



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND ELECTRONIC MAIL

SEP 09 2019

Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics
in Washington
1101 K Street, N.W.
Washington, DC 20005
nbookbinder@citizensforethics.org

RE: MUR 6538R
Americans for Job Security

Dear Mr. Bookbinder:

This is in reference to the complaint and supplemental information you filed with the Federal Election Commission concerning possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Americans for Job Security ("AJS"). On October 18, 2016, the Commission found that there was reason to believe that AJS violated 52 U.S.C. §§ 30102, 30103, and 30104 and conducted an investigation in this matter. On September 3, 2019, the Commission accepted a signed conciliation agreement with AJS to resolve its violations of the Act. Accordingly, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). Copies of the conciliation agreement with AJS and the Factual and Legal Analysis are enclosed for your information.

If you have any questions, please contact Jonathan Peterson, at (202) 694-1525, or Amanda Andrade, at (202) 694-1343.

Sincerely,

Jin Lee
Acting Assistant General Counsel

Enclosure
Conciliation Agreement
Factual & Legal Analysis

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4) MUR 6538R
5 Americans for Job Security)
6)
7

8 **CONCILIATION AGREEMENT**

9
10 This matter was initiated by a signed, sworn, and notarized complaint filed by Citizens
11 for Responsibility and Ethics in Washington. Upon remand from the United States District
12 Court for the District of Columbia, the Federal Election Commission ("Commission") found
13 reason to believe that Americans for Jobs Security ("AJS") violated 52 U.S.C. §§ 30102, 30103,
14 and 30104 by failing to organize, register, and report with the Commission as a political
15 committee.

16 NOW, THEREFORE, the Commission and AJS, having participated in informal methods
17 of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

18 I. The Commission has jurisdiction over AJS and the subject matter of this
19 proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C.
20 § 30109(a)(4)(A)(i).

21 II. AJS has had a reasonable opportunity to demonstrate that no action should be
22 taken in this matter.

23 III. AJS enters voluntarily into this agreement with the Commission.

24 IV. The pertinent facts in this matter are as follows:

¹ *CREIV v. FEC*, 209 F. Supp. 3d 77 (D.D.C. 2016); see also *CREIV v. FEC*, 299 F. Supp. 3d 83 (D.D.C. 2018).

Applicable Law

1
2 1. The Federal Election Campaign Act of 1971, as amended, defines a
3 "political committee" as "any committee, club, association or other group of persons which
4 receives contributions aggregating in excess of \$1,000 during a calendar year or which makes
5 expenditures aggregating in excess of \$1,000 during a calendar year." 52 U.S.C. § 30101(4)(A).

6 2. A "contribution" includes any gift, loan, advance, or deposit of money or
7 anything of value made by any person for the purpose of influencing a federal election.
8 52 U.S.C. § 30101(8)(A)(i).

9 3. An "expenditure" includes any purchase, payment, distribution, loan,
10 advance, deposit, or gift of money or anything of value, made by any person for the purpose of
11 influencing a federal election. 52 U.S.C. § 30101(9)(A)(i).

12 4. An independent expenditure means an expenditure by any person that
13 expressly advocates the election or defeat of a clearly identified federal candidate and that is not
14 made in concert or cooperation with or at the request or suggestion of such candidate, the
15 candidate's authorized political committee, or their agents, or a political party committee or its
16 agents. 52 U.S.C. § 30101(17).

17 5. An electioneering communication is a broadcast, cable, or satellite
18 communication that: (1) refers to a clearly identified federal candidate; (2) is made within 60
19 days before a general election or 30 days before a primary election; and (3) is targeted to the
20 relevant electorate. 52 U.S.C. § 30104(f)(3)(A)(i); 11 C.F.R. § 100.29(a). A communication is
21 "targeted to the relevant electorate" when it can be received by 50,000 or more persons in the
22 district the candidate seeks to represent. 11 C.F.R. § 100.29(b)(5).

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1 11. In 2008 AJS aired its first electioneering communications, a year after the
2 Supreme Court invalidated the corporate and union ban on electioneering communications in
3 *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007).

4 12. Shortly after the Supreme Court's decision in *Citizens United v. FEC*, 558
5 U.S. 310 (2010), which invalidated the ban on corporate and union funding of communications
6 that contain express advocacy, AJS aired its first independent expenditures, totaling \$4.9 million
7 in 2010. Thus, AJS crossed the statutory threshold for becoming a political committee by 2010.

8 13. Also in 2010, AJS ran numerous electioneering communications,
9 including: "Agree," "Thank You," "Back to Work," "Outsource," "Brink," "Earmarks," "Talk is
10 Cheap," "Pennsylvania Jobs," "Instrumental," and "Ants." Under the court's ruling, each of
11 these ads "contribut[e] to a 'major purpose' of nominating or electing a candidate for federal
12 office."⁷

13 14. Between November 1, 2009 and October 31, 2010, AJS raised and spent
14 roughly \$12.4 million. Of this amount, AJS reported spending roughly \$4.9 million on
15 independent expenditures and \$4.5 million on electioneering communications—a clear majority
16 of its overall spending related to the 2010 election.

17 15. Based on the proportion of AJS's federal campaign spending compared to
18 its total spending as set forth in paragraph 14, AJS's major purpose was the nomination or
19 election of federal candidates.

