

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

MUR 7181

DATE COMPLAINT FILED: November 2, 2016

DATE OF NOTIFICATION: November 7, 2016

DATE OF LAST RESPONSE: April 19, 2017

DATE ACTIVATED: April 28, 2017

EARLIEST SOL: April 1, 2015

LATEST SOL: June 30, 2020

ELECTION CYCLES: 2010-2014

COMPLAINANT: Center for Media and Democracy**RESPONDENT:** Independent Women’s Voice**RELEVANT STATUTES:** 52 U.S.C. § 30102

52 U.S.C. § 30103

52 U.S.C. § 30104

INTERNAL REPORTS CHECKED: Disclosure Reports**FEDERAL AGENCIES CHECKED:** None**I. INTRODUCTION**

The Complaint in this matter alleges that Independent Women’s Voice (“IWV”), an organization established under Section 501(c)(4) of the Internal Revenue Code, violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by failing to organize, register, and report as a political committee beginning in 2010.¹ The Complaint, filed in 2016, argues that because IWV allegedly spent millions of dollars on the 2010, 2012, and 2014 federal elections and its major purpose since 2010 was apparently to influence federal elections, it was a political committee under the Act.² Further, the Complaint alleges that even if IWV were not

¹ Compl. at 1 (Nov. 2, 2016).

² *Id.* at 1, 5-6.

1 required to report as a committee, it violated the Act by failing to report all of its independent
2 expenditures in “at least one election.”³

3 In response, IWV asserts that it is not a political committee because its major purpose is
4 not to influence federal elections but to educate the public and engage in issue advocacy.⁴ It
5 contends that its spending on federal campaign activity comprised just a small portion of its total
6 spending and that it has fully complied with the Act by filing independent expenditure and
7 electioneering communications reports when applicable.⁵

8 As discussed below, the factual record indicates that between 2010 and 2014, IWV spent
9 millions of dollars on independent expenditures and may have spent millions more in campaign-
10 related activity that it failed to report, including paid-online advertisements, message testing, and
11 polling relating to the election of federal candidates. By itself, such spending would not appear
12 to indicate a major purpose of nominating or electing candidates. However, in addition, the
13 available information also includes certain of IWV’s representatives’ own express statements
14 concerning its activities directed toward the nomination or election of candidates. Taken
15 together, these circumstances support a reasonable inference that IWV’s major purpose had
16 become the nomination or election of a federal candidate beginning in 2010 and that IWV thus
17 became a political committee under the Act. Once it became a political committee in 2010, IWV
18 had an ongoing obligation to file disclosure reports with the Commission, which it has not done.
19 Accordingly, we recommend that the Commission find reason to believe that IWV violated
20 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize, register, and report as a political

³ *Id.* at 22-23.

⁴ Resp. at 4 (Apr. 19, 2017).

⁵ *Id.* at 11-13.

1 committee and authorize an investigation. We also recommend that the Commission dismiss the
2 allegation that IWV violated 52 U.S.C. § 30104(c) by failing to report independent expenditures.

3 **II. FACTUAL BACKGROUND**

4 **A. IWV's Organizational Purposes**

5 IWV is an Internal Revenue Code section 501(c)(4) organization that was founded in
6 2003.⁶ According to its website, IWV “fights for women and their loved ones by effectively
7 expanding support among women, independents, and millennials for policy solutions.”⁷ Heather
8 Higgins serves as the Chief Executive Officer of IWV.⁸ IWV's self-described “primary
9 purposes,” as outlined in its articles of incorporation, are: (1) to educate women on public policy
10 issues; (2) to inform elected officials of the organization's views on public policy issues;
11 (3) “[t]o mobilize women to bridge ideas with action and get involved in the public debate”;
12 (4) to prepare educational materials and conduct educational activities in support of the
13 corporation's purposes; (5) to conduct and sponsor programs such as forums, lectures, and
14 debates; and (6) to assist other charitable, educational, and social welfare organizations in
15 conducting similar activities.⁹

16 In its Response, IWV contends that it does not have the major purpose of “campaigns,”
17 and that, rather, its major purpose is “outreach, education, and persuasion” on public policy

⁶ Compl. at 6, Exs. 1, 2; Resp. at 4; *see also* IWV 2019 Annual Report at 1, Commonwealth of Virginia State Corp. Comm'n (Apr. 24, 2019), <https://sccefile.scc.virginia.gov/ARSearch/Home/SearchResults> (enter Entity Name: Independent Women's Voice or Entity ID: 05989694).

