

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

EDMUND CORSI & GEAUGA CONSTITUTIONAL COUNCIL,

*Petitioners,*

v.

OHIO ELECTIONS COMMISSION,

*Respondent.*

On Petition for a Writ of Certiorari  
to the Supreme Court Of Ohio

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

Ohio law defines political action committees (“PACs”) to include only those groups “the primary or major purpose of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election through express advocacy.” OHIO REV. CODE. ANN. § 3517.01(B)(8) (2012). The Ohio Elections Commission found that the Geauga Constitutional Council had such a “major purpose” based upon (1) its mission statement, which included “supporting and helping to elect” individuals to office as one of the Council’s multiple goals, (2) a single voter guide produced by the Council, and (3) isolated excerpts from the Council’s website. However, contrary to this Court’s decisions in *Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (*per curiam*) and *FEC v. Mass. Citizens for Life*, 479 U.S. 238, 252 n. 6 (1986), no finding was ever made that these statements and publications comprised a majority, plurality, or even a substantial portion of the Council’s activity or expenditures. The Court of Common Pleas, Franklin County, upheld the Commission’s ruling despite the absence of such a finding, as did the Ohio Court of Appeals, Tenth Appellate District. The Supreme Court of Ohio, by a vote of 4-3, declined to review those rulings.

The questions presented are:

1. May the major purpose test for political committee status, established by this Court in *Buckley v. Valeo* and *FEC v. Mass. Citizens for Life*, be satisfied without finding that

regulated activity comprises the majority of an organization's activity or expenditures?

2. May a state meet its burden of demonstrating an organization's major purpose without determining the portion of its expenditures directed toward political communications?

**PARTIES TO THE PROCEEDING**

The Petitioners (Appellants below) are Edmund Corsi and the Geauga Constitutional Council, an unincorporated entity.

The Respondent (Appellee below) is the Ohio Elections Commission.

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Edmund Corsi and the Geauga Constitutional Council respectfully petition for a writ of certiorari to review the judgment of the Ohio Court of Appeals, Tenth District, in this case.

### **OPINIONS BELOW**

The opinion of the Supreme Court of Ohio denying certiorari is reprinted in the Appendix at 51a and is reported at *Corsi v. Ohio Elections Comm'n*, 984 N.E.2d 29 (Ohio 2013). The opinion of the Ohio Court of Appeals is reprinted in the Appendix at 1a and is reported at *Corsi v. Ohio Elections Comm'n*, 981 N.E.2d 919 (Ohio Ct. App. 2012). The opinion of the Ohio Court of Common Pleas is reprinted in the Appendix at 21a and is unreported. The Ohio Elections Commission's administrative Decision and Filing is reprinted in the Appendix at 35a and is unreported.

### **JURISDICTION**

Petitioner seeks review of the judgment and opinion issued by the Ohio Court of Appeals on October 18, 2012. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a) after the Ohio Supreme Court denied Petitioner's request for review by that court on March 13, 2013.

### **CONSTITUTIONAL AND STATUTORY PROVISIONS**

The relevant provisions of U.S. CONST. amend I, U.S. CONST. amend. XIV, OHIO REV. CODE ANN. §§ 3517.10(A), 3517.10(D)(1), 3517.10(D)(4) (2012), and

OHIO ADMIN. CODE 3517-1-14(B) (2012) appear in the appendix at App. 52a-64a, *infra*.

## STATEMENT

This case presents a fundamental question of campaign finance law that has been a significant source of confusion at the state level. Since 1976, this Court’s rulings have limited the scope of federal political committee status to groups that are “under the control of a candidate or the major purpose of which is the nomination or election of a candidate.” *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 252 n. 6 (1986) (“*MCFL*”) (Brennan, J.) (plurality opinion). Ohio purports to incorporate this test in its own definition of political action committee. OHIO REV. CODE ANN. § 3517.01(B)(8) (“the primary or major purpose of [a PAC] is to support or oppose any candidate, political party, or issue, or to influence the result of any election through express advocacy”). But a recent decision of the Ohio Elections Commission (“OEC”), upheld by the state courts, interpreted that statute to require an organization to register as a PAC even where political advocacy does not comprise a majority—or even a substantial portion—of its activity or expenditures.

The OEC found that the Geauga Constitutional Council (“GCC”), a small, unincorporated entity, was a PAC under Ohio law. In so doing, it specifically found that the GCC has “a major purpose” of supporting or opposing candidates or issues. OEC Decision and Finding, App. at 49a (emphasis supplied). It did not find that such support or opposition was the GCC’s *primary*

purpose, as allowed by Ohio law. R.C. § 3517.01(B)(8) (defining PACs as those organizations meeting a “primary or major purpose” requirement). This is doubtless because, as its Chairman noted, the Commission believes that “[m]aybe you can only have one primary purpose, but you can certainly have more than one major purpose.” Tr. of OEC Hearing, April 28, 2011, at 108. Put differently, the OEC’s decision turned on a belief that political advocacy comprised a portion—but not a majority—of the GCC’s activities.

In fact, the OEC made no finding whatsoever regarding how much of the GCC’s total activity was political, instead satisfying itself with a finding that the organization engaged in *some* political activity. The OEC consulted only a few pieces of evidence in identifying political advocacy as one of the GCC’s major purposes, and conducted no overall analysis of the organization’s activities. In particular, it did not investigate what portion of the GCC’s finances were spent on political communications, nor did it require the state to prove that such expenditures constituted any particular portion of total GCC spending. As a result, Ohio law now subjects an organization engaging in any substantial political activity to PAC registration and reporting requirements,<sup>1</sup> but

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<sup>1</sup> Petitioners do not contest that they may be required to report actual independent expenditures, as in *MCFL*, 479 U.S. at 252 (Brennan J.) (plurality opinion). The question, also as in *MCFL*, is whether they can be required to take on the substantial added burdens of registering with the government as a PAC and complying with those detailed and extensive regulations. *Compare, id.* at 253-54 (Brennan J.) (plurality opinion) (discussing burdens of political committee status) *with id.* at 266 (O’Connor, J. concurring) (discussing

provides no guidance as to how this substantiality is demonstrated, or what portion of total activity subjects an entity or group to this regime.

### PROCEDURAL HISTORY

On June 28, 2010, OEC Director Philip Richter informed Edmund Corsi that a complaint had been filed against the GCC and Mr. Corsi personally. Edward Ryder, chairman of the Geauga County Republican Party and a member of the Geauga County Board of Elections, initiated the complaint on behalf of the Board. Mr. Corsi obtained counsel, and on August 4, 2010, moved the OEC for judgment on the pleadings. Proceedings before the entire OEC took place on April 28, 2011. The proceedings and all OEC deliberations were public and transcribed by OEC staff.

During the hearing, counsel for the GCC reminded the Commission of the state's law regarding the major purpose test, inviting the Commission to "look for the expressed advocacy, look for whether the primary or major purpose is actually elections or any kind of money is actually for electioneering." OEC Tr. at 16. Petitioners' counsel further noted that the state law reads, "primary or major, not incidental purpose" and that "[w]hat the Supreme Court says in *Buckley v. Valeo* is that you can only regulate the support or opposition of a candidate." OEC Tr. at 84-85.

The proceeding included testimony from two witnesses, the complainant Mr. Ryder and the

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organizational constraints imposed by political committee status).

respondent Mr. Corsi. Both parties also presented affidavits from others involved either directly or tangentially with the GCC. Additionally, eleven exhibits—a copy of GCC’s pamphlet, printouts from the GCC website, etc.—were introduced before the OEC. The state introduced no information concerning the full and accurate cost of any of the GCC’s activities, nor did the OEC conduct its own investigation or analysis.

Mr. Ryder explained that he decided to file the complaint after “[a] couple of different people brought me...[a] little pamphlet that was being passed out at the booth that the Constitutional Council had at the [county] fair.” OEC Tr. at 18. Mr. Ryder attended the fair as chairman of the county Republican Party, which was also participating in the event. *Id.* After learning that the pamphlet—which included a list of officeholders and candidates the GCC was “supporting and not supporting”—did not carry the disclaimer mandated by state law for PAC expenditures, Ryder took the issue to the Board, which ultimately referred the matter to the OEC. *Id.* at 19.

Following the complainant’s cross-examination of Mr. Corsi, members of the Commission were allowed to ask him questions. Although the hearing had not yet concluded, OEC Commissioner Mrockowski declared that the GCC appeared to

walk like a duck, sound like a duck, poops [*sic*] like a duck, does all these other things like a duck, it’s a duck. Everything that you have done here, to me, shows me that you’re a PAC....I’ve seen others come here that

must comply by the law, fill out the forms, do what you need to do. And I think that's what you need to do, sir.

*Id.* at 74-75.

In response, Mr. Corsi referred Commissioner Mrockowski to his attorney's arguments in the still ongoing hearing. *Id.* These included the need to find not only that GCC engaged in some political activity, but that such activity was its major purpose. *Id.* at 9-16.

After the parties concluded their arguments, the Commission engaged in an open discussion. One commissioner asked Director Richter to "define the elements of a PAC." *Id.* at 90. And once the Commission determined that Mr. Corsi had not acted alone, Mr. Mrockowski asked Chairman Bryan Felmet whether the PAC analysis went "beyond that...that in itself does that say, by statute, that that's a PAC?" *Id.* at 97. Chairman Felmet responded, "we have to determinate" whether "advocacy or a primary purpose or something less than a primary purpose" described the GCC's activities. *Id.* at 99. Director Richter reminded the Chairman that under Ohio law, a PAC could be regulable if express advocacy constitutes either the "major purpose" or the "primary purpose" of an organization. *Id.* Chairman Felmet responded: "[o]h, it says primary or major?" *Id.*

The Commission discussed the educational components of the GCC, as well as the Council's mission statement. Chairman Felmet noted that he initially wanted to determine that the Council's activities did not require PAC registration, but that "primarily [because of] the mission statement" he had decided GCC was likely a PAC. *Id.* at 103-04.



The Chairman also acknowledged the educational nature of the only GCC events where fees for attendance and food were charged, and noted, “[i]f that’s all you did, you’re not a PAC.” *Id.* at 106-07. “Maybe,” the Chairman mused, “you can only have one primary purpose, but you can certainly have more than one major purpose.” *Id.* at 108. Finally, emphasizing the OEC’s standard-less approach to the major purpose test, the Chairman stated: “I note[] in your affidavit you say, ‘Do I have to hire a lawyer to avoid these things?’ Yeah, I guess so. I think that’s – it’s very complicated without going to those lengths.” *Id.* at 104; *compare Citizens United v. FEC*, 558 U.S. 310, 324 (2010) (“The First Amendment does not permit laws that force speakers to retain a campaign finance attorney, conduct demographic marketing research, or seek declaratory rulings before discussing the most salient political issues of our day.”).

In its written Decision, the OEC concluded that “[t]he second portion of the definition of a PAC under Ohio law is whether the activities of the organization fulfill the ‘primary or major purpose’ element,” but the statute does not “help define that phrase.” OEC Decision and Finding, App. at 43a. Thus, the Commission turned to dictionary definitions of “major” and “purpose.” *Id.*

It then reasoned that “[t]he appropriate way to judge an organization...is through its self-proclaimed Mission Statement.” *Id.* at 23a. Finding that express advocacy was the third element of the Council’s mission statement, the Commission deemed that “it is certainly reasonable to assert that by including this item among the only three action items in the Mission Statement of the GCC that this

is a major purpose of the organization.” *Id.* at 44a-45a. But the Commission specifically noted that “by listing this element third in the hierarchy of its actions the GCC does not consider this element the primary mission of the organization, as a primary mission would be ‘first in order’ or ‘of first rank.’” *Id.* at 43a (quoting WEBSTER’S NEW WORLD DICTIONARY (2d college ed. 1986)).