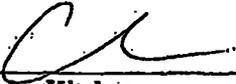
20 16. Accordingly, AJS was required to register and report as a political
21 committee in 2010 and until it terminated.

22 17. AJS contends that it ceased all federal election activity by 2013.

⁷ *CREW v. FEC*, 299 F. Supp. 3d at 101.

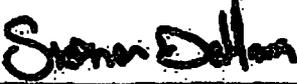
1 FOR THE COMMISSION:

2 Lisa J. Stevenson
3 Acting General Counsel
4

5 BY: 
6 Charles Kitcher
7 Acting Associate General Counsel
8 for Enforcement
9

9/9/19
Date

10 FOR THE RESPONDENT:

11 
12 Stephen DeMaura
13 Americans for Job Security

8/28/19
Date

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

MUR: 6538R

RESPONDENT: Americans for Job Security and Stephen DeMaura in his official capacity
as treasurer

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I. INTRODUCTION

This matter was generated by a complaint filed by Citizens for Responsibility and Ethics in Washington and Melanie Sloan.¹ The complaint alleges that Americans for Job Security (“AJS”) violated the Federal Election Campaign Act of 1971, as amended, (the “Act”) by failing to organize, register, and report as a political committee.

The Commission originally considered the complaint in MUR 6538 (Americans for Job Security), but there was an insufficient number of votes to find reason to believe that AJS violated 52 U.S.C. §§ 30102 (“Organization of political committees”), 30103 (“Registration of political committees”), and 30104 (“Reporting requirements”).² Accordingly, the Commission closed its file in MUR 6538. The Commission’s decision was challenged in *CREW v. FEC, et al.*, No. 1:14-cv-01419. On September 19, 2016, the U.S. District Court for the District of Columbia held that the dismissal was contrary to law, and remanded the case to the Commission for proceedings consistent with that Opinion.³ Pursuant to the court’s remand, this matter was reopened and numbered MUR 6538R.

¹ See 52 U.S.C. § 30109(a)(1).

² See Certification, MUR 6538 (Americans for Job Security) (June 27, 2014), available at <http://eqs.fec.gov/eqsdocsMUR/14044361730.pdf>.

³ *CREW v. FEC*, 2016 WL 5107018 (D.D.C. September 19, 2016) (“*CREW v. FEC*”).

1 As discussed below, consistent with the Court's instructions, the Commission finds
2 reason to believe that Americans for Job Security violated 52 U.S.C. §§ 30102, 30103, and
3 30104 by failing to organize, register, and report as a political committee.

4 **II. FACTUAL AND LEGAL ANALYSIS**

5
6 **A. Facts**

7 **1. AJS**

8 Americans for Job Security, a tax-exempt entity organized under section 501(c)(6) of the
9 Internal Revenue Code, was founded in 1997.⁴ Stephen DeMaura is the President and
10 Treasurer.⁵ AJS describes itself as an "independent, bi-partisan, pro-business issue advocacy
11 organization" whose chief goal is "educating the public on issues of importance to businesses
12 and encouraging a strong job-creating economy that promotes a pro-growth agenda."⁶ Its articles
13 of incorporation state that it is incorporated for the purpose of uniting "in a common organization
14 businesses, business leaders, entrepreneurs, and associations of businesses" and to "promote the
15 common business interests of its members . . . by helping the American public to better
16 understand public policy issues of interest to business."⁷ According to its tax return, "the
17 organization promotes governmental policy that reflects economic issues of the workplace" by
18 "educating the public through television, radio, and newspaper and direct mail advertising . . ."⁸

⁴ Compl. at 3; Resp. at 2-3. The administrative complaint, responses, vote certifications and other documents related to MUR 6538 are publicly available at <http://eqs.fec.gov/eqs/searcheqs.jsessionid=DB4F18785BEEF61E76AF65FCD107CE2C?SUBMIT=continue>.

⁵ Compl. at 3.

⁶ Resp. at 3; see <https://web.archive.org/web/20091113131843/http://www.savejobs.org/aboutajs.php>. The organization's website appears to no longer be active.

⁷ Resp. at 11.

⁸ Form 990, Return of Organization Exempt from Income Tax (2009) at 2, available at <http://eqs.fec.gov/eqsdocsMUR/14044360317.pdf>.

1 2. AJS's Activities

2 AJS states that it received approximately \$54 million in membership dues and
3 assessments and spent approximately \$51 million on its activities and communications between
4 its establishment in 1997 and 2012.⁹ AJS cites several examples of its “economic issue advocacy
5 communications and activities” from 2004 through 2006, including communications about the
6 “death tax” and the establishment of an asbestos trust fund.¹⁰ After the Supreme Court lifted the
7 prohibition on certain corporate “electioneering communications”¹¹ in *FEC v. Wisconsin Right to*
8 *Life, Inc. (“WRTL II”)*,¹² AJS began making electioneering communications. In 2008, the first
9 election following the Court’s decision, AJS reported spending \$10,322,302 on forty-three
10 electioneering communications. In 2010, the Supreme Court in *Citizens United v. FEC*¹³ struck
11 down the Act’s prohibition on corporate independent expenditures and the remaining prohibition
12 on corporate and union funding of electioneering communications. Following *Citizens United v.*
13 *FEC*, AJS reported making independent expenditures totaling \$4,908,847¹⁴ and electioneering
14 communications totaling \$4,556,518¹⁵ in the months leading up to the 2010 election. According

⁹ Resp., Attach. 1. ¶ 3.

