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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-1213

[Filed July 21, 2023]

JILL L. STEIN, DR. AND JILL STEIN FOR PRESIDENT, PETITIONERS	)
V.	)
FEDERAL ELECTION COMMISSION, RESPONDENT	)

Argued January 18, 2023 Decided July 21, 2023

On Petition for Review of an Order of the Federal Election Commission

Oliver B. Hall argued the cause and filed the briefs for petitioners.

Shaina Ward, Attorney, Federal Election Commission, argued the cause for respondent. With her on the brief were *Kevin Deeley*, Associate General Counsel, and *Jacob S. Siler*, Assistant General Counsel.

Before: HENDERSON, WILKINS, and KATSAS, *Circuit Judges*.

App. 2

Opinion for the Court by *Circuit Judge* KATSAS.

KATSAS, *Circuit Judge*: The federal government funds certain expenses incurred by presidential candidates at specific times during their primary campaigns. Jill Stein, who ran for President in 2016, contends that a temporal limit on this funding unconstitutionally discriminates against minor-party candidates. Stein also contests an administrative ruling that she forfeited the right to document certain costs of winding down her campaign, which could have offset a repayment obligation that she owed the government. We deny her petition.

I

A

The Presidential Primary Matching Payment Account Act makes public funds available for the campaigns of presidential primary candidates. 26 U.S.C. §§ 9031–42. Under the Act, candidates may receive funds to match individual contributions up to $250. *Id.* § 9034(a). A candidate may use these funds to defray qualifying expenses incurred in connection with her primary campaign. *Id.* §§ 9032(9), 9038(b). Except for expenses associated with winding down a campaign, these expenses must be incurred during specific times known as the matching payment period. *Id.* §§ 9032(6), 9038(a); 11 C.F.R. § 9034.11(a).

The end of the matching payment period depends on whether the candidate's party selects its nominee at a national convention. If it does, the period ends when a nominee is selected. 26 U.S.C. § 9032(6). If it does not, the period ends on the earlier of that date or the last

day of the last national convention held by a major party. *Id.* If a candidate seeks the nomination of both a party that selects its nominee at a national convention and one that does not, the matching payment period ends on the later of the two statutory possibilities. FEC Advisory Op. No. 2000-18 at 3–4 (Aug. 11, 2000). For such candidates, the matching payment period thus ends no later than the end of the national conventions.

The Federal Election Commission must audit every campaign that receives public funds under the Act. 26 U.S.C. § 9038(a). If the audit reveals that the candidate received excess funds or used funds for an unauthorized purpose, the candidate must repay those amounts. *Id.* § 9038(b).

Regulations outline the audit process. After considering materials from its staff and the candidate, the FEC issues an audit report that includes any repayment determination. 11 C.F.R. § 9038.1(d)(1). The candidate may seek administrative review of the determination within 60 days. To do so, she must "submit in writing … legal and factual materials demonstrating that no repayment, or a lesser repayment, is required." *Id.* § 9038.2(c)(2)(i). The "failure to timely raise an issue" in these written materials "will be deemed a waiver of the candidate's right to raise the issue at any future stage of proceedings including any petition for review." *Id.*

B

At its national convention on August 6, 2016, the Green Party nominated Jill Stein for President. But

this nomination did not qualify Stein for a spot on many states' general-election ballots. In those states, Stein sought to access the ballot through petition initiatives and by seeking the nomination of individual state parties. Stein pursued these efforts until September 9, 2016, the latest state deadline for her to so qualify. In connection with her primary campaigns and ballot-access efforts, Stein accepted over $590,000 in public funds.

The FEC issued its audit report in April 2019. It determined that Stein owed the government $175,272. This calculation assumed that Stein's matching payment period ended on August 6, 2016, when Stein secured the Green Party nomination, which was after the two major-party conventions. The calculation also reflected one offset for winding down costs incurred through August 2018 and a second, estimated offset for later winding down costs. The report stated that the estimate "will be compared to actual winding down costs and will be adjusted accordingly." App. 14.

In June 2019, Stein sought administrative review of the repayment determination. As relevant here, she argued that the Fifth Amendment required extending her matching payment period from August 6 to September 9, the last possible date for her to qualify to appear on a state general-election ballot. And she asserted that she would have no repayment obligation if the period were so extended. In a single sentence, Stein also stated that "other findings concerning the nature of winding down expenses … cannot survive scrutiny." App. 26.

After a substantial delay caused by the lack of a quorum, the Commission granted review and set a hearing date in February 2021. A week before the hearing, Stein submitted evidence of winding down costs not previously considered. After the hearing, Stein submitted more such evidence.

In September 2021, the FEC issued its final repayment determination, which again fixed her obligation at $175,272. The agency rejected Stein's arguments for extending the matching payment period. It further held that Stein had forfeited any argument for recognizing additional winding down costs to offset the repayment amount.

Stein sought review in this Court. We have jurisdiction under 26 U.S.C. § 9041.

II

Stein first contends that the Act defines the matching payment period in a way that unconstitutionally discriminates against minor-party candidates. As explained above, the period ends no later than the end of the national conventions. For major-party candidates, Stein reasons, this cutoff ensures funding until the nominee has secured access to every state's general-election ballot. But no such guarantee protects minor-party candidates who, even if they secure a nomination at a national convention, still must seek ballot access through state-party primary campaigns or petition drives. If those activities extend beyond the national conventions, as happened in 2016, the cutoff prevents minor-party candidates—and only minor-party candidates—from receiving

funding for campaign activities necessary to secure access to all states' general-election ballots.

In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court considered various equal-protection challenges to the limits on public funding for general and primary campaigns in presidential elections. Under the scheme for general-election campaigns, major-party candidates receive more money than candidates of minor or new parties. *See id.* at 88. The funding distinctions depend on the percentage of the popular vote received by each party in the last election cycle: major parties are those that received at least 25% of the popular vote; minor parties are those that received between 5% and 25%; and new parties are those that received less than 5%. *Id.* at 87. Candidates of new parties receive no public funds unless the candidate wins at least 5% of the popular vote in the election at issue. *See id.* at 89. The challengers objected that this differential treatment unconstitutionally discriminates against minor and new parties, but the Court disagreed. *See id.* at 97.

