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7 BEFORE THE PUBLIC DISCLOSURE COMMISSION
8 OF THE STATE OF WASHINGTON

9 In re Matters of Enforcement Action
10 Against:

11 FEDEX CORPORATION

12 Respondent.

PDC CASE No. 60811

**RESPONDENT'S MEMORANDUM OF
POINTS AND AUTHORITIES ON
APPROPRIATE PENALTY**

13 **I. INTRODUCTION**

14 On January 31, 2022, the Commission issued an order granting summary judgment in
15 favor of the PDC Staff, declined to grant summary judgment as to penalty, and invited the
16 parties to submit written briefing regarding the penalty. As detailed below, there is ample
17 evidence in the record demonstrating FedEx Office's ("FedEx") good faith in complying with
18 the campaign finance laws, the lack of impact on the public, and other mitigating factors that
19 warrant a minimal penalty in this matter. FedEx respectfully requests that the Commission
20 issue no penalty or an entirely suspended penalty against FedEx.

21 **II. FACTS**

22 FedEx incorporates all facts outlined in its Response to the PDC Staff's motion for
23 summary judgment herein by reference.¹ Due to the unique procedural posture of this case—
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25 ¹ Citations to exhibits in this brief refer to the exhibits attached to the Declaration of Maia
Robbins in support of FedEx's Response to the PDC Staff's Motion for Summary Judgment (**Exhs.
A–R**) and to the Declaration of Maia Robbins in support of FedEx's Memorandum of Points and

1 namely, that FedEx has been deprived of a full hearing on the merits, which would have
2 included testimony regarding mitigation—FedEx submits the following additional factual
3 background for the Commission’s consideration.

4 It is undisputed that FedEx worked to resolve complainant Stephen Finley’s requests
5 in a timely manner. Once FedEx received the demands from Mr. Finley for information,
6 FedEx worked swiftly to engage counsel and to communicate with the PDC to resolve the
7 issues. Mr. Finley contacted FedEx on October 15 and October 18, 2019—once under
8 pseudonym, and once under his real name—specifically requesting documents related to Mike
9 Cero. Immediately after Mr. Finley contacted the Store on October 18,² the Store’s manager,
10 Angela Breeding, sought assistance from her district manager. Because one of FedEx’s core
11 principles is to maintain client confidences, Ms. Breeding contacted Mr. Cero for his
12 permission to share his information with Mr. Finley, but Mr. Cero refused.³ Ms. Breeding
13 then immediately consulted with and sought help from FedEx’s legal department as to how to
14 address this novel situation.⁴

15 Within a day of being contacted by the PDC regarding Mr. Finley’s requests on
16 October 18, 2019, FedEx retained the undersigned counsel to advise FedEx about how to
17 respond to the requests and to engage with the PDC.⁵ Immediately upon being retained, on
18 October 21, 2019, FedEx counsel initiated communications with PDC Staff multiple times,

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20 Authorities on Appropriate Penalty (**Exhs. S–Y**). The declarations combined will be referred to as
21 “Robbins Decl.”.

22 ² The PDC Staff argues that FedEx sought legal counsel on October 15, after receiving the
23 email from Bob Brooks. A review of the cited exhibit shows that the PDC Staff misread FedEx’s
24 letter, which clearly indicates that FedEx sought counsel following Mr. Finley’s October 18 call. *See*
25 *Young Declaration in Support of PDC Staff’s Motion for Summary Judgment (“Young Decl.”) Exh. A*
at 31.

³ Declaration of Angela Breeding in Support of FedEx’s Opposition to Motion for Summary
Judgment (“Breeding Decl.”) ¶ 16.

⁴ *Id.*

⁵ Robbins Decl. ¶ 7.

1 including informing the Staff that FedEx would be making a submission as to whether FedEx
2 should be considered a “commercial advertiser” under Washington’s campaign finance laws.⁶