¹⁰ *Id.* at 3-4. AJS’s activities between 2000 and 2006 were the subject of MURs 5910 and 5694. The Commission failed to find that there was reason to believe that AJS was a political committee or that its advertisements contained express advocacy, on a 3-3 vote.

¹¹ An “electioneering communication” is “any broadcast, cable, or satellite communication which — (I) refers to a clearly identified candidate for federal office; (II) is made within [30 or 60 days of certain elections]; and (III) in the case of a communication which refers to a candidate for an office other than President and Vice President, is targeted to the relevant electorate.” 52 U.S.C. § 30104(f)(3)(A).

¹² 551 U.S. 449 (2007).

¹³ 130 S. Ct. 876 (2010).

¹⁴ AJS October 2010 Quarterly Report at 1 (amended Jan. 13, 2017), available at <http://docquery.fec.gov/pdf/551/201701139041387551/201701139041387551.pdf>; 2010 Year End Report at 1, available at <http://docquery.fec.gov/pdf/422/11930290422/11930290422.pdf>.

¹⁵ See *infra* notes 65-74.

1 to its tax return, AJS received \$12,411,684 and spent \$12,417,809 between November 1, 2009,
2 and October 31, 2010.¹⁶

3 AJS describes its issue advocacy campaigns as “particularly active during campaign
4 season” because “campaign season is when the majority of Americans are debating and focused
5 on public policy.”¹⁷ AJS lists several “issues of the day” that it attempts to influence: reducing
6 taxes; tort reform; free markets and free trade; transportation; education reform; health care
7 reform and modernization; and energy.¹⁸

8 **B. Analysis**

9
10 1. The Test for Political Committee Status

11 The Act and Commission regulations define a “political committee” as “any committee,
12 club, association or other group of persons which receives contributions aggregating in excess of
13 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000
14 during a calendar year.”¹⁹ In *Buckley v. Valeo*,²⁰ the Supreme Court held that defining political
15 committee status “only in terms of the annual amount of ‘contributions’ and ‘expenditures’”
16 might be overbroad, reaching “groups engaged purely in issue discussion.”²¹ To cure that
17 infirmity, the Court concluded that the term “political committee” “need only encompass
18 organizations that are under the control of a candidate or the *major purpose of which is the*

¹⁶ Form 990, Return of Organization Exempt from Income Tax (2009) at 1.

¹⁷ <https://web.archive.org/web/20091113131843/http://www.savejobs.org/aboutajs.php> (“In addition, since the media and public officials only focus on media markets where there are hotly contested political campaigns, we select the media markets we advertise in accordingly.”).

¹⁸ <https://web.archive.org/web/20091114124504/http://www.savejobs.org/issues.php>.

¹⁹ 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

²⁰ 424 U.S. 1 (1976).

²¹ *Id.* at 79.

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1 nomination or election of a candidate.”²² Accordingly, under the statute as thus construed, an
2 organization that is not controlled by a candidate must register as a political committee only if
3 (1) it crosses the \$1,000 threshold and (2) it has as its “major purpose” the nomination or election
4 of federal candidates.

5 a. The Commission’s Case-By-Case Approach to Major Purpose

6 Although *Buckley* established the major purpose test, it provided no guidance as to the
7 proper approach to determine an organization’s major purpose.²³ In *Massachusetts Citizens for*
8 *Life v. FEC* (“*MCFL*”),²⁴ the Supreme Court identified an organization’s independent spending
9 as a relevant factor in determining an organization’s major purpose.²⁵

10 Following *Buckley*, the Commission adopted a policy of determining on a case-by-case
11 basis whether an organization is a political committee, including whether its major purpose is the
12 nomination or election of federal candidates.²⁶ The Commission has since periodically
13 considered proposed rulemakings to craft a bright-line rule regarding the major purpose test;
14 however, the Commission consistently has declined to do so.²⁷

²² *Id.* (emphasis added).

²³ *See, e.g., Real Truth About Abortion, Inc. v. FEC* (formerly *Real Truth About Obama v. FEC*), 681 F.3d 544, 556 (4th Cir. 2012), *cert. denied*, 81 U.S.L.W. 3127 (U.S. Jan. 7, 2013) (No. 12-311) (“*RTAA*”).

²⁴ 479 U.S. 241, 249, 263 (1986) (“*MCFL*”).

²⁵ *Id.* at 249, 262.

²⁶ Political Committee Status, 72 Fed. Reg. 5,596 (Feb. 7, 2007) (Supplemental Explanation and Justification) (“Supplemental E&J”).

²⁷ *See, e.g., Independent Expenditures; Corporate and Labor Organization Expenditures*, 57 Fed. Reg. 33,548, 33,558-59 (July 29, 1992) (Notice of Proposed Rulemaking); *Definition of Political Committee*, 66 Fed. Reg. 13,681, 13,685-86 (Mar. 7, 2001) (Advance Notice of Proposed Rulemaking); *see also* Summary of Comments and Possible Options on the Advance Notice of Proposed Rulemaking on the Definition of “Political Committee,” Certification (Sept. 27, 2001) (voting 6-0 to hold proposed rulemaking in abeyance).

