal candidate sees that speech and uses it for some purpose, even where the speaker does not intend a contribution, does not coordinate with the campaign the speaker favors, and does not pay a fee to publish the speech. Such an approach amounts to direct regulation of independent political speech that infringes core First Amendment protections.

Just consider this case. The Politico article that complainants cite reported that "[a]ll of it [i.e., the information] was out in the open for the world to see."⁴⁷ Politico further reported that the campaign of U.S. Senate candidate Josh Mandel, a primary opponent of Vance's, accessed the Medium website and, before the primary, "had been spending months poring over the reams of polling data, the detailed state-of-the-race memos, and advertising spending plans, using all of it to adjust their own strategy."⁴⁸ Thus, under complainants' theory, because it appears that POV's political speech and materials were reviewed by the Mandel campaign and utilized by that campaign in the 2022 Ohio U.S. Senate Primary, an argument could be made that POV made an in-kind contribution to the Mandel campaign just as surely as to the Vance Campaign. Indeed, this theory would open POV up to allegations that it made similar contributions to the other six or

⁴⁶ In this way, MUR 5409 (Norquist *et al.*, 2004), complainants' sole authority for their theory, is readily distinguished. That MUR, decided prior to the adoption of the uncompensated internet activities exemption, Internet Communications, 71 F.R. 18,589 (Apr. 12, 2006), involved an allegation that the president of Americans for Tax Reform, Inc. ("ATR") gave the campaign manager of Bush-Cheney '04 a "master contact list of activists in 37 states" and numerous other materials detailing ATR's political activity. The parties there did not dispute that ATR's president "provided materials to the [Bush-Cheney Campaign]..." MUR 5409 First Gen. Counsel Rep. at 9. Instead, ATR and the Bush-Cheney Campaign principally disputed whether the "master contact list" was a "thing of value." *Id.* at 1–3. Moreover, the First General Counsel's report disputed ATR's characterization that the "master contact list" was on the website, noting that "the ATR website does not include the extensive...meeting attendee lists described above which comprise most of the materials at issue." *Id.* at 8. *See also id.* at 9 (the "circumstances surrounding some of the materials raise questions as to whether the materials were in fact publicly or readily available.").

⁴⁷ Isenstadt, May 3, 2022, *supra* n.14.

⁴⁸ *Id.*

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seven candidates that ran in the 2022 Ohio U.S. Senate Primary,⁴⁹ to the extent those other campaigns reviewed and used POV's speech and information on the Medium website in connection with their campaigns. (POV has no idea whether all campaigns did so, but it is aware that at least three campaigns had access to information on the Medium blog). And the campaign of Vance's general-election opponent, Tim Ryan, has *also* accessed and used the information on the Medium blog. On July 19, 2022, after announcing a statewide TV ad buy that attacked Vance, Tim Ryan's Campaign Manager tweeted to "give a big shout out to @ltthompso [i.e., Mr. Thompson] and his research team [at POV] who were the ones who put together the initial research behind this spot and posted it online for us. Thanks y'all!"⁵⁰ Complainants' theory could lead to POV's Medium blog posts being treated as an in-kind contribution to Tim Ryan's campaign as well. Taken to its logical conclusion, then, Complainants' view of the law might lead to the absurd result of POV being deemed to have made the same in-kind contribution to Vance, to some number of Vance's primary opponents, *and* to Vance's general-election opponents. And because POV's Medium website would only be an in-kind contribution if a federal candidate or campaign committee happens to read the website and use it in connection with a federal campaign, POV has no way of knowing *ex ante* the parties to whom it is making an in-kind contribution, making it all but impossible for POV or similarly situated parties to value the contribution⁵¹ or disclose it.

Complainants' proposed rule is unconstitutionally vague at a minimum, as a party's inability to know when it has given an in-kind contribution renders it impossible for "a person of ordinary intelligence [to have] a reasonable opportunity to know what is prohibited, so he may act accordingly," and fails to "provide explicit standards for those who apply [the rule]." *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972). That is true of statutes that touch upon core First Amendment rights, due in part to the infamous chilling effect that speech regulation creates. *See, e.g., Smith v. Goguen*, 415 U.S. 566, 573 (1974); *Reno v. American Civil Liberties Union*, 521 U.S. 844, 870–72 (1997). If any American's blog post, Tweet, or Facebook comment about a federal candidate could become an in-kind campaign contribution subject to the FECA's contribution and expenditure limits and disclosure obligations, the effect on free speech could be calamitous. *See generally* Timothy F. D'Elia, *Don't Tread On Me ... Online: The FEC Should Stay Out of Free Internet-Based Political Speech*, 24 *Cath. U. J. L. & Tech.* 177, 202–05 (2015). And that is true even if the uncompensated blogging or Tweeting includes the release of commentary or analysis on campaign strategy, polling, or related items, all of which are regularly published by media organizations, interest groups, PACs, and others.

⁴⁹ A total of seven Republican candidates participated in that primary: J.D. Vance, Mike Gibbons, Josh Mandel, Jane Timken, Matt Dolan, Mark Pukita, and Neil Patel. An eighth candidate, Bernie Moreno, campaigned throughout 2021 but suspended his campaign in January 2022.

⁵⁰ Dave Chase, July 19, 2022, Twitter, <https://twitter.com/dchase/status/1549430121160908800> (visited Aug. 9, 2022) (attached as **Exhibit F**). Mr. Ryan's Communications Director tweeted screen shots from the Medium blog, commenting, "thanks bestie @ltthompso [i.e., Mr. Thompson]." Izzi Levy, July 19, 2022, Twitter, https://twitter.com/chevytothe_levy/status/1549440306411626498 (visited Aug. 9, 2022) (attached as **Exhibit G**).

⁵¹ Political speech and analysis is impossible to value and depends on a multitude of factors unknowable at the time the speech is made. President Lincoln, for example, could not have known when he delivered it that the Gettysburg Address would be considered one of the best political speeches in U.S. history. The eye is truly in the beholder. Here, some would argue that POV's Medium website turned out to be more beneficial to Mr. Mandel than to Mr. Vance.

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But even setting aside vagueness concerns, the complainants' view would amount to unconstitutional infringement of First Amendment rights. Because "political speech must prevail against laws that would suppress it," "laws that burden political speech are 'subject to strict scrutiny'" and must be narrowly tailored to a compelling government interest. *Citizens United v. FEC*, 558 U.S. 310, 340 (2010) (quoting *FEC v. Wis. Right to Life*, 551 U.S. 449, 464 (2007)). Although the Supreme Court has recognized that some campaign-finance rules may serve a governmental interest in avoiding "corruption and the appearance of corruption," *Buckley v. Valeo*, 424 U.S. 1, 45 (1976) (contribution but not expenditure limits); *see also*, *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 678 (1990) (Stevens, J., concurring), overruled by *Citizens United*, *supra*. But complainants' theory would amount to a harsh limitation on independent speech, tantamount to "limits on independent expenditures, including those made by corporations..." *Citizens United*, 558 U.S. at 357. Those expenditures "do not give rise to corruption or the appearance of corruption" and any "anticorruption interest is not sufficient to displace" speech. *Id.* at 357–58. The governmental interest in regulating the speech at issue here is even weaker than the speech at issue in *Citizens United*, and the government cannot point to "record evidence or legislative findings" that "demonstrat[e] the need to address a special problem" by such burdensome regulation. *FEC v. Cruz*, 142 S.Ct. 1638, 1653 (2022).

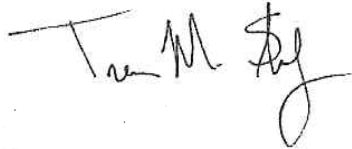
In fact, that record favors robust free speech—not speech restrictions. The Commission undertook an extensive analysis of how to treat free internet-based communications, and it decided to exempt uncompensated internet activity like POV's from regulation in 2006. *See* Internet Communications, 71 F.R. 18,589, 18,603 (Apr. 12, 2006) (in relevant part, adopting 11 C.F.R. §§ 100.94 and 100.155). *See also* D'Elia, 24 Cath. U. J. L. & Tech. at 186–89 (describing history of rulemaking process). Since that time, in at least two MURs, the Commission has dismissed complaints alleging substantially similar facts to those alleged here. *See, e.g.*, Statement of Reasons of Lee J. Goodman at 1, MUR 6578 (LaMalfa Cmte., et al., 2014) (no reason-to-believe that independent contractor for U.S. House candidate Doug LaMalfa violated FECA where, on his personal time and independent of the campaign, the contractor "created and launched a website that attacked the credentials of one of LaMalfa's opponents..."); Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen at 2–3, MUR 6729 (Checks and Balances for Economic Growth, 2014) (finding section 501(c)(4) organization's videos, shown only on the internet, did not trigger the reporting and disclaimer requirements of the FECA under the uncompensated internet activity exemption). As former Chairman Goodman noted, in adopting the exemption, "the Commission declared it would take a 'restrained regulatory approach' with respect to online political activity" and "promulgated the Internet exemption to 'remove any potential restrictions' on the ability of individuals and groups to use the Internet as a tool for civic engagement and political advocacy." Statement of Reasons of Goodman at 5, MUR 6729 (quoting Internet Communications, 71 F.R. at 18,589). The complaint seeks a result at odds with this analysis and the First Amendment, and it should be dismissed.

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VI. Conclusion

For the foregoing reasons, this Complaint should be dismissed.

Sincerely,

A handwritten signature in black ink, appearing to read "Trevor M. Stanley" and "Patrick T. Lewis" written together in a cursive style.

Trevor M. Stanley
Patrick T. Lewis

Exhibits

EXHIBIT A

PRESS RELEASES

End Citizens United // Let America Vote Endorses Congressman Tim Ryan for U.S. Senate

May 26, 2022

Ryan is a champion for workers who will stand up to corporate special interests

End Citizens United // Let America Vote today endorsed Congressman Tim Ryan for U.S. Senate in Ohio.