The Commission supplemented this finding by “reviewing the materials included in the complaint and presented at the hearing.” *Id.* at 48a. After concluding this limited review, the Commission decided “[t]here could be no clearer indication of express advocacy as there is contained in these statements.” *Id.* The Commission made no finding, however, as to what portion of the GCC’s activities this express advocacy comprised. Moreover, the Commission expressly declined to review GCC’s finances as part of its inquiry. *Id.* at 39a.

The GCC appealed to the Franklin County Court of Common Pleas, arguing that “*the* major purpose of any group, not simply *a* major purpose must be...express advocacy in order for PAC regulations of speech to attach to otherwise free political speech.” Corsi R. Br. (C.P.) at 1 (internal citations omitted, emphasis in original). Further, the Council argued that the method the OEC used to determine PAC status was incorrect, as “the major purpose of anything, group or individual, cannot be ascertained without reviewing that person or entity’s *entire body of work*, to determine what quotient thereof constitutes express advocacy.” Corsi R. Br. (C.P.) at 1-2 (internal citations omitted, emphasis in original). But in a decision handed down on October 27, 2011, the trial court determined that

“overwhelming evidence” existed “that a major purpose of the GCC is to support or oppose candidates or issues as demonstrated in the Mission Statement and throughout the materials authored on behalf of the GCC.” Decision and Entry, Court of Common Pleas, App. at 26a (citing OEC Decision) (emphasis added).

The GCC appealed this ruling to the Tenth Appellate District of the Court of Appeals of Ohio, arguing that the “OEC’s standards in applying the ‘primary or major purpose’ test...ignore[d] actual spending on express advocacy for or against identified candidates” and “ignore[d] the totality of a speaker’s speech” while “only requir[ing] ‘a’ major purpose of express advocacy.” Corsi R. Br. (Ohio Ct. App.) at 9 (emphasis supplied). Further, by refusing to make a “comparison of the organization’s spending with overall spending to determine whether the preponderance of expenditures are for express advocacy or contributions to candidates,” the GCC’s PAC status was derived in violation of *MCFL*. Corsi R. Br. (Ohio Ct. App.) at 9-10 (internal citations and quotations omitted). Nonetheless, the Court of Appeals handed down a decision on October 18, 2012, which held that Ohio’s PAC status regime was consistent with *Buckley v. Valeo*, and it was permissible to determine “the Council’s major or primary purpose was express advocacy...based on a number of facts, none of which involved how much money was spent or received.” *Corsi v. Ohio Elections Comm’n*, 2012 Ohio 4831, App. at 17a ¶ 25 (Ohio Ct. App. 2012) (citation omitted).

## REASONS FOR GRANTING THE PETITION

- A. The Ohio Court of Appeals applied the First Amendment in a manner inconsistent with the major purpose test required by *Buckley v. Valeo* and *Mass. Citizens for Life v. FEC*.

In 1976, this Court decided *Buckley v. Valeo*, an omnibus challenge to the then-recently amended Federal Election Campaign Act (“FECA”). *Buckley v. Valeo*, 424 U.S. 1, 6-7 (1976). Of particular import here, the *Buckley* Court emphasized the need to shield issue speech from government regulation, including registration and filing requirements. *Id.* at 42-44, 79-80. But the resulting need to distinguish issue speech from electoral advocacy posed a difficult challenge, as “the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning.” *Id.* at 43 (quoting *Thomas v. Collins*, 323 U.S. 516, 535 (1945)) (discussing FECA’s limits on political expenditures).

FECA’s definition of “expenditure,” a term that triggered PAC status, posed a particularly thorny problem. Congress had written the law in such a way that it appeared “to prohibit all individuals...except political parties and campaign organizations from voicing their views relative to a clearly identified candidate through means that entail aggregate expenditures of more than \$1,000 in a calendar year.” *Id.* at 39-40 (internal quotation marks omitted). In order to save the statute from

constitutional infirmity, the *Buckley* Court limited the definition of “expenditure” to communications that “contain[] express words of advocacy of election or defeat, such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ [and] ‘reject.’” *Id.* at 43 n. 52.

The need to protect issue speech from regulation also required the Court to address FECA’s definition of “political committee.” Having already limited the definition of “expenditure” to express advocacy, the Court found that Congress could only regulate groups making expenditures if they were also “under the control of a candidate or [had] the major purpose” of expressly advocating the election or defeat of candidates. *Id.* at 79.

The Court revisited—and reaffirmed—this standard in *MCFL*. In that case, the Court determined that MCFL had a “central organizational purpose...[of] issue advocacy,” and that while it “occasionally engage[d] in activities on behalf of political candidates,” this was not MCFL’s major purpose. *MCFL* at 252 n. 6.

Writing for a plurality of the Court, Justice Brennan expressed concern that the burdens of disclosure accompanying PAC status might overwhelm small, grassroots organizations. *Id.* at 253-54. Justice O’Connor, in concurrence, feared that “the organizational restraints” of being a political committee might hinder issue groups from raising money for their causes. *Id.* at 266. The Court concluded that MCFL would be classified as a political committee only if its “independent spending bec[a]me so extensive that the organization’s *major purpose* may be regarded as campaign activity.” *Id.* at 262 (emphasis supplied).

Similarly, in *McConnell v. FEC*, this Court reaffirmed the major purpose test, specifically quoting *Buckley*'s refined definition of a political committee. 540 U.S. 93, 170 n. 64 (2003).

In contrast to *Buckley* and *MCFL*'s test, Ohio law now conceptualizes “political action committees”—entities bearing substantively the same burdens as federal “political committees”—as organizations with *multiple* “major” purposes, including some political advocacy. The Ohio Revised Code provides that a “political action committee” is “a combination of two or more persons, the primary or major purpose of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election through express advocacy...” OHIO REV. CODE ANN. § 3517.01(B)(8) (2012).

Ohio's statute and its enforcement by the OEC are inconsistent with this Court's precedents and the First Amendment, as incorporate against the states by the Fourteenth Amendment. In its Decision and Finding, the OEC held that because “*one* of the GCC's *major purposes* is to support or oppose a candidate or issue,” registration as a PAC was mandatory. OEC Decision, App. at 45a (emphasis supplied). However, the OEC did not consider spending or any other indicia of the GCC's overall activities, nor did it compare the relative proportions of GCC's political activity to its overall activity. Thus, the OEC's analysis is inconsistent with *Buckley* and *MCFL*, because it required the Petitioner to register as a PAC, but did not require the state to demonstrate that a majority of the GCC's activities were political, or even conduct an inquiry in that regard.

Of particular relevance to the OEC was the GCC's voter guide. *Id.* at 45a-46a. But as this Court has made clear, a voter guide—even one which constitutes express advocacy—does not compel PAC status. *MCFL* at 262. Indeed, the *MCFL* Court reviewed all of MCFL's "diverse education and legislative activities designed to further its agenda." *Id.* at 242. The express advocacy contained in MCFL's voter guide was weighed against, *inter alia*, newsletters, discussion groups, proposed legislation, "a prayer service...in front of the Statehouse," and testimony before the Massachusetts state legislature. *Id.* at 242-43.

The Commission entirely failed to undertake a similarly comprehensive analysis of the GCC's body of work. Instead, the OEC pulled statements from the GCC's mission statement and flyers, without weighing what proportion this activity held towards the overall functions of GCC. This is precisely the scenario *Buckley* sought to avoid. "No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation." *Buckley*, 424 U.S. at 43.

- B. Because the decision below reflects an approach to the major purpose test taken by a number of state governments, the questions presented are of exceptional importance.

Ohio has codified "the primary or major purpose" requirement in its campaign finance laws. But in applying this standard, the Commission found that the GCC was a PAC despite having more than one major purpose. Moreover, it failed to

articulate any standard for what portion of the GCC's activities must be political in order to trigger PAC status. Indeed, such a holding would have been impossible given the OEC's failure to determine—or even inquire about—the portion of GCC's activities that were political.

The “multiple major purpose PAC” is not unique to Ohio. Most states fail to articulate any sort of statutory major purpose requirement, requiring groups with *de minimis* express advocacy to register as political committees. *See, e.g.* ALA. CODE § 17-5-2(a)(11) (2013) (regulating organizations which receive contributions or make expenditures, or merely anticipate doing so) CONN. GEN. STAT. § 9-601(1) (2013) (regulating organizations which are designed “to aid or promote” success or defeat of a candidate). Other states impose arbitrary monetary triggers, a sure means to capture groups with minimal electioneering involvement. *See, e.g.* FLA. STAT. § 106.011(1)(a) (2013) (\$500 monetary trigger), ARIZ. REV. STAT. § 16-901(19) (2013) (\$250 monetary trigger). Still other states regulate groups with merely *a* major purpose, not *the* major purpose, a rejection of this Court's holding in *Buckley*. *See, e.g.* KAN. STAT. ANN. § 25-4143(k)(1) (2013) (regulating organizations which have “a major purpose” of expressly advocating for or against the election or defeat of a clearly identified candidate).

Colorado is another such example. The state permits regulation of groups with *a* major purpose of electioneering. *See* COLO. CONST. ART. XXVIII, § 2(10). In 2008, “a nonprofit policy research organization” which had become embroiled in the campaign finance laws, sued the Colorado secretary of state, arguing that the state's “a major purpose”



test was unconstitutional. *Independence Institute v. Coffman*, 209 P.3d 1130, 1134 (Colo. App. 2008). The state court of appeals upheld the “a major purpose requirement,” partially based on the odd conclusion that if “an organization...has four equally important purposes, only one of which is electoral advocacy,” then “[i]t will be easier, not harder, to determine ‘a’ rather than ‘the’ major purpose of that organization.” *Id.* at 1143 (Connelly, J., concurring). Both the Colorado Supreme Court and this Court denied the Institute’s requests for *certiorari*. *Cert. denied sub nom., Independence Institute v. Buescher*, 2009 SC 26 (Colo. 2009), *cert. denied* 558 U.S. 1024 (2009).

In Utah, the state’s political issues committee definition was struck down by a federal court, on the grounds that the major purpose test was mandatory, as “*Buckley* did indeed mean exactly what it said.” *Nat’l Right to Work Legal Defense and Ed. Found., Inc. v. Herbert*, 581 F.Supp. 2d 1132, 1154 (D. Utah 2008) (citing *N.C. Right to Life v. Leake*, 525 F.3d 274, 288 (4th Cir. 2008)). In response to the court’s order, the state of Utah declined to adopt the major purpose test, instead defining political committees as those having merely “a major purpose” of electioneering, a decision that simply copied the law in neighboring Colorado. UTAH CODE ANN. §§ 20A-11-101(30)(a) and -101(32)(a) (2013).

Other states have explicitly required registration for groups whose major purpose is not express advocacy. Maine has created a category of non-major purpose PACs which must register with the state upon spending an arbitrary amount “promoting, defeating or influencing the nomination or election of any candidate to political office.” ME. REV. STAT. tit. 21-A, §§ 1052(5)(A)(5), 1053 (\$5,000

trigger). The First Circuit upheld these explicitly non-major purpose PAC requirements because, *inter alia*, the Supreme “Court has never applied a ‘major purpose’ test to a state’s regulation of PACs.” *Nat’l Org. for Marriage v. McKee*, 649 F.3d 34, 59 (1st Cir. 2011), *cert. denied* 132 S.Ct. 1635 (2012).