1 In 2004, for example, the Commission issued a notice of proposed rulemaking asking
2 whether the agency should adopt a regulatory definition of “political committee.”²⁸ The
3 Commission declined to adopt a bright-line rule, noting that it had been applying the major
4 purpose test “for many years without additional regulatory definitions,” and concluded that “it
5 will continue to do so in the future.”²⁹

6 b. Challenges to the Commission’s Major Purpose Test and the
7 Supplemental E&J
8

9 When the Commission’s decision in the 2004 rulemaking not to adopt a regulatory
10 definition was challenged in litigation, the district court in *Shays v. FEC* rejected plaintiffs’
11 request that the Commission initiate a new rulemaking.³⁰ The court found, however, that the
12 Commission had “failed to present a reasoned explanation for its decision” to engage in case-by-
13 case decision-making, rather than rulemaking, and remanded the case to the Commission to
14 explain its decision.³¹

15 Responding to the remand, the Commission issued a Supplemental E&J to further
16 elaborate on its 2004 decision to apply a case-by-case approach and to provide the public with
17 additional guidance as to its process for determining political committee status.³² The
18 Supplemental E&J explained that “the major purpose doctrine requires fact-intensive analysis of

²⁸ See Political Committee Status, 69 Fed. Reg. 11,736, 11,745-49 (Mar. 11, 2004) (Notice of Proposed Rulemaking).

²⁹ See Final Rules on Political Committee Status, Definition of Contribution, and Allocation for Separate Segregated Funds and Nonconnected Committees, 69 Fed. Reg. 68,056, 68,064-65 (Nov. 23, 2004).

³⁰ *Shays v. FEC*, 424 F. Supp. 2d 100, 117 (D.D.C. 2006) (“*Shays I*”).

³¹ *Id.* at 116-17.

³² Supplemental E&J, 72 Fed. Reg. 5595.

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1 a group's campaign activities compared to its activities unrelated to campaigns."³³ The
2 Commission stated that the determination of an organization's major purpose "requires the
3 flexibility of a case-by-case analysis of an organization's conduct that is incompatible with a
4 one-size fits-all rule," and that "any list of factors developed by the Commission would not likely
5 be exhaustive in any event, as evidenced by the multitude of fact patterns at issue in the
6 Commission's enforcement actions considering the political committee status of various
7 entities."

8 To determine an entity's "major purpose," the Commission explained that it considers a
9 group's "overall conduct," including public statements about its mission, organizational
10 documents, government filings (e.g., IRS notices), the proportion of spending related to "Federal
11 campaign activity (i.e., the nomination or election of a Federal candidate)," and the extent to
12 which fundraising solicitations indicate funds raised will be used to support or oppose specific
13 candidates.³⁴ The Commission stated in the Supplemental E&J that it compares how much of an
14 organization's spending is for "*federal campaign activity*" relative to "activities that [a]re not
15 campaign related."³⁵

16 After the Commission issued the Supplemental E&J, the *Shays I* plaintiffs again
17 challenged, under the Administrative Procedure Act,³⁶ the Commission's case-by-case approach
18 to political committee status. In *Shays II*, the district court rejected the challenge, upholding the

³³ *Id.* at 5601-02.

³⁴ *Id.* at 5597, 5605.

³⁵ *Id.* at 5601, 5605 (emphasis added).

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1 Commission's case-by-case approach as an appropriate exercise of the agency's discretion.³⁷

2 The court recognized that "an organization . . . may engage in many non-electoral activities so
3 that determining its major purpose requires a very close examination of various activities and
4 statements."³⁸

5 In 2012, in *Real Truth About Abortion, Inc. v. FEC*, the Fourth Circuit rejected a
6 constitutional challenge to the Commission's case-by-case determination of major purpose.³⁹

7 The court upheld the Commission's approach, holding that *Buckley* "did not mandate a particular
8 methodology for determining an organization's major purpose," and therefore the Commission
9 was free to make that determination "either through categorical rules or through individualized
10 adjudications."⁴⁰ The court concluded that the Commission's case-by-case approach was
11 "sensible, . . . consistent with Supreme Court precedent and does not unlawfully deter protected
12 speech."⁴¹ The Fourth Circuit concluded that the Supplemental E&J provides "ample guidance
13 as to the criteria the Commission might consider" in determining an organization's political
14 committee status and therefore is not unconstitutionally vague.⁴²

15 The Commission's application of the major purpose test was recently considered in
16 *CREW v. FEC*, following the Commission's dismissal of allegations in MUR 6538 that two
17 organizations, including AJS, were required to register and report as political committees. The

³⁷ *Shays v. FEC*, 511 F. Supp. 2d 19, 24 (D.D.C. 2007) ("*Shays II*").

³⁸ *Id.* at 31.

³⁹ *RTAA*, 681 F.3d 544.

⁴⁰ *Id.* at 556.

⁴¹ *Id.* at 558.

⁴² *Id.*; see also *Free Speech v. FEC*, 720 F.3d 788 (10th Cir. 2013) (quoting *RTAA* and upholding Commission's case-by-case method of determining political committee status), *cert. denied*, 572 U.S. ___ (2014).