“There is no bigger champion for Ohio workers than Congressman Tim Ryan. Throughout his entire career, he’s fought for the dignity of work and to protect Ohio jobs. He’s called out corporate America for outsourcing Ohio jobs, exploiting Ohio workers, and using their wealth and influence to raise taxes on Ohio families while cutting taxes for themselves,” **said End Citizens United // Let America Vote President Tiffany Muller**. “We need Tim Ryan in the Senate to stand up for Ohio working families, and we are thrilled to endorse him.”

“Thanks to the unchecked flood of money in politics, Washington isn’t working for working people: too many Ohioans are working harder than ever before and still falling further behind. Unlike J.D. Vance, who’s bought and paid for by a Big Tech billionaire who already spent \$15 million on his behalf, I’ll fight to make sure our government is on the side of the workers. That starts with making sure corporations and billionaires like Peter Thiel can’t just buy our elections for out-of-touch, anti-worker politicians who are more focused on passing big breaks for their special interest allies than improving the lives of hardworking Ohioans. I’m proud to be endorsed by End Citizens United // Let America Vote and am excited to work with them to win this race for the people of Ohio,” **said Congressman Tim Ryan**.

Congressman Ryan is running against Silicon Valley tech millionaire J.D. Vance, who is running to repay his wealthy backers by supporting a plan that raises taxes on **over a third of Ohioans**. Vance's candidacy has been propped up by fellow-Silicon Valley tech billionaire Peter Thiel, who has spent over **\$15 million** to back his preferred Senate candidate. Thiel will expect a return on his investment, a shameful pay-to-play politics that is the perfect example of the type of corrupt pay-to-play politics Ohioans are sick and tired of—and that Tim Ryan will put a stop to.

ECU // LAV is a leading anti-corruption and voting rights group. The grassroots-funded political action committee raised and spent \$65.5 million in the 2020 election cycle to elect candidates fighting to limit the influence of big money in politics and protect the freedom to vote. ECU // LAV has more than four million members nationwide.

###

OH-SEN

EXHIBIT B

PRESS RELEASES

End Citizens United Files FEC Complaint Against JD Vance Campaign and Protect Ohio Values PAC for Illegal In-Kind Contribution Scheme

Jun 09, 2022

The complaint states that Protect Ohio Values PAC illegally provided the Senate campaign of JD Vance with draft communications materials and campaign strategy documents

End Citizens United (ECU) filed a complaint with the Federal Election Commission (FEC) against Protect Ohio Values PAC (POV PAC) and JD Vance for Senate Inc. Vance is the Republican nominee for U.S. Senate in Ohio. By providing the campaign with valuable resources through a secret website it created, the super PAC circumvented the law and denied voters access to knowledge about the full extent of who supported the campaign.

[Click here to read the complaint.](#)

The complaint states that POV PAC paid for campaign strategy documents and draft communications materials that were provided to the Vance Campaign through a hidden website, in violation of the Federal Election Campaign Act (FECA). Essentially, the super PAC made a

massive in-kind contribution to the Vance campaign by paying to procure these materials and providing them to the campaign at no charge, violating federal laws prohibiting in-kind contributions from super PACs.

At issue in the complaint is the use of a “secret website,” operated by POV PAC for the alleged purpose of providing the above-mentioned materials to the Vance campaign. According to a [report in Politico](#), the website was used to provide “a trove of sensitive documents,” including polling data, opposition research and memos, and even ideas for a script for a campaign ad on immigration that the Vance campaign subsequently produced. As the complaint explains, before Politico’s report publicized it, the website was extremely difficult to find and its existence was not publicly known, making plain that its only intended audience was the Vance campaign.

“This abuse is perhaps one of the clearest and most flagrant examples of a candidate and a super PAC skirting campaign finance laws,” **said Tiffany Muller, president of End Citizens United.** “Protect Ohio Values PAC and JD Vance’s campaign completely disregarded the law as the super PAC essentially served as an all-inclusive and paid-for arm of the campaign. Wealthy donors danced around the law to prop up their preferred candidate, who will inevitably be indebted to them. People in Ohio—or anywhere else—don’t want billionaires buying elections, and are fed up with it. The FEC should immediately investigate this matter and hold all parties accountable.”

POV PAC spent over [\\$14 million](#) on independent expenditures supporting Vance’s candidacy, as permitted by law. But super PACs and other outside groups are prohibited from contributing directly to candidates, whether in the form of money or valuable campaign materials that the group uses its resources to procure. As detailed in the complaint, POV PAC violated that prohibition when it paid to obtain campaign materials that it provided to Vance’s campaign at no charge. Indeed, on the hidden website, POV PAC commented that it was helping “bring presidential level [voter] targeting sophistication to JD’s campaign without expecting the campaign to shoulder the cost.” Vance’s campaign, in turn, accepted and made use of these illegal campaign resources provided at no charge, as demonstrated by the campaign developing a communication essentially mirroring the POV PAC ad proposal.

To reduce political corruption, we need real transparency about who is spending big money on elections so that politicians can no longer receive unlimited, secret contributions – whether those be in the form of money or other resources – from wealthy special interests to support their campaigns. The FEC should swiftly take action to address this illegal activity so that Ohio voters are able to fully assess the messages they are seeing in this hotly contested race.

###

OH-SEN

EXHIBIT C

To: Interested Parties

From: Protect Ohio Values

Re: Ohio Senate

Date: September 28, 2021

JD Vance is a unique candidate. He has a compelling biography, of course. But for a first-time candidate, he also has world-class communication skills, a clear political vision that he can articulate persuasively, and broad media interest both among hostile mainstream and generally supportive conservative outlets.

At the same time, like any new candidate, JD entered the race having little name-id with the primary electorate writ large, no staff, and wanting a broad donor network. At Protect Ohio Values (POV), we have worked to amplify JD's unique strengths while lightening the challenges he faces as a rookie candidate.

As a result, in addition to fulfilling traditional Super PAC roles, POV has broken new ground. This memo outlines some of the novel roles played by POV.

Supporting the Launch

When JD was investigating whether he wanted to run for office, POV began to build out a campaign-in-waiting. JD created an exploratory committee called the Ohio Values Project, which paid for a staffer and allowed him to travel, speak with potential donors, and make an informed choice about running.

Operating independently, POV recruited, vetted, and hired staff who later joined JD as his candidacy approached. This helped his campaign save resources and get off to a quick start.

Before JD's July 1 announcement, we at POV sent crews to shoot b-roll of Middletown, to follow JD around several events in the Cincinnati area, and ultimately to cut together two videos.

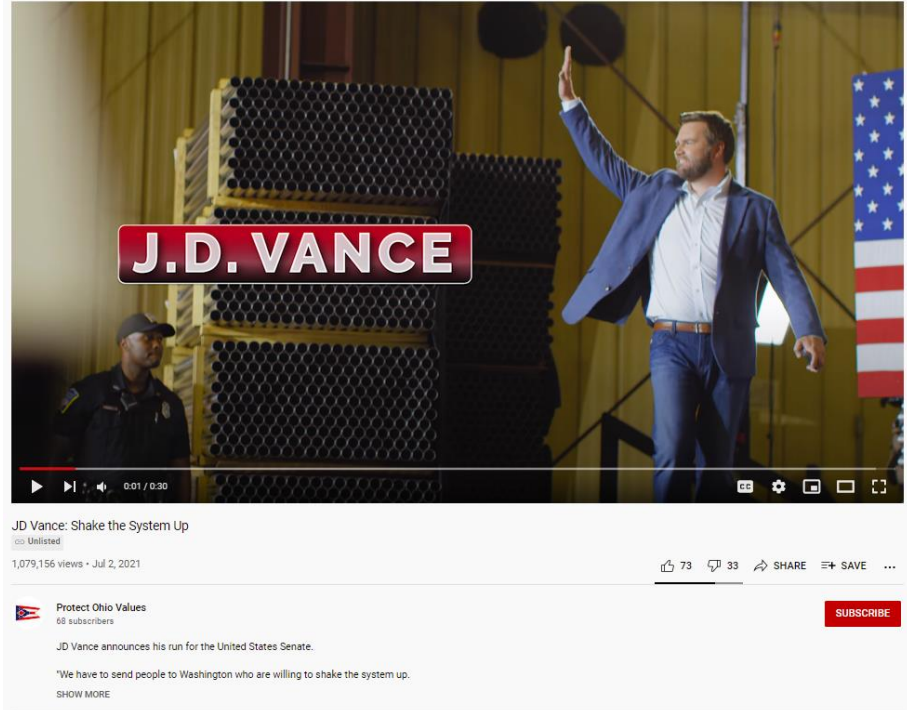
One June 30, a day before JD's announcement, we released a hype video called "[Fighting for Us](#)", which we gave to FOX News as an exclusive. The video rapidly attracted over 75,000 views.



We had two film crews in place for JD’s announcement rally. Overnight we combined our footage from the event with earlier material to create a launch video, which we called “Shake the System Up”, and which we released the morning of July 2.

“[Shake the System Up](#)” has been viewed over a million times on YouTube.

By handling the creation, distribution, and promotion of the hype and launch videos for JD, we allowed the nascent campaign apparatus to focus on his launch event and fundraising.



DEADLINE ALERT

FUNDRAISING DEADLINE APPROACHING
JD VANCE NEEDS YOUR HELP

[DONATE TODAY](#)

The race in Ohio is tighter than ever, my friend.

To stand a chance against the far-Left Democrats and take back the Senate, we need the RIGHT candidate.

That candidate is JD Vance.



MAJOR '22 FUNDRAISING DEADLINE APPROACHING | SEPTEMBER 30th 11:59

With the way things are going under Democrats' failed leadership, America is going down a dangerous path.

We can't afford to lose a SINGLE seat. We have to take back control of Congress.

JD Vance is running for Senate in Ohio to bring conservative values back to Washington.

JD's race is critical to take back the Senate.

This End of Quarter deadline is a major milestone for the 2022 election cycle. Can you chip in today?