Unless this Court weighs in, the major purpose requirement is poised to become a dead letter in the states. Just this past year, the state of Nevada enacted a new campaign finance law that regulates any organization which has as its “primary purpose” affecting the outcome of an election, and which spends \$1,500 toward that end. 2013 Nev. Stat. 259, § 1, 77th Sess. (Nev. 2013) (effective Oct. 1, 2013) (amending NEV. REV. STAT. § 294A.0055 (2013)). But the statute also regulates any organization that “does not have as its primary purpose” affecting the outcome of an election, provided that the organization meets the arbitrary measure of receiving contributions or making expenditures in excess of \$5,000. *Id.*

The “considered judgment of” this Court and other federal courts ought not to “be lightly cast aside.” *Newdow v. Rio Linda Union Sch. Dist.*, 597 F.3d 1007, 1075 n. 55 (9th Cir. 2010) (Reinhardt, J., dissenting). This is particularly true in the context of political rights enshrined in the First Amendment, which are “integral to the operation of the system of government established by our Constitution.” *Buckley*, 424 U.S. at 14. Many states, including Ohio,<sup>2</sup> have adopted systems whose vague and

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<sup>2</sup> Particularly when applied by entities such as state elections commissions. For some of the problems faced by organizations at the OEC, including the partisanship and lack of legal

overbroad triggers “offer[] no security for free discussion”—the very harm *Buckley* sought to avoid. *Id.* at 43. The states’ refusal to apply the major purpose test is even more troubling when many of the most egregious offenders, such as Colorado, Nevada, and certainly Ohio, are perennially competitive states in national elections.

- C. Because the Ohio courts failed to require any showing that political activity comprised the majority of Petitioner’s activities, or any analysis concerning what portion of Petitioner’s activities were political, this case is a superior vehicle for addressing the scope of the major purpose test.

This case presents the Court with an opportunity to address widespread misapplication of *Buckley* and *MCFL*. See *Cooper v. Aaron*, 358 U.S. 1 (1958). The Ohio District Court of Appeals and the Franklin County Court of Common Pleas both accepted the Ohio Elections Commission’s finding that PAC status attaches even when political advocacy does not constitute the majority of a group’s activities, and despite the OEC’s complete failure to undertake any comparative analysis of the cost or frequency of the GCC’s political activities versus other activities, such as non-political blogging and concededly-educational events. OEC Transcript at 53-55 (discussing education forums the GCC

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training of members, and the lack of adequate procedures for building a record, see Br. of *Amicus Curiae* Att’y Gen. of Ohio, *COAST Candidates PAC v. Ohio Elections Comm’n.*, No. 11-cv-775, (S.D. Ohio 2012) available at [http://www.hamilton-co.org/cinlawlib/blog/DeWine\\_COAST\\_brief.pdf](http://www.hamilton-co.org/cinlawlib/blog/DeWine_COAST_brief.pdf).

hosted); 72 (discussing certain posts from the GCC's blog). Indeed, as discussed above, the OEC's Chairman conceded that the GCC's events with national speakers, where GCC "was bringing money in" to pay for tickets and food, were educational in nature. OEC Tr. at 106-08.

This Court has not hesitated to address such egregious legal errors when committed by state courts. *See, e.g., Presley v. Georgia*, 558 U.S. 209 (2010) (*per curiam*) ("The Supreme Court of Georgia's affirmance contravened this Court's clear [Sixth Amendment] precedents"); *Arkansas v. Sullivan*, 532 U.S. 769, 771 (2001) (*per curiam*) ("Because the Arkansas Supreme Court's decision on rehearing is flatly contrary to this Court's controlling [Fourth Amendment] precedent, we grant the State's petition for writ of certiorari and reverse"); *Ohio v. Reiner*, 532 U.S. 17, 21 (2001) (*per curiam*) ("The Supreme Court of Ohio's determination...clearly conflicts with *Hoffman* and *Grunewald*"). When a statute is in "direct conflict with [the Court's]...precedents" and "simply cannot be squared" with the Court's decisions, it is the province of this Court to instruct lower courts they are "mistaken." *Lambert v. Wicklund*, 520 U.S. 292, 293, 297 (1997) (*per curiam*).

Such is the case here. *Buckley* and *MCFL* plainly require comparison of an organization's political activity to its overall activity before PAC status, with its various burdens, can be imposed. *Buckley*, 424 U.S. at 79; *MCFL*, 479 U.S. at 252, n.6 (Brennan, J.) (plurality opinion). The OEC's failure to do so constitutes an unconstitutional act, one which was squarely presented to the state courts that reviewed that act. *See, supra* at 8-9.

This Court's silence on cases involving express advocacy and the major purpose test only encourages courts and legislatures to move further from the dictates of this Court's *per curiam* opinion in *Buckley v. Valeo*. *Corsi v. Ohio Elections Comm'n* (Ohio Ct. App. 2012), App. at 17a ¶24 (citing *Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 554, 555-58 (4th Cir. 2012), *cert denied* 133 S. Ct. 841 (2013), for the proposition that examining expenditures is not the "only method to determine PAC status..."). GCC's experience provides a clean opportunity for this Court to declare the major purpose test mandatory, and to require the states to undergo the comparative analysis that is already required at the federal level. *See Real Truth*, 681 F.3d at 555; *N.M. Youth Organized v. Herrera*, 611 F.3d 669, 677 (10th Cir. 2010).

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of *certiorari*.

Respectfully submitted,

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APPENDIX A

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IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

EDMUND CORSI	:	
and GEAUGA	:	
CONSTITUTIONAL	:	
COUNCIL	:	
	:	No. 11AP-1034
Appellants-Appellants,	:	(C.P.C. No
	:	11CVF-06-7794)
v.	:	
	:	(REGULAR
	:	CALENDAR)
OHIO ELECTIONS	:	
COMMISSION	:	
	:	
Appellee-Appellee.	:	

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DECISION

Rendered on October 18, 2012

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*Maurice A. Thompson and Ryan D. Walters, for appellants.*

*Michael DeWine, Attorney General, Erick D. Gale, Michael J. Schuler and Erin Butcher-Lyden, for appellee.*

*Wolfe & Russ LLC, and Andrew E. Russ*, for amicus curiae Ohio Liberty Council.

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APPEAL from the Franklin County  
Court of Common Pleas

KLATT, J.

{¶1} Appellants, Edmund Corsi and the Geauga Constitutional Council, appeal from a judgment of the Franklin County Court of Common Pleas affirming a decision of appellee, the Ohio Elections Commission ("OEC"). The OEC found that the Geauga Constitutional Council ("the Council") was a political action committee ("PAC") and that it failed to comply with requirements imposed on PACs by Ohio law. For the following reasons, we affirm that judgment.

**I. Factual and Procedural Background**

{¶2} In April 2010, the Geauga County Board of Elections ("the Board") referred Corsi and his group, the Council, to the OEC. The Board claimed that it had reason to believe that the Council was a PAC and that the Council failed to comply with requirements imposed on PACs. R.C. 3517.01(B)(8) defines a PAC as "a combination of two or more persons, the primary or major purpose of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election through express advocacy, and that is not a political



party, a campaign committee, a political contributing entity, or a legislative campaign fund." R.C. 3517.10 places certain reporting and disclosure requirements on PACs. These requirements include the designation of a treasurer and the filing of periodic financial statements.

{¶3} The OEC held a hearing regarding Corsi and the Council. At the hearing, Ed Ryder, a member of the Board, testified that he received a pamphlet authored by the Council that was being handed out at a county fair. The Council wrote the pamphlet and it appeared to endorse or support certain elected officials or candidates while attacking others. Ryder asked other Board members whether the Council was a registered PAC. It was not, so the Board asked Corsi to register the Council as a PAC. Corsi declined.

{¶4} Corsi testified at the hearing and also submitted an affidavit. Corsi stated that he believes that most elected officials ignore the constitution and, as a result, he is concerned that he will lose his freedoms in this country. (Tr. 48.) He created the Council and its website as a way to expose and criticize local government officials without fear of reprisals. He claimed that the opinions in the Council's pamphlet were his own and that he was solely responsible for the content on the Council's website. He also testified that the use of the terms "us" and "we" in the pamphlet, arguably indicating that the Council may be more than just himself, was just "loose terminology on my part." (Tr. 50.) Corsi also testified that he believed the Council's website and pamphlet were educational in nature and not

endorsements of any particular candidate. He testified that he typed, prepared, and paid for the pamphlet by himself and guessed that it cost him a couple hundred dollars to publish the pamphlet. (Tr. 45.) Corsi also held various informational events for which people purchased seats to attend and for which Corsi paid for food and for speakers. He did not know how much the events cost him or how much he received as a result. He also paid \$40 a month in order to support the Council's website. Corsi never disputed that he did not register the Council as a PAC, nor did the Council ever designate a treasurer or file periodic financial statements as required of PACs.

{¶5} The Board presented an affidavit from a woman who attended "meetings" of the Council and claimed to be a member of the Council. Corsi disputed her claim, arguing that those meetings were not Council meetings, but just a "discussion group," to which he invited people for the purpose of discussing politics. (Tr. 67.) Appellant filed two other affidavits from people who claimed they attended a number of those meetings. Those individuals denied that the Council had any members. However, both individuals also stated that they had produced and handed out political pamphlets on behalf of the Council, and each affidavit used the word "we" when referring to the Council.

{¶6} Corsi argued to the OEC that the Council was not a PAC, in part, because he was its only member. The OEC disagreed, noting the involvement of at least two other people in the Council and the use of plural terms in the Council's

pamphlets. The OEC determined that the Council was a PAC under Ohio law. It further held that the Council failed to file a designation of treasurer as required by R.C. 3517.10(D)(1) and a statement of contributions and expenditures required by R.C. 3517.10(A). The OEC specifically indicated that it did not find any violations against Corsi as an individual. (Tr. 116-18.) The Franklin County Court of Common Pleas affirmed the OEC's decision.

{¶7} Appellants appeal to this court and assign the following errors:

First Assignment of Error: The trial court erred by not declaring R.C. 3517.01(B)(8), R.C. 3517.10(D)(1) and (4), R.C. 3517.10(A), and OAC 3517-1-14(B) unconstitutional, whether on their face or as applied to the parties and/or communications at issue in this case.

Second Assignment of Error: The trial court erred by not narrowly construing R.C. 3517.01(B)(8), R.C. 3517.10(D)(1) and (4), R.C. 3517.10(A), and OAC 3517-1-14(B), so as to find them inapplicable to the communications at issue in this case, thereby saving their constitutionality.

## II. Standards of Review

{¶8} Pursuant to R.C. 3517.157(D), a party adversely affected by a final determination of the OEC may appeal pursuant to R.C. 119.12. *The Team*

*Working for You v. Ohio Elections Comm.*, 142 Ohio App.3d 114, 119, 754 N.E.2d 273 (10th Dist.2001). In an administrative appeal pursuant to R.C. 119.12, the court of common pleas reviews an order to determine whether it is supported by reliable, probative, and substantial evidence, and is in accordance with the law. *Levine v. State Med. Bd. of Ohio*, 10th Dist. No. 10AP-962, 2011-Ohio-3653, ¶ 12.

{¶9} The standard of review is more limited on appeal to this court. Unlike the lower court, this court does not determine the weight of the evidence. *Rossford Exempted Village School Dist. Bd. of Edn. v. State Bd. of Edn.*, 63 Ohio St.3d 705, 707, 590 N.E.2d 1240 (1992). In reviewing the court of common pleas' determination that the commission's order is supported by reliable, probative, and substantial evidence, this court's role is confined to determining whether the court of common pleas abused its discretion. *Roy v. Ohio State Med. Bd.*, 80 Ohio App.3d 675, 680, 610 N.E.2d 562 (10th Dist.1992). The term abuse of discretion connotes more than an error of law or judgment, it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 5 Ohio B. 481, 450 N.E.2d 1140 (1983). However, on the question of whether the commission's order is in accordance with the law, this court's review is plenary. *Dann v. Ohio Elections Comm.*, 10th Dist. No. 11AP-598, 2012 Ohio 2219, ¶ 9, 973 N.E.2d 285, citing *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.*, 63 Ohio St.3d 339, 343, 587 N.E.2d 835 (1992). Because this case concerns constitutional

issues such as political speech and the freedom of association, we apply the de novo, plenary review of the OEC's decision without deference to the agency's decision. *Lesiak v. Ohio Elections Comm.*, 128 Ohio App.3d 743, 746, 716 N.E.2d 773 (10th Dist.1998), citing *Jacobellis v. Ohio*, 378 U.S. 184, 189, 84 S. Ct. 1676, 12 L. Ed. 2d 793 (1964).