3 On October 25, 2019, FedEx submitted to the PDC a memorandum analyzing the issue
4 of whether FedEx qualifies as a “commercial advertiser.”⁷ One week after receiving FedEx’s
5 letter, on November 1, 2019, the PDC Staff responded to FedEx’s letter informing FedEx that
6 the PDC still considered FedEx to be a commercial advertiser.⁸ Upon receiving the PDC’s
7 response on November 1, FedEx and its counsel began compiling the information requested
8 by Mr. Finley.⁹ On November 7, 2019, counsel for FedEx responded to the PDC’s November
9 1 email to inform the PDC that FedEx was reviewing options for how to legally proceed and
10 would be responding to the PDC’s email shortly.¹⁰ On November 13, 2021, counsel for FedEx
11 emailed Mr. Beatty and the PDC’s counsel Sean Flynn with all information required by RCW
12 42.17A.345 to respond to Mr. Finley’s request.¹¹ The letter contained information about two
13 additional transactions related to (but not included in) Mr. Finley’s request.¹² Two days later,
14 on November 15, 2021, Mr. Beatty forwarded the email containing FedEx’s November 13,
15 2021 letter—“the latest correspondence”—to Mr. Finley.¹³ Despite the fact that he had just
16 forwarded the information to Mr. Finley, and despite the fact that he had previously told Ms.
17 Breeding to turn over the information to the PDC directly, Mr. Beatty then emailed FedEx’s
18 counsel and informed FedEx that it would need to transmit the information to Mr. Finley
19 directly.¹⁴ FedEx transmitted this same information to Mr. Finley on November 21.¹⁵ The
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21 ⁶ Robbins Decl. ¶ 9.

22 ⁷ Young Decl. Exh. A at 16–22.

23 ⁸ Robbins Decl. **Exh. E**.

24 ⁹ Robbins Decl. ¶ 11.

25 ¹⁰ Robbins Decl. **Exh. F**.

¹¹ Robbins Decl. **Exh. G**.

¹² *Id.*

¹³ Robbins Decl. **Exh. H**.

¹⁴ Robbins Decl. **Exh. I**.

¹⁵ *Id.* at pp. 37–38.

1 PDC Staff's written discovery responses show that the Staff did not feel that FedEx's
2 response was inadequate, just that FedEx did not produce the information in a timely enough
3 manner.¹⁶

4 Mr. Finley stated during his deposition that he understood that FedEx was
5 communicating with the PDC Staff regarding whether FedEx qualified as a commercial
6 advertiser.¹⁷ He admitted that he understood that any issues between FedEx and the PDC
7 regarding whether the laws apply to FedEx would need to be resolved before Mr. Finley
8 would receive any information.¹⁸ He also understood that FedEx was actively working to
9 provide him with the documents he sought once FedEx counsel reached out to Mr. Finley
10 directly.¹⁹

11 By November 15, Mr. Finley had received the information he requested from FedEx
12 and the PDC, and, as he admitted in his deposition, may have already had access to the
13 mailers that were the subject of his requests.²⁰ He also admitted that his motives for
14 requesting the information were not to further any sort of public purpose, but rather to
15 compile evidence to draft a complaint against the Mercer Islanders for Sustainable Spending
16 coalition ("MISS").²¹ In fact, after receiving the last of the information from FedEx related to
17 these requests, he had moved on and believed there were no additional proceedings against
18 FedEx.²² Even after requesting and receiving new documents from FedEx in October 2021,
19 Mr. Finley believed that any disputes between FedEx and the PDC had been resolved, until he
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21 ¹⁶ Robbins Decl. **Exh. A** at p. 21.

22 ¹⁷ See, e.g., Robbins Decl. **Exh. S** at 64:2-12.

¹⁸ *Id.* at 64:2-12.

23 ¹⁹ See *id.* at 79:17-80:14

24 ²⁰ *Id.* at 123:19-124:4.

25 ²¹ *Id.* at 72:21-73:15; see also *id.* at p. 132.

²² *Id.* at 88:24-89:12.

received a subpoena for his deposition in November 2021.²³ It was clear from Mr. Finley’s deposition that after receiving the documents related to the October 2019 request, he felt that all issues with FedEx had been resolved, and that he was surprised that the enforcement action had gone this far.

III. ARGUMENT

A. Penalty Standards for Commercial Advertisers

The campaign finance statutes and PDC regulations provide a penalty scheme for violations. The Commission may waive a penalty for a first-time violation, even if it must assess a penalty for a second or third violation.²⁴ However, the Commission “must assess successively increased penalties for succeeding violations pursuant to the following schedule,” which lists penalties for the first offense, second offense, and third offense, respectively.²⁵

Commercial advertisers—Public inspection of documents			
Commercial advertisers who after accepting or providing political advertising or electioneering communications during an election campaign fail to maintain records and books of account, or make such information available by the methods provided under WAC 390-18-050 .	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400

Absent extraordinary or extreme circumstances, any penalty assessed against FedEx presumptively falls within the scope of this schedule.²⁶ The Commission may issue penalties

²³ *Id.*

²⁴ RCW 42.17A.755(3)(c).