Finally, in the month leading up to JD’s launch, we began a large-scale small-dollar donor recruitment effort. Based on JD’s message and skills as a communicator, we believed that we could nationalize the primary race. This would allow us to recruit a large cadre of small dollar supporters for his candidacy using Super PAC resources – something no organization has done successfully in a primary before.

Initially, we worked to recruit an email list of prospective supporters. Once JD announced, we pushed these people to become donors while simultaneously taking on board increasingly aggressive prospecting responsibilities. Just based on our own metrics, JD will finish his first quarter as a candidate with several thousand grassroots donors, a genuinely unprecedented feat in a contested primary. These donors will help to close the gap with the other candidates in the race.

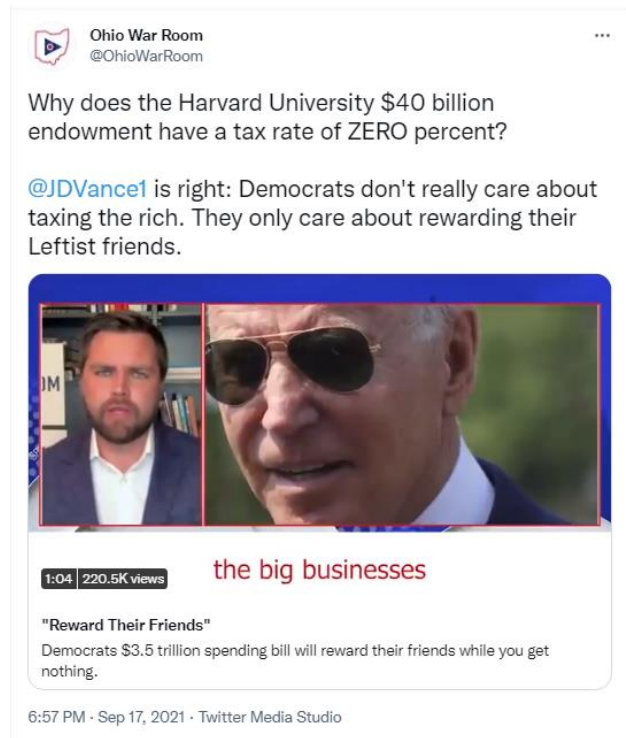
So long as we continue to hit our benchmarks, we will continue the small dollar program through the primary.

Shaping the Landscape

Shortly before JD’s announcement, POV launched “Ohio War Room” – a Twitter account devoted to promoting positive coverage of JD to conservative media outlets and influencers, and to promoting original videos that highlight aspects of JD’s message and candidacy.

Every time JD is on television, Ohio War Room clips his appearance and tweets out a high-resolution video for his supporters to embed or use. Ohio War Room also produces original videos that amplify JD’s message, dramatize some of his most effective moments, and make fun of the hysterical reaction to his candidacy in the mainstream media.

Clipped videos reliably draw thousands and tens of thousands of views. Our original content does even better. Ohio War Room’s most recent video, “Reward Their Friends”, has been watched more than 220,000 times.

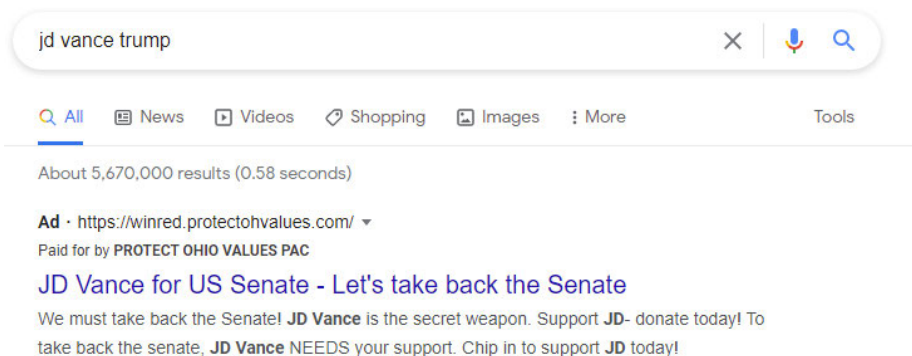


POV also supports the campaign in less conspicuous ways. Because JD is his own best messenger, we work to grow attendance at his events. Every time JD’s campaign posts an event announcement, POV sends two rounds of texts and robocalls to likely primary voters in the area letting them know when and where the event is taking place.



POV has also hosted JD for a series of statewide tele-townhalls. We robocall and text tens of thousands of Ohioans before each event and several thousand have attended. These provide a casual and conversational environment for JD to address citizen concerns head-on in a Q&A setting. POV collects, aggregates, and tracks the data from each tele-townhall.

Lastly, we aggressively track digital spending in the state, and have several supporters across Ohio who notify us of direct mail flights. We have been able to counteract spending by the Club for Growth, among others, attempting to portray JD as a RINO and a NeverTrumper.



[We have built a custom website](#) that sets the record straight about JD's views of Trump. We have also spent to dominate search results for terms connected to Trump and Vance. Anybody in the Buckeye state who turns to Google to learn about JD and Trump is served our website as the first result. We will continue playing digital defense against this charge for the duration of the campaign.

J.D. VANCE - 100% PRO-TRUMP & AMERICA FIRST .

- J.D. Vance: "I ultimately pulled the trigger and encouraged a lot of my friends to pull the lever for Donald Trump in 2020...I was really happy with the policy and so, that's what caused me to become a Trump supporter" (*Sebastian Gorka, "Reinvigorating America's Heartland: J.D. Vance Talks With Sebastian Gorka," American Greatness, 3/10/21*)
- J.D. Vance is a bona fide conservative-populist fighter, and like President Trump, is willing to take on Big Tech, woke corporations, the open borders lobby, Communist China, and the rest of the radical left-wingers trying to undermine our American families, destroy small businesses, erase our history, and transform our country for the worse.
- As a boy, J.D. experienced many of the hardships that are all too common in our rural communities - he will always be a voice for the people overlooked or looked down upon by the corrupt political elites in Columbus and Washington.
- As a Marine and Iraq veteran, J.D. has served our country on the front lines, and as an entrepreneur he's building businesses and bringing jobs back to our region.
- J.D. cares passionately about securing the American Dream, our religious liberty, our constitutional rights, and our way of life for future generations.

Research Support

In April, we hired pollster Tony Fabrizio and the industry-leading opposition researchers at Prospect Strategic. Our researchers compiled extensive dossiers on JD and his opponents. Tony then conducted a series of four polls, from April to August, to inform our thinking about the race. We tested a set of policy positions and messages based on JD's public statements, JD's vulnerabilities, and the vulnerabilities of our leading opponents.

Using these insights, we hired the data science company DeepRoot to build a series of models and segments around different issue concerns and messages. The campaign is also hiring DeepRoot to provide data services. The campaign will therefore be able to access the modeled universes POV has created, and POV will be able to access voter contact data uploaded into the database by the campaign. This arrangement allows POV to bring presidential-level targeting sophistication to JD's campaign without expecting the campaign to shoulder the cost of audience construction.

Substantively, our polling and modeling have separately found that JD has a clear path to victory, that his message and biography fit that trajectory well, and that he's making good progress along the way while his opponents stall or slide.

Fabrizio has polled Ohio Republican primary voters for POV four times. In April, we tested a range of issues that we expected JD to run on should he choose to become a candidate, along with several positive attributes of JD's biography. In June we tested JD's vulnerabilities shortly before his announcement. In July we tested Timken's vulnerabilities and in August we tested Mandel's.

Across these four polls, we find JD rising, Timken collapsing, and Mandel sliding on the ballot. At the same time, a large group of voters remain undecided.

	<i>Apr</i>	<i>Jun</i>	<i>Jul</i>	<i>Aug</i>
Josh Mandel	25	22	21	19
J.D. Vance	6	4	12	13
Mike Turner	7	6	7	5
Jane Timken	8	8	7	5
Mike Gibbons	2	2	2	4
Matt Dolan	n/a	2	1	2
Bernie Moreno	2	1	2	1
Undecided	51	55	48	51

We have also seen JD's favorable ratings grow steadily along with awareness of his candidacy. Most importantly, his Very Favorable rating is growing the fastest.

Now I am going to read you a list of names of people in the news. Please tell me if you have a favorable or unfavorable opinion of each person. If you have no opinion or have never heard of the person, just say so. (PROBE: VERY/SOMEWHAT FAV/UNFAV)

ROTATE		TOTAL FAVORABLE	TOTAL UNFAVORABLE	Very Fav	Smwt Fav	Smwt Unfav	Very Unfav	No Opinion	Never Heard Of
7. J.D. Vance	<i>Apr</i>	16	3	7	8	1	2	23	58
	<i>Jun</i>	13	4	5	8	2	2	21	62
	<i>Jul</i>	25	9	10	14	4	5	18	49
	<i>Aug</i>	28	10	14	14	5	5	24	39
8. Josh Mandel	<i>Apr</i>	50	17	18	32	10	7	20	12
	<i>Jun</i>	44	18	17	28	9	9	22	16
	<i>Aug</i>	45	17	18	28	7	9	25	14

As a corollary, even though JD is still running behind Mandel in terms of name recognition, he is rapidly closing in on Mandel's consideration score.

Now regardless of who you are voting for today, please tell me whether you would CONSIDER or NOT CONSIDER voting for each of the following candidates for U.S. Senator. If you don't know enough about the person to say one way or the other, just say so.

ROTATE		TOTAL CONSIDER	TOTAL NOT CONSIDER	Def Con	Prob Con	Prob NOT Con	Def NOT Con	Don't Know Enough
14. J.D. Vance	<i>Apr</i>	20	6	10	9	4	2	74
	<i>Jun</i>	20	7	8	12	5	3	73
	<i>Jul</i>	32	10	18	15	4	7	57
	<i>Aug</i>	35	12	19	16	6	6	53
15. Josh Mandel	<i>Apr</i>	48	14	26	22	6	8	38
	<i>Jun</i>	49	15	26	22	6	8	37
	<i>Aug</i>	49	17	25	24	7	10	34

Much the same can be said of JD's ideological positioning in the electorate. As the primary continues, he has come to be seen as considerably more conservative. Mandel, for all his antics, is essentially unchanged.