{¶10} This case involves the Council's assertions that Ohio's laws defining and regulating PACs are unconstitutional and violate its First Amendment rights to freedom of speech and association. The First Amendment to the United States Constitution provides that "[c]ongress shall make no law \* \* \* abridging the freedom of speech." When a law burdens core political speech, it must survive strict scrutiny. *Fed. Election Comm. v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 464-65, 127 S. Ct. 2652, 168 L. Ed. 2d 329 (2007). Under that review, the state must prove that the law is narrowly tailored to further a compelling government interest. *Id.* Other burdens, such as reporting, disclaimer and disclosure requirements, may burden the ability to speak, but they impose no ceiling on campaign-related activities and do not prevent anyone from speaking. *Citizens United v. Fed. Election Comm.*, 130 S. Ct. 876, 914, 175 L. Ed. 2d 753, 558 U.S. 310 (2010). For this reason, such burdens are only subjected to an "exacting scrutiny," which requires a substantial relation between the requirement and a sufficiently important governmental interest. *Id.*; *Doe v. Reed*, 130 S.Ct. 2811, 2818, 177 L. Ed. 2d 493 (2010). To withstand this scrutiny, "the strength of the governmental interest must reflect the seriousness of the actual burden on First

Amendment rights." *Id.*, quoting *Davis v. Fed. Election Comm.*, 554 U.S. 724, 128 S. Ct. 2759, 171 L. Ed. 2d 737 (2008).

{¶11} In determining the constitutionality of a legislative act, this court must first determine whether the party is challenging the act on its face or as applied to a particular set of facts. *Yajnik v. Akron Dept. of Health, Hous. Div.*, 101 Ohio St.3d 106, 2004-Ohio-357, ¶ 14, 802 N.E.2d 632. An "as applied" challenge asserts that a statute is unconstitutional as applied to the challenger's particular conduct. *Columbus v. Meyer*, 152 Ohio App.3d 46, 2003-Ohio-1270, ¶ 31, 786 N.E.2d 521. In contrast, a facial challenge asserts that a law is unconstitutional as applied to the hypothetical conduct of a third party and without regard to the challenger's specific conduct. *Id.* To succeed in a typical facial attack, the Council would have to establish "that no set of circumstances exists under which [the definition] would be valid." *United States v. Salerno*, 481 U.S. 739, 745, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987). However, the United States Supreme Court has recently recognized, in the First Amendment context, "a second type of facial challenge," whereby a law may be invalidated as overbroad if "a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *United States v. Stevens*, 559 U.S. 460, 130 S.Ct. 1577, 1587, 176 L. Ed. 2d 435 (2010), citing *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449, fn. 6, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008).

{¶12} Here, although the Council claims both facial and as applied constitutional challenges, it is clear that the Council's argument is more properly analyzed as an applied challenge, as the Council argues that Ohio's PAC laws are unconstitutional when applied to an entity such as itself with small contributions and expenditures.

### **III. R.C. Chapter 3517--Ohio's Political Action Committee Laws**

{¶13} Before we address the questions presented by the Council's appeal, we must first clarify what is not at issue. First, the OEC did not take any action or find any violations against Corsi as an individual. The OEC's decision impacts the Council and the Council alone. Nothing in the OEC's decision prevents him, as an individual, from speaking on the issues he considers important. For this reason, Corsi cannot claim that the OEC violated his individual constitutional rights. Second, appellants do not challenge the OEC's factual findings that the Council is a PAC or that the Council did not comply with the requirements imposed on PACs by R.C. 3517.10. Lastly, this case does not involve monetary limits on PACs' contributions or expenditures or the amounts that must be disclosed. Instead, appellants clarified at oral argument that they are challenging Ohio's definition of a PAC in R.C. 3517.01(B)(8) and the requirements imposed as a result of that designation. We, therefore, consider the Council's two assignments of error together.

### A. PACs and their Registration, Reporting and Disclosure Requirements

{¶14} As already noted, R.C. 3517.01(B)(8) defines a PAC as "a combination of two or more persons, the primary or major purpose of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election through express advocacy, and that is not a political party, a campaign committee, a political contributing entity, or a legislative campaign fund." The Council argues that Ohio's definition of a PAC burdens its core political speech and, therefore, the state must show that the definition is narrowly tailored to serve an overriding state interest.

{¶15} We reject the Council's premise that Ohio's definition of a PAC, by itself, burdens political speech. "It is not the designation as a PAC but rather the obligations that attend PAC designation that matter for purposes of First Amendment review." *Natl. Organization for Marriage v. McKee*, 649 F.3d 34, 56 (1st Cir.2011) ("NOM I"). Therefore, we turn to R.C. 3517.10 to determine whether the obligations imposed on the Council as a PAC survive exacting scrutiny. *Id.*; *Natl. Organization for Marriage, Inc. v. McKee*, 669 F.3d 34, 39-40 (1st Cir.2012) ("NOM II"); *Doe* at 2818 (noting that Supreme Court has consistently reviewed disclosure requirements under "exacting scrutiny").

{¶16} As relevant here, R.C. 3517.10(D)(1) requires PACs to file a form designating a treasurer for the organization. The name and address of that person must appear on certain political publications



the PAC issues. *See, e.g.*, R.C. 3517.20(A)(3). R.C. 3517.10(D) requires PACs to file periodic financial statements of its contributions and expenditures. Those statements must include the amount and date of the contribution or expenditure along with the name and address of the person or entity from whom contributions are received or to whom expenditures are made. R.C. 3517.10(B)(4) and (5). These requirements do not prohibit the Council from expressing its views. *Citizens United* at 914. They only require disclosure of certain information. The Council, however, argues that these requirements (and the administrative costs they entail), when imposed on a small entity with only "*de minimis* forays into express advocacy" discourages its speech and, therefore, burdens its First Amendment rights. We disagree.

{¶17} The United States Supreme Court has recognized the possibility that "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Buckley v. Valeo*, 424 U.S. 1, 64, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976); *see also Fed. Election Comm. v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 254, 107 S. Ct. 616, 93 L. Ed. 2d 539 (1986) ("Detailed recordkeeping and disclosure obligations, along with the duty to appoint a treasurer and custodian of the records, impose administrative costs that many small entities may be unable to bear."). Nevertheless, the United States Supreme Court upheld the reporting and disclosure requirements on PACs at issue in *Buckley*. The reporting and disclosure requirements upheld in *Buckley* are similar to the requirements in R.C.

3517.10. They included forced registration and record keeping of contributions and expenditures, as well as periodic financial statements. *Buckley* at 63-64. Although the Supreme Court noted the potential infringements on First Amendment right that compelled disclosure entailed, it concluded in *Buckley* that the government presented sufficiently important interest to outweigh the possibility of those infringements. *Id.* at 65. Those interests included providing the electorate with information about campaign money, deterring corruption and avoiding the appearance of corruption by exposing large contributions to the public, and gathering information to detect violations of contribution limitations. *Id.* at 67-68; *In re Evans*, 10th Dist. No. 06AP-539, 2006-Ohio-4690, ¶ 42 (noting interests).

{¶18} In the present case, the OEC similarly argues that the reporting and disclosure requirements serve its important interest in providing the electorate with information regarding where political campaign money comes from and how it is spent. The United States Supreme Court recognized this interest as one "sufficiently important" to support campaign finance laws. *Buckley*. The Supreme Court has also recognized an "informational interest" the public has in "knowing who is speaking about a candidate shortly before an election" that justifies disclosure requirements. *Citizens United* at 915-16; see also *Human Life of Washington, Inc. v. Brumsickle*, 624 F.3d 990, 1005-6 (9th Cir.2010) ("This vital provision of information repeatedly has been recognized as a sufficiently important, if not compelling, governmental interest."). We agree. Given the ever-changing

technological advances that allow the public to be inundated with political views from a multitude of different persons, platforms, and viewpoints, this "informational interest" that Ohio asserts becomes more important every day. The public should be able to gather as much information as possible in order to judge the merits of different positions, and that information includes "the source and credibility of the advocate." *Brumsickle* at 1008, quoting *First Natl. Bank of Boston v. Bellotti*, 435 U.S. 765, 791-92, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978).

{¶19} The Council argues, however, that this interest is not substantially served when the disclosures are required by an entity, such as itself, that spends small amounts of money and engages, if at all, in only limited express advocacy. In support of this argument, the Council mainly relies on two cases from the federal court of appeals. *Canyon Ferry Rd. Baptist Church v. Unsworth*, 556 F.3d 1021 (9th Cir.2009); *Sampson v. Buescher*, 625 F.3d 1247 (10th Cir.2010). In addition to not being controlling case law in this district, the Council's reliance on those cases is misplaced because they are both factually distinguishable, and because both cases expressly limited their holdings to the specific facts in front of them. *Canyon Ferry* at 1033-34; *Sampson* at 1261.

{¶20} In *Canyon Ferry*, the state of Montana concluded that a church was an "incidental political committee" because the church allowed the use of its facilities to gather signatures on petitions in support of a ballot issue and the church's pastor encouraged people to sign the petition. Under Montana law, an

incidental political committee was formed, in part, by making a contribution or expenditure to support or oppose a candidate or issue. *Id.* at 1026. The terms "expenditures" and "contributions" were defined to include the church's in-kind expenditures (use of its facilities). As a result of the church's actions, the state sought to impose disclosure and reporting requirements for an incidental political committees on the church. As it related to the church's First Amendment argument, the court concluded that these de minimis in-kind expenditures did not justify the burdens imposed on the church. The court expressly limited its holding to the facts of that case and stated that it was not concerned with the legality of imposing disclosure requirements as applied to monetary contributions of any size. *Id.* at 1033-34 (rejecting requirements as applied, while noting that similar requirements have ordinarily been justified in other cases).

{¶21} The court in *Sampson* was also faced with disclosure and reporting requirements imposed on a group concerned with a ballot issue and not one seeking to elect or defeat a candidate. The court noted the significance of that difference, that "the justifications for requiring disclosures in a candidate election may not apply, or may not apply with as much force, to a ballot initiative" because "there is no need for concern that contributors can change a law enacted through a ballot initiative as they can influence a person elected to office." *Id.* at 1249. The group at issue in *Sampson* was a ballot initiative committee that opposed the annexation of their neighborhood into a nearby town. The group raised less than \$1,000 in contributions, but the state of

Colorado sought to have them register as an "issue committee." The court concluded that the requirements were unconstitutional, but did so based largely on the fact that the group was a ballot issue committee. It concluded that the state's asserted legitimate interest was "significantly attenuated when the organization is concerned with only a single ballot issue and when the contributions and expenditures are slight." *Id.* at 1259. While the court did note the small size of the group's contributions and expenditures, the focus of the court's opinion was on the nature of the group's interest—a single ballot issue.

{¶22} Here, the Council is not concerned with a single ballot initiative or issue. The Council's writings show a concern for candidates and locally-elected officials in a wide range of offices, and the OEC concluded that the Council's "primary or major purpose" was to support or oppose candidates or issues. Additionally, the organization in *Canyon Ferry* spent no money, but rather performed acts that constituted "in-kind expenditures" under state law. Here, Corsi conceded that he spent money on the Council and its website and that he received money from holding informational events. Because of these significant factual differences, we find the cases cited by the Council unpersuasive. *See also ProtectMarriage.com v. Bowen*, 830 F.Supp.2d 914, 943-44, 949-50 (E.D. Cal.2011) (rejecting plaintiff's reliance on same cases).

{¶23} We are also unpersuaded by the argument that the PAC disclosure and reporting requirements are unconstitutional as applied to the Council simply

because the Council raises and spends a small amount of money on political activities. We conclude that these requirements, even when imposed on small PACs, are substantially related to the government's sufficiently important governmental interests in providing the electorate with information about money in political campaigns. This transparency "enables the electorate to make informed decisions and give proper weight to different speakers and messages," *Citizens United* at 916, and provides "the voting public with the information with which to assess the various messages vying for their attention in the marketplace of ideas." *Family PAC v. McKenna*, 685 F.3d 800, 808 (9th Cir.2012), quoting *Brumsickle* at 1008.