⁷ IWV, *Who We Are*, <http://iwv.org/about> (last visited Jan. 7, 2020).

⁸ IWV, *Staff*, <https://iwv.org/staff.php> (stating that Higgins currently only serves as CEO of IWV) (last visited Jan. 7, 2020); *see also* Compl. at 7; Resp. at 2.

⁹ Compl., Ex. 1; Resp. at 4.

1 issues, and presents several examples of these activities.¹⁰ For example, IWV asserts that
2 repealing the Affordable Care Act has been a focus of its efforts; the organization created a
3 Repeal Pledge in 2010, complete with a website and video ads, in furtherance of this objective.¹¹
4 Additionally, IWV notes that, in 2012, it engaged in health care reform education in North
5 Carolina, which did not reference specific candidates.¹²

6 Representatives of IWV have also publicly stated, for example, that: (1) an
7 advertisement campaign IWV conducted in connection with a federal election in Hawaii in 2010
8 “did its job” in the wake of a desired outcome;¹³ (2) its 2012 campaign regarding then-President
9 Barack Obama was based on the idea that “[w]omen voters are ready to move on to someone
10 who is more dependable”;¹⁴ and (3) in connection with IWV’s 2014 spending, that “IWV
11 devoted its major expenditures in 8 key states by providing residents with fact-based insights and
12 information,” which led to “[t]hese better informed citizens elect[ing] 7 out of 8 conservative
13 candidates who they felt would best represent and support them and their interests.”¹⁵ These
14 statements are others are discussed in more detail below in connection with IWV’s spending on
15 certain communication campaigns.¹⁶

¹⁰ Resp. at 4-5.

¹¹ *Id.* (citing Obamacare Repeal Pledge, available at <https://web.archive.org/web/20101025085918/http://www.therepealpledge.com/> (last visited Jan. 7, 2020), <https://web.archive.org/web/20101025090018/http://www.therepealpledge.com/take-action/> (last visited Jan. 7, 2020)).

¹² Resp. at 5 (citing IWV, *Success Stories*, available at <https://web.archive.org/web/20161019233039/http://iwv.org/success> (last visited Jan. 7, 2020)); *see also* Compl., Ex. 27 at 4.

¹³ Compl. at 20, Ex. 31.

¹⁴ *Id.*, Ex. 26.

¹⁵ IWV, *Success Stories*, *supra* note 12; *see also* Compl., Ex. 27.

¹⁶ *See infra* section III.A.2.b (analyzing statements by IWV’s representatives in connection with its spending over the 2010, 2012, and 2014 election cycles).

1 **B. IWV's Reported Spending on Federal Campaign-Related Activities**¹⁷

2 IWV did not report any political activity to the Commission before 2010. The Complaint
3 alleges that in 2010 a substantial shift occurred in IWV's spending, following the Supreme
4 Court's decision in *Citizens United v. FEC*, 558 U.S. 310 (2010), which struck down the Act's
5 prohibition on corporate independent expenditures and partial prohibition on corporate
6 electioneering communications.¹⁸ In that year, IWV began filing reports disclosing its spending
7 on federal independent expenditures and electioneering communications. In 2010, IWV also
8 significantly expanded its level of spending activity, increasing from less than \$250,000 in 2009
9 spending to almost \$2 million in 2010.¹⁹ According to IWV's reports filed with the
10 Commission, IWV continued its spending on federal elections through the 2014 election cycle.²⁰
11 IWV reported no federal activity to the Commission for the 2016 or 2018 election cycles.