The Court held that restrictions on public funding are constitutional if they further an important government interest and do not "unfairly or unnecessarily burden[] the political opportunity of any party or candidate." *Buckley*, 424 U.S. at 95–96. The Court concluded that Congress's "interest in not funding hopeless candidacies with large sums of public money" is important enough and "necessarily justifies the withholding of public assistance from candidates without significant public support." *Id.* at 96. So too does "the important public interest against providing artificial incentives to splintered parties and

unrestrained factionalism." *Id.* (cleaned up). The Court further stressed that the funding scheme does not reduce the strength of nonmajor parties "below that attained without any public financing," for any party remains "free to raise money from private sources." *Id.* at 99. And as for relative burdens, a candidate accepting public funds must agree to expenditure limits that are constraining for major-party candidates but "largely academic" for others. *Id.* Finally, the Court noted that the challenged funding restrictions were less constraining than previously upheld state laws "limiting places on the ballot to those candidates who demonstrate substantial popular support." *Id.* at 96.

The funding limits at issue here easily survive review under these standards. Primary elections, no less than general elections, implicate the important government interests in limiting public funding for candidates with slim support. And the Green Party received only 0.4% of the popular vote in the 2012 presidential election—far less than the 5% cutoff that justified denying any public funds to support Stein's general-election campaign in 2016. *See Buckley*, 424 U.S. at 87–88; 26 U.S.C. § 9004. If Congress could permissibly deny all public funding for that campaign based on the lack of widespread support for the Green Party, then Congress could also take the less restrictive step of offering Stein funding as a primary candidate that was less generous than the funding provided to primary candidates of major parties.

Moreover, the Act did not even weaken Green Party candidates, in absolute terms or relative to major-party candidates. Nothing prevented Stein from declining

public funds or raising money from private sources after her matching payment period ended. Moreover, Stein faced the same basic choice as do general-election candidates: (1) raise and spend all the private funds you can, or (2) accept matching funds and agree to expenditure limits. 26 U.S.C. § 9035. *Buckley* explained that for the general election, the applicable expenditure limits do not affect minor-party candidates but severely constrain major-party candidates, thus benefitting minor-party candidates on average. Stein offers no reason to suspect that the expenditure limits for primary campaigns operate any differently. To the contrary, in recent primary election cycles, leading candidates of the major parties have declined matching funds and the ensuing expenditure limits.[1] Relative to those candidates, the funding scheme clearly strengthens the position of minor and new party candidates.

Because the public funding limits at issue are indistinguishable from those upheld in *Buckley*, we reject Stein's equal-protection challenge.

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[1] *See* 2016 Presidential Matching Fund Submissions, https://www.fec.gov/campaign-finance-data/presidential-matching-fund-submissions/2016-presidential-matching-fund-submissions/ (last visited June 19, 2023); 2012 Presidential Matching Fund Submissions, https://www.fec.gov/campaign-finance-data/presidential-matching-fund-submissions/2012-presidential-matching-fund-submissions/(last visited June 19, 2023). During the 2020 primary season, the FEC lacked a quorum and therefore was unable to approve any funding for presidential candidates.

III

Stein next argues that the FEC arbitrarily refused to consider her winding down costs during the administrative-review process. Applying its regulations, the Commission found that Stein had forfeited this issue by failing to develop it adequately in her written request for administrative rehearing. That determination was not arbitrary.

To contest a repayment determination on rehearing, a candidate must "submit in writing" any "legal and factual materials demonstrating that no repayment, or a lesser repayment, is required." 11 C.F.R. § 9038.2(c)(2)(i). And the "failure to timely raise an issue" in these "written materials" is "deemed a waiver of the candidate's right to present the issue at any future stage of proceedings." *Id.* In *Robertson v. FEC*, 45 F.3d 486 (D.C. Cir. 1995), we held that the Commission may insist on strict compliance with this issue-preservation requirement. *See id.* at 491.

The FEC reasonably concluded that Stein's written request for administrative review did not adequately raise the issue of additional winding down costs. The request mentioned winding down costs only in a single sentence: "[I]t will be shown that the other findings concerning the nature of winding down expenses … cannot survive scrutiny." App. 26. And Stein submitted no supporting evidence. Under this Court's forfeiture standards, Stein's enigmatic remark would not be enough to preserve her argument that the audit's estimate of winding down costs was too low. *See*, *e.g.*, *United States v. McGill*, 815 F.3d 846, 909 (D.C. Cir. 2016) ("woefully undeveloped arguments are forfeited");

City of Waukesha v. EPA, 320 F.3d 228, 250 n.22 (D.C. Cir. 2003) (argument raised "only summarily, without explanation or reasoning" is forfeited). And if we ourselves would hold that Stein's written submission was not enough to preserve this argument, we cannot fault the FEC for reaching the same conclusion.

In response, Stein claims to have addressed winding down costs earlier in the administrative process, in negotiating with the FEC's audit staff and in contesting its draft audit report before the Commission. But as shown above, FEC regulations required her to reassert the issue in her written submission for administrative review.

Stein next argues that the Commission should be estopped from claiming forfeiture because its audit report stated that the winding down costs "estimated" for the period between September 2018 and July 2019 "will be compared to actual winding down costs and will be adjusted accordingly." App. 14. We do not read this statement to relieve Stein of her duty to address winding down costs in her request for administrative review, which was filed near the end of that period.

Finally, Stein contends that she could not have forfeited any argument related to winding down costs incurred after she requested administrative review in June 2019. We recognize that Stein could not predict the exact amount of future winding down costs. But she could have done much more to alert the FEC that she expected those costs to exceed the estimates in the audit report—and to do so by a substantial amount. For example, Stein claims that between September 2018 and July 2019 she blew past the Commission's

estimated winding down costs by over $150,000. In June 2019, she could have documented most of those costs and could have given at least a rough estimate of any further winding down costs expected in the future, which was then more than 2.5 years after the general election. Finally, even if winding down costs were continuing to accrue after June 2019, Stein could have filed a petition for rehearing from the Commission's final repayment determination in September 2021. *See* 11 C.F.R. § 9038.5(a). And in that petition, she could have explained why those later-arising costs "were not and could not have been presented during the original determination." *Id.* § 9038.5(a)(1)(iii).[2]

IV

The matching payment period definition was constitutional as applied to Stein, and the FEC's forfeiture holding was not arbitrary. We therefore deny the petition for review.