#### **B. The PAC Definition--"Primary or Major Purpose"**

{¶24} In Ohio, to qualify as a PAC, the organization must, as its "primary or major purpose," support or oppose any candidate, political party, or issue, or influence the result of any election through express advocacy.<sup>1</sup> R.C. 3517.01(B)(8). The Council argues that its "major or primary purpose" cannot be express advocacy because it spends such an insignificant amount of money for that purpose. While we agree that the amount of money involved may be a factor in determining an entity's "primary or major purpose," it is not the sine que non of that

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<sup>1</sup> Express advocacy includes communications that in express terms advocate the election or defeat of a clearly identified candidate for office. *Buckley* at 44; *Community Advocate Inc. v. Ohio Elections Comm.*, 124 Ohio App.3d 70, 705 N.E.2d 414, (10th Dist.1997).

analysis. The determination of an organization's "primary or major purpose" is a fact intensive analysis and such a determination must weigh a number of considerations. *See The Real Truth About Abortion, Inc. v. Fed. Election Comm.*, 681 F.3d 544, 555-58 (4th Cir.2012) (rejecting claim that only method to determine PAC status is to examine expenditures and concluding that the analysis requires more comprehensive consideration and weighing of multiple factors).

{¶25} Here, in concluding that the Council was a PAC, the OEC found that the Council's major or primary purpose was express advocacy. The OEC made this finding based on a number of facts, none of which involved how much money was spent or received. First, the Council's own mission statement stated that its purpose was, in part, to support and help elect certain people. Second, the Council's voter guide that it produced and disseminated, as well as its web site, supported and recommended certain officials. The Council does not challenge these facts or the OEC's factual finding. Even if the Council did spend a small amount of money on express advocacy, the OEC could still have found that its "primary or major purpose" was express advocacy given the other facts in the record, facts which the Council does not dispute.

{¶26} The Council also claims that its major or primary purpose is not express advocacy because Corsi used the Council's website to blog nearly every day for three years but the OEC could only point to a few isolated examples of express advocacy. Implicit in this claim is that the other three years of blogging

and web posts did not contain express advocacy. However, the content of those posts were not in the record before the OEC and are not before this court. While the Council admitted various screen shots from its web site which included headings of various posts, those screen shots do not include the content of those posts. We cannot speculate regarding the context of those posts.

### **C. The PAC Definition--The Absence of a Monetary Threshold**

{¶27} The Council also contends that the definition of a PAC is against the law because it applies regardless of the amount of money involved. Specifically, the Council argues that there must be a monetary threshold of an organization's contributions and/or expenditures (although the Council does not identify a specific amount) only above which the PAC definition may apply. We disagree.

{¶28} The Council is correct that some state laws, as well as federal laws, contain monetary thresholds for PAC status or registration. *See, e.g., NOM I* (Maine PAC registration law applies if organization receives or has expenditures over \$1,500 and has as its major purpose the influencing of an election or ballot question); *The Real Truth About Abortion* at 555 (federal law defining PAC contains \$1,000 threshold). However, the absence of a monetary trigger in the PAC definition is not determinative of their legality. Our research reveals at least two other states, Washington and North Carolina, that do not include a monetary threshold



in their definitions of a PAC. *Brumsickle* at 997 (affirming state's definition of PAC); *North Carolina Right to Life, Inc. v. Leake*, 525 F.3d 274, 286 (4th Cir.2008) fn. 4 (noting that state legislature had recently eliminated monetary trigger of definition). In fact, Washington defines a PAC as any person "having the expectation of receiving contributions or making expenditures." Thus, absent any contributions or expenditures, but only based on an expectation of receiving same, an organization in Washington may be defined as a PAC, provided that the organization meets the other requirements of the definition.

{¶29} Ohio has decided to forgo a monetary threshold and simply define a PAC by its major or primary purpose. In a similar context, when reviewing threshold amounts above which require disclosure of contributors, the Supreme Court of the United States concluded that the establishment of such a threshold is best left for the legislature to decide and will not be rejected unless it is "wholly without rationality." *Buckley* at 82-84 (concluding that low threshold amounts of \$10 or \$100 leading to record keeping and reporting provisions were "best left in the context of this complex legislation to congressional discretion" and were not "wholly without rationality."); Cf. *NOM I* at 60-61 (1st Cir.2011) (affirming \$100 threshold for reporting and recordkeeping requirements); *Family PAC* at 811. Applying that reasoning to the present case, we cannot say that the absence of a monetary trigger for PAC designation is wholly without rationally in this context.

#### IV. Conclusion

{¶30} For all of these reasons, we reject the Council's constitutional challenges to Ohio's laws regarding PACs. Accordingly, we overrule the Council's two assignments of error and affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BRYANT and TYACK, JJ., concur.

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APPENDIX B

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COURT OF COMMON PLEAS,  
FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

EDMUND CORSI	:	
and the GEAUGA	:	
CONSTITUTIONAL	:	
COUNCIL	:	
	:	
Appellant,	:	CASE NO.
	:	11-CVF-06-7794
-vs-	:	
	:	JUDGE JOHN. F.
OHIO ELECTIONS	:	BENDER
COMMISSION	:	
	:	
Appellee.	:	

DECISION AND ENTRY

Rendered this \_\_\_\_ day of October 2011

**BENDER, JUDGE**

This matter comes before this Court upon an appeal pursuant to R.C. § 119.12 from a June 9, 2011 Decision and Finding of the Ohio Elections Commission (“Commission”) that determined that the Geauga Constitutional Council (“GCC”) meets the definition of a “political action committee” (“PAC”) pursuant to R.C. 3517.01(B)(8).

On April 30, 2010, the Geauga County Board of Elections filed a complaint with the Commission alleging that the GCC was acting as a PAC but had not complied with R.C. 3517.10(A) and (D) when it failed to file a designation of treasurer form or any campaign report. The Geauga County Board of Elections alleged that the GCC met the definition of a PAC because it operated a website that supported and opposed candidates, received funds from candidates, and produced a pamphlet supporting and opposing candidates in Geauga County. The Commission held a preliminary review on October 28, 2010. The Commission voted unanimously to set the case for a full hearing.

On April 28, 2011, the Commission held a full hearing. After evidence and testimony was presented by the opposing parties, the Commission voted 5-0 concluding that the GCC met the definition of a PAC under Ohio law and therefore violated R.C. 3517.10(A) and (D) for failing to designate a treasurer and file campaign reports. The Commission also concluded that the GCC should not be fined and the matter should not be referred to a prosecutor. The Commission directed its Executive Director to prepare an opinion explaining the Commission's decision. On June 9, 2011 the Commission approved the opinion drafted by the Executive Director and issued its final Order against the GCC.

**Standard of Review**

This Court must affirm the order of the Commission if the order is supported by reliable, probative and substantial evidence and is in accordance with law. R.C. 119.12; *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St. 2d 108, 111. That quality of proof was defined by the Ohio Supreme Court in *Our Place v. Liquor Control Comm.* (1992), 63 Ohio St. 3d 570 as follows:

- (1) “Reliable” evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true.
- (2) “Probative” evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue.
- (3) “Substantial” evidence is evidence with some weight; it must have importance and value.

The appellant did not assert any assignments of error in its brief. Thus, this Court will review the record to determine if the Division’s Order is supported by reliable, probative, and substantial evidence and is in accordance with law.

**Appellant's Position**

Although the appellant did not assert any assignments of error in its brief, counsel for the appellant asserted as follows:

The ultimate issue before this Court is whether onerous preregistration, disclosure and reporting requirements can be imposed on independent political bloggers and pamphleteers before they may engage in, and commensurate with their engagement in, protected political speech. In making this determination, this Court must first determine whether rights enshrined by the First and Fourteenth Amendments of the United States Constitution and Section 11, Article 1 of the Ohio Constitution protect Mr. Corsi's speech, in his capacity as an independent blogger and pamphleteer.

Upon so determining, this Court must consider whether Mr. Corsi's occasional interaction with others, in the course of his blogging, pamphleteering, and other educational projects, strips him of the aforesaid protections, relegating him (along with unidentified citizens who may assist him) subject to characterization as a Political Action Committee, and imposition of the disclosure and reporting requirement that accompany

that characterization. Answering this question in the negative then requires the Order of the Ohio Elections Commission be overturned, and relevant portions of R.C. 3517 stricken, deemed unconstitutional as applied to Mr. Corsi through GCC, or construed in a manner so as to render them constitutional.

See Appellant's Brief, p. 8.

### **Appellee's Position**

The Commission determined from the evidence presented at the hearing that the GCC was a group of people whose major purpose was to expressly advocate for the election for, or defeat of, candidates and ballot issues and thus met the definition of a PAC. Moreover, the appellee asserts that R.C. 3517.10(A) and (D) are constitutional. Thus, the Commission argues that there is reliable, probative and substantial evidence in the record which supports the Commission's June 9, 2011 Order.

### **Law and Analysis**

The issue before this Court is whether the June 9, 2011 Decision and Finding is supported by reliable, probative and substantial evidence and is in accordance with law. See R.C. 119.12. The appellant improperly has based its arguments from the perspective that the appellee's June 9, 2011 Decision and Finding affected Edmund Corsi in his role as an

individual blogger and pamphleteer. There is no reliable, probative or substantial evidence to support that the appellee took any action against Edmund Corsi as an individual. To the contrary, the Commission found no violation of R.C. 3517.10(A) and (D) against Edmund Corsi individually. The June 9, 2011 Decision and Finding provides in pertinent part:

After reviewing all of these elements, the Commission concludes that the Geauga Constitution Council is a political action committee as that entity is defined in R.C. 3517.01(B)(8). While Mr. Corsi is certainly a critical individual in the operations of the GCC, the evidence shows that there are more than 2 persons involved in the operations of the GCC that helped to carry out its activities. There is overwhelming evidence that a major purpose of the GCC is to support or oppose candidates or issues as demonstrated in the Mission Statement and throughout the materials authored on behalf of the GCC. Lastly, beginning with the pamphlet that contained the Mission Statement and on through the other materials presented as evidence to the Commission, the GCC repeatedly used the phrases such as “for”, “no” and “support” that are words of express advocacy. There can be no doubt that the Geauga Constitutional Council



meets all the requirements to be considered a PAC under Ohio law.

See June 9, 2011 Decision and Finding.

The record supports that the Commission, based on all the evidence before it, concluded that the conduct and activities of the GCC were carried out by two or more persons and thus, met the first prong of the definition of a “PAC” as set forth in R.C. 3517.01(B)(8). Thus, Mr. Corsi’s arguments regarding the applicability of Chapter 3517 as applied to him as an individual are not cognizable. Moreover, since the appellant has not asserted any assignments of error and has set forth general arguments without any specificity, this Court is reluctant to address issues not before it. Thus, this Court will determine whether the appellee’s June 9, 2011 Decision and Finding is supported by reliable, probative and substantial evidence and is in accordance with law.

The appellant asserts that relevant portions of Chapter 3517 are unconstitutional as applied to “him.” There is a strong presumption of constitutionality that cloaks legislative acts. Moreover, any assertion of a legislative act’s incompatibility with a constitutional provision must be established beyond a reasonable doubt before the legislation is deemed as unconstitutional. See *Pack v. Cleveland* (1982), 1 Ohio St. 3d 129, 134; see also *State ex rel Rear Door Bookstore v. Tenth Dist. Court of Appeals* (1992), 63 Ohio St. 3d 354.

As previously stated, the June 9, 2011 Decision and Finding was made in regard to the GCC and not made in regard to Edmund Corsi as an individual. As a matter of weight and credibility, the Commission did not believe that Mr. Corsi was acting alone since the evidence overwhelmingly supported that the conduct and activities of the GCC were being implemented by two or more persons. Thus, the appellant has not demonstrated beyond a reasonable a doubt that the relevant portions of Chapter 3517 are unconstitutional as applied to the conduct and activities of the GCC. Sec June 9, 2011 Decision and Finding.