1 Court held that the dismissal was contrary to law, finding that the controlling Commissioners'
2 statement of reasons adopted erroneous standards for determining (1) which spending indicates
3 the "major purpose" of nominating or electing a candidate, and (2) the relevant time period for
4 evaluating a group's spending. The Court instructed the Commission, when examining the
5 organization's major purpose, to look beyond express advocacy and consider whether the other
6 communications at issue indicate a "campaign-related purpose."⁴³ The Court also held that the
7 Commission's analysis of the relevant time period for evaluating a group's spending must retain
8 the flexibility to account for changes in an organization's major purpose over time.⁴⁴

9 c. Organizational and Reporting Requirements for Political
10 Committees

11
12 Political committees — commonly known as "PACs" — must comply with certain
13 organizational and reporting requirements set forth in the Act. PACs must register with the
14 Commission, file periodic reports for disclosure to the public, appoint a treasurer who maintains
15 its records, and identify themselves through "disclaimers" on all of their political advertising, on
16 their websites, and in mass e-mails.⁴⁵

17 In the wake of the Supreme Court's decision in *Citizens United v. FEC*,⁴⁶ which struck
18 down the Act's prohibitions on corporate independent expenditures and electioneering
19 communications, the D.C. Circuit held in *SpeechNow.org v. FEC* that political committees that

⁴³ *CREW v. FEC* at 11.

⁴⁴ *Id.* at 25 (citing *MCFL*, 479 U.S. at 262 ("recognizing that a group's 'spending [may] become so extensive that the organization's major purpose may be regarded as campaign activity [such that] the corporation would be classified as a political committee.' (emphasis added)")).

⁴⁵ See 52 U.S.C. §§ 30102-30104; 11 C.F.R. §110.11(a)(1).

⁴⁶ 130 S. Ct. 876 (2010).

1 engage only in independent expenditures are not subject to contribution limits.⁴⁷ These political
2 committees, often referred to as independent expenditure-only political committees or Super
3 PACs, continue to be subject, however, to the reporting requirements of 2 U.S.C. §§ 432, 433,
4 and 434(a) [now 52 U.S.C. §§ 30102, 30103, and 30104(a)], and the organizational requirements
5 of 2 U.S.C. §§ 431(4) and 431(8) [now 52 U.S.C. §§ 30101(4) and 30101(8)]. The district court
6 in *CREW v. FEC* concluded that “the majority of circuits have concluded that . . . disclosure
7 requirements [related to registration and reporting] are not unduly burdensome.”⁴⁸

8 2. Application of the Test for Political Committee Status to AJS

9 a. Statutory Threshold

10
11 To assess whether an organization has made an “expenditure,” the Commission analyzes
12 whether spending on any of an organization’s communications made independently of a
13 candidate constitute express advocacy under 11 C.F.R. § 100.22.⁴⁹ In 2010, AJS made more
14 than \$4.9 million in independent expenditures.⁵⁰ Thus, AJS far exceeded the \$1,000 statutory
15 threshold for political committee status.⁵¹

16 b. Major Purpose

17
18 AJS states in its response to the complaint in MUR 6538, on its website, and in its tax
19 returns that its major purpose is not to engage in federal campaign activity but rather to advocate

⁴⁷ 599 F.3d 686, 696 (D.C. Cir. 2010).

⁴⁸ See *CREW v. FEC* at 10 (quoting *Yamada v. Snipes*, 786 F.3d 1182, 1195 (9th Cir.), cert. denied sub nom., *Yamada v. Shoda*, 136 S. Ct. 569 (2015)).

⁴⁹ See Supplemental E&J at 5606.

⁵⁰ See *supra* at 3.

⁵¹ See 52 U.S.C. § 30101 (4)(A); 11 C.F.R. § 100.5.

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1 issues and educate the public.⁵² The Commission noted in the Supplemental E&J that it may
2 consider such statements made by an organization in its analysis of an organization's major
3 purpose,⁵³ but that such statements are not necessarily dispositive.⁵⁴ Under the Commission's
4 case-by-case approach, the Commission considers the organization's "overall conduct,"
5 including its disbursements, activities, and statements.⁵⁵ In this case, AJS's proportion of
6 spending related to federal campaign activity compared to its total spending is alone sufficient to
7 indicate that its major purpose had become the nomination or election of federal candidates.

8 AJS reported spending approximately \$4,908,847 on independent expenditures during the
9 2010 election cycle, spending which clearly indicates a purpose to elect or nominate federal
10 candidates. As noted, AJS reported making electioneering communications totaling \$4,556,518.
11 In *CREW v. FEC*, the Court instructed the Commission to consider not only independent
12 spending on express advocacy but also spending on electioneering communications that indicate
13 a "campaign-related purpose" when determining whether an organization's major purpose is the
14 nomination or election of federal candidates.⁵⁶ Thus, following the Court's instruction in *FEC v.*
15 *CREW*, and pursuant to the Commission's case-by-case, fact intensive approach to evaluating
16 political committee status and major purpose, the Commission has determined that AJS ran

⁵² Resp. at 1, 11; <https://web.archive.org/web/20091113131843/http://www.savejobs.org/aboutajs.php> ; Form 990, Return of Organization Exempt from Income Tax (2009) at 1, 2.

⁵³ Supplemental E&J at 5606.

⁵⁴ See *Real Truth About Obama v. FEC*, No. 3:08-cv-00483, 2008 WL 4416282, at *14 (E.D. Va. Sept. 24, 2008) ("A declaration by the organization that they are *not* incorporated for an electioneering purpose is not dispositive.") (emphasis in original), *aff'd*, 575 F.3d 342 (4th Cir. 2009), *vacated on other grounds*, 130 S. Ct. 2371 (2010), *remanded and decided*, 796 F. Supp. 2d 736, *affirmed sub nom. Real Truth About Abortion v. FEC*, 681 F.3d 544 (4th Cir. 2012), *cert. denied*, 81 U.S.L.W. 3127 (U.S. Jan. 7, 2013) (No. 12-311).