12 1. 2010 Election Cycle

13 Based upon information obtained from IRS reports, the Complaint indicates that for the
14 first six years of IWV's existence, "IWV's annual spending ranged from \$52,678 in 2004 to a
15 high of \$248,823 in 2009."²¹ IWV's total spending before 2010 totaled \$496,631, according to

¹⁷ The Complaint also alleges significant unreported federal campaign activity, which is discussed in further detail in the analysis, below.

¹⁸ Compl. at 7.

¹⁹ *Id.*, Exs. 7 at 1 (IWV 2009 Form 990), 8 at 1 (IWV 2010 Form 990).

²⁰ *See id.*, Exs. 13-23.

²¹ *Id.* at 7-8.

1 the Complaint.²² But in 2010, IWV’s overall spending rose to \$1,986,937,²³ of which \$299,175
 2 was spent on reported electioneering communications and \$387,251 was spent on reported
 3 independent expenditures; these disbursements were related to federal candidates in 20 House
 4 races and two Senate races.²⁴ In addition, according to its 990 Form filed with the IRS in 2010,
 5 IWV for the first time disclosed expenditures for “political campaign activities,” reporting
 6 spending a total of \$772,435 on “political expenditures.”²⁵

7 2. 2012 Election Cycle

8 During the 2012 election cycle, IWV continued its federal spending. During the off-
 9 election year in 2011, IWV’s total reported spending dropped to \$984,378, with \$349,001 spent
 10 on political expenditures as disclosed in its 2011 IRS Form 990 and \$28,600 spent on reported
 11 federal independent expenditures.²⁶ In the 2012 election year, IWV further substantially
 12 increased its spending on political activities. According to its 2012 IRS Form 990, IWV’s total

²² *Id.* at 8.

²³ *Id.* at 8, Ex. 8 (IWV 2010 Form 990). On its 2010 990 Form, IWV reported spending \$99,739 on direct mail, \$1,119,597 for advertising and promotion, and \$183,209 for communications. *Id.*, Ex. 8 at 10, Schedule O at 5.

²⁴ *Id.*, Exs. 13-17; IWV, FEC Form 5, Report of Independent Expenditures Made and Contributions Received (Jan. 16, 2010); IWV, FEC Form 5, Report of Independent Expenditures Made and Contributions Received (Jan. 18, 2010).

²⁵ *Id.*, Ex. 8, Schedule C at 1 (IWV 2010 Form 990). Under IRS rules, “political campaign activities” are “[a]ll activities that support or oppose candidates for elective federal, state, or local public office”; the term “doesn’t include any activity to encourage participation in the electoral process, such as voter registration or voter education, provided that the activity doesn’t directly or indirectly support or oppose any candidate.” Dept. of the Treasury, Internal Revenue Service, *2019 Instructions for Form 990* at 69, <https://www.irs.gov/pub/irs-pdf/i990.pdf> (last visited Jan. 7, 2020). Political campaign activities are reported on Form 990 Schedule C and include “political expenditures,” which are defined as including “a payment, distribution, loan, advance, deposit, or gift of money, or anything of value” made for political campaign activities. Dept. of the Treasury, Internal Revenue Service, *2019 Instructions for Schedule C (Form 990 or 990-EZ)* at 1 (Sept. 18, 2019), <https://www.irs.gov/pub/irs-pdf/i990sc.pdf>.

²⁶ Compl., Exs. 9 at 1, Schedule C at 1 (IWV 2011 Form 990), 18 (IWV 2011 FEC Form 5 July Quarterly Report), 19 (IWV 2011 FEC Form 5 October Quarterly Report).