The appellant asserts that the imposition of the “PAC” label and the disclosure requirements renders R.C. 3517.01(A)(8) and R.C. 3517.10(A), (D)(1), and (D)(4) as unconstitutionally overbroad. The appellant bases its assertion on the presupposition that the “appellant” is a sole individual acting as an independent blogger and pamphleteer. Clearly, the record is replete with evidence supporting the fact that the appellee did not conclude that Edmund Corsi as an individual blogger and pamphleteer violated Chapter 3517. There is no reliable, probative or substantial evidence to support that contention in the record.

What is clear from the record is that in its analysis the Commission *first* determined whether R.C. 3517.01(B)(8) was applicable to the GCC and whether the activities conducted by GCC met the definition of a PAC. R.C. 3517.01(B)(8) provides:

“Political action committee” means a combination of two or more persons, the primary or major purpose of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election through express advocacy, and that is not a political party, a campaign committee, a political contributing entity, or a legislative campaign fund. “Political action committee” does not include either of the following:

- (a) A continuing association that makes disbursements for the direct costs of producing or airing electioneering communications and that does not engage in express advocacy:
- (b) A political club that is formed primarily for social purposes and that consists of one hundred members or less, has officers and periodic meetings, has less than two thousand five hundred dollars in its treasury at all times, and makes an aggregate total contribution of one thousand dollars or less per calendar year.

There is reliable, probative and substantial evidence that two or more persons implemented the conduct and activities of the GCC. The GCC’s publications and Mr. Corsi’s own sworn testimony

refer to the GCC in the plural by form and by content. See Exhibit A. The GCC's mission statement is replete with references in the plural form such as:

**“Our** mission and purpose is to protect our great County...” (Emphasis added).

As to both content and form, the mission statement further provides that the GCC will shed light on the truth through **“our** informative, unique, interactive web site” and “thru e-mail blasts to people in **our group** and other groups **we** are linked to throughout Ohio,” emphasizing group conduct and activity. See Exhibit G.

Likewise, the form and content of Mr. Corsi's own sworn testimony makes it clear that he was acting as part of a group:

“When **we** bring in national speakers, **we** have to charge something because it is so expensive. They charge a fee. **We** have to cover dinner. But all of **our** events are free otherwise. See Tr. 53; see also Tr. 57-58.

Additionally, two of the appellant's witnesses, Judy Zamlen Spotts and Thomas Teare, testified through affidavit testimony that they “produced and handed out pamphlets and flyers containing political content on behalf of Geauga Constitutional Council” and that they “helped to organize events promoted as put on by the Geauga Constitutional Council.” See Exhibits 1, 4, B, G, H and I; see also Tr. 22-23, 31,

57-58. The affidavit testimony of Jean Coe states that she was a “member of the Geauga Constitutional Council” from June 2009 through January 2010 and that the GCC met on a bi-monthly basis. See Exhibit L. Further, Ms. Coe testified that there were normally about six members of the group present at each meeting. See Exhibit L.

The evidence also demonstrated that the GCC held fundraisers and speaker forums. The record demonstrates that the GCC received financial contributions from numerous sources at its fundraisers, which monies were used for GCC sponsored events and operations. The record demonstrates that Mr. Corsi opened a bank account in the name of the GCC to cash checks made payable to the GCC, and individuals other than Mr. Corsi participated in organizing and running GCC events. Tr. 57-58, 61-62; see also Exhibit G. The Commission relied on all of this evidence to conclude that the GCC was comprised of “two or more persons” and thus, met the first prong of the PAC definition as set forth in R.C. 3517.01(B)(8). This Court concludes as a matter of law that there is reliable, probative and substantial evidence to support the appellee’s decision and finding that the GCC was comprised of “two or more persons.” See R.C. 3517.01(B)(8).

The second prong set forth in R.C. 3517.01(B)(8) in determining whether a PAC exists is whether the activities of the organization fulfill the “primary or major purpose of which is to support or oppose any candidate, political party or issue.” See R.C. 3517.01(B)(8). Thus, the Commission again

reviewed the GCC's self proclaimed mission statement which declares the following:

Our mission and purpose is to protect our great County by promoting Constitution rights, freedom and personal responsibility by educating the general public and elected servants through letters in various publications, flyers, ads, web site, e-mail blasts, public forums and working with public servants on various projects; ...**supporting and helping elect** GOD fearing people for office...[Emphasis in original].

See Exhibit A.

The GCC has met the second prong of the definition of a PAC by listing one major component of its mission and purpose as supporting and helping elect "God fearing people" for office. See Exhibit A. Moreover, there was also evidence in its Voters' Guide that the GCC was supporting the re-election efforts of three political candidates; Judy Caputo, Mike Joyce and Michael Brown. Thus, the appellee properly determined that the GCC met the definition of a PAC since an organization that publishes and circulates a "Voters' Guide" and explicitly advocates for, and recommends and supports certain candidates and/or issues, is clearly an organization whose purpose, intent and actions meets the statutory definition. See R.C. 3517.01(B)(8); see also Exhibit C and Tr. 56, 93, 97-98, 100-104, 108.

Consequently, there is reliable, probative and substantial evidence supporting the appellee's June 9, 2011 Decision and Finding concluding that the conduct and activities of the GCC met the definition of a PAC under Ohio law. Sec R.C. 3517.01(B)(8).

### **DECISION**

Accordingly, this Court concludes that the appellee's June 9, 2011 Decision and Finding is supported by reliable, probative and substantial evidence and is in accordance with law. Accordingly, the June 9, 2011 Decision and Finding is hereby **AFFIRMED**.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

**(B) Notice of filing.** When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

**THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY. THIS IS A FINAL APPEALABLE ORDER.** Pursuant to Civil Rule 58, the Clerk of Court shall serve notice upon all parties of this judgment and its date of entry.

IT IS SO ORDERED.

/s/ J. Bender  
**Judge John F. Bender**

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**APPENDIX C**

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**Ohio Elections Commission**

Geauga County Board :  
of Elections, Complainant :  
 :  
vs. : Case No. 2010R-275  
 :  
Edward Corsi & :  
Geauga Constitutional :  
Council, Respondents :

**\*\*\*\*\***

**Decision and Finding**

**Syllabus**

This matter was heard by the Commission on April 28, 2011, pursuant to the filing of a complaint with the Commission by the Geauga County Board of Elections. The complaint alleged 2 violations against the respondents. To commence the proceedings, the Commission was presented with the statement of the case as contained in the complaint. An Answer and Affirmative Defense and a Motion for Judgment on the Pleadings were submitted on behalf of the respondents. At the conclusion of the hearing by a preponderance of the evidence, the Commission found that the Geauga Constitutional Council (GCC) was a Political Action Committee (PAC) as that term is defined in Ohio Revised Code §3517.01(B)(8) and that there had been violations of R.C. §3517.10(A) and §3517.10(D) as alleged in the complaint. This finding of a violation is due to the

fact that, as a PAC, the GCC was obligated to file a Designation of Treasurer with the appropriate filing office to establish itself as a PAC and then to subsequently file the campaign finance reports required of a properly registered PAC, neither of which filings were made. This written decision states the basis for the Commission's determination of the case made on that date and is the final appealable order issued to the parties.

### **Statement of the Case**

The evidence presented to the Commission from the complaint, the responses, supplementary affidavits offered to the Commission and the testimony given at the Commission hearing showed that the respondent, Edward Corsi, is an individual who, in conjunction with others, has acted as respondent, Geauga Constitutional Council (GCC). The GCC maintains an active website that offers comment on political and civic issues in and around Geauga County, Ohio, and published a certain pamphlet that stated the Mission Statement of the organization. In addition, the pamphlet shared some of the information that was contained on the website. The GCC also conducted group meetings, or get-togethers, at which invited persons would "throw around ideas and information on political issues or people who held office". (Transcript, Page 67) In addition, it was revealed that the GCC hosted events at which public speakers of local and national reputation addressed attendees who paid a fee to the GCC for the opportunity to hear these speakers and at which multiple persons assisted in various ways to conduct these events.

The essential issues before the Commission were whether there was one or more persons who worked with or aided Mr. Corsi in conducting the activities of the GCC, whether the published materials that were produced on the website and the pamphlets were “express advocacy” or “issue advocacy” as those terms are used in the political arena, and what is the “primary or major purpose” of the group. Mr. Corsi argued that the GCC was entirely his organization emphasizing this by responding to questions and stating that “the Geauga Constitutional Council is me, and me only.” (Tr. P. 64)

During the hearing, the Commission considered testimony offered by a witness for each of the parties to the case. Mr. Edward Ryder, member of the Geauga County Board of Elections, testified on behalf of the complainant, and Mr. Corsi testified on his own behalf and that of the GCC. In addition, the parties allowed the submission of affidavits from Jean Coe, Senator Timothy J. Grendell, Thomas Teare, and Judy Zamlen Spotts, along with two separate affidavits from Mr. Corsi, one filed at the hearing and the other filed at an earlier time in the consideration of the case.

The testimony of Mr. Ryder gave an overview of the Board’s case. His testimony included how the matter came to the attention of the Board after the GCC hosted a booth at the Geauga county fair and the pamphlet that was circulated by the GCC at the County Fair. He stated that the pamphlet contained the mission statement of the GCC, and that it was brought to his attention that the pamphlet did not

contain the proper disclaimer required by Ohio election law. From that, he discovered that no Designation of Treasurer or other campaign finance filings had been made with the Geauga County Board of Elections on behalf of the GCC. He also recounted his attendance at one of the events hosted by the GCC. He recalled the speech that he heard while in attendance at that event and that there were persons who assisted Mr. Corsi in hosting the event, who circulated literature and received admission payments on behalf of the GCC from the persons who attended the event.

Mr. Corsi testified at length that the GCC was solely him and his organization. He also testified that all of the writings and opinions were his and that he was merely exercising his constitutional rights. He refuted the affidavit of Ms. Coe and stated that there was no membership in the GCC and that Ms. Coe was not a regular attendee at the “get-togethers” (Tr. P. 67) before she went on to establish her own organization. Commission members questioned Mr. Corsi in depth on the pertinent subjects at issue in this case.

### **Analysis**

As a part of his opening argument, Maurice A. Thompson, Esq., counsel for Mr. Corsi and the GCC, discussed the various activities that have been conducted by the GCC and exhorted the Commission to consider the different functions that Mr. Corsi carried out under the banner of the GCC and to consider whether those separate functions comport with the definition of a PAC under Ohio law. Mr.

Thompson identified three key elements for the Commission to consider during its deliberations (Tr. P. 13):

1. Is there more than one person in each of those functions?
2. Is there express advocacy that can be regulated in each of those functions? and
3. Is money actually being spent to elect or defeat a candidate in any of those functions?

As it conducted its deliberations, the Commission did consider each of the elements put forth by Mr. Thompson, but rather than simply accepting item 3., as proposed by Mr. Thompson, (as there is no mention of money in the definition of a PAC), the Commission strictly interpreted the terms of the definition contained in R.C. §3517.01(B)(8) which states that a “political action committee”

means a combination of two or more persons, the primary or major purpose of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election through express advocacy, and that is not a political party, a campaign committee, or a legislative campaign fund.

### **Two or More Persons**

The primary contention by Mr. Corsi throughout the proceedings of this case was that the GCC was “me, and me only” (Tr. P. 64). Upon

consideration of the entirety of the testimony, the Commission could not accept this contention. The Commission determined that the GCC was comprised of more persons than just Edward Corsi, and was actually a combination of two or more persons as required by the statute.