So ordered.

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[2] Stein has moved this Court to supplement the administrative record with the written materials that she tried to submit to the FEC after its hearing on administrative review. Because we uphold the agency's forfeiture determination, we deny Stein's motion to supplement as moot.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-1213

[Filed July 21, 2023]

JILL L. STEIN, DR. AND JILL STEIN FOR PRESIDENT, PETITIONERS	)))
V.	)
FEDERAL ELECTION COMMISSION, RESPONDENT	))

September Term, 2022
FILED ON: JULY 21, 2023

On Petition for Review of an Order
of the Federal Election Commission

Before: HENDERSON, WILKINS and KATSAS, *Circuit Judges*

J U D G M E N T

This cause came on to be heard on the petition for review of an order of the Federal Election Commission and was argued by counsel. On consideration thereof, it is

ORDERED and **ADJUDGED** that the petition for review be denied, in accordance with the opinion of the court filed herein this date.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

Date: July 21, 2023

Opinion for the court filed by Circuit Judge Katsas.

APPENDIX C

[SEAL] FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 1, 2021

VIA ELECTRONIC MAIL

Harry Kresky, Esq.
Law Office of Harry Kresky
128 Binninger Road
Shushan, NY 12873

Re: Dr. Jill Stein and Jill Stein for President (LRA # 1021)

Dear Mr. Kresky:

The Commission has considered the response submitted on behalf of Dr. Jill Stein and Jill Stein for President (the "Committee") to the Commission's repayment determination. On September 30, 2021, the Commission determined, after administrative review, that Dr. Stein and the Committee must repay $175,272 to the United States Treasury. Dr. Stein and the Committee must repay this amount within 30 calendar days after service of this determination. 11 C.F.R. § 9038.2(c)(3), (d)(2).

Enclosed is a Statement of Reasons that sets forth the legal and factual basis for the Commission's determination. 11 C.F.R. § 9038.2(c)(3). Judicial review of the Commission's determination is available

pursuant to 26 U.S.C. § 9041. You may also file a petition for rehearing with the Commission within 20 calendar days of service of this determination. 11 C.F.R. §§ 9038.2(h), 9038.5(a). If you have any questions regarding the Commission's determination, you may contact me at (202) 694-1533 or at jblume@fec.gov.

Sincerely,

/s/ Joshua Blume
Joshua Blume
Attorney
Policy Division

Enclosure

BEFORE THE FEDERAL ELECTION COMMISSION

LRA 1021

[Filed October 29, 2021]

In the Matter of	)
Dr. Jill Stein	)
Jill Stein for President	)
	)

STATEMENT OF REASONS IN SUPPORT OF REPAYMENT DETERMINATION AFTER ADMINISTRATIVE REVIEW

I. SUMMARY OF REPAYMENT DETERMINATION AFTER ADMINISTRATIVE REVIEW

Pursuant to 26 U.S.C. § 9038(b)(1) and (3), on September 30, 2021, the Federal Election Commission determines that Dr. Jill Stein and Jill Stein for President ("Committee") must repay $175,272 to the United States Treasury, representing surplus public funds in the Committee's accounts and public funds received in excess of entitlement. The Commission orders that Dr. Stein repay the $175,272 within 30 calendar days after service of this repayment determination. 11 C.F.R. § 9038.2(c)(3), (d)(2).

II. PROCEDURAL BACKGROUND

A. The Commission's Initial Determination That the Candidate Must Repay $175,272 to the United States Treasury.

Dr. Stein sought the nomination of the Green Party of the United States ("U.S. Green Party") for the Office of President of the United States at its national nominating convention at the same time that it sought the nomination of other independent state parties that were scheduled to hold their elections and conventions on later dates.

Dr. Stein applied for public funds, and the Commission determined on April 13, 2016 that she was eligible to receive public funds. On August 6, 2016, the Green Party of the United States held its national nominating convention and nominated Dr. Stein to be its presidential candidate in the 2016 election. The Commission determined that the date of the nominating convention — August 6, 2016 — was the date on which Dr. Stein would no longer be eligible to receive public funds for the purpose of seeking the nomination. Commission Certification in the Matter of Date of Ineligibility — Jill Stein for President, LRA 1021 (Aug. 12, 2016). This date is known as the "date of ineligibility" or "DOI." 11 C.F.R. § 9033.5. The Commission notified the candidate of its DOI determination on August 17, 2016. Letter from Margaret Forman, Attorney, to Ms. Jill Stein re: Date of Ineligibility for Public Funds (LRA 1021) (Aug. 17, 2016).

By the conclusion of Dr. Stein's campaign, she had received $456,036 in matching fund payments as of the DOI and had received an additional $134,900 in matching fund payments on January 18, 2017, for a total amount of $590,936 in matching fund payments. Attachment 1, at 7, n.11 (Apr. 16, 2019).

Following the conclusion of Dr. Stein's campaign, the Commission conducted a mandatory audit of the Committee's finances in accordance with 26 U.S.C. § 9038(a). As a result of this audit, the Commission initially determined that the candidate had a surplus of funds at DOI, and that the candidate must repay $175,272 to the United States Treasury. There were two components to the repayment determination: 1) the public funds portion of the surplus in the Committee's accounts as of the candidate's DOI and 2) the public funds received in excess of entitlement after the candidate's DOI.

The Commission found that the Committee had a surplus as of the DOI of $200,856. Attachment 1, at 15. The Commission calculated the Committee's surplus based on the statement of net outstanding campaign obligations ("NOCO Statement") that the Committee was required to file after the Commission's DOI determination. *Id.* at 14; 11 C.F.R. § 9034.5. The NOCO Statement reflects the difference between the Committee's reported assets and liabilities as of the candidate's DOI. 11 C.F.R. § 9034.5. The Committee's liabilities may include costs for winding down

expenses.[1] *Id.* § 9034.11. The Commission accordingly included winding down expenses in calculating the net outstanding campaign obligations as of the date of DOI based on estimates and documentation that the Committee made available at the time of the audit. Following the audit, the Commission prepared a verified NOCO Statement, reproduced on the next page:[2]

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[1] Winding down expenses are costs associated with the termination of political activity associated with the candidate's campaign. 11 C.F.R. § 9034.11(a). Such costs may include costs associated with complying with post-election requirements of the Federal Election Campaign Act or the Matching Payment Act and administrative costs associated with winding down activity, such as office space rental, office supplies and staff salaries. *Id.* Campaigns may use public funds to pay for these expenses, and therefore the candidate's statement of net outstanding campaign obligations may account for such costs, up to a certain limit. *Id.* §§ 9034.11(b) (reciting limitations on allowance for winding down costs), 9034.5(b)(2) (including estimated winding down costs in statement of net outstanding campaign obligations).