1 spending in 2012 was over \$5 million,²⁷ which included \$382,542 in political expenditures.²⁸
2 IWV also reported spending \$961,019 on independent expenditures in reports filed with the
3 Commission for 2012.²⁹ These expenditures were spent on 33 federal races, including \$154,900
4 opposing then-President Barack Obama's reelection bid.³⁰

5 3. 2014 Election Cycle

6 IWV's spending pattern continued in the 2014 election cycle, with a drop in spending
7 during the off-election year in 2013, followed by another increase during the election year in
8 2014. In 2013, IWV's total spending as reported to the IRS was \$2,318,795,³¹ which included
9 \$958,770 in political expenditures.³² IWV also reported that it spent \$160,287 on independent
10 expenditures in 2013, related to a special election in South Carolina's first congressional
11 district.³³ In 2014, IWV's total reported spending increased to \$5,490,529,³⁴ with political

²⁷ *Id.*, Ex. 10 at 1 (IWV 2012 Form 990). IWV reported spending \$1,132,390 on advertising and promotion, \$502,247 on polling, \$165,376 on phone banks, \$2,183,024 on active engagement, and \$63,935 on communications. *Id.*, Ex. 10 at 10, Schedule O. IWV also reported payments totaling about \$4 million to several vendors for "communications services," including \$500,772 to GEB International, discussed further below. *Id.*, Ex. 10 at 8.

²⁸ *Id.*, Ex. 10, Schedule C (IWV 2012 Form 990).

²⁹ *Id.*, Ex. 20 (IWV 2012 FEC Form 5 Year-End Report). The apparent discrepancies between the amounts IWV reported to the Commission and the amounts it reported to the IRS in the same years (*e.g.*, reporting calendar year 2012 IRS political expenditures of only \$383,542 while reporting calendar year 2012 FEC independent expenditures of \$961,019) are discussed further in the analysis below.

³⁰ *Id.*; *see also* Compl. at 12.

³¹ Compl., Ex. 11 at 1 (IWV 2013 Form 990). IWV reported spending \$307,499 on grassroots, \$963,703 on active engagement, \$298,938 on polling, and \$45,641 on communications. *Id.*, Ex. 11 at 10. It also reported paying vendors a total of almost \$1 million for "communications services" and \$274,000 for "grassroots services." *Id.*, Ex. 11 at 8.

³² *Id.*, Ex. 11, Schedule C (IWV 2013 Form 990).

³³ *Id.*, Ex. 21 (IWV 2013 FEC Form 5 July Quarterly Report).

³⁴ *Id.*, Ex. 12 at 1 (IWV 2014 Form 990). IWV reported spending \$898,775 on active engagement, \$364,881 on polling, \$243,500 on grassroots, and \$45,880 on communications. *Id.*, Ex. 12 at 10. IWV reported paying vendors \$783,907 for communications services, \$179,630 for grassroots, and \$336,981 for polling, including \$166,981 to GEB Strategies. *Id.*, Ex. at 8.

1 expenditures reported to the IRS amounting to \$747,359 and independent expenditures reported
2 to the Commission totaling \$783,403.³⁵

3 4. Summary of Reported Political Campaign Activity

4 Based on the discussion above, the following chart summarizes disbursements IWV
5 reported to the IRS and the Commission as relating to political campaigns between 2010 through
6 2014:

³⁵ *Id.*, Exs. 12, Schedule C (IWV 2014 Form 990), 22 (IWV 2014 FEC Form 5 July Quarterly Report), 23 (IWV 2014 FEC Form 5 Year-End Report).

| Figure A. Summary of IWV's Spending (2010-2014) | | | | | |
|--|--|--|--|---|---|
| Year | Total Spending Reported to IRS³⁶ | Political Expenditures Reported to IRS³⁷ | Political Expenditures Reported to IRS/Total Spending Reported to IRS | Total Federal Political Spending Reported to FEC | Total Federal Political Spending Reported to FEC/ Total Spending Reported to IRS |
| 2010 | \$1,986,937 | \$772,435 | 38.9% | \$686,426 (\$387,251 in IEs; \$299,175 in ECs) | 34.5% |
| 2011 | \$984,378 | \$349,001 | 35.5% | \$28,600 in IEs | 2.9% |
| 2012 | \$5,040,110 | \$382,542 | 7.6% | \$961,019 in IEs | 19.1% |
| 2013 | \$2,318,795 | \$958,770 | 41.3% | \$160,287 in IEs | 6.9% |
| 2014 | \$5,490,529 | \$747,359 | 13.6% | \$783,403 in IEs | 14.3% |
| Total | \$15,820,749 | \$3,210,107 | 20.3% | \$2,320,560 in IEs \$299,175 in ECs | 16.6% |

- 1 As noted above, IWV's reported political spending declined heavily after 2014 with no federal
- 2 spending reported to the Commission in the years following the 2014 election cycle.