The first piece of evidence that the Commission considered was the Mission Statement of the GCC that is contained in the pamphlet that was circulated at the Geauga County Fair. The Mission Statement states for the GCC that

Our mission and purpose to protect our great County by promoting Constitutional rights, freedom, and personal responsibility by educating the general public and elected servants ... [Emphasis added]

In addition, other statements in the pamphlet alluded to multiple persons sharing responsibility for the flyer. On the third page under the heading "Most UnWanted", the following phrases are used:

1. On line 2 - "... who we feel are misrepresenting themselves to you..."
2. On line 10 - "We believe the following people deserve this notoriety ..."
3. At the bottom of the page - "Note: The GCC realizes this may anger some of you. We are sorry but can't help that. We publicize this ..."

In reviewing the totality of the pamphlet, there is no reference to the words "I" or "me", or any

other term that would indicate that this pamphlet was produced by an individual, acting in his own capacity and without any assistance or participation by other persons.

Throughout his testimony, Mr. Corsi often used plural terms when describing the GCC. During direct examination on repeated questioning from his counsel, Mr. Corsi attributed such usage to “loose terminology” (Tr., P.49) and that its “just because it’s the verbiage I’m using, not for any other reason.” (Tr. P. 49) Yet later in his testimony, when answering a question about the public events and the need to charge a fee, he responds by saying that “(w)hen we bring in national speakers, we have to charge something ... (w)e have to cover dinner, But all of our events are free otherwise.” [Emphasis added] (Tr. P. 53).

Under cross examination by Sheila Salem, Esq., counsel for the complainant, Mr. Corsi admitted that he used Ms. Spotts as the mail location for checks to be paid for those public speaking events, explaining it as a desire to maintain his anonymity and not to publish his address. Commission member Harvey Shapiro followed up on this line of questioning and in responding, Mr. Corsi acknowledged that Ms. Spotts agreed to receive the checks on his behalf for the GCC. (Tr. Pp. 57-58)

The Commission also considered the affidavits of Mr. Teare and Ms. Spotts. Paragraph 5 of Mr. Teare’s affidavit and paragraph 6 of Ms. Spotts’ affidavit both contain the same statement, “I am not

a member of the Geauga Constitutional Council (“GCC”) because GCC has no members. There is no membership criteria.” While these statements and others that portray Mr. Corsi’s total control of the website are certainly of great import, later in their affidavits each person states that they “produced and handed out pamphlets and flyers containing political content on behalf of ‘Gauga Constitutional Council”, “I have helped to organize events promoted as put on by the Geauga Constitutional Council”, and “When Ed Corsi, I and others invite a speaker into town and hold an event, we use the name ‘Gauga Constitutional Council’ to describe ourselves ...”

As further evidence of Ms. Spotts’ participation with the GCC, the complainants submitted as a part of their Exhibit ‘B’, a page from the GCC website that contained an editorial opinion letter penned by Ms. Spotts indicating that it was posted by the GCC.

There was much testimony that fund raisers were held by the GCC. Mr. Corsi indicated that it was expensive to hold these events because you had to reimburse the speakers at the events, and that there were expenses for the room in which the event was held and other costs. Mr. Corsi also testified that he had to make special arrangements to cash some of the checks that were made out to GCC for some events and at other events he instructed attendees to make their checks out to ‘cash’. While financial contributions are not a part of the definition of what creates a PAC, there was testimony that moneys were received that promoted



the GCC's operations from numerous sources. Mr. Corsi testified that he was required to open a new checking account so that he could cash checks that were received by the GCC (Tr. P. 62). All of this is further indication that the GCC was comprised of "two or more persons" as required by Ohio law.

During its deliberations, Commission members relied on all of these elements to determine that the GCC is comprised of "two or more persons" as mandated in the statutes. (Tr. Pp. 91-96, 105)

**Primary or Major Purpose of which is to Support or Oppose**

The second portion of the definition of a PAC under Ohio law is whether the activities of the organization fulfill the "primary or major purpose" element. No specific definition of either word is contained in the statute to help define that phrase, but according to Webster's New World Dictionary the terms are defined as follows:

1. Primary - first in order of time or development; of first rank, importance, or value
2. Major - greater in dignity, rank, importance, or interest; greater in number, quantity, or extent; prominent or significant in size, amount, or degree (Webster's New World Dictionary, 2<sup>nd</sup> College Edition, 1986)

The appropriate way to judge an organization, and to help determine whether that political organization meets this portion of the definition, is through its self-proclaimed Mission Statement. So the Commission looks again to the pamphlet that is complainant's exhibit A. A portion of this pamphlet is again reprinted below.

Our mission and purpose to protect our great County by promoting Constitution rights, freedom, and personal responsibility by educating the general public and elected servants through letters in various publications, flyers, ads, web site, e-mail blasts, public forums and working with public servants on various projects; ... **supporting and helping elect** GOD fearing people for office ... [Emphasis in original]

The above highlighted portion of the Mission Statement is the third item that is given emphasis on the list that comprises the action elements of the mission statement. While it is logical to conclude that by listing this element third in the hierarchy of its actions the GCC does not consider this element the primary mission of the organization, as a primary mission would be "first in order" or "of first rank". Nonetheless, it is certainly reasonable to assert that by including this item among the only three action items in the Mission Statement of the GCC that this is a major purpose of the organization. By listing "supporting and helping elect" candidates as one of only three action items in this Mission

Statement, this certainly must be judged as something that is “greater in dignity, rank, importance, or interest” or something that is “prominent or significant in size, amount, or degree”.

As further evidence that one of the GCC’s major purposes is to support or oppose a candidate or issue and that meets the definition of a PAC, the Commission then looks to the fifth page of the pamphlet that uses the term “Voters Guide” immediately above the phrase “Most Wanted”. The first paragraph of this page begins by saying, “The GEAUGA CONSTITUTIONAL COUNCIL supports and recommends all the following people ...” In reviewing the listing of names that is contained on this page there are three persons (Judy Caputo, Mike Joyce and Michael Brown) whose listing include the phrase “up for re-election”.

An organization that publishes and circulates a “Voters Guide” and contemporaneously explicitly recommends and supports candidates and/or issues is an organization whose purpose, intent and actions can only be determined to be supporting candidates and/or issues as is required by the statute. The phrases used throughout this pamphlet certainly indicate the GCC’s support for those persons who are candidates and are “Most Wanted”.

Page three of the pamphlet contains the names of persons who are listed as the “Most UnWanted” and “Posers for Voters”. The first line of the first paragraph on this page states that, “Many incumbents and contenders for office in Geauga County are R.I.N.O.’s (Republicans In Name Only),

who we feel are misrepresenting themselves to you, just to get or stay elected.” Again, the Commission identifies such phrases as “contenders for office” and “to get or stay elected” as examples of key phrasing that identifies a major purpose of the GCC as supporting or opposing candidates. Similar to the previous paragraph, an organization that publishes a “Voter’s Guide” and contemporaneously explicitly opposes candidates and/or issues is an organization whose purpose, intent and actions can only be determined to be opposing candidates and/or issues as is required by the statute.

Further examples are included on the website of the GCC. Page 1 of 5 of complainant’s Exhibit B contains information on Judge Eugene Lucci that discusses an upcoming fundraiser that is to be held on behalf of the Judge. The second paragraph of the article starts out by saying that, “He is a candidate for the 11<sup>th</sup> DISTRICT Court of Appeals ...” The fourth paragraph of this same article states that, “There are VERY FEW candidates for Judge worth supporting and I feel he is one of the very few.”

Complainant’s Exhibit C contains a letter from Judy K. Zamlen-Spotts that expresses her encouragement to voters to vote “no” on an upcoming library tax levy and even goes on to encourage a “no” vote on all levies at an upcoming election. In a note from Mr. Corsi that immediately follows Ms. Spotts’ letter he concludes by saying, “sorry, but I agree with Judy .... NO MORE LEVIES....NOT ONE!” Lastly, on Page 4 of 5 of the exhibit attached to the complaint. Near the bottom of the page under the heading, “OHIO THIRD FRONTIER PROGRAM”,

after the words “Posted By: Geauga Constitutional Council”, and the date stamp for the posting, the following phrase is in bolded and capitalized letters, “NO...NO...NO ON STATE ISSUE 1”. [Emphasis in original] Certainly such language that expressly advocates Mr. Corsi’s position on the website of the GCC in opposition to such tax issues in such a prominent position must be considered significant in degree and a major element in the organization’s activities.

Commission members identified all of these elements as evidence that the GCC’s major purpose is to support or oppose candidates or issues. (Tr. Pp. 100-104, 108) It is apparent to the Commission in reviewing all of the examples that are included in GCC’s materials that a major purpose of the GCC is to support or oppose candidates and issues.

#### **Influence the Result of any Election through Express Advocacy**

The phrase “express advocacy” is a convenient way of expressing the United States Supreme Court’s holding in the seminal case of *Buckley v. Valeo*, 424 U.S. 1 (1976). The *Buckley* court, in footnote 52, limited the application of the Federal Election Campaign Act to “...communications containing express words of advocacy of election or defeat, such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ ‘reject’” or “express advocacy” for or against a candidate or ballot issue.

In reviewing the materials included in the complaint and presented at the hearing that were taken from the GCC website, a substantial number of examples are evident. We previously discussed the phrase that was used concerning Judge Lucci (“There are VERY FEW candidates for Judge worth supporting and I feel he is one of the very few.”) and the statement concerning State Issue 1 (“NO...NO...NO ON STATE ISSUE 1”). In the pamphlet under the VOTER GUIDE and the Most Wanted list, the first sentence states, “The GEAUGA CONSTITUTIONAL COUNCIL supports and recommends all the following people ...” some of whom were on an upcoming ballot. The copies of the pages from the website attached to the complaint also contain the following phrases, “RON YOUNG FOR OHIO HOUSE OR REPRESENTATIVES”, “SANDRA O’BRIEN...OUR GAL FOR SECRETARY”, and “SANDRA O’BRIEN FOR OHIO SECRETARY OF STATE”. All of these statements included in the GCC’s materials use strong words to expressly advocate the election or defeat of the respective candidates and issues that are on a ballot.

There could be no clearer indication of express advocacy as there is contained in these statements. Commission members considered all of this evidence in determining that the GCC used “express advocacy” to complete all of the requisite elements to establish a PAC under Ohio law. (Tr. Pp. 93, 97-98, 100-101, 104)

### **Conclusion**

After reviewing all of these elements, the Commission concludes that the Geauga Constitutional Council is a political action committee as that entity is defined in R.C. §3517.01(B)(8). While Mr. Corsi is certainly a critical individual in the operations of the GCC, the evidence shows that there are more than 2 persons involved in the operations of the GCC that helped to carry out its activities. There is overwhelming evidence that a major purpose of the GCC is to support or oppose candidates or issues as demonstrated in the Mission Statement of the group and throughout the materials authored on behalf of the GCC. Lastly, beginning with the pamphlet that contained the Mission Statement and on through the other materials presented as evidence to the Commission, the GCC repeatedly used phrases such as “for”, “no” and “support” that are words of express advocacy. There can be no doubt that the Geauga Constitutional Council meets all of the requirements to be considered a PAC under Ohio law.

Therefore, by a preponderance of the evidence, the Commission finds that the Geauga Constitutional Council is a Political Action Committee as that term is defined in Ohio Revised Code §3517.01(B)(8) and that as a political action committee the GCC was required to file a Designation of Treasurer and other campaign finance filings as required of a PAC by Ohio law, and that by failing to do so there are violations of R.C. §3517.10(A) and §3517.10(D) as alleged in the complaint. As the penalty for these violations, the Commission finds that there is good cause present

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not to impose a fine or refer the matter for further prosecution.

The Commission considers this Decision and Finding, a confirmation of the decision made at the Commission's meeting of April 28<sup>th</sup>, 2011 and approved and issued on the 9<sup>th</sup> day of June, 2011, its final appealable order in this matter and finds that there is no just reason for delay pursuant to Civil Rule 54(B).

Ohio Elections Commission

/s/ Bryan Felmet  
Bryan Felmet  
Chair



**APPENDIX D**

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SUPREME COURT OF OHIO

CORSI	:	
	:	CASE NO.
v.	:	2012-2016
	:	
OHIO ELECTIONS	:	
COMMISSION	:	

March 13, 2013

**APPEAL NOT ACCEPTED FOR REVIEW**

O'Connor, C.J., and Kennedy and O'Neill, JJ.,  
dissent.

