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.


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,

[Signature]

Jin Lee
Acting Assistant General Counsel

Enclosure
Conciliation Agreement
BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Americans for Job Security

MUR 6538R

CONCILIATION AGREEMENT

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

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

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

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

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

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

Applicable Law

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

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

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

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

5. An electioneering communication is a broadcast, cable, or satellite communication that: (1) refers to a clearly identified federal candidate; (2) is made within 60 days before a general election or 30 days before a primary election; and (3) is targeted to the relevant electorate. 52 U.S.C. § 30104(f)(3)(A)(i); 11 C.F.R. § 100.29(a). A communication is "targeted to the relevant electorate" when it can be received by 50,000 or more persons in the district the candidate seeks to represent. 11 C.F.R. § 100.29(b)(5).
6. In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court held that defining political committee status "only in terms of the annual amount of 'contributions' and 'expenditures'" might be overbroad, reaching "groups engaged purely in issue discussion." *Id.* at 79. To cure that infirmity, the Court concluded that the term "political committee" "need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." *Id.* (emphasis added). Accordingly, under the statute as thus construed, an organization that is not controlled by a candidate becomes a political committee only if (1) it crosses the $1,000 threshold and (2) it has as its "major purpose" the nomination or election of federal candidates.

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

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2 See *Political Committee Status*, 72 Fed. Reg. 5,595, 5,597, 5,605 (Feb. 7, 2007) (Supplemental Explanation and Justification) ("Supplemental E&J").

3 *Id.*

4 *Id.* at 5,597, 5,605.
§ 30109(a)(8) and concluded that the controlling Commissioners erred in “excluding all non-
express advocacy speech from consideration” in its major purposes analysis. In a subsequent
opinion, the same court concluded that the Commission must “presume that spending on
electioneering communications contributes to a ‘major purpose’ of nominating or electing a
candidate for federal office, and, in turn, to presume that such spending supports designating an
entity as a ‘political committee’ under FECA.’”

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

Facts

9. AJS organized in 1997 as a tax-exempt entity under section 501(c)(4) of
the Internal Revenue Code. AJS has not registered as a political committee with the
Commission, but filed annual returns with the IRS, and also filed reports as to some of its
receipts and disbursements with the Commission under the provisions governing electioneering
communications and independent expenditures.

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

5 CREW v. FEC, 209 F. Supp. 3d at 92.

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


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

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

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

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

1 CREW v. FEC, 299 F. Supp. 3d at 101.
V. AJS violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize, register, and report with the Commission as a political committee.

VI. AJS will take the following actions:

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

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

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

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

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any
If any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

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

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

This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.
MUR 6538R (Americans for Job Security)
Conciliation Agreement.
Page 8 of 8

FOR THE COMMISSION:

Lisa J. Stevenson
Acting General Counsel

BY: [Signature]
Charles Kitcher
Acting Associate General Counsel
for Enforcement

9/9/19
Date

FOR THE RESPONDENT:

[Signature]
Stephen DeMauria
Americans for Job Security

8/28/19
Date