⁵⁵ Supplemental E&J at 5597.

⁵⁶ *CREW v. FEC* at 11.

1 electioneering communications during the period leading up to the 2010 election that, though not
2 necessarily express advocacy, support a conclusion that there is reason to believe that the group's
3 major purpose is the nomination or election of federal candidates.⁵⁷

4 Consider, for example, "Agree," "Back to Work," and "Pennsylvania Jobs":

5 **Agree⁵⁸**

6 Behind closed doors, Washington decides the future of our health care. With no
7 transparency or accountability, they're slashing Medicare and raising taxes, and
8 only listening to the special interests. One Massachusetts leader says, "Slow
9 down. Get health care right." Scott Brown says, "Protect Medicare. Don't raise
10 taxes. Listen to the people, not the lobbyists." Call Scott Brown and tell him you
11 agree. Washington should listen to us on health care for a change.

12 **Back to Work⁵⁹**

13 Washington is a cesspool filled with political insiders who think more
14 government is the solution. Not Ken Buck. Ken Buck stands up to the insiders in
15 both parties. Ken Buck's conservative plan to get Colorado back to work: No to
16 bailouts. No to debt. No to big government spending. Yes to low taxes for job
17 creation that helps families. Call Ken Buck. Tell him to keep fighting for smaller
18 government and policies that support taxpayers.

19 **Pennsylvania Jobs⁶⁰**

20 Washington politicians are on a spending spree. Bigger government. Earmarks.
21 Bailouts and debt have pushed our country to the brink. Pennsylvania needs
22 relief. Barack Obama and Washington politicians don't get it. They want higher
23 taxes and bigger government. Pat Toomey has a commonsense plan to get
24 Pennsylvania back to work. Cut the red tape, so Pennsylvania small businesses
25 are free to create jobs. Cut the spending. No more earmarks and no more

⁵⁷ While the Commission analyzes several of AJS's ads, the scripts for all ads before the Commission, as well as the amounts that AJS spent on each ad, are included in an appendix.

⁵⁸ AJS spent \$479,268 on this advertisement. http://docquery.fec.gov/cgi-bin/fecimg/?_10930863308+0.

⁵⁹ AJS spent \$143,300, \$171,700, and \$126,496 on this advertisement. http://docquery.fec.gov/cgi-bin/fecimg/?_10930858544+0; http://docquery.fec.gov/cgi-bin/fecimg/?_10930863356+0; http://docquery.fec.gov/cgi-bin/fecimg/?_10930869654+0.

⁶⁰ The transcript for this advertisement is attached to the AJS Response as "Complaint Communication #33." AJS spent \$72,100 on this advertisement. http://docquery.fec.gov/cgi-bin/fecimg/?_10991128553+0.

1 bailouts. Toomey wants to end deficit spending — and return money to families
2 and job creators. The Toomey plan: getting Pennsylvania working again. As a
3 small businessman Toomey created jobs and knows what it takes to make a
4 payroll. Pat Toomey: fiscal discipline, lower taxes, and common sense economic
5 policies. Call Pat Toomey at 434-809-7994 and tell him you support his common
6 sense plan to get Pennsylvania back to work.

7 None of these ads expressly refers to candidacies or elections. However, “Back to Work”
8 refers to “political insiders” and “insiders in both parties,” and “Pennsylvania Jobs” refers to
9 “Washington politicians.” Each ad favorably contrasts the identified candidate’s background or
10 positions against activity conducted in Washington. None of the individuals identified in these
11 ads was a federal officeholder when the ads ran and thus was in no position to affect the federal
12 political activities, issues, or programs mentioned in the ads. Statements in these ads
13 encouraging the individuals to maintain their positions on the identified issues have no nexus
14 with the legislative process. More to the point, Buck and Toomey were in no position to
15 implement either of their plans unless they were elected, and Brown’s position on federal health
16 care policy would likely be of minimal significance to legislative activities in Washington unless
17 Brown were first elected to the Senate. Therefore, “Agree,” “Back to Work,” and “Pennsylvania
18 Jobs” are indicative of a major purpose to nominate or elect a federal candidate.

19 Another ad, “Talk is Cheap,”⁶¹ offers criticism rather than praise of a subject candidate:

20 Liberal politicians will say anything, but talk is cheap. Take Jane Norton.
21 [Norton clip] “The federal government is overspending, it’s overtaxing, it’s
22 overregulating....” Wait, what’s the real Norton record? Norton pushed the
23 largest tax hike in Colorado history. As a regulator, she managed a multimillion
24 dollar surge in government spending. Yep, talk is cheap, but Jane Norton’s real
25 record has cost us plenty. Tell Jane Norton: no more high taxes and spending.

26 “Talk is Cheap” does not expressly mention candidacies or elections, though it identifies Norton
27 as a “[l]iberal politician[.]” and includes an image of Senator Michael Bennet, whom Norton

⁶¹ AJS spent \$585,800 on this advertisement. http://docquery.fec.gov/cgi-bin/fecimg/?_10931075321+0.