³⁶ This column reflects total spending as reported by IWV on its tax returns. See Compl., Exs. 8 at 1 (IWV 2010 Form 990), 9 at 1 (IWV 2011 Form 990), 10 at 1 (IWV 2012 Form 990), 11 at 1 (IWV 2013 Form 990), 12 at 1 (IWV 2014 Form 990). IWV's tax returns cover the respective calendar year, rather than a fiscal year. See, e.g., *id.*, Ex. 8 at 1, Box A.

³⁷ This column reflects spending reported by IWV as political expenditures on its tax returns; in some years, as discussed below, it may include state in addition to federal campaign activity. See *id.*, Ex. 8, Schedule C (IWV 2010 Form 990), 9, Schedule C (IWV 2011 Form 990), 10, Schedule C (IWV 2012 Form 990), 11, Schedule C (IWV 2013 Form 990), 12, Schedule C (IWV 2014 Form 990). By definition, IRS political campaign activities may contain both state and federal campaign activities. See *supra* note 25. However, given the limited number of state campaigns IWV claims to have supported, we have included this category of expenses in our analysis. See IWV, *Success Stories*, *supra* note 12 (claiming no involvement in any 2010 or 2014 state campaigns, one state campaign in 2011, 2012, and 2013, and one state ballot initiative in 2011).

1 **III. LEGAL ANALYSIS**

2 **A. Political Committee Status Allegation**

3 1. The Test for Political Committee Status

4 The Act and Commission regulations define a “political committee” as “any committee,
5 club, association, or other group of persons which receives contributions aggregating in excess of
6 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000
7 during a calendar year.”³⁸ In *Buckley v. Valeo*,³⁹ the Supreme Court held that defining political
8 committee status “only in terms of [the] amount of annual ‘contributions’ and ‘expenditures’”
9 might be overbroad, reaching “groups engaged purely in issue discussion.”⁴⁰ To cure that
10 infirmity, the Court concluded that the term “political committee” “need only encompass
11 organizations that are under the control of a candidate or the *major purpose of which is the*
12 *nomination or election of a candidate.*”⁴¹ Accordingly, under the statute as thus construed, an
13 organization that is not controlled by a candidate must register as a political committee only if
14 (1) it crosses the \$1,000 threshold and (2) it has as its “major purpose” the nomination or election
15 of federal candidates.

16 Although *Buckley* established the major purpose test, it provided no guidance as to the
17 proper approach to determine an organization’s major purpose.⁴² After *Buckley*, the Commission

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

³⁹ 424 U.S. 1 (1976) (per curiam).

⁴⁰ *Id.* at 79.

⁴¹ *Id.* (emphasis added).

⁴² 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*, 568 U.S. 1114 (Jan. 7, 2013) (No. 12-311) (“RTAA”) (“Although *Buckley* did create the major purpose test, it did not mandate a particular methodology for determining an organization’s major purpose.”).

1 adopted a policy of determining on a case-by-case basis whether an organization is a political
2 committee, including whether its major purpose is the nomination or election of federal
3 candidates. Though it has periodically considered crafting a bright-line rule through rulemaking,
4 the Commission consistently has declined to do so.⁴³ Instead, the Commission determined that
5 determining an organization’s major purpose “requires the flexibility of a case-by-case analysis
6 of an organization’s conduct that is incompatible with a one-size-fits-all rule,” and that “any list
7 of factors developed by the Commission would not likely be exhaustive in any event, as
8 evidenced by the multitude of fact patterns at issue in the Commission’s enforcement actions
9 considering the political committee status of various entities.⁴⁴

10 To determine an entity’s “major purpose,” the Commission considers a group’s “overall
11 conduct,” including, among other factors, public statements about its mission, organizational
12 documents, government filings (*e.g.*, IRS notices), and the proportion of spending related to
13 “Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).”⁴⁵ The
14 Commission has stated that it compares how much of an organization’s spending is for “federal
15 campaign activity” relative to “activities that [a]re not campaign related.”⁴⁶

⁴³ 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).