ROTATE		TOTAL CONSERV-ATIVE	MODERATE	TOTAL LIBERAL	Very Cons	Smwt Cons	Smwt Lib	Very Lib	DK/ Ref (DNR)
16. J.D. Vance	<i>Apr</i>	15	4	3	5	10	3	1	78
	<i>Jun</i>	13	6	3	5	8	2	2	78
	<i>Jul</i>	27	7	5	11	16	3	2	61
	<i>Aug</i>	32	7	6	15	17	4	2	55
17. Josh Mandel	<i>Apr</i>	43	10	4	20	22	2	2	43
	<i>Jun</i>	43	9	7	23	20	4	3	41
	<i>Aug</i>	48	11	6	26	22	4	2	35

Finally, our polling indicates that JD has a lot of room to grown. As mentioned, we tested several positive attributes and messages in April, when JD he was unknown. He immediately jumped to more than a third of the vote and a commanding lead, with Mandel's ballot support cut in half.

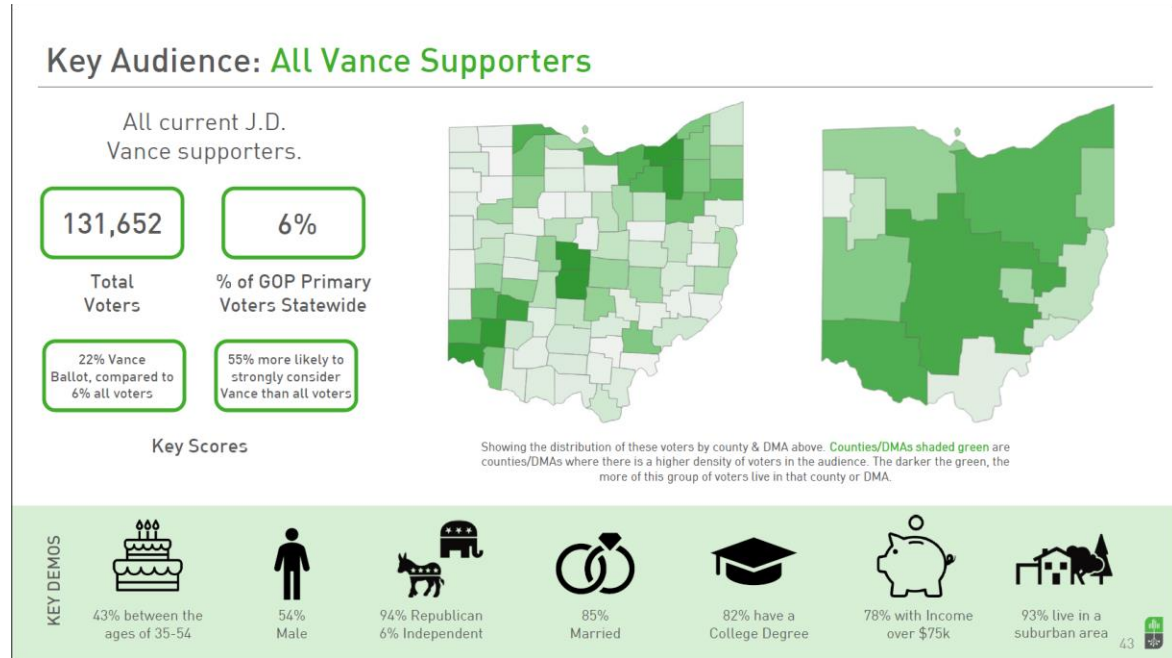
J.D. Vance	34
Josh Mandel	12
Jane Timken	6
Mike Turner	4
Bernie Moreno	2
Mike Gibbons	1
Undecided	41

In August we tested negative attributes and messages about Mandel. Mandel's support fell to nearly an identical level as the April informed ballot survey and JD takes the lead. Interestingly, Timken saw no change in her position. All this is to say that, if we have the resources to put JD and his message in front of voters, he will win.

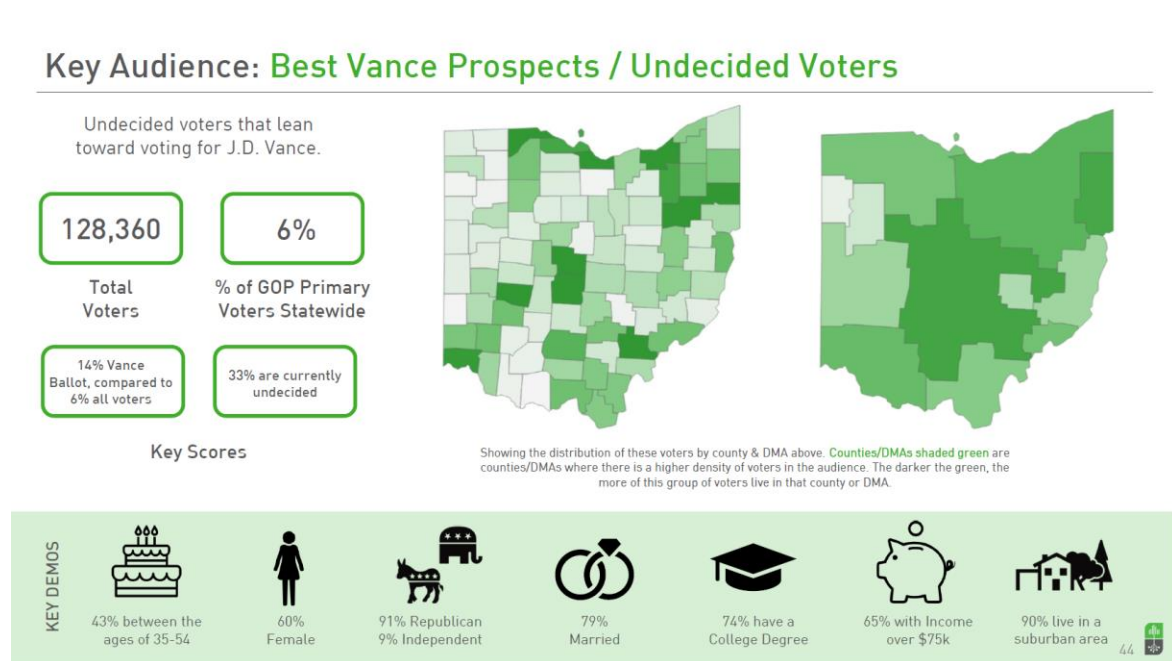
J.D. Vance	17
Josh Mandel	13
Mike Turner	6
Jane Timken	5
Mike Gibbons	4
Matt Dolan	3
Bernie Moreno	2
Undecided	50

Data Infrastructure

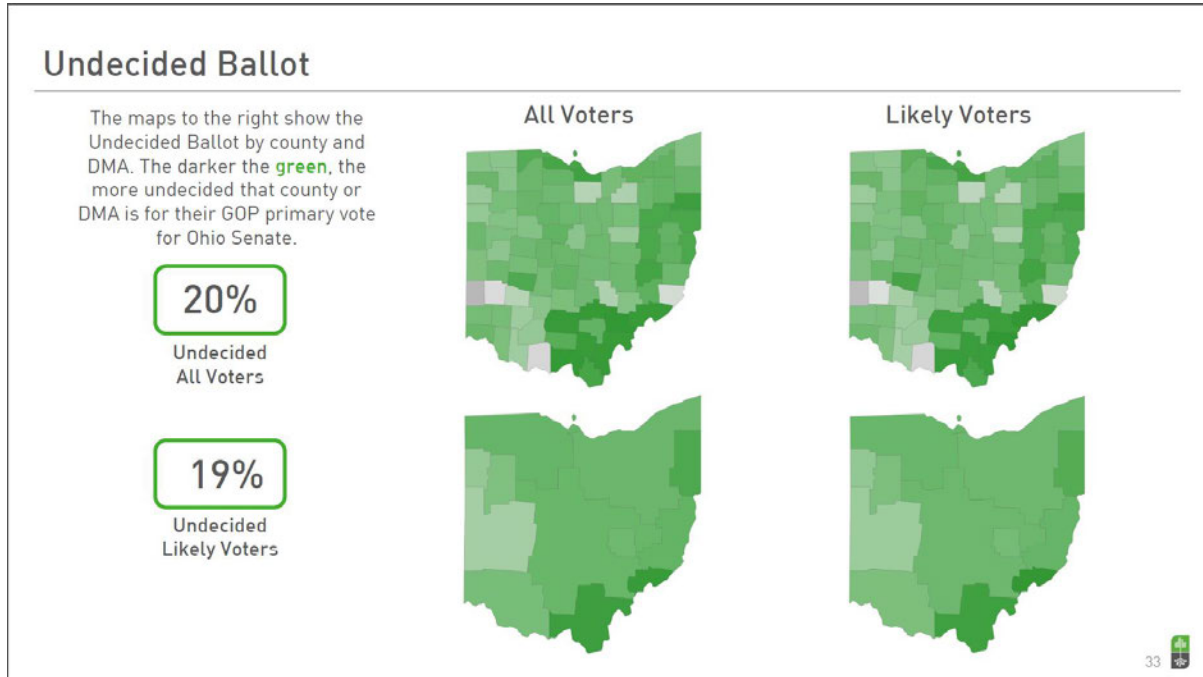
Moving from the bigger picture to tactical questions, our modeling helped us identify who in the primary electorate needs to hear what. In June, before JD’s announcement, we identified several key segments of the electorate. We found that JD indexed well with comparatively affluent GOP primary voters, especially college-educated suburbanites – a difficult group to reach with traditional media buying.