[2] The NOCO Statement reproduced here is identical to the NOCO Statement as it appears in the Commission's Final Audit Report, except for footnote 4, below, which omits one sentence that originally appeared in that footnote: "This amount will be compared to actual winding down costs and will be adjusted accordingly." Attachment 1, at 14. At the time that the NOCO was originally prepared, this statement would have been accurate. However, the Commission at this point in the process would not undertake such a comparison and Dr. Stein and the Committee have waived the issue (see below), thus exhausting their administrative remedies.

Jill Stein for President
Statement of Net Outstanding Campaign Obligations
As of August 6, 2016
As determined at August 31, 2018

Assets		
Cash in Bank	$ 792,935[3]	
Accounts Receivable	13,289	
Physical Assets @ 60% depreciation	4,200	
Total Assets		**$ 810,424**
Liabilities		
Accounts Payable for Qualified Campaign Expenses as of 8/6/16	$ (237,602)	
Loan Payable as of 8/6/2016	(40,000)	
Actual Winding Down Costs (12/9/16 – 8/31/18)	(262,611)	
Estimated Winding Down Costs (9/1/18 – 7/31/2019)	(69,355)[4]	
Total Liabilities		**$ (609,568)**

[3] Amount includes contributions dated prior to DOI and deposited after DOI.

[4] Estimated winding down costs for future reportable periods only. Estimated winding down presented in the Preliminary Audit Report was reduced from $100,880 to $69,335 to reflect the remaining winding down period.

Net Outstanding Campaign Obligations – Surplus	**$ 200,856**

The Commission further found that because Dr. Stein already had a surplus as of the DOI, the United States Treasury's additional $134,900 public funds payment to the Committee on January 18, 2017 exceeded her entitlement to public funds. Attachment 1, at 20.

The Commission used a pro-rata ratio[5] (.2010) to calculate the public funds portion of the $200,856 surplus. *Id.* at 15, n.13. The public funds portion was $40,372 ($200,856 x .2010).[6] *Id. See also* 26 U.S.C.

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[5] In calculating the amount of public funds that must be repaid in the event of a surplus, the Commission uses the amount equal to that portion of the surplus bearing the same ratio to the total surplus that the total amount of public funds the candidate received bears to the total deposits made to the candidate's accounts. 11 C.F.R. § 9038.3(c)(1). "Total deposits" means all deposits to all candidate accounts minus transfers between accounts, refunds, rebates, reimbursements, checks returned for insufficient funds, proceeds of loans and other similar amounts. *Id.* § 9038.3(c)(2). The Commission treats all funds in all accounts maintained by a candidate as a mixed pool of private and public funds, and accordingly uses the ratio described to determine the portion of the amounts in the accounts that are public funds. *Kennedy for President Comm. v. FEC*, 734 F.2d 1558, 1564 (private contributions and public funds are a "commingled pool of federal and private monies").

[6] Normally, this amount would have been payable within 30 days of the DOI. 11 C.F.R. § 9038.3(c)(1). However, in this case, the Commission was not aware of the existence of the surplus until after the audit had been conducted. Indeed, had the Commission

§ 9038(b)(3); 11 C.F.R. § 9038.3(c)(1). The Commission added to this the entire $134,900 payment of public funds received in January 2017 for a total repayment obligation of $175,272 ($134,900 + $40,372). Attachment 1, at 10. Accordingly, on April 16, 2019, the Commission made an initial determination that the Committee must repay $175,272 to the United States Treasury. *Id.* at 11, 19.

B. The Committee Requests Administrative Review of The Commission's Initial Determination.

The Committee submitted a written response on June 17, 2019, requesting administrative review of the Commission's initial repayment determination and an oral hearing. Attachment 2. The Commission held the oral hearing on February 25, 2021.[7] Attachment 3. Before addressing the Committee's arguments on the initial repayment determination, we must address a procedural issue. At the oral hearing, the Committee argued that the Commission should revise the NOCO

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been aware of the surplus, it would not have authorized the additional payment of public funds in January 2017.

[7] The Commission lost its quorum of at least four voting members on August 30, 2019. The Commission may not grant a request for an oral hearing on a repayment determination without the approval of at least four Commissioners. 11 C.F.R. § 9038.2(c)(2)(ii). *See also generally* 52 U.S.C. § 30106(c) (Four affirmative votes required to take any action with respect to chapters 95 and 96 of title 26, dealing with public financing). Apart from a period of approximately one month extending from May 2020 to early July 2020, the Commission remained without a quorum until December 2020.

Statement to include additional winding down expenses. On February 18 and 19, before the oral hearing, and between March 1 and March 4, after the oral hearing, the Committee submitted new supporting documents that detailed additional winding down expenses.

Because winding down expenses may be included in the liabilities portion of the NOCO Statement, any additional winding down expenses could reduce the Committee's surplus and, in turn, the amount of the repayment. *See* 11 C.F.R. § 9034.5(b)(2); Attachment 1, at 14. However, making a legal argument for including additional winding down expenses in the NOCO Statement and submitting supporting factual materials at this stage of the adjudication process raises the procedural issue of whether the Committee properly raised, and therefore preserved, the issue for Commission's consideration. 11 C.F.R. § 9038.2(c)(2)(i). We therefore first determine whether the Committee properly raised this issue in its written response.

III. THE COMMITTEE WAIVED ANY ISSUES OR ARGUMENTS IT MAY HAVE PERTAINING TO WINDING DOWN EXPENSES BY FAILING TO RAISE THEM IN ITS REQUEST FOR ADMINISTRATIVE REVIEW.

The Commission concludes that the Committee did not properly raise the issue, and, therefore, the Committee waived its argument of including additional winding down expenses in a revised NOCO Statement.