⁴⁴ Political Committee Status, 72 Fed. Reg. 5595, 5602 (Feb. 7, 2007) (Supplemental Explanation and Justification) (“Supplemental E&J”).

⁴⁵ *Id.* at 5597, 5605.

⁴⁶ *Id.* at 5597, 5605-06. This approach was subsequently challenged and upheld in federal district court. See *Shays v. FEC*, 511 F. Supp. 2d 19 (D.D.C. 2007). In 2012, in *RTAA*, the Fourth Circuit upheld the Commission’s case-by-case approach in the face of a constitutional challenge. See 681 F.3d 544; 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. 1114 (2014).

1 Political committees must comply with certain organizational and reporting requirements
2 set forth in the Act. They must register with the Commission, file periodic reports for disclosure
3 to the public, appoint a treasurer who maintains its records, and identify themselves through
4 “disclaimers” on all of their political advertising, on their websites, and in mass e-mails.⁴⁷

5 2. Application of the Test for Political Committee Status to IWV

6 a. Statutory Threshold

7 To assess whether an organization has made an “expenditure,” the Commission analyzes
8 whether spending on any of an organization’s communications made independently of a
9 candidate constitute express advocacy under 11 C.F.R. § 100.22.⁴⁸ Beginning in 2010, IWV
10 reported spending \$387,251 on independent expenditures and reported an additional \$1,933,309
11 for such expenditures through the 2012 and 2014 election cycles. Thus, IWV well exceeded the
12 \$1,000 statutory threshold for political committee status.⁴⁹

13 b. Major Purpose

14 According to IWV’s reports filed with the Commission, IWV’s federal campaign activity
15 comprised 35% of the overall spending it reported to the IRS in 2010, 3% in 2011, 19% in 2012,
16 7% in 2013, and 14% in 2014.⁵⁰ On its own, such spending would be below the comparative
17 spending the Commission has previously found indicative of a major purpose to nominate or
18 elect a candidate.⁵¹ The factual record, however, indicates that IWV’s reported activity to the

⁴⁷ See 52 U.S.C. §§ 30102-30104; 11 C.F.R. § 110.11(a)(1).

⁴⁸ See Supplemental E&J, 72 Fed. Reg. at 5606.

⁴⁹ See 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

⁵⁰ Resp. at 11; see *supra* Figure A.

⁵¹ See Supplemental E&J, 72 Fed. Reg. at 5605 (providing three examples of organizations whose major purpose was federal campaign activity where the organizations respectively spent 91%, 50-75%, and 68% of their budgets on federal campaign activity).

1 Commission does not fully encompass all of its federal campaign activity.⁵² As further
2 described below, in each of the years from 2010 through 2014, IWV appears to have spent
3 millions of dollars on *unreported* federal campaign activities, such as paid online advertisements,
4 message testing, and polling. Furthermore, IWV’s public statements — a component of an
5 organization’s overall conduct to be considered by the Commission in its case-by-case analysis⁵³
6 — indicate that, while IWV may characterize itself to the IRS in its tax returns and the
7 Commission in its Response as an issue advocacy and educational organization, it has candidly
8 acknowledged in other contexts that much of its activity between 2010 and 2014 was done in
9 support of achieving particular outcomes in federal elections.⁵⁴

10 i. *2010 Election Cycle Activities*

11 In 2010, IWV reported spending \$387,251 in independent expenditures and \$299,175 in
12 electioneering communications. While IWV’s independent expenditures are by definition for the

⁵² See *Citizens for Responsibility and Ethics in Washington v. FEC*, 299 F. Supp. 3d 83, 93 (D.D.C. 2018) (“CREW II”) (“[T]o the extent that the Commission considers an entity’s spending in assessing its major purpose, it must presumptively treat spending on electioneering ads as indicating a purpose of nominating or electing a candidate.”); *Citizens for Responsibility and Ethics in Washington v. FEC*, 209 F. Supp. 3d 77, 93 (D.D.C. 2016) (“CREW I”) (stating that it is improper to “exclude from . . . consideration all non-express advocacy in the context of disclosure”); see *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 241, 262 (1986) (“[S]hould [a corporation’s] independent spending become so extensive that the organization’s major purpose may be regarded as campaign activity, the corporation would be classified as a political committee.”) (citing *Buckley*, 424 U.S. at 79).

