



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

SEP 09 2019

**VIA ELECTRONIC AND U.S. MAIL**

William B. Canfield, Esq.  
Suite 201  
6723 Whittier Avenue  
McLean, VA 22101  
canfieldwilliam@gmail.com

RE: MUR 6538R  
Americans for Job Security

Dear Mr. Canfield:

On September 3, 2019, the Federal Election Commission accepted the signed conciliation agreement submitted on your client's behalf in settlement of the violations of 52 U.S.C. §§ 30102, 30103, and 30104, provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed 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). Information derived in connection with any conciliation attempt will not become public without the written consent of your client and the Commission. *See* 52 U.S.C. § 30109(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that your client has 30 days from the date the conciliation agreement becomes effective to comply with and implement the requirements contained in the agreement and to so notify the Commission. If you have any questions, please contact Jonathan Peterson, at (202) 694-1525, or Amanda Andrade, at (202) 694-1343.

Sincerely,

J. Lee

Acting Assistant General Counsel

Enclosure  
Conciliation Agreement

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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**

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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:

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<sup>1</sup> *CREW v. FEC*, 209 F. Supp. 3d 77 (D.D.C. 2016); see also *CREW v. FEC*, 299 F. Supp. 3d 83 (D.D.C. 2018).

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Applicable Law

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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            6.    In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court held that  
2 defining political committee status “only in terms of the annual amount of ‘contributions’ and  
3 ‘expenditures’” might be overbroad, reaching “groups engaged purely in issue discussion.” *Id.* at  
4 79. To cure that infirmity, the Court concluded that the term “political committee” “need only  
5 encompass organizations that are under the control of a candidate or the *major purpose of which*  
6 *is the nomination or election of a candidate.*” *Id.* (emphasis added). Accordingly, under the  
7 statute as thus construed, an organization that is not controlled by a candidate becomes a political  
8 committee only if (1) it crosses the \$1,000 threshold and (2) it has as its “major purpose” the  
9 nomination or election of federal candidates.

10           7.    Following *Buckley*, the Commission has adopted a policy of determining  
11 on a case-by-case basis whether an organization is a political committee, including whether its  
12 major purpose is the nomination or election of federal candidates.<sup>2</sup> To determine an entity’s  
13 “major purpose,” the Commission considers a group’s “overall conduct,” including public  
14 statements about its mission, organizational documents, government filings (e.g., IRS notices),  
15 the proportion of spending related to “Federal campaign activity (i.e., the nomination or election  
16 of a Federal candidate),” and the extent to which fundraising solicitations indicate funds raised  
17 will be used to support or oppose specific candidates.<sup>3</sup> The Commission compares how much of  
18 an organization’s spending is for “federal campaign activity” relative to “activities that [a]re not  
19 campaign related.”<sup>4</sup> A district court reviewed the record in this matter under section 52 U.S.C.

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<sup>2</sup> See *Political Committee Status*, 72 Fed. Reg. 5,595, 5,597, 5,605 (Feb. 7, 2007) (Supplemental Explanation and Justification) (“Supplemental E&J”).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 5,597, 5,605.

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1 § 30109(a)(8) and concluded that the controlling Commissioners erred in “excluding all non-  
2 express advocacy speech from consideration” in its major purposes analysis.<sup>5</sup> In a subsequent  
3 opinion, the same court concluded that the Commission must “presume that spending on  
4 electioneering communications contributes to a ‘major purpose’ of nominating or electing a  
5 candidate for federal office, and, in turn, to presume that such spending supports designating an  
6 entity as a ‘political committee’ under FECA.”<sup>6</sup>

7 8. A political committee must register with the Commission by filing a  
8 Statement of Organization, report its receipts and disbursements, and may terminate only when it  
9 files a written statement that it will no longer receive any contributions or make any  
10 disbursements and that such committee has no outstanding debts or obligations. 52 U.S.C.  
11 §§ 30103(a), (d), 30104(a); 11 C.F.R. §§ 102.1, 102.3, 104.3.

12 Facts

13 9. AJS organized in 1997 as a tax-exempt entity under section 501(c)(6) of  
14 the Internal Revenue Code. AJS has not registered as a political committee with the  
15 Commission, but filed annual returns with the IRS, and also filed reports as to some of its  
16 receipts and disbursements with the Commission under the provisions governing electioneering  
17 communications and independent expenditures.

18 10. Stephen DeMaura became president of AJS in 2008 and was its only  
19 employee until AJS became defunct. The Internal Revenue Service revoked AJS’s tax-exempt  
20 status in 2018 for failure to file the required forms for three consecutive years.

<sup>5</sup> *CREW v. FEC*, 209 F. Supp. 3d at 92.

<sup>6</sup> *CREW v. FEC*, 299 F. Supp. 3d at 101.

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."<sup>7</sup>

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.

<sup>7</sup> *CREW v. FEC*, 299 F. Supp. 3d at 101.

1           V.     **AJS violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize,**  
2 **register, and report with the Commission as a political committee.**

3           VI.    **AJS will take the following actions:**

4               1.     **AJS will cease and desist from violating 52 U.S.C. §§ 30102, 30103, and**  
5 **30104.**

6               2.     **AJS will register with the Commission as a political committee.**

7               3.     **In light of the extraordinary circumstances of this case — including, but**  
8 **not limited to, the long period of time between the activity at issue and the conciliation, and**  
9 **AJS's defunct status — AJS agrees to file an omnibus Form 99 miscellaneous document with the**  
10 **Commission outlining its receipts, including the identity of any person or organization that gave**  
11 **money to AJS, and disbursements for 2010 through 2012, that reflects DeMaura's best efforts to**  
12 **obtain information about expenditures and disbursements for that time period. DeMaura also**  
13 **agrees to submit an affidavit attesting to his best efforts used to file the report described in this**  
14 **paragraph.**

15              4.     **In ordinary circumstances, the Commission would seek a civil penalty**  
16 **based on the violations outlined in the Agreement. However, the Commission is taking into**  
17 **account that AJS is defunct and has no ability to raise additional funds. If evidence is uncovered**  
18 **indicating that AJS's financial condition is not as represented, a total civil penalty of \$20,000**  
19 **will be immediately due.**

20           VII.   **The Commission, on request of anyone filing a complaint under 52 U.S.C.**  
21 **§ 30109(a)(1) concerning the matters at issue herein or on its own motion, may review**  
22 **compliance with this agreement. If the Commission believes that this agreement or any**

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1 requirement thereof has been violated, it may institute a civil action for relief in the United States  
2 District Court for the District of Columbia.

3 VIII. This agreement shall become effective as of the date that all parties hereto have  
4 executed same and the Commission has approved the entire agreement.

5 IX. AJS shall have no more than 30 days from the date this agreement becomes  
6 effective to comply with and implement the requirements contained in this agreement and to so  
7 notify the Commission.


8 X. This Conciliation Agreement constitutes the entire agreement between the parties  
9 on the matters raised herein, and no other statement, promise, or agreement, either written or  
10 oral, made by either party or by agents of either party, that is not contained in this written  
11 agreement shall be enforceable.

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1 FOR THE COMMISSION:

2 Lisa J. Stevenson  
3 Acting General Counsel  
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5 BY:   
6 Charles Kitcher  
7 Acting Associate General Counsel  
8 for Enforcement  
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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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