²⁵ WAC 390-37-182(2)(c).

²⁶ *See id.*

1 in excess of the regulatory schedule, but only in the presence of “aggravating factors.”²⁷ In
2 any event, the maximum penalty available to the Commission for a violation is \$10,000, and
3 only under aggravating circumstances.²⁸ Additionally, the Commission may “suspend any
4 portion of an assessed penalty contingent on compliance” with PDC regulations.²⁹

5 When determining penalty, the Commission “may consider the nature of the violation
6 and any relevant circumstances.”³⁰ The Commission lists several factors for consideration—
7 described in further detail below—including but not limited to the respondent’s compliance
8 history and good faith efforts to comply, as well as the impact on the public.³¹ The
9 Commission may consider these factors when determining whether to suspend a portion or all
10 of a penalty.³²

11 **B. The Requests for Information Essentially Constitute One Violation.**

12 The penalty schedule detailed above shows the importance of determining how many
13 violations occurred in any enforcement action. In its order granting the PDC Staff’s motion
14 for summary judgment, the Commission found that FedEx received three separate requests for
15 information by Mr. Finley.³³ FedEx respectfully submits that, to the extent any violation
16 occurred, Mr. Finley’s interaction with FedEx subsequent to the initial October 2019 request
17 merely consisted of requests to supplement that request. Mr. Finley asked for information
18 related to Mike Cero in October 2019, then proceeded to bombard FedEx with several
19 supplemental requests in a continuous and back-and-forth exchange during the period of time
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21 ²⁷ WAC 390-37-182(5).

22 ²⁸ RCW 42.17A.755(3)(b)

23 ²⁹ WAC 390-37-182(2)(a).

24 ³⁰ WAC 390-37-182(3).

25 ³¹ *See id.*

³² WAC 390-37-182(4).

³³ Order at 3.

1 covered by the Commission's Order. Because the subsequent discussions stemmed from the
2 same initial request,³⁴ the entire exchange between Mr. Finley, FedEx, and the PDC Staff
3 should be treated as one occurrence and as one violation for the purpose of determining the
4 appropriate penalty.

5 **C. The Regulatory Factors Weigh in Favor of a Minimal Penalty.**

6 The majority of the applicable factors outlined in WAC 390-37-182(3) weigh in favor
7 of assigning a minimal penalty to FedEx. FedEx has never previously been accused of
8 violating Washington campaign finance laws, or had any contact with the PDC before Mr.
9 Finley reported FedEx in October 2019. FedEx thus has neither a history of noncompliance
10 nor a pattern of prior violations.³⁵ Moreover, much of any delay in compliance with the PDC
11 regulations for that October 2019 request was related to FedEx's good-faith uncertainty
12 concerning the PDC Staff's demands that FedEx produce confidential information about a
13 customer, as demonstrated by FedEx's repeated letters to the PDC Staff regarding the
14 applicability of the commercial advertiser statutes and regulations.³⁶ At that time, as outlined
15 in detail in FedEx's response to the PDC Staff's motion for summary judgment, FedEx
16 consulted with the PDC Staff on several occasions prior to the enforcement action as to its
17 obligations under the campaign finance laws.³⁷ As an initial matter, FedEx sent the PDC Staff
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19 ³⁴ See, e.g., **Exh. S** at pp.118-19; 121-29 (Mr. Finley requesting additional details about MISS
20 transactions at FedEx); *id.* at pp. 118-19 (Mr. Finley requesting copies of the mailers that were the
21 subject of discussion; *id.* at pp. 127-28 (Mr. Finley requesting that FedEx search for additional names
22 related to the original request for MISS transactions at FedEx).

23 ³⁵ WAC 390-37-182(3)(a) (respondent's compliance history).

24 ³⁶ WAC 390-37-182(3)(k) (the respondent's good faith uncertainty is relevant to mitigation of
25 penalty). See also Young Decl. Exh. A at pp. 16-22 (October 25, 2019 letter); Robbins Decl. **Exh. G, K, T-V** (other letters sent by FedEx to PDC). By way of comparison, had FedEx chosen to litigate this
26 matter through a declaratory judgment action, or requested that the Attorney General provide an
27 opinion, see Robbins Decl. **Exh. N**, FedEx's response would have been delayed by many months. The
28 PDC Staff is attempting to penalize FedEx for attempting to resolve this issue in a more expeditious
29 manner that benefits all parties, including the interests of the public and the PDC.