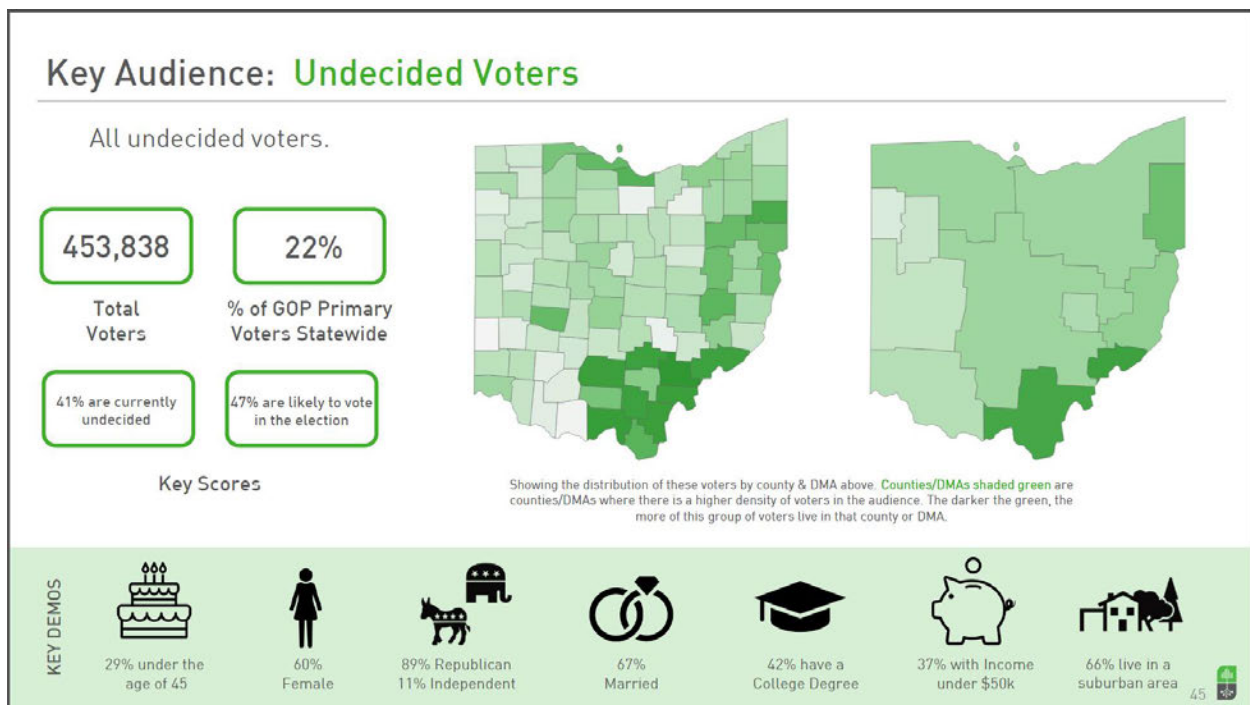
These initial supporters, plus a cohort of demographically similar voters, were the shortest path to viability. We focused our initial efforts on getting JD’s announcement video in front of them.



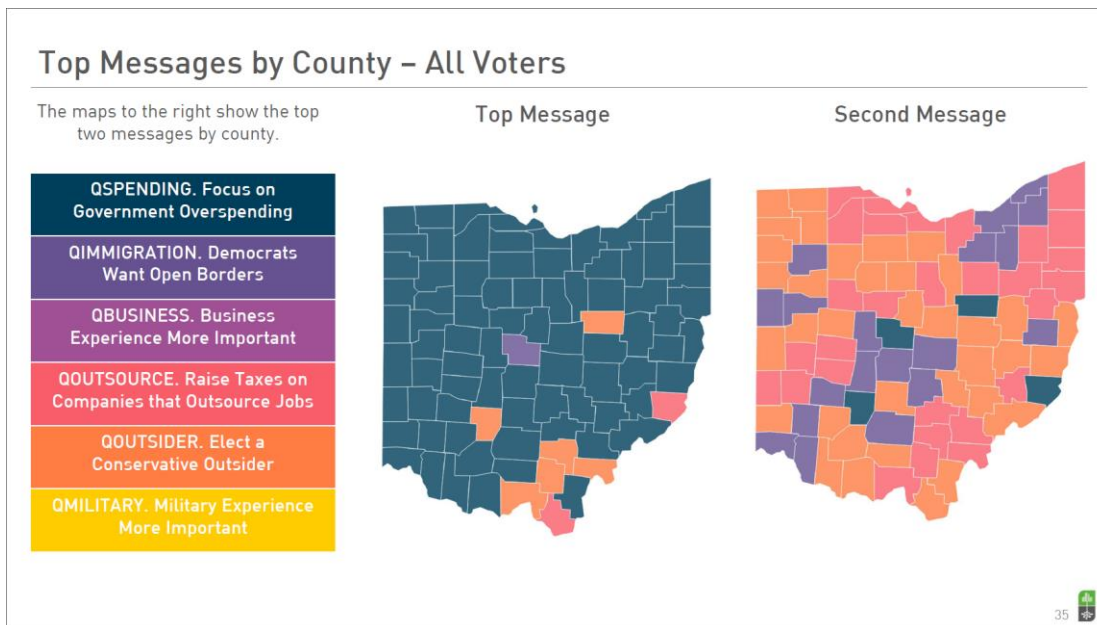
Crucially, a large segment of the population remained fully undecided on the ballot. This group clustered in southeastern Ohio because we included Congressman Turner in our modeling survey. Excluding him, the entirety of southern Ohio is full of voters up for grabs. JD is the only non-Cleveland candidate, with a biography and message well-matched to the stretch of counties running from Mahoning County, down the West Virginia border, and across the state south of Columbus.



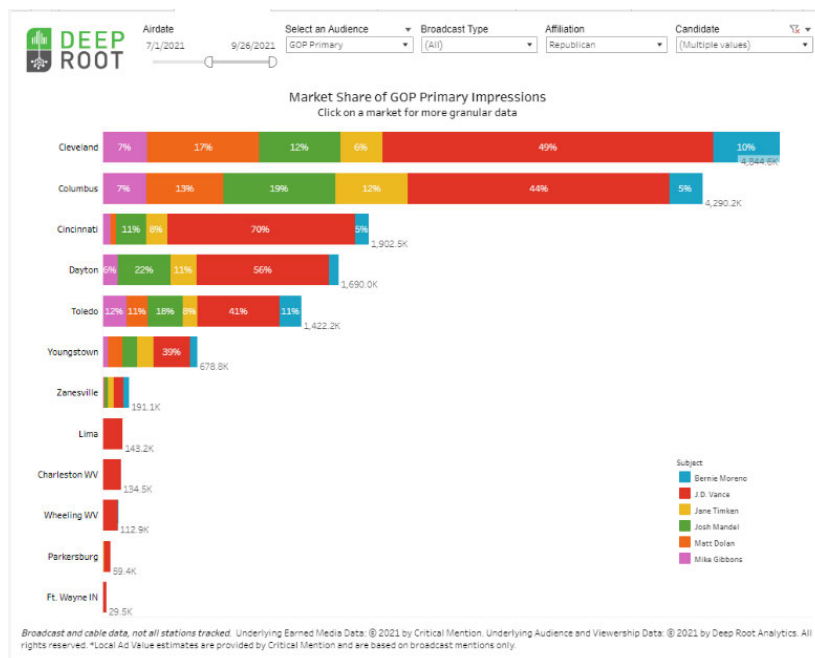
These undecided voters are older, less likely to be married, have lower incomes, and lower rates of college graduation. They consume traditional media, especially broadcast and cable television.



We found that the messages we tested based on JD’s public statements matched well with the policy priorities of these undecided voters. This group is hungry for a conservative outsider who is tough on immigration, willing to tax companies that outsource jobs, and reign in the Biden administration’s inflation-causing spending spree. JD fits the bill to a tee.



Winning over these undecided voters, while retaining JD’s strong suburbanite support, would reassemble the Trump coalition in miniature, which carried Ohio twice. It would certainly put JD over the percentage needed to win the nomination.



And JD appears to be well on his way. JD has dominated earned media in the state since his July 1 announcement, carrying the lion’s share in every market and across both broadcast and cable.

His 2,534 television appearances swamp Mandel’s 393 and Timken’s 202. Indexed to the GOP primary electorate, we estimate JD has earned more than 300 targeted rating points in every market in the state, with 501 in Columbus, 454 in Cleveland, and 436 in Cincinnati. He dominates the secondary markets, where cable is king.

When we refreshed the models earlier this month, we found across-the-board improvement for JD. He continued to consolidate the suburbanite vote and, based solely off earned media, has begun to build support among the undecided bloc in southern and far-eastern Ohio.

Field Name	Grouping	Count	Percent	R2-R1	Round 2 9/14/21	Round 1 5/24/21
Key Groups	Republican Underperformers	14,746	1%	-2%	9%	11%
	White Working Class Men	200,582	10%	8%	12%	4%
	Voters Under 35	157,390	8%	3%	10%	7%
	White Evangelicals	433,962	21%	5%	10%	5%
	Pro Life White Evangelicals	339,904	17%	6%	11%	5%
	Moderate Pro Choice Suburban Women	379,985	19%	1%	9%	8%
	Blue Collar Voters	352,262	17%	7%	11%	4%
	New Registrants	116,416	6%	6%	11%	5%
	Disengagers	226,503	11%	6%	11%	5%
	Voted in 2018 Not 2016	29,432	1%	5%	10%	5%
Voted in 2016	1,920,819	94%	5%	11%	6%	

Tripling his vote share among white working-class men in particular shows immense promise. At the same time, he's growing fastest among the most reliable GOP voters, who make up the lion's share of the primary electorate and who are the most likely to vote.