When a publicly financed candidate wishes to challenge an initial repayment determination, it must submit, in writing, legal and factual materials demonstrating that no repayment, or a lesser repayment, is required, within 60 days after service of the notice of the repayment determination. 11 C.F.R. § 9038.2(c)(2)(i). If the candidate does not timely raise an issue in this written submission, then that issue is considered to have been waived for all further stages of the proceeding, including in subsequent litigation. *Id*.

Although the Committee timely filed its written request for administrative review within 60 days of the Commission's initial repayment determination, the Committee did not raise the argument regarding the additional winding down expenses until the oral hearing, nearly two years later. At the oral hearing, the Committee argued that the Committee's statements in the written submission that "it will be shown that the other findings concerning the nature of winding down expenses, misstatement of financial activity and disclosure of debts likewise cannot survive scrutiny" and "[a]s will be demonstrated in a further submission coming directly from the Committee, were it not for the improper imposition of the August 6, 2016 DOI, no repayment would be called for" sufficed to raise an issue regarding winding down expenses. *See* Attachment 2, at 1, 4; Attachment 3, at 17-18. However, such general statements without any explanation or reasoning are insufficient to raise an issue for the Commission's consideration under 11 C.F.R. § 9038.2(c)(2)(i). As the U.S. Court of Appeals for the District of Columbia Circuit observed in the course of upholding section 9038.2(c)(2)(i)'s requirement that

all issues must be raised in the written submission, the purpose of such a requirement is to ensure that the Commission has timely notice of the nature of any challenges to its authority. *Robertson v. FEC*, 45 F.3d 486, 491 (D.C. Cir. 1995) (upholding the Commission's refusal to consider a committee's argument because the committee failed to make the argument in its written submission).[8] The D.C. Circuit reasoned that the purpose and effect of section 9038.2(c)(2)(i) is similar to the court's traditional refusal to consider positions taken during oral argument unsupported by the principal brief. *Id.* In considering whether the Committee's general statement suffices to raise an issue under the regulation, we follow the D.C. Circuit's analogy to judicial procedure and note that the courts also require more than a general statement of the kind here to preserve an issue or argument for judicial consideration.[9] *See City of Waukesha v. Environmental Protection Agency*, 320 F.3d 228, 250-51 n.22 (D.C. Cir. 2003) (considering argument raised by petitioner in reply brief waived, because argument was made in opening brief "only summarily, without explanation or

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[8] The D.C. Circuit upheld a similar pleading requirement in 11 C.F.R. § 9038.5(a)(1)(iii), which requires candidates to state why they could not have raised arguments or issues earlier in the process when petitioning the Commission for rehearing on its administrative determination. *Fulani v. FEC*, 147 F.3d 924, 927 (D.C. Cir. 1998).

[9] *See United States v. L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 37 (1952) ("orderly procedure and good administration require that objections to the proceedings of an administrative agency be made while it has opportunity for correction in order to raise issues reviewable by the courts.").

reasoning" and citing *Tribune Co. v. Federal Communications Commission*, 133 F.3d 61, 69 n.8 (D.C. Cir. 1998) (noting party's arguments must be sufficiently developed to avoid waiver)). *See also United States v. Hunter*, 739 F.3d 492, 495 (10th Cir. 2013) (claim inadequately developed in opening brief is waived).

Here, no argument was made in the written submission, even summarily.[10] Merely mentioning the

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[10] In its Request for Consideration of a Legal Question, submitted during the audit process, the Committee asked: "Should committees be allowed to incur Winding Down expenses and other Primary expenses after the DOI if they are clearly incurred to improve compliance with existing laws and regulations or if they are clearly required in the course of seeking the qualification for the ballot in various states?" *See* Letter to Commission from Matt Kozlowski, Director of Compliance, Jill Stein for President (Jan. 12, 2018), at 4 (§ IV.2). The Commission noted at the time that the Committee had presented no argument regarding this question, but that in any event, the Commission's regulations addressed the incurrence and payment of winding down costs, including costs associated with compliance with statutory post-election requirements and other specifically defined administrative costs. *See* Memorandum to Commission from Erin Chlopak, Request for Consideration of a Legal Question Submitted by Jill Stein for President (LRA # 1021) (Feb. 28, 2018), at 2. In the Request for Legal Consideration phase, the Committee asked whether winding down expenses may be incurred after the DOI, whereas here, the Committee has proffered documentation of winding down expenses that it seeks to incorporate into the Commission's analysis and thus the two presentations are not the same. Even if they were the same, however, the presentation of a question relating to winding down expenses during the earlier phase of the process does not suffice to preserve the issue for Commission review during the administrative review phase. The Commission's regulations state that the issues must be raised in

subject of winding down expenses in the written submission, without any explanation, reasoning, or argument — indeed, purporting to defer any elaboration to a later time — is insufficient to raise an issue for administrative review. The statement that "it will be shown that the other findings concerning the nature of winding down expenses, misstatement of financial activity and disclosure of debts and obligations likewise cannot survive scrutiny," Attachment 2, at 1, without more, does not give the Commission any notice of the arguments that the Committee is raising about the winding down expenses. *See Robertson*, 45 F.3d at 491 (D.C. Cir. 1995). The Commission, therefore, declines to consider the Committee's argument for including additional winding down expenses in the NOCO Statement.[11]

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the written materials seeking administrative review of the repayment determination. 11 C.F.R. § 9038.2(c)(2)(i).

[11] The Committee had ample opportunity to submit adequate documentation relating to winding down expenses during the audit process, but it chose not to do so. *See* Attachment 1, at 17 (noting Committee's failure to submit adequately documented winding down expenses). In particular, the Committee could have submitted this documentation during the audit fieldwork, after the audit exit conference and in response to the Preliminary Audit Report. The Committee, however, provided no explanation as to why it failed to submit this documentation during these stages of the audit.

IV. AFTER ADMINISTRATIVE REVIEW, THE COMMISSION DETERMINES THAT AUGUST 6, 2016, IS THE PROPER DATE OF INELIGIBILITY AND THEREFORE THE COMMITTEE MUST REPAY $175,272 IN PUBLIC FUNDS.

The Commission concludes that the candidate's date of ineligibility is August 6, 2016. As result of this conclusion, the Commission determines that the candidate must repay $175,272 to the United States Treasury.