30 ³⁷ WAC 390-37-182(3)(m) (first-time filing with the PDC relevant to mitigation).

1 a letter outlining FedEx's positions on the applicability of the campaign finance laws, and
2 requesting input from the PDC.³⁸ PDC Staff acknowledged that it was considering FedEx's
3 arguments and drafting a response, then responded to FedEx's letter one week later.³⁹ Even
4 though the PDC Staff understood and explicitly condoned FedEx's delay in responding to Mr.
5 Finley by considering its arguments, it has since used that time period to argue that FedEx
6 unlawfully delayed providing documents to Mr. Finley.

7 FedEx also repeatedly requested guidance from the PDC Staff as to how to respond to
8 various requests by Mr. Finley throughout 2019 and 2020, and the majority of the requests
9 went unanswered.⁴⁰ Additionally, PDC Staff provided inconsistent instructions to FedEx at
10 the outset regarding whom to provide the requested information, aggravating the alleged
11 "untimely" production of information (and despite the fact that PDC Staff had already
12 provided Mr. Finley with the information requested).⁴¹ Despite these delays caused in-part by
13 the PDC Staff, the PDC Staff insists that FedEx did not timely provide documents to Mr.
14 Finley.

15 After receiving guidance from the PDC Staff that FedEx should produce information
16 to Mr. Finley, FedEx provided all requested information to Mr. Finley to the best of its ability,
17 and in compliance with the campaign finance laws. Indeed, the only contact FedEx has had
18 with the PDC subsequent to the time period covered by the Commission's Order was when
19 Mr. Finley made new demands to FedEx in October 2021, which FedEx worked diligently
20 and swiftly to resolve.⁴²

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22 ³⁸ Young Decl. Exh. A at pp. 16–22.

23 ³⁹ Robbins Decl. ¶¶ 8–9; **Exh. E**.

24 ⁴⁰ WAC 390-37-182(3)(n) (good faith efforts to comply relevant to mitigation).

25 ⁴¹ WAC 390-37-182(3)(j) (delays related to PDC staff relevant to mitigation).

⁴² WAC 390-37-182(3)(l) (demonstrated remedial action and compliance relevant to mitigation).

1 Moreover, there was minimal impact to the public as a result of FedEx's alleged
2 failure to timely provide information to Mr. Finley.⁴³ Among other admissions, Mr. Finley
3 admitted in his deposition that the purpose of his requests was to build an entirely unrelated
4 complaint against MISS in the course of his work as a political consultant for opposing
5 parties—not to assist the public with any particular matter.⁴⁴ His goal was not to provide
6 information to the public regarding campaign spending, it was to make MISS look “as evil as
7 possible.”⁴⁵ Mr. Finley also admitted that he had information about MISS's expenditures at
8 FedEx from MISS's C-6 filings and that he likely had copies of most or all of the documents
9 he sought from FedEx before even requesting copies from FedEx; thus, Mr. Finley was not
10 actually deprived of any information that he did not already have.⁴⁶ And to the extent the
11 public was deprived of any information, Mr. Finley admitted that such a deprivation would be
12 as a result of MISS's failure to file accurate documents, not alleged omissions or failures by
13 FedEx.⁴⁷

14 It is undisputed that FedEx never intended to disobey any campaign finance laws.⁴⁸
15 Although FedEx acknowledges it is a large corporation, the activities FedEx engages in (self-
16 service copying, printing and mailing on demand, often via internet submission)⁴⁹ are entirely
17 different from political advertisers or consultants that work with campaigns to design or

18 ⁴³ WAC 390-37-182(3)(b) (whether noncompliance did not have a significant or material
19 impact to the public is relevant to mitigation).

20 ⁴⁴ Robbins Decl. **Exh. S** at 72:21-73:15. *see also id.* at p. 132 (email from Mr. Finley
21 commanding receiver to make MISS sound “as evil as possible”).

22 ⁴⁵ *Id.* at p. 132; Robbins Decl. **Exh. S** at 139:3-140:25 (authenticating email).

23 ⁴⁶ Robbins Decl. **Exh. S** at 43:24-44:2; 138:1-22. See also Robbins Decl. **Exh. Q** (emails
24 reflecting Finley had copies of at least one subject mailer before receiving the information from
25 FedEx).

⁴⁷ Robbins Decl. **Exh. S** at 128:1-14.