Field Name	Grouping	Count	Percent	R2-R1	Round 2 9/14/21	Round 1 5/24/21
Republican Party Framework	Strong Republicans	1,600,440	78%	6%	11%	6%
	Steady Republicans	147,895	7%	2%	9%	7%
	Volatile Republicans	171,159	8%	1%	8%	6%
	Volatile Independents	128,341	6%	2%	7%	5%

Field Name	Grouping	Count	Percent	R2-R1	Round 2 9/14/21	Round 1 5/24/21
Turnout Propensity	High	131,746	6%	7%	13%	6%
	Mid	1,477,105	72%	5%	11%	6%
	Low	438,984	21%	5%	10%	6%

Field Name	Grouping	Count	Percent	R2-R1	Round 2 9/14/21	Round 1 5/24/21
RNC Calc Party	Hard Republican	1,662,005	81%	5%	11%	6%
	Soft Republican	262,257	13%	4%	10%	6%
	Independent	22,206	1%	1%	7%	6%
	Soft Democrat	80,671	4%	2%	7%	5%
	Hard Democrat	20,696	1%	0%	6%	6%

Geographically, we see steady and nearly uniform ballot position across the state. This despite having spent nothing on television advertising so far.

Field Name	Grouping	Count	Percent	R2-R1	Round 2 9/14/21	Round 1 5/24/21
DMA	CHARLESTON-HUNTINGTON	53,849	3%	9%	12%	4%
	CINCINNATI	360,533	18%	7%	13%	6%
	CLEVELAND-AKRON (CANTON)	580,391	28%	4%	10%	6%
	COLUMBUS, OH	419,312	20%	4%	10%	6%
	DAYTON	262,173	13%	5%	10%	5%
	LIMA	49,565	2%	8%	12%	4%
	TOLEDO	171,336	8%	5%	10%	5%
	WHEELING-STEUBENVILLE	30,109	1%	6%	10%	4%
	YOUNGSTOWN	74,523	4%	5%	9%	5%

These results contrast favorably to both Mandel and Timken. Mandel has stalled out, and in many places taken a small step back. And interestingly, as we see from the polling, his modeled audiences are not converting into his ballot position. Even people who look like Mandel supporters are not yet committed to Mandel despite. By contrast, JD's ballot position is running ahead of his modeled support, meaning he's drawing from unconventional places that transcend his coalition.

Field Name	Grouping	Count	Percent	R2-R1	Round 2 9/14/21	Round 1 5/24/21
Republican Party Framework	Strong Republicans	1,600,440	78%	-1%	29%	30%
	Steady Republicans	147,895	7%	-1%	21%	22%
	Volatile Republicans	171,159	8%	-2%	20%	22%
	Volatile Independents	128,341	6%	-1%	20%	21%

Field Name	Grouping	Count	Percent	R2-R1	Round 2 9/14/21	Round 1 5/24/21
Turnout Propensity	High	131,746	6%	-6%	29%	35%
	Mid	1,477,105	72%	-2%	28%	30%
	Low	438,984	21%	0%	23%	23%

Field Name	Grouping	Count	Percent	R2-R1	Round 2 9/14/21	Round 1 5/24/21
DMA	CHARLESTON-HUNTINGTON	53,849	3%	12%	35%	23%
	CINCINNATI	360,533	18%	-1%	27%	28%
	CLEVELAND-AKRON (CANTON)	580,391	28%	-4%	29%	33%
	COLUMBUS, OH	419,312	20%	0%	26%	26%
	DAYTON	262,173	13%	-1%	19%	20%
	LIMA	49,565	2%	-6%	28%	34%
	TOLEDO	171,336	8%	-3%	30%	33%
	WHEELING-STEUBENVILLE	30,109	1%	7%	31%	24%
	YOUNGSTOWN	74,523	4%	6%	33%	27%

Timken, by contrast to both Mandel and JD, appears to be in free-fall, especially in Cincinnati and Columbus. The prospects for her candidacy are grim.

Field Name	Grouping	Count	Percent	R2-R1	Round 2 9/14/21	Round 1 5/24/21
Republican Party Framework	Strong Republicans	1,600,440	78%	-5%	9%	15%
	Steady Republicans	147,895	7%	-4%	8%	12%
	Volatile Republicans	171,159	8%	-5%	7%	12%
	Volatile Independents	128,341	6%	-4%	7%	12%

Field Name	Grouping	Count	Percent	R2-R1	Round 2 9/14/21	Round 1 5/24/21
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	DAYTON	262,173	13%	0%	5%	6%
	LIMA	49,565	2%	3%	11%	8%
	TOLEDO	171,336	8%	0%	10%	9%
	WHEELING-STEUBENVILLE	30,109	1%	-3%	12%	15%
	YOUNGSTOWN	74,523	4%	-3%	13%	16%

Looking Ahead

As the above makes clear, JD is on a trajectory to win. He has the right message for the primary. His opponents are treading water or sinking. Mandel especially has major vulnerabilities that we have identified and can exploit to let voters know that he is not the America First champion he purports to be.

The momentum is on our side.

However, we will need resources to put JD in front of voters. His opponents already attack him daily on social media. The campaign and Super PAC have been disciplined and have refused to take the bait. However, we will need to go on offense as 2021 becomes 2022.

POV is already putting together the materials we need to make JD the next United States Senator from Ohio. But we are facing a two-time statewide elected official with a massive campaign war chest, and four self-funders who can commit millions of their own dollars. We have the path, we have the plan, and we have a uniquely talented candidate with a message that matches the moment. We simply need to secure the resources necessary to win.

EXHIBIT D



2022 ELECTIONS

A mole hunt, a secret website and Peter Thiel's big risk: How J.D. Vance won his primary

The former Trump critic leaned on a super PAC and his billionaire patron to put him in position for Trump's all-important endorsement.



Republican U.S. Senate candidate J.D. Vance arrives onstage after winning the primary at an election night event on May 3 in Cincinnati, Ohio. | Drew Angerer/Getty Images

By **ALEX ISENSTADT**

05/03/2022 11:08 PM EDT



Tech billionaire Peter Thiel had already donated a record-breaking amount of money to support J.D. Vance in the Ohio Republican Senate primary — but last week, the Silicon Valley tycoon decided he wanted to give even more.

“Peter would like to make another contribution to the PAC, this time for \$1.5 million,” a top Thiel lieutenant wrote to strategists running a pro-Vance super PAC in an April 26 email, a copy of which was obtained by POLITICO. “We are planning to send the wire today, but before doing so I just wanted to confirm you have everything you need from us.”

Advertisement

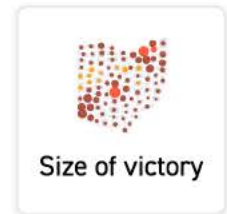
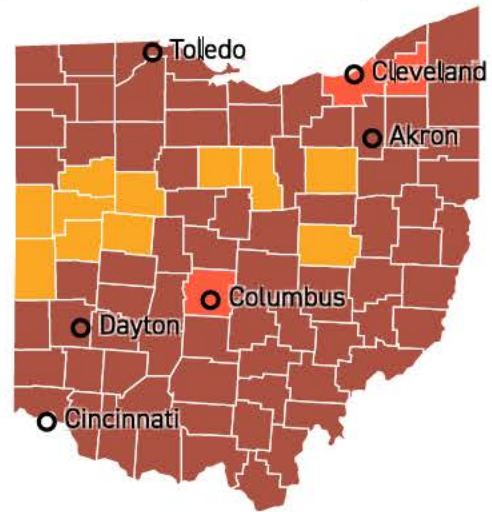
With that previously unreported donation, Thiel had given \$15 million in total to bolster Vance — the largest amount ever given to boost a single Senate candidate. Thiel is a contrarian who became famous for making risky investments that paid off — and with Vance's win in Tuesday's primary, the PayPal co-founder and early Facebook financier struck it big again.

Vance was hardly a sure thing. His campaign was outspent by his better-funded rivals, and he had a long history of making anti-Trump statements that could have gone over poorly with GOP primary voters. In February, his campaign suffered a damaging leak of confidential polling data that painted a grim picture of his prospects, chilled his fundraising and set off a forensic hunt for a potential mole.

U.S. Senate, Ohio (GOP primary)

CANDIDATE	VOTES	PCT.
J.D. Vance ✓	340,991	32.2%
Josh Mandel	253,051	23.9%
Matt Dolan	247,042	23.3%
Mike Gibbons	123,417	11.7%

99% of expected vote in



[SEE ALL OHIO RESULTS](#)

And unbeknownst to his political advisers, a rival campaign had gained access to some of the Vance operation’s most sensitive documents, giving them a bird’s-eye view into their plans.

But Vance — like many of Thiel’s venture capital investments — took an unusual path to the top, one aimed specifically at helping him win former President Donald Trump’s endorsement and then, in turn, the nomination.

While Vance’s rivals took the conventional route and funneled millions of dollars into TV commercials, Vance mostly outsourced his advertising to the Thiel-funded super PAC, instead focusing on winning free media attention from conservative outlets.

AD

And while his rivals relentlessly pursued Trump's all-important endorsement with repeated trips to the former president's Mar-a-Lago estate, Vance kept his distance after an early meeting — and ultimately won over the image-focused Trump anyway, with the former president privately telling Vance he had a “beautiful” golf swing and was a “handsome son of a b----.”

“J.D. really had to carve his own path,” said Republican strategist Luke Thompson, who ran Vance's allied super PAC. “There was no traditional path to victory, so doing things conventionally wasn't an option.”

Courting Trump — and keeping him at bay

While Vance's rivals were racing to win Trump's endorsement as the primary got underway, Vance was forced to start by playing a very different game: trying to keep the former president from attacking him. After all, during the 2016 campaign Vance had identified himself as "Never Trump," said he "loathed" the former president and once wondered on Twitter: "What percentage of the American population has @RealDonaldTrump sexually assaulted?"

They were the kind of statements that typically infuriated Trump, and that led Vance to try to soothe the former president during a spring 2021 meeting at Trump's Mar-a-Lago resort. During the sit-down, which was chaperoned by Thiel and also attended by Trump's son, Donald Trump Jr., Vance argued that he was aligned with Trump on the populist issues the former president cared about. The candidate took other steps to win over Trump, including befriending his eldest son, who would become Vance's closest ally in the former president's orbit.