The connection between the DOI and the repayment is as follows: A candidate may only use public funds to pay for "qualified campaign expenses." 11 C.F.R. § 9034.4(a). A qualified campaign expense is any expense that a candidate incurs in connection with her campaign for the nomination during the period within which she may receive public funds.[12] 26 U.S.C. § 9032(9); 11 C.F.R. § 9032.9. As a general matter, general election ballot access expenses are qualified campaign expenses for minor party candidates. *See, e.g.,* Advisory Opinion 1995-45 (Hagelin for President). To be considered a qualified campaign expense, however, the expense must be incurred on or before the candidate's DOI.[13] *See* 11 C.F.R. § 9032.9(a)(1).

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[12] Winding down expenses, subject to certain restrictions, are considered qualified campaign expenses. 11 C.F.R. §§ 9034.4(a)(3), 9034.11(a).

[13] Winding down expenses may be incurred after the candidate's DOI. 11 C.F.R. § 9034.11(a) (includes costs of terminating

The Commission includes qualified campaign expenses on the NOCO Statement as liabilities. 11 C.F.R. § 9034.5(b). Any liabilities on the NOCO Statement may reduce the amount of the surplus and, consequently, the candidate's repayment obligation. *Id.* §§ 9034.5(a), 9038.3(c)(1).

The Committee incurred certain ballot access expenses after the DOI. The Commission, therefore, did not include these expenses in the final, verified, NOCO Statement. *See* Attachment 1, at 15 (explaining non-inclusion of ballot expenses incurred after DOI as main difference between Committee's and Commission's NOCO Statements); 11 C.F.R. § 9032.9(a)(1). Moving the DOI to a later date, as the Committee argues, would mean that additional ballot access expenses would be included on the NOCO Statement, potentially reducing or eliminating the surplus of public funds that the candidate would be obligated to repay.

Under Commission regulations, a candidate's eligibility to receive matching funds ends on whichever of the following dates occurs first: the date the candidate becomes inactive, receives insufficient votes, or reaches the end of the matching payment period. *Id.* § 9033.5. Given that Dr. Stein remained active during the nomination process and ultimately received sufficient votes to be the party's nominee, the relevant date for purposes of determining DOI here is the date that the matching payment period ended.

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campaign, including complying with post-election requirements of FECA and Matching Payment Act).

The matching payment period represents the time during which an eligible candidate may receive public funds for the purpose of seeking the nomination of a party for the office of the President of the United States.[14] *See* 26 U.S.C. § 9032(6). While this period always begins on the start of the calendar year during which the general election will occur, the end of the period depends upon the nomination process the candidate undergoes. If a party nominates a candidate during a national convention, then the matching payment period ends on the date the candidate is nominated. 26 U.S.C. § 9032(6); 11 C.F.R. § 9032.6(a). If a party does not use a national nominating convention to nominate its candidate, then the period ends either on the date the party nominates the candidate or on the last day of the last national convention held by a major party during the election year, whichever is *earlier*. 26 U.S.C. § 9032(6)(A), (B).

Dr. Stein's candidacy raises the issue of which method should be used to determine the end of the matching period because she sought nomination both from a national committee of a party at a national convention, and from parties that did not nominate candidates at a national convention. 11 C.F.R. § 9032.6(a), (b). Dr. Stein's 2016 letter of candidate agreements and certifications ("9033 Letter")[15] stated

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[14] Candidates may continue to receive matching payments after this period for the sole purpose of paying debt incurred during the matching payment period. 11 C.F.R. §§ 9033.5, 9034.5.

[15] The initial step in the process of becoming eligible to receive public funds for a presidential candidate is to submit a letter in which the candidate makes certain certifications and agrees to

that she was seeking the nomination of a number of political parties, including the U.S. Green Party, a national committee which held its national convention in Austin, Texas on August 4-7, 2016. 52 U.S.C. § 30101(14); *see* Advisory Opinion 2001-13 (Green Party of the United States) (concluding that the U.S. Green Party is a "national committee" of a political party); Green Party of the United States FEC Form 1, filed May 29, 2012, http://docquery.fec.gov/pdf/322/12951903322/12951903322.pdf. In her 9033 Letter, Dr. Stein certified that she also sought the nomination of several unaffiliated state green parties without ballot lines, with ballot access deadlines of June 1, 2016 (Kansas), July 11, 2016 (South Dakota), August 1, 2016 (Vermont), and August 15, 2016 (Utah). Dr. Stein also certified that she sought the nomination of the Peace and Freedom Party, which was not a national committee and would be holding its state nominating convention in California on August 13, 2016.[16] The last day of the last national convention held by a major party in 2016 was July 28, 2016. In such circumstances, the Commission has previously given the candidate the benefit of the later independent party nomination dates rather than the earlier date of the national nominating convention, provided that such dates were not later than the date of the last day of the

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comply with certain requirements of the matching payment program. *See* 26 U.S.C. § 9033(a), (b); 11 C.F.R. §§ 9033.1, 9033.2.

[16] During the Commission's audit, the Committee submitted a Request for Consideration of a Legal Question, in which it averred that the final ballot access deadline it was working to meet was September 9, 2016.

last major party nominating convention. Advisory Opinion 1984-25 (Johnson) at 2; *see also* Advisory Opinion 1984-11 (Serrette), Advisory Opinion 2000-18 (Nader 2000).

Here, the date of the U.S. Green Party's national nominating convention was August 6, 2016. The last day of the last major party nominating convention was July 28, 2016. Dr. Stein also was a candidate for the nomination of several other independent state parties. However, because none of them held a national nominating convention, Dr. Stein could not receive the benefit of any state nomination or ballot access date after July 28, 2016, the last date of the last major party nominating convention. 26 U.S.C. § 9032.6; 11 C.F.R. § 9032.6; Advisory Opinion 1984-25 (Johnson) at 2. Thus, the most advantageous DOI that the Commission could use to calculate Dr. Stein's DOI under the Matching Payment Act and Commission regulations was August 6, 2016, the date of the U.S. Green Party's nominating convention. Accordingly, the Commission determines that August 6, the more advantageous of the two possibilities, is Dr. Stein's DOI. This is consistent with the Commission's regulations and past practice to apply the date that results in the candidate receiving the full benefit of the longest permissible matching payment period to which she is entitled, rather than artificially shortening that period merely because the candidate also seeks nominations that are decided at earlier dates.[17]

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[17] "Given its conclusion in Advisory Opinion 1984-11, the Commission is of the view that Ms. Johnson's concurrent campaign for the national convention nomination of the Citizens Party

The Committee argues that the candidate's DOI should not be August 6, 2016,[18] but one of the later general election ballot access dates, if not the latest, instead.[19] It raises four points in support of this

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should not result in a shorter matching payment period for her, than for a candidate who only seeks the presidential nominations of political parties at the state level, rather than at the national level." Advisory Opinion 1984-25 (Johnson) at 2.