**APPENDIX E**

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**CONSTITUTIONAL, STATUTORY, AND RULE  
PROVISIONS**

U.S. CONST. amend. I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. amend. XIV, § 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

OHIO REV. CODE § 3517.01(B)(8) (2012).

"Political action committee" means a combination of two or more persons, the primary or major purpose of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election through express advocacy, and that is

not a political party, a campaign committee, a political contributing entity, or a legislative campaign fund. "Political action committee" does not include either of the following:

(a) A continuing association that makes disbursements for the direct costs of producing or airing electioneering communications and that does not engage in express advocacy;

(b) A political club that is formed primarily for social purposes and that consists of one hundred members or less, has officers and periodic meetings, has less than two thousand five hundred dollars in its treasury at all times, and makes an aggregate total contribution of one thousand dollars or less per calendar year.

OHIO REV. CODE § 3517.10(A) (2012).

Except as otherwise provided in this division, every campaign committee, political action committee, legislative campaign fund, political party, and political contributing entity that made or received a contribution or made an expenditure in connection with the nomination or election of any candidate or in connection with any ballot issue or question at any election held or to be held in this state shall file, on a form prescribed under this section or by electronic means of transmission as provided in this section and section 3517.106 of the Revised Code, a full, true, and itemized statement, made under penalty of election falsification, setting forth in

detail the contributions and expenditures, not later than four p.m. of the following dates:

(1) The twelfth day before the election to reflect contributions received and expenditures made from the close of business on the last day reflected in the last previously filed statement, if any, to the close of business on the twentieth day before the election;

(2) The thirty-eighth day after the election to reflect the contributions received and expenditures made from the close of business on the last day reflected in the last previously filed statement, if any, to the close of business on the seventh day before the filing of the statement;

(3) The last business day of January of every year to reflect the contributions received and expenditures made from the close of business on the last day reflected in the last previously filed statement, if any, to the close of business on the last day of December of the previous year;

(4) The last business day of July of every year to reflect the contributions received and expenditures made from the close of business on the last day reflected in the last previously filed statement, if any, to the close of business on the last day of June of that year.

A campaign committee shall only be required to file the statements prescribed under divisions (A)(1) and (2) of this section in connection with the nomination or election of the committee's candidate.

The statement required under division (A)(1) of this section shall not be required of any campaign committee, political action committee, legislative campaign fund, political party, or political contributing entity that has received contributions of less than one thousand dollars and has made expenditures of less than one thousand dollars at the close of business on the twentieth day before the election. Those contributions and expenditures shall be reported in the statement required under division (A)(2) of this section.

If an election to select candidates to appear on the general election ballot is held within sixty days before a general election, the campaign committee of a successful candidate in the earlier election may file the statement required by division (A)(1) of this section for the general election instead of the statement required by division (A)(2) of this section for the earlier election if the pregeneral election statement reflects the status of contributions and expenditures for the period twenty days before the earlier election to twenty days before the general election.

If a person becomes a candidate less than twenty days before an election, the candidate's campaign committee is not required to file the statement required by division (A)(1) of this section.

No statement under division (A)(3) of this section shall be required for any year in which a campaign committee, political action committee, legislative campaign fund, political party, or political contributing entity is required to file a postgeneral

election statement under division (A)(2) of this section. However, a statement under division (A)(3) of this section may be filed, at the option of the campaign committee, political action committee, legislative campaign fund, political party, or political contributing entity.

No campaign committee of a candidate for the office of chief justice or justice of the supreme court, and no campaign committee of a candidate for the office of judge of any court in this state, shall be required to file a statement under division (A)(4) of this section.

Except as otherwise provided in this paragraph and in the next paragraph of this section, the only campaign committees required to file a statement under division (A)(4) of this section are the campaign committee of a statewide candidate and the campaign committee of a candidate for county office. The campaign committee of a candidate for any other nonjudicial office is required to file a statement under division (A)(4) of this section if that campaign committee receives, during that period, contributions exceeding ten thousand dollars.

No statement under division (A)(4) of this section shall be required of a campaign committee, a political action committee, a legislative campaign fund, a political party, or a political contributing entity for any year in which the campaign committee, political action committee, legislative campaign fund, political party, or political contributing entity is required to file a postprimary election statement under division (A)(2) of this

section. However, a statement under division (A)(4) of this section may be filed at the option of the campaign committee, political action committee, legislative campaign fund, political party, or political contributing entity.

No statement under division (A)(3) or (4) of this section shall be required if the campaign committee, political action committee, legislative campaign fund, political party, or political contributing entity has no contributions that it has received and no expenditures that it has made since the last date reflected in its last previously filed statement. However, the campaign committee, political action committee, legislative campaign fund, political party, or political contributing entity shall file a statement to that effect, on a form prescribed under this section and made under penalty of election falsification, on the date required in division (A)(3) or (4) of this section, as applicable.

The campaign committee of a statewide candidate shall file a monthly statement of contributions received during each of the months of July, August, and September in the year of the general election in which the candidate seeks office. The campaign committee of a statewide candidate shall file the monthly statement not later than three business days after the last day of the month covered by the statement. During the period beginning on the nineteenth day before the general election in which a statewide candidate seeks election to office and extending through the day of that general election, each time the campaign committee of the joint candidates for the offices of governor and lieutenant

governor or of a candidate for the office of secretary of state, auditor of state, treasurer of state, or attorney general receives a contribution from a contributor that causes the aggregate amount of contributions received from that contributor during that period to equal or exceed ten thousand dollars and each time the campaign committee of a candidate for the office of chief justice or justice of the supreme court receives a contribution from a contributor that causes the aggregate amount of contributions received from that contributor during that period to exceed ten thousand dollars, the campaign committee shall file a two-business-day statement reflecting that contribution. During the period beginning on the nineteenth day before a primary election in which a candidate for statewide office seeks nomination to office and extending through the day of that primary election, each time either the campaign committee of a statewide candidate in that primary election that files a notice under division (C)(1) of section 3517.103 of the Revised Code or the campaign committee of a statewide candidate in that primary election to which, in accordance with division (D) of section 3517.103 of the Revised Code, the contribution limitations prescribed in section 3517.102 of the Revised Code no longer apply receives a contribution from a contributor that causes the aggregate amount of contributions received from that contributor during that period to exceed ten thousand dollars, the campaign committee shall file a two-business-day statement reflecting that contribution. Contributions reported on a two-business-day statement required to be filed by a campaign committee of a statewide candidate in a primary



election shall also be included in the postprimary election statement required to be filed by that campaign committee under division (A)(2) of this section. A two-business-day statement required by this paragraph shall be filed not later than two business days after receipt of the contribution. The statements required by this paragraph shall be filed in addition to any other statements required by this section.

Subject to the secretary of state having implemented, tested, and verified the successful operation of any system the secretary of state prescribes pursuant to divisions (C)(6)(b) and (D)(6) of this section and division (H)(1) of section 3517.106 of the Revised Code for the filing of campaign finance statements by electronic means of transmission, a campaign committee of a statewide candidate shall file a two-business-day statement under the preceding paragraph by electronic means of transmission if the campaign committee is required to file a pre-election, postelection, or monthly statement of contributions and expenditures by electronic means of transmission under this section or section 3517.106 of the Revised Code.

If a campaign committee or political action committee has no balance on hand and no outstanding obligations and desires to terminate itself, it shall file a statement to that effect, on a form prescribed under this section and made under penalty of election falsification, with the official with whom it files a statement under division (A) of this section after filing a final statement of contributions

and a final statement of expenditures, if contributions have been received or expenditures made since the period reflected in its last previously filed statement.

OHIO REV. CODE § 3517.10(D)(1) (2012).

Prior to receiving a contribution or making an expenditure, every campaign committee, political action committee, legislative campaign fund, political party, or political contributing entity shall appoint a treasurer and shall file, on a form prescribed by the secretary of state, a designation of that appointment, including the full name and address of the treasurer and of the campaign committee, political action committee, legislative campaign fund, political party, or political contributing entity. That designation shall be filed with the official with whom the campaign committee, political action committee, legislative campaign fund, political party, or political contributing entity is required to file statements under section 3517.11 of the Revised Code. The name of a campaign committee shall include at least the last name of the campaign committee's candidate. If two or more candidates are the beneficiaries of a single campaign committee under division (B) of section 3517.081 of the Revised Code, the name of the campaign committee shall include at least the last name of each candidate who is a beneficiary of that campaign committee. The secretary of state shall assign a registration number to each political action committee that files a designation of the appointment of a treasurer under this division if the

political action committee is required by division (A)(1) of section 3517.11 of the Revised Code to file the statements prescribed by this section with the secretary of state.

OHIO REV. CODE § 3517.10(D)(4) (2012).

Every expenditure in excess of twenty-five dollars shall be vouched for by a receipted bill, stating the purpose of the expenditure, that shall be filed with the statement of expenditures. A canceled check with a notation of the purpose of the expenditure is a receipted bill for purposes of division (D)(4) of this section.

OHIO ADMIN. CODE 3517-1-14(B) (2012).

Fines. (1) Fines may be imposed by the commission when it has found a violation of sections 3517.08 to 3517.13, 3517.17 and 3517.18 of the Revised Code in the following amounts and manner...

(2) A fine imposed by the commission for a violation of section 3517.20 of the Revised Code shall be not less than twenty-five nor more than five-hundred dollars.

(3) Fines may be imposed by the commission when it has found a violation of section 3599.03 or 3599.031 of the Revised Code in the following amounts and manner...

(4) Fines imposed by the commission for violations which occurred prior to August 24, 1995 shall be made by using the schedule in paragraph (B)(1) of this rule but no fine shall be imposed which exceeds the maximum fine amount as outlined in the pertinent section of the Revised Code which was in effect at the time of the violation.

(5) In determining the amount of a fine and whether to impose the maximum or minimum penalty allowable, the commission shall take into consideration, but shall not be controlled by, the following:

(a) Prior violations of Title XXXV of the Revised Code by the party before the commission;

(b) Whether such actions were knowing or purposeful;

(c) Whether the required filing has been made with the proper filing office, and the promptness of the filing;

(d) Any outstanding fines for a violation of Title XXXV of the Revised Code;

(e) The nature and circumstances of the violation and whether the nature and circumstances of the violation tend to excuse or justify the violation, regardless of whether the nature or circumstances establish a defense to the violation;

(f) Whether the violation occurred during the course of a campaign and was to have been reported prior to the day of the election; or

In addition, the commission may, but is not required to, consider prior penalties imposed by this commission involving similarly situated parties where the circumstances would make such consideration appropriate.

(6) (a) Fines by the commission for violations by a candidate's campaign committee or treasurer shall be imposed jointly on the campaign committee, the treasurer and the candidate.

(b) Fines by the commission for violations by a political committee or political party, or its treasurer, shall be imposed jointly on the political committee or political party and the responsible treasurer or other responsible individual that is before the commission.

(c) Fines by the commission may be imposed separately on the campaign committee, political action committee, political party, legislative campaign committee, or other committee or organization, and on any individual that the commission finds to have committed the violation, if sufficient evidence is presented that would establish that the violation may be imposed on less than all parties to the case.

(d) In all cases, fines may only be imposed against persons who are respondents before the commission.

(7) (a) Any fine imposed by the commission shall be paid no later than thirty days after the written notice thereof is mailed to the respondent.

(b) Payment shall be made at the commission's office in person or by mail. Checks shall be made payable to the "Ohio Elections Commission." Such fines paid to the commission shall be deposited in the Ohio elections commission fund of the State of Ohio.

(c) If a fine is not paid, the matter shall be referred to the Ohio attorney general for collection. Staff attorney to the commission shall take any action necessary and work with the attorney general in furtherance of the interests of the commission to reconcile any case which commission staff has referred for collection.