Senate candidate J.D. Vance, left, greets former President Donald Trump at a rally on April 23, 2022, in Delaware, Ohio. | Joe Maiorana/AP Photo

By the fall, Vance's poll numbers were on the rise, and it appeared there was a thaw in the relationship between Trump and Vance. But Vance was soon dealt a setback when the Club for Growth, which was backing Vance rival Josh Mandel, pulverized him with TV ads highlighting his past anti-Trump remarks.

Trump appeared to cool on the candidate.

While he "really liked J.D.," Trump told friends, the "Club ads" just "killed him dead."

The secret website

Last fall, Thompson wrote a memo to Thiel's team and other donors explaining that the pro-Vance super PAC would have to operate very differently from other outside groups, carrying much of the load that the Vance campaign couldn't.

Vance was a first-time candidate, and he lacked a donor base able to keep up on the fundraising front with his rivals, some of whom poured millions of dollars from personal fortunes into their campaign accounts. The disparity showed in the campaigns: Vance had a bare-bones team, with only one communications staffer.

AD

As the primary got underway, the super PAC took on the responsibilities typically overseen by campaigns: It built out an extensive data operation, sent

text messages to supporters encouraging them to attend Vance's events, and hosted tele-town hall events the candidate participated in. But the most striking maneuver was one that wasn't mentioned in the memo.

Shortly after Vance launched his campaign last summer, Thompson set up a public website where he published a trove of sensitive documents — from thousands of pages of polling data, to memos assessing the strengths and weaknesses of Vance's opponents, to a 177-page opposition research book detailing all of the areas where Vance's opponents might attack him. There were suggested lines for Vance to use on the campaign trail, and even guidance on how the candidate could win Trump's endorsement.



Tech billionaire Peter Thiel had given \$15 million in total to bolster J.D. Vance — the largest amount ever given to boost a single Senate candidate. | Rebecca Blackwell, File/AP Photo

All of it was out in the open for the world to see. But it had one intended audience: the Vance campaign.

The site — housed on the publishing platform Medium under the username [@protectohiovaluesforms](#) — allowed the super PAC to publicly convey

information to the Vance campaign without breaking federal laws prohibiting coordination between big-spending outside groups and campaigns. By accessing the website, the lesser-funded Vance campaign was able to capitalize on the resources of the Thiel-funded super PAC.

While organizations from both parties have set up similar websites, the sheer amount of information on the Medium site — and the danger associated with laying so much out in public — set it apart.

“We knew we were going to have less to work with from the start, so we had to take risks and be innovative to keep our donors and supporters engaged,” said Thompson, who worked on the big-spending super PAC that bolstered former Florida Gov. Jeb Bush in the 2016 presidential campaign. “That included risking having all of our research in public. But if we hadn’t taken those risks, we would never be in a position to contend for the lead and for a presidential endorsement.”

As the Vance team would soon find out, they were right to be concerned.

Whack-a-mole

Vance had reset his campaign early this year following the Club for Growth’s scorching TV blitz, when he was dealt a serious blow: The publication of a 98-page [internal polling memo](#) in POLITICO warning that Vance was in a “precipitous decline.”

Donors started closing their wallets, and within the super PAC, which commissioned the survey, the hunt was on for the leaker. Thompson examined drafts of the memo and compared them to what was published. He tried to determine if someone might have accessed the document from the Medium platform by examining the server’s logs. And he reached out to his data team, Deep Root Analytics, for assistance in the search.

While Thompson narrowed down a list of potential suspects, he never settled on one.



U.S. Senate Republican candidate Josh Mandel concedes to opponent J.D. Vance on May 3, 2022, in Beachwood, Ohio. | Phil Long/AP Photo

Another problem had developed: Mandel's campaign had discovered the Medium site and was plumbing it for intel. The Mandel team had been spending months poring over the reams of polling data, the detailed state-of-the-race memos, and advertising spending plans, using all of it to adjust their own strategy.

AD

It was a stunning breach, one that gave one of Vance's chief rivals visibility into

his operation.

Officials on the pro-Vance super PAC never knew about the snooping; while they tracked the site's traffic, they couldn't tell who the visitors were. The Mandel campaign flagged the website to POLITICO late last week.

Tucker, Ukraine and vaccines

While Vance's opponents flooded the TV airwaves with millions of dollars in commercials, the more cash-strapped Vance generated free media attention for himself by running as a fire-breathing, controversy-embracing populist. The candidate took to conservative outlets like Breitbart News, Steve Bannon's "War Room" podcast, and Tucker Carlson's Fox News show. He declared that Mexican drug cartels should be labeled "terrorist organizations," called for "mass civil disobedience" in response to vaccine requirements and argued against American involvement in Russia's war on Ukraine.

Vance's position on Ukraine turned off donors and cut against popular opinion that backed aiding the country's fight against Russian aggression with supplies, if not with American troops. But the candidate made up for it with loads of media attention. According to media tracking information, Vance has been mentioned on broadcast TV stations more than 7,200 times since June 1, 2021, more than twice as much as his nearest rival, Mandel.

The bomb-throwing rhetoric was also about repositioning himself as a conservative after being tagged as anti-Trump.

In February, Thompson posted a memo to the Medium site arguing that Vance had an opening to zero in on immigration and border security, noting that he had a “personal” connection to the issue given his mother’s struggles with drug addiction. The issue was near and dear to primary voters, the memo argued, and crucially, could help in nabbing Trump’s support.

“To win a Trump endorsement, a candidate has to show growing ballot share. To get that, a candidate has to own a critical issue,” the memo read. “JD can do that.”

When Vance took the stage at the Conservative Political Action Conference in Florida later that month, he [focused squarely on immigration](#). And when the campaign went up with its [first TV ad](#) last month, it showed a direct-to-camera Vance telling viewers that he “nearly lost” his “mother to the poison coming across our border” — just like his super PAC suggested.

Trump makes his move

As winter turned to spring, the race for Trump’s endorsement accelerated — and just about everyone involved in the primary knew it would likely decide the eventual nominee.

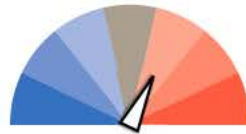
While Trump was aware of Vance’s past condemnations, he was hearing from allies including Carlson and Missouri Sen. Josh Hawley who encouraged him to get behind the candidate. And he had recently seen Vance playing golf at Mar-a-Lago, where he complimented the candidate on his swing and his personal appearance. But for the TV-obsessed Trump, it was Vance’s performance in the debates that led the former president to endorse his onetime critic.

AD

Trump had met with Mandel and investment banker Mike Gibbons, among other candidates in the field. But he was repulsed when he was shown a clip of the two nearly coming to blows during a March forum. After watching one of later debates in full, the president told advisers he was unimpressed with all of those running, except for Vance.

POLITICO FORECAST 2022

The Senate

**Leans
Republican****SEE FULL ANALYSIS**

Donald Trump Jr., who had privately grown close to Vance, was by that point edging closer to going public with his support for the candidate. After several of Vance's rivals in March came out in support of imposing a European-led no-fly zone in Ukraine, which Vance opposed, the younger Trump took to Twitter to praise him as "100% America First."

But to get Trump to endorse, those on the Vance team recognized they needed to increase his standing in polls, which had shown him trailing throughout the

primary. That meant the super PAC would go for broke.

On Feb. 10, Thompson took to Medium and posted a picture of an atomic bomb going off, with the caption, “Bombs away.” The next day, the organization emptied out its bank account with a TV ad blitz promoting Vance.

In mid-April, Trump called a Thiel associate and told them he was moving closer to endorsing Vance. Thiel, a Vance mentor who had been a financial backer of Vance’s Narya venture capital firm, had been playing a key role for the candidate. In addition to donating millions to the pro-Vance super PAC, Thiel helped to recruit around 10 more major donors to Vance. He introduced the candidate to venture capitalist David Sacks, who donated \$1 million to the super PAC and hosted a December fundraising reception.

On April 15, Trump made his endorsement of Vance official — a nod that pushed Vance to victory. “It was his endorsement that secured the nomination for J.D.,” said senior Vance adviser Andy Surabian.

Within days, the candidate had vaulted into first place in polling. And Tuesday night, Vance celebrated his win with a congratulatory phone call from the former president.

FILED UNDER: OHIO, DONALD TRUMP, DONALD TRUMP 2020, PETER THIEL, J.D. VANCE, 

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EXHIBIT E



ELECTIONS

'Precipitous decline': J.D. Vance pollster issues warning on Ohio Senate race

A polling presentation for the pro-Vance super PAC shows the candidate suffering from attacks on his past comments about Trump.



J.D. Vance has been working to make inroads with both Trump supporters and Trump himself. | AP

By **ALEX ISENSTADT**

02/07/2022 02:57 PM EST

Updated: 02/07/2022 03:42 PM EST



Republican Senate candidate J.D. Vance “needs a course correction ASAP” — and that’s according to the well-funded super PAC supporting him.

A [98-page PowerPoint presentation](#) produced by Tony Fabrizio, who has been polling for the pro-Vance Protect Ohio Values super PAC since last year, paints a dire picture of the candidate’s prospects. According to the slide deck, Vance has seen a “precipitous decline” in Ohio’s GOP Senate primary since last fall, when a pair of outside groups backing a rival began a [multimillion-dollar TV advertising blitz](#) using five-year-old footage of Vance attacking former President Donald Trump.

“Driving his negatives is the perception that he is anti-Trump. This has only grown since” November, said the presentation, which is based on polling data of 800 likely primary voters conducted Jan. 18-20.

The Senate race in Ohio is a high-profile example of how Trump is dominating Republican down-ballot primaries, and how his support is seen as make-or-break for those seeking the party’s nomination. Vance refashioned himself as a Trump supporter long ago, but his past comments are sticking to him. Meanwhile, Republican candidates are welding themselves to the former president and aggressively seeking out his endorsement; last spring, a handful of the Ohio Republican candidates met with Trump for an [“Apprentice”-style boardroom audition for his support.](#)

Vance, a venture capitalist and the author of “Hillbilly Elegy,” has been working to make inroads with both Trump supporters and Trump himself: Last year, Vance and his main financial benefactor, tech billionaire Peter Thiel, [quietly met with Trump](#) at his Mar-a-Lago estate in South Florida.