1 would have faced in the general election had she won the primary. The ad criticizes Norton for
2 decisions (presumably) made during her term as Colorado's Lieutenant Governor, by stating that
3 her decisions have "cost [Coloradoans] plenty." The ad also suggests that Norton's record is
4 inconsistent with her public statements on those same issues. Norton, however, was not an
5 officeholder at the state or federal level when the ad ran and in no position to affect the federal
6 political activities, issues, or programs mentioned in the ads. Thus, the call to action — to "[t]ell
7 Jane Norton: no more high taxes and spending" — has no nexus with the legislative process.
8 Therefore, "Talk is Cheap" is indicative of a major purpose to nominate or elect a federal
9 candidate.

10 Turning to the relevant time period for evaluating AJS' spending, AJS argues that its
11 independent expenditures represent "a very minor portion" of its overall activities since its
12 founding in 1997.⁶² In *CREW v. FEC*, the Court ruled that the Commission's analysis of the
13 relevant time period for evaluating a group's spending must be flexible to account for changes in
14 an organization's major purpose over time.⁶³

15 AJS spent no money on electioneering communications prior to the Supreme Court's
16 decision in *WRTL II*, then shifted its activities towards electioneering communications leading up
17 to the 2008 election. After the Supreme Court struck the prohibition on corporate independent
18 expenditures in *Citizens United v. FEC*, AJS allocated more of its resources to campaign-related
19 spending. Consistent with the Court's instructions, the Commission must consider AJS's
20 election-related spending in 2010 as evidence that the organization's major purpose might have
21 changed. Absent detailed information about AJS's spending and activities in subsequent years,

⁶² Resp. at 2, 5.

⁶³ *Id.* at 11-12.

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1 the record evidence of AJS's spending in 2010 provides reason to believe that AJS's major
2 purpose had become the nomination or election of federal candidates.

3 In sum, for roughly a year before the 2010 election, AJS spent a total of \$12,417,809.
4 More than half of this amount was for independent expenditures (\$4,908,847) and the
5 electioneering communications analyzed above (\$1,578,664). The Commission has never set a
6 threshold on the proportion of spending on major purpose activities required for political
7 committee status and declines to do so now. Without determining whether it is *necessary* to
8 cross a 50 percent threshold to determine an organization's major purpose, it is *sufficient* in this
9 case, based on the available information, to find reason to believe that AJS's major purpose had
10 become the nomination or election of federal candidates.⁶⁴

11 **C. Conclusion**

12 Because AJS made over \$1,000 in expenditures during calendar year 2010, and the
13 available information indicates that its major purpose had become the nomination or election of
14 federal candidates, the Commission finds reason to believe that AJS violated 52 U.S.C.
15 §§ 30102, 30103, and 30104 by failing to organize, register, and report as a political committee.

⁶⁴ Since (as shown above) AJS spent a sufficient proportion of its funds on both express advocacy communications and electioneering communications indicating a "campaign-related purpose" to justify a reason-to-believe finding, it is not necessary to analyze each ad.

Appendix

i. Agree⁶⁵

Behind closed doors, Washington decides the future of our health care. With no transparency or accountability, they're slashing Medicare and raising taxes, and only listening to the special interests. One Massachusetts leader says, "Slow down. Get health care right." Scott Brown says, "Protect Medicare. Don't raise taxes. Listen to the people, not the lobbyists." Call Scott Brown and tell him you agree. Washington should listen to us on health care for a change.

ii. Thank You⁶⁶

[Traditional Indian music is playing. There is a person of apparent south Asian descent, dressed in traditional garb and standing in front of stock footage of an Indian market.]

Person: "Thank you, Bill Halter. Thank you!"

[Screen shows an image of Bill Halter and the text: "Bill Halter off-shored American jobs to Bangalore, India while our economy struggled."]

Narrator: "While millionaire Bill Halter was a highly-paid director of a U.S. company, they exported American jobs to Bangalore, India."

[Person #2, also of apparent south Asian descent, appears in front of stock footage of an Indian family.]

Person #2: "Bangalore needs many, many jobs. Thank you, Bill Halter."

[Screen shows an image of Bill Halter and the text: "Support job creation here. Don't send jobs overseas."]

Narrator: "With almost 65,000 Arkansans out of work, we need jobs, too."

[Person #3, also of apparent south Asian descent, appears in front of stock footage of a street in India.]

Person #3: "Thank you. Thank you, Bill Halter."

[Screen shows an image of Bill Halter and the text: "While American families struggle, Bangalore says, 'Thanks Bill Halter.'"]

Narrator: "Bangalore says, 'Thanks, Bill Halter.' Arkansas, tell Bill Halter, 'Thanks for nothing.'"

⁶⁵ AJS spent \$479,268 on this advertisement. http://docquery.fec.gov/cgi-bin/fecimg/?_10930863308+0.

⁶⁶ AJS spent \$913,096 on this advertisement. http://docquery.fec.gov/cgi-bin/fecimg/?_10030321386+0.

1 iii. Outsource⁶⁷

2
3 Arkansas families are struggling. Thousands out of work. Politicians? They say
4 one thing and do another. Bill Halter says he has never outsourced American
5 jobs. [Picture of Halter and text: "Not a single one of those companies has
6 moved jobs overseas."] But the facts say when he was a highly-paid corporate
7 director, his company outsourced jobs to India. Those jobs could have boosted a
8 community here in Arkansas, but all they boosted was Bill Halter's company's
9 bottom line. Call Bill Halter. Tell him to support job creation here in America.