⁵³ See Supplemental E&J, 72 Fed. Reg. at 5597. The Commission has noted that in its consideration of an organization’s “overall conduct,” it will look at that organization’s public statements, including its own materials, statements to donors, or statements made on its website, “giving due weight to the form and nature of the statements, as well as the speaker’s position within the organization.” *Id.* at 5601.

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).

1 purpose of influencing a federal election, its electioneering communications are presumptively
2 campaign-related,⁵⁵ and the record provides no reason to rebut that presumption here.

3 Of the \$299,175 in electioneering communications that IWV disclosed, \$237,500 was
4 spent on one advertisement: Case Closed — an ad opposing Ed Case, a candidate who ran in the
5 2010 special election in Hawaii's First Congressional District.⁵⁶ The advertisement stated:

6 There's a candidate for office claiming to be a moderate.
7 But his file shows otherwise: 72 votes for higher taxes.
8 Failing grades from non-partisan taxpayer groups.
9 He even hired indicted Governor Blagojevich's advisor, who wanted to trade
10 Barack Obama's Senate seat.
11 Who is this tax-raising liberal? [Case's name is displayed.]
12 Visit TheCaseIsClosed.com and see the full file. Independent Women's Voice is
13 responsible for the content of this ad.⁵⁷

14 While this advertisement may not expressly advocate the defeat of Case, it is campaign-related
15 as it clearly identifies Case as a "candidate" and negatively casts him as a "tax-raising liberal"
16 who hired an advisor to an indicted public official. Case was not an officeholder when the
17 advertisement ran and thus was in no position to affect the federal activities, issues, or programs
18 mentioned in the ad. Thus, the advertisement has no nexus to the legislative process, as in other
19 recent matters the Commission has considered,⁵⁸ and is, consistent with the analysis used by the

⁵⁵ See *CREW II*, 299 F. Supp. 3d at 93; compare Factual & Legal Analysis at 11, 13 MUR 6538R (Americans for Job Security) (determining that numerous electioneering communications that did not contain express advocacy were nevertheless campaign-related and "indicative of a major purpose to nominate or elect a federal candidate" in 2010).

⁵⁶ Compl., Ex. 13. The remaining \$61,675 in reported electioneering communications was spent on advertisements concerning Robin Carnahan who was a candidate in the Missouri Senate race. Compl., Ex. 14. We have not been able to find the advertisement in the public record, and thus cannot at this time determine whether expenses relating to the Carnahan electioneering communication were campaign-related.

⁵⁷ IWV, *Case Closed*, YOUTUBE (May 6, 2010), https://www.youtube.com/watch?v=D8Uh0EALdM0&feature=player_embedded (cited by Compl. at 18-19). The website referenced in the advertisement ("thecaseisclosed.com") is an active website but appears to no longer be associated with IWV.

⁵⁸ See Factual & Legal Analysis at 13-14, MUR 6538R (Americans for Job Security) (noting that certain advertisements at issue in that matter "have no nexus with the legislative process").

1 court in *CREW II*, presumptively considered among those activities indicative of a major purpose
2 to nominate or elect a federal candidate.