Vance allies downplayed the memo, noting that the poll is nearly three weeks old and that several major developments have taken place in the race in the last

few weeks, including the withdrawal of one of Vance's rivals.

But Fabrizio, who is also a longtime Trump pollster, wrote in the presentation that Vance is “now underwater with strong Trump” supporters “and very conservative voters, groups needed to win a GOP primary.” He added that Vance’s “association as a Never Trumper has only grown since November” and that “being anti-Trump is the #1 reason voters do not like Vance.”

Several months out from the May 3 primary, the presentation says that “consideration of Vance has fallen most dramatically with those on the right: conservatives and strong approvers of Trump,” and that the “perception” of Vance “as a moderate or even as a liberal continues to steadily grow.”

“The groups where Vance has improved are those we don’t want him doing better with: Trump disapprovers and moderate/liberals,” Fabrizio wrote.

Vance’s decline follows a \$2 million-plus TV ad campaign from the Club for Growth and USA Freedom Fund, outside groups that are backing Vance rival Josh Mandel, which have portrayed Vance as an anti-Trump figure. The commercials, which use footage from 2016, show Vance describing himself as a “Never Trump guy” and calling Trump an “idiot,” “noxious” and “offensive,” appear to have made a dent. According to the slide deck, “anti-Trump is by far the top thing the 50% of voters who have seen an ad about Vance remember.”

AD

Still, the polling paints the picture of a close, crowded race. The survey shows

Mandel, a former state treasurer who unsuccessfully ran for Senate in 2012, out ahead with 15 percent. He is followed closely in the results by self-funding investment banker Mike Gibbons, with 14 percent, former state GOP Chair Jane Timken with 13 percent, business owner Bernie Moreno with 11 percent, and Vance at 9 percent. (Moreno dropped out of the primary last week, several weeks after the poll was taken.)

In a statement to POLITICO, Fabrizio pointed out that the race has taken several turns since the January survey was conducted that make the results outdated. In addition to Moreno's departure, the Club for Growth has begun an advertising offensive targeting Timken, and another candidate, wealthy state Sen. Matt Dolan, has begun spending heavily.

Fabrizio also noted that since the poll was taken, Vance won the endorsement of Georgia Rep. Marjorie Taylor Greene, the conservative firebrand popular among Republican grassroots activists, and held a campaign event with her in Ohio. Vance also recently embarked on a 20-stop, town hall tour through the state.

The polling memo contends that Vance has an opening to make further inroads with conservatives by stressing messages such as "cutting federal aid to localities that allow non-citizens to vote," and requiring proof of citizenship to get public assistance."

The report's conclusion: "Vance needs a course correction ASAP that will resolidify him as a true conservative. He has a ton of strong messaging to make that happen and he should push it hard."

A representative for the pro-Vance super PAC declined to comment. Fabrizio, who last week transitioned from working for the super PAC to working for Vance's official campaign, noted in a statement that "to date, J.D. Vance has had the most money spent against him and virtually none on his behalf."

That could change quickly: The super PAC went into 2022 with more than \$6 million in its bank account, according to recent campaign finance disclosures.

Thiel seeded the group with \$10 million last year.

Fabrizio also pointed to the changes in the race since the poll was taken and said that, with his endorsement from Greene, Vance was “shoring up his credentials as the conservative outsider in the race.”


Yet it’s another, as-yet-undelivered endorsement that hangs over the race: Trump’s. Fabrizio’s slide deck suggests that is the one that could really propel Vance.

The presentation includes a six-page section devoted to exploring the impact of a Trump endorsement and concludes that, in the event he received the former president’s support, Vance’s vote share would jump from 9 percent to 35 percent, the polling suggested, more than tripling the support held by his nearest rival in that scenario.

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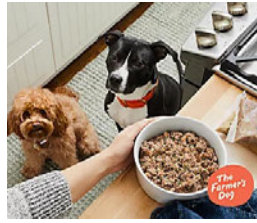
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JD Vance is a fraud. #ohsen

Paul Steinhauser @steinhauserNHI · Jul 19
2022 Watch-NEW on @FoxNews - Ohio Democratic Senate nominee @TimRyan charges in a new statewide TV ad that #GOP nominee @JDVance1 used an opioid non-profit to further his "political career" foxnews.com/politics/ohio-... #2022Elections #ohpol #FoxNews

2 replies 6 retweets 14 likes

Dave Chase @dchase

Also just want to give a big shout out to @ltthompso and his research team who were the ones who put together the initial research behind this spot and posted it online for us. Thanks y'all!

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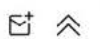


EXHIBIT H

BEFORE THE
FEDERAL ELECTION COMMISSION

Declaration of Lucas Thompson

I, Lucas Thompson, declare under penalty of perjury that the following is true and accurate.


1. I am the Executive Director of Protect Ohio Values PAC. My business address is 100 E. Campus View Boulevard, Suite 250, Columbus, Ohio 43235. The statements in this declaration are based upon my personal knowledge.
2. POV created the Medium blog to communicate effectively with, *inter alia*, donors, potential donors, influencers, and supporters directly, rather than working through the large teams of surrogates and advisors retained by several POV donors and donor prospects.
3. The presence of surrogates and advisors rendered a private mailing list or invite-only website insufficient to reach the audience POV needed to reach, leading POV to opt for a public-facing website.
4. POV did not pay any fees to Medium or to Twitter for the posting of any of the blog's content.
5. The use of the Medium blog grew substantially in October 2021, after circumstances required POV to publish sensitive internal information to this publicly accessible blog.
6. On September 28, 2021, I circulated a confidential memorandum to key donors and other stakeholders interested in the race showing that Mr. Vance had an inside track to securing the nomination.
7. Within days of that memorandum's circulation, significant donors to POV learned that the Club For Growth planned to run millions of dollars of negative ads against J.D. Vance in an effort to keep him from securing the Republican nomination for United States Senate in Ohio.
8. In response, donors to POV pushed POV to do more to support Vance immediately, including but not limited to conducting more polling and running television advertisements. In response to this pressure, I decided to distribute the donor memorandum to a broader audience.
9. On October 4, 2021, POV posted to the Medium blog and wrote, "A number of people have asked what POV is doing to break from the same-old, same-old approach of traditional Super PACs. After all, we received the largest single primary election contribution in campaign history. It was an opportunity to do new things and break new ground. With that in mind, we're publishing an updated version of a memo we sent to key

supporters.” I was able to use this post to persuade donors it was best to preserve most of POV’s resources for a later date, rather than to heavily spend resources immediately.

10. Thereafter, POV leveraged the public Medium platform to communicate more robustly with its donors, potential donors, and supporters.
11. POV’s posts after the October 4 post and until February 6, 2022, consisted of information on public impressions from earned media, publicizing the fact POV hired a film crew to cover public events for J.D. Vance, and putting up some B-roll for anybody to use and view from Vance’s public events—all relatively mundane activity that Complainants ignore because it has no significance other than to let donors know that POV was busy working and preparing for the primary season.
12. The first substantive Medium post after October 4, 2021 did not run until February 6, 2022. That date is no accident. I had been informed by a Politico reporter that the news website would run an article the next day describing that J.D. Vance’s chances for winning the Republican nomination were in a tailspin, and that Politico would publish POV’s polling documents confirming that fact.
13. I had not released those documents to Politico, raising the prospect that a rival campaign or the press had obtained them from the Medium blog.
14. That same day, POV published a blog post calling for calm, entitled, “The Senator from January” focused on the tightness of the race and advising: “This year’s Ohio Senate race, by contrast, is an IndyCar slugfest. Victory goes not simply to the swiftest, but to he who masters the clock. Margins are tight. Positions can shift on a dime. Timing is everything.” The post was accompanied by an F1 car crashing, insinuating that spending money too fast could end up in a disaster.
15. The Politico article, coupled with unrelenting spending from the Club For Growth and other allies of Mr. Mandel, pushed POV’s hand. Consequently, on February 10, POV posted a note saying “bombs away” that preceded POV’s first major ad buy.
16. A week later, on February 17, POV posted a blog entry to Medium that outlined the state of the race in relation to an endorsement from former President Trump. The post discussed the ad POV had on-air, editorialized about different ad directions the organization might take, and proposed a commercial based on J.D. Vance’s commitment to ending the opioid endemic and curbing illegal immigration. The post outlined Vance’s political identity for surrogates and influencers, and set forth a case to President Donald Trump that J.D. Vance was the right candidate to endorse.
17. Indeed, February 17 marked an inflection point for POV’s donor messaging. After that date, the spending from the Club for Growth and the pressure from Mr. Mandel’s and other campaigns’ supporters on President Trump to issue an endorsement forced the blog to increase the amount of information it was sharing on POV’s activities.

18. Specifically, the blog focused entirely on providing information to POV's network of potential donors and supporters so they could convince President Trump that Mr. Vance was the best candidate to win in November.
19. The blog entries, with significant information about the internal workings of POV, were posted with awareness that Politico and other campaigns were likely watching the blog closely.
20. On April 15, 2022, President Trump endorsed Vance, and POV received significant contributions of over \$6 million.
21. There was no effort to hide the POV site. The name included the full name of Protect Ohio Values, no settings were used to intentionally hide the site from public view, and the site still remains live today.
22. At no time did the Vance Campaign request that POV conduct a poll or provide any other goods or services. POV never discussed the results of any polling with Vance Campaign officials and never provided the Campaign any goods or services. POV had no indication that the Vance Campaign used the polling data or other material on the Medium website, and there is no evidence on the record that the Vance Campaign did so.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

By: 

Lucas Thompson
Executive Director
Protect Ohio Values PAC

Date: August 9, 2022