[18] The Committee argues that the Commission has been inconsistent in first resolving the Committee's request for consideration of a legal question by concluding that August 7, 2016 was the DOI, and then subsequently concluding that the DOI was August 6. The Commission's first certification declaring the DOI to be August 7 was the result of a technical error committed by the Office of the General Counsel in its recommendation memorandum to the Commission, which the OGC subsequently corrected upon discovery of the error. *See* Memorandum from Erin Chlopak to Commission, Correction to Memorandum on Request for Consideration of a Legal Question by Jill Stein for President (LRA #1021) (Apr. 24, 2018).

[19] The Committee challenged the DOI determination during the audit, first by invoking the Commission's Program on Requesting Consideration of Legal Questions, *see* Policy Statement Regarding a Program for Requesting Consideration of Legal Questions by the Commission, 84 Fed. Reg. 36602 (July 29, 2019), and then in its responses to the Commission's draft Preliminary and Draft Final audit reports that preceded the issuance of the final audit report. The Committee argued throughout these processes that because it had to incur ballot access expenses to obtain general election ballot qualification for Dr. Stein, and because the Commission has concluded that the incurrence of such expenses is related to the primary election, the Commission should include these expenses when calculating the Committee's net outstanding campaign obligations. The Commission rejected the Committee's arguments both during the Request for Consideration of a Legal Question procedure and in the course of the audit. *See* Certification,

argument. First, the Committee argues that Advisory Opinion 1975-53 (Bradley for Senate) established the principle that the quest for access to the general election ballot is effectively a primary election for independent and non-major party candidates and that a publicly financed independent or non-major parity presidential candidate may therefore choose the latest of the ballot access dates established by the states. The Committee also points to a Commission regulation that allows independent and non-major party candidates to designate one of three possible dates, and therefore potentially the latest of those dates, as the date of the candidate's primary election.[20] *See* 11 C.F.R. § 100.2(c)(4). Second, the Committee asserts that the Commission, in later advisory opinions, particularly Advisory Opinions 1984-11 (Serrette) and 1984-25 (Johnson), upon which the Commission relied in establishing the DOI, deviated without explanation from the approach of Advisory Opinion 1975-53 (Bradley for Senate) by limiting the assignment of the DOI using ballot access dates to the last day of the last major party convention. Third, in the Committee's view, the Commission did not adequately explain its

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Correction to Memorandum on Request for Consideration of a Legal Question by Jill Stein for President (LRA 1021) (May 2, 2018); Attachment 1, at 14-15, 18.

[20] The regulation provides that the candidate may choose one of three dates to designate as the date of the primary election: "(i) The day prescribed by applicable State law as the last day to qualify for a position on the general election ballot . . .. (ii) The date of the last major party primary election, caucus, or convention in that State . . . (iii) [i]n the case of non-major parties, the date of the nomination by that party. . ." 11 C.F.R. § 100.2(c)(4).

change of position and thus has acted arbitrarily and capriciously, thus violating due process. *See* Attachment 2, at 4 (citing *Common Cause v. FEC*, 906 F.2d 705 (D.C. Cir. 1990) and *Fox TV Stations, Inc. v. Federal Communications Commission*, 280 F.3d 1027, 1044-45 (D.C. Cir. 2002), *mod. Fox Television Stations, Inc. v. Federal Communications Commission*, 293 F.3d 537 (2002)). Finally, the Committee argues that the ostensibly new, more restrictive position established in Advisory Opinions 1984-11 (Serrette) and 1984-25 (Johnson) undermines the Commission's earlier asserted view that it seeks to administer the election laws in a manner that fosters equal treatment of major party and minor party or independent candidates. It therefore allegedly denies the Committee the equal protection of the laws. *Id* (citing *Riddle v. Hickenlooper*, 742 F.3d 922 (10th Cir. 2014) and *Green Party of Connecticut v. Garfield*, 616 F.3d 213 (2d Cir. 2010)).

The Commission disagrees with the Committee's interpretation of the relevant authorities. Advisory Opinion 1975-53 (Bradley for Senate) applied a different statute — the Federal Election Campaign Act — and did not address the principles for calculating the DOI for a publicly financed candidate under the Matching Payment Act.[21] Thus, Advisory Opinion 1975-

[21] Advisory Opinion 1975-53 (Bradley for Senate) does not mention the Matching Payment Act, concerned as it is, as its title indicates, with a Senate campaign. Advisory Opinion 1975-44 (Socialist Workers 1976 National Campaign Committee) contains a passage recognizing the impact of the public funding provisions, however: "Since the date pertaining to petition qualification vary from State to State, the Commission considers it necessary to prescribe a uniform date when, for purposes of 18 U.S.C. § 608(b), the petition

53 (Bradley for Senate) is materially distinguishable from the present circumstances. *See* 11 C.F.R. § 112.5(a)(2) (a person may rely on an advisory opinion if the person is involved in the specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered). Further, the two statutory schemes in this context are different. Even though 11 C.F.R. § 100.2(c)(4) and the 1975 advisory opinions specify that under FECA's definition of primary election, the minor party candidate may choose the latest of three possible dates to designate as the primary election, the Matching Payment Act, which is concerned with delimiting the period of time during which a candidate may be considered eligible to receive public funding, instructs the Commission to use the *earlier* of the possible dates for determining the DOI: either the date the party nominates the candidate or the last day of the last major party convention in the relevant election year where the party does not nominate the candidate at a national nominating convention. 26 U.S.C. § 9032(6); 11 C.F.R. § 9032.6(b). Because the Matching Payment Act and Commission regulations specify what date may serve as the DOI,

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process ends for minor party presidential candidates. The Commission concludes that the prescribed date should be when the presidential nominee last selected before the general election is nominated by a national nominating convention of a major political party. It is noted that this date coincides with the date when an eligible minor party presidential candidate, entitled to public funding before the general election, may properly expend or obligate funds "to further his election" (citing 26 U.S.C. § 9002(11), (12))." *Id.* at 2.