⁴⁸ WAC 390-37-182(3)(e) (lack of intent to violate law, lack of deception, and lack of
collusion to violate law are relevant to mitigation).

⁴⁹ *See generally* Breeding Decl.

1 disseminate political ads. The PDC Staff's argument that FedEx's corporate size lends to its
2 sophistication is therefore misplaced: FedEx does not have any experience or dedicated
3 business unit for political consulting and political advertising. FedEx's customers are
4 individuals such as Mike Cero, who simply copy their materials using self-service machines,
5 upload materials over the web to print, or confidentially drop off electronic files with FedEx
6 to have materials printed or mailed.⁵⁰ Certainly, neither FedEx nor any other party received an
7 economic benefit from any alleged non-compliance with the campaign finance laws.⁵¹

8 The PDC Staff has said that it intends to argue that the fact that FedEx litigated this
9 matter is, in and of itself, an aggravating factor. This argument has no merit. It would be
10 grossly unjust to consider a respondent's good faith exercise of due process rights in an
11 adjudicatory proceeding to be an aggravating factor as to penalty. Moreover, without waiving
12 any arguments regarding the constitutionality of the commercial advertiser statutes or
13 regulations, or the validity of the Commission's findings in this matter, FedEx respectfully
14 submits that FedEx has been complying with all campaign finance laws since the PDC Staff
15 informed FedEx that it may be considered a commercial advertiser, and intends to comply
16 going forward.

17 **D. Other Factors—Including Constitutional Issues—Relevant to This Matter**

18 Under WAC 390-37-182(3)(p), the Commission may consider other factors relevant to
19 a particular case. Here, FedEx has several additional constitutional and statutory arguments
20 regarding the applicability of these regulations as applied to FedEx. Most importantly, the
21 statutory definition of "Commercial Advertiser" violates the First Amendment overbreadth
22 doctrine due to vagueness and substantial impact to non-political third parties like FedEx that
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24 ⁵⁰ WAC 39-37-182(3)(c) (sophistication of campaign-related organization is relevant to
25 mitigation).

⁵¹ WAC 390-37-182(3)(g) (lack of financial benefit is relevant to mitigation).

1 chills political speech. Also, the application of the commercial advertiser designation to
2 FedEx violates due process by imposing strict liability onto FedEx. Of course, the
3 Commission may not rule on the constitutionality of statutes or upon the validity of the
4 regulations that it administers. *See* RCW 34.05.570(3)(a) (vesting jurisdiction in the Superior
5 Court). Nonetheless, FedEx presents these arguments here for the Commission to determine if
6 such arguments are relevant to the penalty to impose.⁵²

7 The First Amendment prohibits the government from “abridging the freedom of
8 speech, or of the press; or the right of the people peaceably to assemble, and to petition the
9 Government for a redress of grievances.” “First Amendment protections apply equally to
10 statutes and local ordinances.” *State v. Immelt*, 173 Wash.2d 1, 3, 267 P.3d 305 (2011).
11 Article I, section 5 of the Washington Constitution also provides free speech protection.
12 *Kitsap County v. Mattress Outlet*, 153 Wn.2d 506, 511, 104 P.3d 1280 (2005).

13 Wherever the extreme perimeters of protected speech may lie, it is clear the First
14 Amendment protects political speech, *see Carey v. Brown*, 447 U.S. 455, 467, 100 S. Ct.
15 2286, 2293, 65 L.Ed.2d 263 (1980), giving it greater protection over other forms of speech.
16 *Metromedia, Inc. v. San Diego*, 453 U.S. 490, 513, 101 S. Ct. 2882, 2895, 69 L.Ed.2d 800
17 (1981). The constitutional protection afforded to political speech has its “fullest and most
18 urgent application precisely to the conduct of campaigns for political office.” *Monitor Patriot*
19 *Co. v. Roy*, 401 U.S. 265, 272, 91 S. Ct. 621, 625, 28 L.Ed.2d 35 (1971).

20 A law may be invalidated under the First Amendment as “overbroad” if a substantial
21 number of its applications are unconstitutional, judged in relation to the statute’s plainly
22 legitimate sweep. *United States v. Stevens*, 559 U.S. 460, 473, 130 S. Ct. 1577, 176 L.Ed.2d
23 435 (2010). Washington States’ article I, section 5 analysis of overbreadth follows the same
24

25 ⁵² FedEx also provides additional materials in light of the Commission’s grant of summary
judgment and cancellation of an evidentiary hearing on the merits. *See* Robbins Decl., **Exhs. W–Y**.

1 analysis under the First Amendment jurisprudence. *Bradburn v. N. Cent. Reg'l Library Dist.*,
2 168 Wn.2d 789, 804, 231 P.3d 166 (2010). A law is overbroad if it “sweeps within its
3 prohibitions” a substantial amount of constitutionally protected conduct. *City of Tacoma v.*
4 *Luvene*, 118 Wn.2d 826, 839, 827 P.2d 1374 (1992).

5 Several aspects of Washington State’s public disclosure law have previously survived
6 facial First Amendment challenges. The Ninth Circuit concluded that political committee
7 disclosure requirements are not unconstitutionally burdensome relative to the State’s
8 informational interest. *Human Life of Washington Inc. v. Brumsickle*, 624 F.3d 990, 1013 (9th
9 Cir. 2010); *see also Utter v. Bldg. Indus. Ass’n of Washington*, 182 Wn.2d 398, 434, 341 P.3d
10 953, 970–71 (2015). But these cases did not address the Commercial Advertiser provision and
11 its application of burdens to non-political third parties.

12 The statutory definition of Commercial Advertiser, RCW 42.17A.005(10), is
13 unconstitutionally overbroad and vague. The definition is vague because it is not clear
14 whether the statute applies to parties like FedEx, to self-service copier providers like
15 pharmacies, to libraries that offer printing and copying services to the public, to the United
16 States Post Office (which sends out direct mail that could be political advertising), or to direct
17 mailing companies. These are all third parties that are not directly involved in the political
18 process, and that are burdened by this statutory regime. Courts apply heightened First
19 Amendment protections to third parties—like FedEx—that are not political actors. *See Brown*
20 *v. Entm’t Merchs. Ass’n*, 564 U.S. 786, 802, 131 S. Ct. 2729, 180 L.Ed.2d 708 (2011) (noting
21 “doubts [about] punishing third parties for conveying protected speech”); *Washington Post v.*
22 *McManus*, 944 F.3d 506, 515–16 (4th Cir. 2019) (invalidating disclosure requirement
23 burdening non-political third parties).

24 Likewise, the statutory scheme violates the First Amendment as applied to FedEx by
25 burdening political speech in a manner that is unrelated to and out of proportion to the State’s

1 interest in duplicating campaign expenditure disclosures. These requirements, which are
2 “content-based, targets political expression, and compels certain speech—poses a real risk of
3 either chilling speech or manipulating the marketplace of ideas” *McManus*, 944 F.3d at 515.
4 This effectively disfavors political speech by increasing the compliance costs, or by
5 compelling third parties to say “[w]hy bother?” and to stop providing services related to
6 political campaigns. *Id.* at 516 (citing *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S.
7 425, 466, 122 S. Ct. 1728, 152 L.Ed.2d 670 (2002) (Souter, J., dissenting)).

8 Finally, application of the Commercial Advertiser statute to FedEx as applied here
9 violates FedEx’s due process rights because the statute—under the Commission’s
10 interpretation—is essentially a strict liability scheme. Government policies that foreclose
11 channels for political speech or simply crowd out too much political speech pose especially
12 serious constitutional dangers. *See, e.g., Watchtower Bible & Tract Soc’y of N.Y., Inc. v. Vill.*
13 *of Stratton*, 536 U.S. 150, 167-68, 122 S. Ct. 2080, 153 L.Ed.2d 205 (2002). This is especially
14 true regarding non-political third parties, who have markedly different incentives as compared
15 to the burdens of disclosures the law places on political actors. *See Reed v. Town of Gilbert*, –
16 U.S. —, 135 S. Ct. 2218, 2230, 192 L.Ed.2d 236 (2015).

17 IV. CONCLUSION

18 Each of FedEx’s purported “violations” of the commercial advertiser statutes and
19 regulations consist of several extensions of one central request in October 2019, and should be
20 treated as one violation. And in light of the extensive factual record in support of mitigating
21 factors, and of the constitutional arguments outlined above, FedEx respectfully requests that
22 the Commission should decline to issue a penalty in this matter, or issue an entirely suspended
23 penalty at the lower end of the compulsory regulatory schedule.
24
25

1 DATED this 18th day of February, 2022.

2
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1. I am employed at Corr Cronin LLP, attorneys for Respondent herein.

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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

/s Wen L. Cruz
Wen Cruz