10
11 iv. Back to Work⁶⁸

12
13 Washington is a cesspool filled with political insiders who think more
14 government is the solution. Not Ken Buck. Ken Buck stands up to the insiders in
15 both parties. Ken Buck's conservative plan to get Colorado back to work: No to
16 bailouts. No to debt. No to big government spending. Yes to low taxes for job
17 creation that helps families. Call Ken Buck. Tell him to keep fighting for smaller
18 government and policies that support taxpayers.

19
20 v. Brink⁶⁹

21
22 Our country is at the brink. Colorado families and workers need relief. Yet Jane
23 Norton supported the largest tax hike in Colorado history, costing us billions.
24 And Jane Norton's record on government spending? The state bureaucracy she
25 managed grew by \$43 million in just three years. Record taxes and reckless
26 spending has cost Colorado jobs. Call Jane Norton. Tell her no more tax hikes
27 and big government spending.

28
29 vi. Earmarks⁷⁰

30
31 Reckless spending, earmarks, debt, bankrupting our country. Politicians and
32 insiders are at the trough. Take Billy Long, who says he's against earmarks. But
33 while on the airport board of directors, he voted to use more than \$3 million in
34 Congressional earmarks for a brand new bus terminal — a terminal that now sits

⁶⁷ AJS spent \$490,000 on this advertisement. http://docquery.fec.gov/cgi-bin/fecimg/?_10930863250+0.

⁶⁸ AJS spent \$143,300, \$171,700, and \$126,496 on this advertisement. http://docquery.fec.gov/cgi-bin/fecimg/?_10930858544+0; http://docquery.fec.gov/cgi-bin/fecimg/?_10930863356+0; http://docquery.fec.gov/cgi-bin/fecimg/?_10930869654+0.

⁶⁹ AJS spent \$318,874 and \$175,956 on this advertisement. http://docquery.fec.gov/cgi-bin/fecimg/?_10930941615+0; http://docquery.fec.gov/cgi-bin/fecimg/?_10991002213+0.

⁷⁰ AJS spent \$45,100 on this advertisement. http://docquery.fec.gov/cgi-bin/fecimg/?_10931073407+0.

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1 empty. The Billy Long bus terminal to nowhere. Call Billy Long and tell him
2 you're sick of earmarks and bus terminals to nowhere.

3
4 vii. Talk is Cheap⁷¹

5
6 Liberal politicians will say anything, but talk is cheap. Take Jane Norton.
7 [Norton clip] "The federal government is overspending, it's overtaxing, it's
8 overregulating..." Wait, what's the real Norton record? Norton pushed the
9 largest tax hike in Colorado history. As a regulator, she managed a multimillion
10 dollar surge in government spending. Yep, talk is cheap, but Jane Norton's real
11 record has cost us plenty. Tell Jane Norton: no more high taxes and spending.

12
13 viii. Pennsylvania Jobs⁷²

14
15 Washington politicians are on a spending spree. Bigger government. Earmarks.
16 Bailouts and debt have pushed our country to the brink. Pennsylvania needs
17 relief. Barack Obama and Washington politicians don't get it. They want higher
18 taxes and bigger government. Pat Toomey has a commonsense plan to get
19 Pennsylvania back to work. Cut the red tape, so Pennsylvania small businesses
20 are free to create jobs. Cut the spending. No more earmarks and no more
21 bailouts. Toomey wants to end deficit spending — and return money to families
22 and job creators. The Toomey plan: getting Pennsylvania working again. As a
23 small businessman Toomey created jobs and knows what it takes to make a
24 payroll. Pat Toomey: fiscal discipline, lower taxes, and common sense economic
25 policies. Call Pat Toomey at 434-809-7994 and tell him you support his common
26 sense plan to get Pennsylvania back to work.

27
28 ix. Instrumental⁷³

29
30 The economy's in a tailspin. Unemployment on the rise. And they just continue
31 the spending, taxing, and bailouts. Harry Teague was instrumental in passing a
32 job-killing cap-and-trade bill. Teague's tax would mean higher electric rates for
33 families, higher gas prices, and cost us up to 12,000 jobs in New Mexico. Tell
34 Harry Teague to stop his reckless spending, bailouts, and job-killing taxes.
35

⁷¹ "Talk is Cheap" is available at <https://www.youtube.com/watch?v=BF-4Bz9wRwE>. AJS spent \$585,800 on this advertisement. http://docquery.fec.gov/cgi-bin/fecimg/?_10931075321+0.

⁷² The transcript for this advertisement is attached to the AJS Response as "Complaint Communication #33." AJS spent \$72,100 on this advertisement. http://docquery.fec.gov/cgi-bin/fecimg/?_10991128553+0.

⁷³ AJS spent \$54,572 on this advertisement. http://docquery.fec.gov/cgi-bin/fecimg/?_10030421366+0.

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x. Ants⁷⁴

1
2
3 Have you heard about how Joe Manchin supported the Obama stimulus, then
4 wasted money on turtle tunnels, ant research and cocaine for monkeys? But that's
5 not their only waste. Their stimulus wasted money on studying the atmosphere of
6 Neptune, hunting for dinosaur eggs in China, and even the International
7 Accordion Festival. We asked for jobs. What we got was waste. Really. Tell
8 Obama and Manchin not to stimulate us anymore.
9

⁷⁴ AJS spent \$980,256 on this advertisement. http://docquery.fec.gov/cgi-bin/fecimg/?_10931695957+0.

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