the Commission has no discretion to use a different, later, DOI as the Committee argues.[22]

In Advisory Opinion 1984-25 (Johnson), the Commission explained that the definition of "matching payment period" "appears to contemplate, if not require, that [a non-major party] candidate have an opportunity to establish eligibility and collect matchable contributions for a period of time that closely approximates the period available to major, party candidates." Advisory Opinion 1984-25 (Johnson) at 2. Congress sought to ensure parity between major and non-major party candidates with respect to the length of time that each would be eligible to receive and spend public funds. Consequently, instead of creating favoritism between major party and minor party candidates, the predicate of the Committee's equal protection claim, the Matching Payment Act seeks to avoid creating such favoritism. *Riddle*, 742 F.3d at 929-30 (invalidating statute creating different contribution limits for major party and write-in candidates on ground that it evinces favoritism). In any event, even if the application of § 9032(6) results in some disadvantage to minor party candidates vis-à-vis major

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[22] Because section 100.2(c)(4) and the 1975 advisory opinion apply a different statute under materially distinguishable circumstances, there is no change of mind or position to explain. *See Motor Vehicle Mfrs. Assn. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983) (agency may change mind but must explain why reasonable to do so); *Fox TV Stations, Inc. v. Federal Communications Commission*, 280 F.3d 1027, 1044-45 (D.C. Cir. 2002) (same in context of informal rulemaking), *mod. Fox Television Stations, Inc. v. Federal Communications Commission*, 293 F.3d 537 (2002).

party candidates, the remedy would lie with Congress, rather than with the Commission.

The Commission has not neglected the relevant statutory and regulatory analysis in arriving at its conclusion.[23] *See Common Cause*, 906 F.2d at 706-07 (no indication that Commission applied regulatory affiliation factors to analysis of affiliation issue). Rather, the Commission considered the Matching Payment Act, as well as regulations implemented under these statutes, in arriving at its DOI determination.

To the extent, therefore, that the candidate opposes the Commission's application of the Matching Payment

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[23] The Committee also argues that the Commission's 2016 DOI determination was inconsistent with the Commission's determination in 2012, when Dr. Stein also received public matching funds. The Committee notes that Dr. Stein's DOI in 2012 was September 6, the date of the state of Alabama's deadline for Dr. Stein to qualify for a position on the general election ballot in that state, even though Dr. Stein had obtained the U.S. Green Party's nomination by national nominating convention in August of that year. But this is not so. In 2012, Dr. Stein was nominated as candidate for president by the U.S. Green Party on July 14, 2012 at the party's national nominating convention. The last day of the last national convention held by a major party in 2012 was September 6, 2012, which coincided with Alabama's deadline for ballot qualification. The Commission determined that the latest permissible date of ineligibility was the last day of the last major party convention — September 6, 2012 — and thus that date, rather than the July 14 nomination date, determined the end of Dr. Stein's matching payment period for the 2012 presidential election. The Commission therefore applied the same methodology in both cases, choosing the latest of the available dates based upon the rules set forth in 26 U.S.C. § 9032(6).

Act to determine that the candidate's national nominating convention date is the DOI, the candidate's quarrel is with the statute itself. Section 9032(6) of the Matching Payment Act is a duly enacted law of Congress and no court has undermined or otherwise questioned its legal validity or its application to the issue presented here. In the absence of a court decision finding section 9032(6) unconstitutional, the Commission lacks the authority to make an administrative determination premised on an act of Congress being considered unconstitutional. *See Johnson v. Robison*, 415 U.S. 361, 368 (1974) (adjudication of constitutionality is generally outside an administrative agency's authority); *Robertson v. FEC*, 45 F.3d 486, 489 (D.C. Cir. 1995) (noting, in the context of the Commission's administrative enforcement process that "[i]t was hardly open to the Commission, an administrative agency, to entertain a claim that the statute which created it was in some respect unconstitutional."); Advisory Opinion 2018-07 (Mace) at 5. As the Commission has previously recognized in other contexts, "[b]ecause no court has invalidated the [statutory] limitation . . . on constitutional grounds, we are required to give the [] provision[] full force." Advisory Opinion 2012-32 (Tea Party Leadership Fund *et al.*) at 3; *cf* Advisory Opinion 2011-12 (Majority PAC *et al.*) at 4 (declining to interpret the Supreme Court's decision in *Citizens United v. FEC*, 558 U.S. 310 (2010), as a basis for not applying statutory contribution limits that were not considered in that case).

V. CONCLUSION

The Commission determines that, within 30 days of service of this Repayment Determination After Administrative Review, Dr. Jill Stein and Jill Stein for President must repay public funds in the amount of $175,272 to the United States Treasury due to the existence of a surplus and to having received public funds in excess of entitlement. 26 U.S.C. § 9038(b)(1), (3); 11 C.F.R. §§ 9038.2(b)(1), 9038.3(c).

ATTACHMENTS

1. Final Audit Report of the Commission, approved Apr. 16, 2019.
2. Committee's Request for Administrative Review, dated June 17, 2019.
3. Transcript of Hearing in the Matter of Administrative Review Hearing: Jill Stein Repayment Determination (LRA#1021), Agenda Document No. 21-10-A (Feb. 25, 2021).

*** *Attachments not included in this appendix****

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-1213

[Filed August 31, 2023]

Jill L. Stein, Dr. and Jill Stein For President, Petitioners	)))
v.	)
Federal Election Commission, Respondent	))

September Term, 2022
FEC-LRA1021
Filed On: August 31, 2023

BEFORE: Henderson, Wilkins and Katsas, Circuit Judges

O R D E R

Upon consideration of appellant's petition for panel rehearing filed on August 21, 2023, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-1213

[Filed August 31, 2023]

Jill L. Stein, Dr. and Jill Stein For President, Petitioners	)))
v.	)
Federal Election Commission, Respondent	))

September Term, 2022
FEC-LRA1021
Filed On: August 31, 2023

BEFORE: Srinivasan, Chief Judge, and Henderson, Millett, Pillard, Wilkins, Katsas, Rao, Walker, Childs, Pan, and Garcia, Circuit Judges

O R D E R

Upon consideration of the petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk