



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Americans for Job Security, Inc.) MURs 5910 & 5694

STATEMENT OF REASONS

Chairman Steven T. Walther
Commissioner Cynthia L. Bauerly
Commissioner Ellen L. Weintraub

On February 25, 2009 the Commission failed by a vote of 3-3 to approve the Office of General Counsel's recommendations to find reason to believe that Americans for Job Security ("AJS") violated 2 U.S.C. §§ 433, 434, 441b, 441a(f) and 441d by failing to register as a political committee with the Commission, by failing to report contributions and expenditures, by knowingly accepting prohibited contributions and contributions in excess of \$5,000, and by failing to include proper disclaimers on its public political advertising. Further, the Commission failed by a vote of 3-3 to find reason to believe that AJS, as a corporation, violated 2 U.S.C. §§ 441b and 441d by making prohibited expenditures on express advocacy communications and by failing to include proper disclaimers on these communications.¹

The Federal Election Campaign Act of 1971, as amended ("the Act") requires that the Commission find "reason to believe that a person has committed, or is about to commit, a violation" of the Act as a predicate to opening an investigation into the alleged violation. 2 U.S.C. § 437g(a)(2). "Reason to believe" is a threshold determination that by itself does not establish that the law has been violated. In fact, "reason to believe" determinations indicate only that the Commission found sufficient legal justification to open an investigation to determine whether there is probable cause to believe that a violation of the Act has occurred.²

¹ Chairman Walther, Commissioners Bauerly and Weintraub voted to approve the recommendations while Vice-Chairman Petersen, Commissioners Hunter and McGahn dissented. The Commission subsequently voted to close the file.

² See 72 F.R. 12545, Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process (March 16, 2007).

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The allegations in the complaint are serious and include an allegation that AJS spent \$17.3 million on political ads from 2000 through 2004 and that most of these ads contained express advocacy which qualified the ads as expenditures under the Act. Based on its 2003 and 2004 tax returns, AJS spent more than \$7 million from November 1, 2003 through October 31, 2005 on media placements, postage, and consultants. Combining these figures and a review of the ads in question, it appears to us that it is reasonable to infer that AJS may have exceeded the \$1,000 statutory threshold for expenditures on communications expressly advocating the election or defeat of a clearly identified federal candidate, and that its major purpose appears to have been federal campaign activity. Accordingly, we supported the recommendations of the Office of the General Counsel to find reason to believe that one or more violations of the Act occurred. Because our decision relied in major part on the Factual and Legal Analysis presented to the Commission by the Office of General Counsel, we believe it is important to place this analysis on the public record.³

4/23/09
Date

Steven T. Walther
Steven T. Walther
Chairman

4/23/2009
Date

Cynthia L. Bauerly
Cynthia L. Bauerly
Commissioner

4/23/09
Date

Ellen L. Weintraub
Ellen L. Weintraub
Commissioner

³ See Attachment A.

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ATTACHMENT A

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Factual and Legal Analysis

I. INTRODUCTION

The complaints in these matters allege, *inter alia*, that Americans for Job Security ("AJS"), which claims to be an incorporated, nonprofit trade association organized under section 501(c)(6) of the Internal Revenue Code, has made illegal corporate expenditures and failed to register as a political committee with the Commission and disclose its contributions and expenditures as required by the Federal Election Campaign Act of 1971, as amended ("the Act").

II. FACTUAL BACKGROUND

AJS, which responded separately to each complaint (incorporating its initial response "by reference" into its subsequent response), describes itself as an "association of businesses, business leaders, and entrepreneurs that believe a strong job-creating economy in which workers have job security and improved job opportunities is essential for a healthy and prosperous business environment." MUR 5694/5910 Responses, Affidavit of (AJS President) Michael D. Dubke ("Dubke Aff."), ¶ 6. On its 2004 Form 990 (AJS's most recently available tax return), AJS states that its "primary exempt purpose" is "educating the public on economic issues with a pro-market, pro-paycheck message."

The complaint in MUR 5694 primarily alleges that AJS has as its major purpose the election or defeat of candidates for federal office, and, because it has spent or received more than \$1,000 to influence federal elections, it must register as a political committee and disclose its receipts and disbursements. See 2 U.S.C. §§ 433 and 434. The complaint focuses on only two television ads – both also addressed in the MUR 5910 Complaint – that aired in Pennsylvania in 2005 and identified then-Senator Rick Santorum. The complaint claims that the ads constituted prohibited corporate expenditures because they contained express advocacy under 11 C.F.R. §§ 100.22(a) and (b).⁴ The complaint also states that, "[b]ecause AJS is a political committee," its ads must comply with the Act's disclaimer requirements. MUR 5694 Complaint at 6. The two ads stated that they were paid for by AJS but contained no other information, such as an address and a spoken and written statement of responsibility. See 2 U.S.C. § 441d(a)(3), (d)(2).

The complaint in MUR 5910 makes similar allegations regarding AJS's spending and major purpose.⁵ It asserts that AJS has spent at least \$17.3 million on

⁴ The complaint mistakenly references section 100.24 instead of section 100.22.

⁵ Some of the materials attached to the MUR 5910 Complaint are styled as a complaint to the U.S. Internal Revenue Service, which is also publicly available on Public Citizen's website. <<http://www.citizen.org/documents/AJS%20Complaint.pdf>>. Complainant states that "[t]his research (footnote continued on next page)

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political ads from 2000 through 2004, most of which allegedly contain express advocacy under the Commission's regulations, thereby qualifying as expenditures under the Act. Based on its 2003 and 2004 tax returns, AJS spent over \$7 million from Nov. 1, 2003 through Oct. 31, 2005, comprised of large disbursements for media placement, postage and consultants. It received over \$8 million in revenue during this same period, almost all of which it listed on its tax returns as membership dues and assessments.

The complaint identifies thirty-two of AJS's television, radio, telephone and print communications since the 2000 election cycle (seventeen federal candidates identified in thirty communications; one non-federal candidate identified in two communications), noting that all of the advertisements identified candidates for elective office and aired shortly before those elections. At least ninety-four percent of the communications allegedly targeted the candidate's voting constituency and none identified specific legislation or were aired when pertinent public policies were being considered in Congress. According to the complaint, press reports suggest that AJS obtained its funding from corporate contributors as well as contributions from individuals in excess of \$5,000, in violation of 2 U.S.C. §§ 441a and 441b.⁶

AJS claims that it does not advocate the election or defeat of any federal candidates under either 11 C.F.R. § 100.22(a) or (b).⁷ Rather, it asserts that each of its communications identified specific governmental or legislative issues pending before the appropriate governmental branch or agency or that pertained to the referenced individual. In addition, AJS claims that each communication contained "an explicit request that the public contact the identified public official or public figure concerning the issues discussed" MUR 5910 Response at 12.⁸

AJS also points out that the complaint does not allege that it received any contributions as a result of communications with members or potential members under *FEC v. Survival Education Fund, Inc.*, 65 F.3d 285 (2d Cir. 1995) ("*Survival Education Fund*") or 11 C.F.R. § 100.57 (2005) (funds received by an organization

originally was prepared as a complaint to the . . . IRS documenting the organization's likely violation of its 501c non-profit tax status" MUR 5910 Complaint at 2.

⁶ Several news articles reportedly identifying some of AJS's corporate contributors are referenced on a website sponsored by the Complainant. See <http://www.stealthpacs.org/funder.cfm?Org_ID=41>.

⁷ Following the Supreme Court's decision in *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. ___, 127 S.Ct. 2652 (2007) ("*WRTL*"), AJS submitted a supplementary response claiming that the decision provides additional support for its arguments that the ads at issue did not constitute express advocacy under 11 C.F.R. § 100.22.

⁸ AJS separately addresses all communications referenced in the complaints that were disseminated from 2002 through 2006, submitting various supporting materials concerning each communication (e.g., legislation it claims was related to the particular issues raised). MUR 5910 Response at 17-44. AJS provided transcripts of sixteen public communications it disseminated in 2004 and 2005 (mailers, radio and television ads), two of which were included in complaints.

considered contributions if in response to communication indicating that “any portion of the funds received will be used to support or oppose the election of a clearly identified Federal candidate”). Finally, AJS asserts that its major purpose is not election activity, but rather, consistent with its 501(c)(6) tax status, its “major purpose is to advance the common business interests of its members by publicizing pro-business and economic expansion public policy issues” MUR 5910 Response at 47.

III. LEGAL ANALYSIS

AJS may be a “political committee” subject to the contribution limitations, source prohibitions, and reporting requirements of the Act. See 2 U.S.C. §§ 431(4)(A), 433, 434, 441a, and 441b. The Act defines a “political committee” as any committee, club, association, or other group of persons that receives “contributions” or makes “expenditures” for the purpose of influencing a federal election which aggregate in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A). To address overbreadth concerns, the Supreme Court has held that only organizations whose major purpose is campaign activity can potentially qualify as political committees under the Act. See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986) (“MCFL”). The Commission has long applied the Court’s major purpose test in determining whether an organization is a “political committee” under the Act, and it interprets that test as limited to organizations whose major purpose is federal campaign activity. See Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597, 5601 (Feb. 7, 2007) (“Supplemental E&J”); see also FEC’s Mem. in Support of Its Second Mot. for Summ. J., *Emily’s List v. FEC*, Civ. No. 05-0049 at 21 (D.D.C. Oct. 9, 2007).

The Commission has previously found that a similar non-profit organization was a political committee under the Act. See MUR 5492 (Freedom, Inc.) (purported 501(c)(4) organization actually a political committee). Similarly, “section 527” tax status has been found to be relevant, but not dispositive, to a determination that organizations were political committees. See, e.g., MURs 5511 and 5525 (Swift Boat Veterans), MUR 5753 (League of Conservation Voters) and MUR 5754 (MoveOn.org Voter Fund). Thus, the mere fact that AJS purports to have 501(c)(6) tax status does not preclude the Commission from determining that it is a political committee under the Act.

A. AJS May Have Exceeded the Statutory Threshold for Expenditures by Spending Over \$1,000 For Communications Expressly Advocating the Election or Defeat of a Clearly Identified Candidate

In determining whether an organization makes an expenditure, the Commission “analyzes whether expenditures for any of an organization’s communications made independently of a candidate constitute express advocacy

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either under 11 C.F.R. § 100.22(a), or the broader definition at 11 C.F.R. § 100.22(b)." Supplemental E&J, 72 Fed. Reg. at 5606. Under the Commission's regulations, a communication contains express advocacy when it uses phrases such as "vote for the President," "re-elect your Congressman," or "Smith for Congress," or uses campaign slogans or words that in context have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, or advertisements that say, "Nixon's the One," "Carter '76," "Reagan/Bush," or "Mondale!" See 11 C.F.R. § 100.22(a); see also *MCFL*, 479 U.S. at 249 ("[The publication] provides in effect an explicit directive: vote for these (named) candidates. The fact that this message is marginally less direct than "Vote for Smith" does not change its essential nature."). Courts have held that "express advocacy also includes verbs that exhort one to campaign for, or contribute to, a clearly identified candidate." *FEC v. Christian Coalition*, 52 F.Supp. 2d 45, 62 (D.D.C. 1999) (explaining why *Buckley*, 424 U.S. at 44, n.52, included the word "support," in addition to "vote for" or "elect," on its list of examples of express advocacy communication).

The Commission's regulations further provide that express advocacy includes communications containing an "electoral portion" that is "unmistakable, unambiguous, and suggestive of only one meaning" and about which "reasonable minds could not differ as to whether it encourages actions to elect or defeat" a candidate when taken as a whole and with limited reference to external events, such as the proximity to the election. See 11 C.F.R. § 100.22(b). In its discussion of then-newly promulgated section 100.22, the Commission stated that "communications discussing or commenting on a candidate's character, qualifications or accomplishments are considered express advocacy under new section 100.22(b) if, in context, they have no other reasonable meaning than to encourage actions to elect or defeat the candidate in question." See 60 Fed. Reg. 35292, 35295 (1995).⁹

In applying the appropriate standards to available AJS communications disseminated during the 2004 and 2006 election cycles, it appears that certain ads constituted express advocacy and that the expenditures for them exceeded the \$1,000 political committee statutory threshold in both 2004 and 2006. See 2 U.S.C. § 431(4)(A).

⁹ In *WRTL*, the U.S. Supreme Court held that "an ad is the functional equivalent of express advocacy," and thus subject to the ban against corporate funding of electioneering communications, "only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *Id.*, 127 S.Ct. at 2667. Although 11 C.F.R. § 100.22 was not at issue in the matter, the Court's analysis included examining whether the ad had "indicia of express advocacy" such as the "mention [of] an election, candidacy, political party, or challenger" or whether it "take[s] a position on a candidate's character, qualifications, or fitness for office." *Id.* The Commission subsequently incorporated the principles set forth in the *WRTL* opinion into its regulations governing permissible uses of corporate and labor organization funds for electioneering communications at 11 C.F.R. § 114.15. See Final Rule on Electioneering Communications, 72 Fed. Reg. 72899, 72914 (Dec. 26, 2007).

1. AJS Communications During the 2004 Election Cycle

The communications publicly disseminated by AJS during the 2004 election cycle typically referred to actions or positions taken by federal candidates regarding particular issues or legislation.¹⁰ While the majority of the communications do not appear to contain express advocacy under either 11 C.F.R. § 100.22(a) or (b)¹¹, at least two television advertisements aired by AJS in 2004 may qualify as express advocacy under 11 C.F.R. § 100.22(b).

First, six weeks prior to the U.S. Senate primary election in North Carolina, AJS broadcast the following ad in that state referencing then-U.S. Senate candidate Richard Burr:

[Narrator:] What will it take to get North Carolina moving? Experience. Leadership. Richard Burr. In Congress, Burr fought to keep jobs here, while attracting new businesses. He blocked unfair trade practices seven times, voting against giving China

¹⁰ Four available AJS communications from 2004 do not identify federal candidates. Two of these communications reference a non-federal candidate, see MUR 5910 Complaint, Att. at 51-54, and two others identify a U.S. Senator who had announced his retirement in 2003 and was not a candidate for any federal office in 2004. See MUR 5694 Response at Att. 5.

¹¹ For example, a direct mail piece disseminated by AJS in 2004 contained the following text:

John Kerry voted against a comprehensive prescription drug benefit making prescription drugs more affordable and accessible to seniors.
But it gets worse.
Kerry wants to repeal the prescription drug benefits seniors now receive. Kerry's prescription for failure:

- Fewer choices
- More government
- More paperwork
- Higher costs.

Call Senator Kerry at (202) 224-2742 and let him know that American Seniors deserve better.

MUR 5910 Complaint, Att. at 45; MUR 5910 Response at 30.

The mailer does not constitute express advocacy under 11 C.F.R. § 100.22(a) because it does not contain any so-called "magic words" nor any slogans or individual words that in context have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates. The ad also falls short under Section 100.22(b) because there no obvious electoral portion and the only action urged is to call Senator Kerry's congressional office in Washington, D.C. regarding a specific legislative issue that was the subject of a number of bills being considered in Congress. The mailer could be reasonably interpreted as encouraging recipients of the mailer to lobby Senator Kerry in his position as an incumbent officeholder. See also MUR 5910 Complaint, Att. at 44, 46-47 (transcripts of similar communications by AJS).

special trade status. A small businessman for 17 years, Burr has the leadership required to protect jobs of our working families. Call Richard Burr. Tell him thanks for being a conservative, common sense voice for North Carolina.

MUR 5910 Complaint, Att. at 48; MUR 5910 Response at 34.¹² At the end of the advertisement, the phone number for Burr's North Carolina office appears on the screen along with the disclaimer "Paid for By Americans for Job Security." *Id.*

Although the ad does not contain words or "in effect" explicit directives that urge the viewer to vote for Burr, see 11 C.F.R. § 100.22(a), it appears to satisfy the express advocacy standard set forth at 11 C.F.R. § 100.22(b) because of its emphasis on Burr's character ("Leadership;" "common sense voice for North Carolina"), his qualifications ("Experience;" "has the leadership required") and his accomplishments ("A small businessman for 17 years"). In comparison, the ad presents job-related issues in a somewhat cursory manner and does not call on Burr to take any particular action.

AJS asserts that "the communication may be interpreted as a request to contact then-Congressman Burr to inquire about his positions on these issues," and notes that the ad "does not refer to . . . Burr as a candidate, reference an election, or exhort the public to campaign for or contribute to a federal candidate." MUR 5910 Response at 34. However, rather than urging the viewer to contact Burr regarding particular issues, AJS encourages viewers to "Tell [Burr] thanks" in connection with his overall record as "conservative, common sense voice" The ad's focus on Burr using his experience and leadership "to get North Carolina moving" and "to protect jobs" suggests that he will push for those objectives if elected to the U.S. Senate. When taken as a whole and with limited reference to external events, including timing, this communication arguably constitutes express advocacy under 11 C.F.R. § 100.22(b) because it is subject to no other reasonable interpretation than to vote for Burr.¹³

¹² This ad reportedly cost \$500,000. See Jennifer Strom, "The Companies He Keeps," *The (NC) Independent Weekly*, July 7, 2004.

¹³ Although the Commission's express advocacy regulation was not at issue in *WRTL*, the Court's consideration of what could be regulated as an electioneering communication set forth a test that included elements similar to those used in 11 C.F.R. § 100.22(b). While the *WRTL* test is not applicable here, the four ads discussed in the text would meet the Court's test, if the other qualifying factors were met, for regulable electioneering communications. The ads contain, to varying degrees, the "indicia of express advocacy" discussed in *WRTL*, such as the discussion of "a candidate's character, qualifications, or fitness for office." *WRTL*, 127 S.Ct. at 2667. Further, the ads do not direct the reader to take action to express a view on a public policy issue or urge the reader to contact public officials with respect to the issue. In sum, the ads are susceptible of no reasonable interpretation other than as an appeal to vote for or against a particular candidate.

Second, AJS aired the following television ad in 2004 in Alaska approximately six weeks before the primary election, in which former Governor Tony Knowles was running for the U.S. Senate seat:¹⁴

(On screen: Cindy Norquest; Anchorage)

CINDY NORQUEST: When Tony Knowles was governor, I had a great many friends that chose to leave Alaska.

(On screen: Under Tony Knowles, Alaska had the lowest economic growth of any state)

They didn't actually choose -- they had to leave Alaska, because there weren't opportunities here.

(On screen: Roy Eckert; Ketchikan)

ROY ECKERT: You can't just drive to the next town to find work.

(On screen: 2001 study showed a sharp increase in young Alaskans leaving to find work.)

You'd have to literally leave your home; there's nowhere else to go.

(On screen: Neil MacKinnon; Juneau)

NEIL MACKINNON: Probably Alaska's greatest export is our children searching for jobs.

(On screen: Paul Axelson; Ketchikan)

PAUL AXELSON: You know, if you don't have a living-wage job, then you have no option but to leave the community.

(On screen: Alaska had the highest unemployment rate in the country under Tony Knowles)

CINDY NORQUEST: Tony Knowles may think flipping burgers is a good job, but it's not the future I want for my daughters.

(On screen: Ask Tony Knowles his plans to bring our children back to Alaska; Paid for by Americans for Job Security.)

AJS asserts that, when it aired this communication, Alaska was facing an unemployment crisis and that the "lack of jobs was causing young adults to leave the state in search of employment opportunities elsewhere. This in turn negatively impacted the small business community in the state." MUR 5910 Response at 28. AJS states that the "communication specifically requests that the viewer contact Governor Knowles to discuss these issues." *Id.*

However, Tony Knowles served as Governor of Alaska from December 1994 through December 2002, and was barred by Alaska law from seeking a third consecutive term in 2002. At the time the above ad was broadcast in Alaska in July 2004, Knowles had not served as Governor in over a year and a half and had been a candidate for U.S. Senate for approximately one year. Since Knowles was not a

¹⁴ The ad text is taken from <http://nationaljournal.com/members/adspotlight>, which contains more detailed information than the ad text included in the MUR 5910 Complaint. The ad reportedly cost \$68,000. See Nicole Tsong, "Knowles Won Senate Fundraising Race," Anchorage (AK) Daily News, March 27, 2005.

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public official at the time, he would not be in a position to influence economic policies impacting Alaskans. In this context, asking Knowles about "his plans to bring our children back to Alaska" would be construed as asking him what his policies would be if elected to the U.S. Senate. In addition, unlike most of its other ads, AJS does not appear to have included a phone number or point of contact for viewers to reach Knowles. Under these circumstances, where the ad makes little sense outside of an electoral context, it is arguably subject to no other reasonable interpretation than to vote against Knowles. See 11 C.F.R. § 100.22(b).

Accordingly, it appears that AJS made expenditures in excess of \$1,000 in 2004. See 2 U.S.C. § 431(4)(A).

2. AJS Communications During the 2006 Election Cycle

At least two AJS television ads (cited only in the MUR 5910 Complaint) referencing 2006 U.S. Senate candidate Bob Casey may satisfy the express advocacy definition at 11 C.F.R. § 100.22(b).¹⁵ At the time the ads were run, Casey was either a candidate in the May 16, 2004 Senatorial primary election, or he had won that election and was then-Senator Rick Santorum's challenger in the general election.

The ad entitled "Serious Times" was run beginning on April 4, 2006, approximately a month and a half before the Pennsylvania primary election.¹⁶ The ad stated, "These are serious times that call for serious leadership," noting that Casey missed work more than 43% of the time because he was "look[ing] for another job," an apparent reference to his running in the primary election for federal office. The ad further stated, "With a record like that can we really count on Bob Casey to be there for us when it matters most? Call Bob Casey, tell him we need serious leaders in serious times." The ad then listed the phone number for the office where Casey was employed as Pennsylvania's state treasurer. AJS argues, *inter alia*, that the "plain language" of the ad does not refer to Casey as a candidate, and

¹⁵ MUR 5694 focuses on two other 2006 cycle ads that were also cited in MUR 5910 ("Moms" and "Grandkids"), but neither ad appears to contain express advocacy. The ads do not qualify under 11 C.F.R. § 100.22(a) because they do not contain any so-called "magic words" such as "Santorum for U.S. Senate" nor any slogans or individual words that in context have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates. These ads would also appear to fall short of the standard at 11 C.F.R. § 100.22(b). Not only is there no obvious electoral portion, but the action urged is simply to call Senator Santorum's office and express thanks for his actions, which can in turn be construed as an effort to encourage Santorum to maintain his positions on the specific legislative issues identified in the ads.

¹⁶ The ad was broadcast on network television in Harrisburg and Philadelphia and on cable statewide, and reportedly cost \$500,000. See National Journal Ad Spotlight, 2006 Political Ads: Pennsylvania Senate, "Serious Times," April 5, 2006, available at <http://nationaljournal.com/members/adspotlight/2006/04/0405pasen1.htm>.

that the ad "may be interpreted as a request to contact State Treasurer Casey to inquire about his positions" pertaining to employment and government ethics issues. MUR 5910 Response at 41.

A similar ad – "Dedication" – was run beginning on June 3, 2006, two weeks after Casey won the primary election.¹⁷ The ad states that "[d]oing a good job requires dedication," and again discusses Casey skipping work to look for another job. The ad continues, "If you miss that much work, would you keep your job? Call Bob Casey and tell him we expect an honest day's work for an honest day's pay." The ad again lists the phone number for Casey's state office. AJS claims that the "plain language" of the ad does not refer to Casey as a candidate, and asserts that the "wasting of taxpayer funds to subsidize an individual who is pursuing activities unrelated to his current job is a serious issue for the business community – an issue State Treasurer Casey was in a position to affect." MUR 5910 Response at 40.

The "Serious Times" and "Dedication" ads may contain express advocacy under section 100.22(b). Because the "Serious Times" questioned Casey's leadership potential and included an apparent reference to the election by noting that he was "look[ing] for another job," a viewer would reasonably interpret this ad as urging a vote against Casey. A viewer would reasonably interpret the "Dedication" ad in a similar manner, since it began running after Casey secured his party's nomination and also informed the viewer that he was "look[ing] for another job." Accordingly, it appears that AJS made expenditures in excess of \$1,000 in 2006.

B. AJS's Major Purpose Appears to Have Been Federal Campaign

Activity

The facts obtained from the complaints, responses and publicly available information suggest that a primary objective of AJS was to influence federal elections. With the exception of only a few communications, the available advertisements identify federal candidates. Although the full scope of AJS's disbursements is not known at this time, it appears that a large portion of its advertising budget was allocated to television, radio and print advertisements that clearly identified candidates for U.S. Senate.¹⁸ The available information indicates

¹⁷ This ad ran on cable statewide and on network broadcast television in Pittsburgh, reportedly for a cost of approximately \$125,000 to \$150,000. See National Journal Ad Spotlight, 2006 Political Ads: Pennsylvania Senate, "Dedication," June 3, 2006, available at <<http://nationaljournal.com/members/adspotlight/2006/06/0605pasen1.htm>>.

¹⁸ See discussion of AJS's tax returns at 2, *supra*. The MUR 5910 Complaint alleges that, in 2004, AJS spent \$3.8 million on media out of a total of \$6 million, and that, since 2000, 78% of AJS's budget has been allocated "to the political advertising campaign." MUR 5910 Complaint at 3. AJS did not respond to these allegations or provide any information concerning its budget.

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that most of these ads were broadcast or disseminated in the states or districts where the candidates were running for office, often in close proximity to the relevant primary or general election. However, in view of the limited information available concerning the scope of the ads and how AJS spent its funds, an investigation is warranted to determine the extent to which AJS made expenditures under the Act. Moreover, there is no information about how AJS solicited funds (AJS did not address this issue in its responses); accordingly, an investigation into whether AJS solicited contributions meeting the standard set forth in section 100.57 is warranted.

C. AJS Appears to Have Made Corporate Expenditures in the Form of Express Advocacy Communications

Alternatively, if AJS is viewed not as a political committee but as a corporation under the Act, then its spending on express advocacy communications appears to have violated the Act's prohibition on corporate expenditures in connection with federal elections. See 2 U.S.C. § 441b(a).

IV. CONCLUSION

For all the foregoing reasons, there is reason to believe that AJS violated 2 U.S.C. §§ 433, 434, 441b and 441a(f) by failing to register as a political committee with the Commission, by failing to report contributions and expenditures, and by knowingly accepting prohibited contributions and contributions in excess of \$5,000.

Regarding the disclaimer allegation, although the advertisements generally stated that they were "Paid for by Americans for Job Security," they failed to include address information, non-authorization statements and, in the case of television and radio ads, statements of responsibility. See 2 U.S.C. § 441d(a)(3), (d)(2). Accordingly, there is reason to believe that AJS violated 2 U.S.C. § 441d by failing to include proper disclaimers on public political advertising it paid for as a political committee.

Alternatively, there is reason to believe that AJS, as a corporation, made prohibited expenditures in violation of 2 U.S.C. § 441b, and failed to include proper disclaimers on express advocacy communications in violation of 2 U.S.C. § 441d.

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