3 In addition, according to a webpage entitled “Success Stories” on IWV’s website, IWV
4 announced that its effort in the Hawaii special election, presumably including its spending on the
5 Case Closed advertisement, “moved Independent women +18 points and resulted in a win for
6 Charles Djou,” one of Case’s opponents.⁵⁹ A second webpage on IWV’s website, entitled
7 “Victory in Hawaii,” also identified activities that were not reported but nevertheless appear to
8 have been campaign-related.⁶⁰ For example, IWV stated that it had commissioned a survey prior
9 to the release of the “Case Closed” advertisement “to determine whether or not it would be
10 worthwhile to engage in some form of electioneering activity in the special election in Hawaii’s
11 First Congressional District.”⁶¹ Further, IWV noted that “[d]ata collected in rolling tracking
12 surveys since the launch of the IWV advertising campaign makes clear that the IWV ad
13 campaign did its job.”⁶²

14 Furthermore, the Complaint attaches a report prepared by a political consulting firm
15 retained by IWV, GEB International, Inc. (“GEB”), which stated that based upon surveys
16 conducted by GEB, IWV “decided to run an ad campaign exposing Ed Case.”⁶³ IWV’s
17 electioneering communications reports filed with the Commission do not disclose any payments

⁵⁹ Compl. at 20, Ex. 27; *see supra* note 12. IWV characterizes its effort as an “independent expenditure” but did not report the effort in reports filed with the Commission; rather, it disclosed spending for electioneering communications.

⁶⁰ Compl. at 20, Ex. 31.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*, Ex. 32 at 10.

1 made to GEB. While the Response contends that “payments for activities like ‘public opinion
2 research, data development, message testing, and grassroots targeting’” are not expenditures
3 under the Act and should not be considered in a major purpose analysis,⁶⁴ Respondents’ argument is
4 unpersuasive because IWV’s statements — both those made contemporaneously and privately to
5 its vendor when receiving the survey results and those made later and publicly on its website
6 after the distribution of its advertisement — indicate that IWV commissioned the surveys to help
7 defeat a federal candidate, Ed Case.

8 Consequently, in addition to spending more than \$686,000 in reported independent
9 expenditures and electioneering communications, which comprised 35% of its overall spending
10 in 2010, IWV appears to have spent additional sums on such unreported campaign-related
11 activity in connection with the special election in Hawaii. Under these circumstances, and
12 particularly in light of the direct manner in which IWV publicly claimed credit for the election of
13 a federal candidate, Charles Djou, the record as a whole supports a reasonable inference that, as
14 the Complaint contends,⁶⁵ IWV’s major purpose changed to the nomination or election of federal
15 candidates at that time. Because IWV appears to have become a political committee in 2010,
16 IWV had an obligation to file a statement of organization⁶⁶ and file reports of receipts and
17 disbursements until termination.⁶⁷

⁶⁴ Resp. at 14.

⁶⁵ Compl. at 13 (alleging that IWV’s political spending comprised 71% of its spending in 2010).

⁶⁶ 52 U.S.C. §§ 30103(a), 30104(a)(1).

⁶⁷ *Id.* § 30103(d)(1); 11 C.F.R. § 102.3(a)(1); *see also* Advisory Op. 1997-47 (Hansen) (“Under the Act and Commission regulations, a political committee is a continuing organization until specific action is taken to terminate the registration of, or disband, the committee.”); Federal Election Commission, *Campaign Guide for Nonconnected Committees* at 93 (May 2008) (noting that a “committee’s reporting obligation does not end until the Commission notifies the committee that the termination report has been accepted”).

1 Geo-targeting to registered voting independents, the ad buy will run through
2 Election Day in five battleground states: Florida, Ohio, Pennsylvania, Virginia
3 and Wisconsin.

4 The ads tell a tale familiar to millions of American women. Women, who four
5 years ago were overwhelmingly supportive of Obama, have come to feel
6 disconnected from and let down by the President. His promises for new policies
7 and a better direction have not matched the reality. It has now gotten to the point
8 where women don't feel obliged to defend his policies.

9 In turn, women are chalking up their relationship with the President as an
10 experience to learn from and a mistake they will not repeat. Women voters are
11 ready to move on to someone who is more dependable.⁷³

12 While IWV reported to the Commission that it had spent \$154,900 in independent
13 expenditures relating to "Mr. Dependable" and "Feeling Guilty," the Complaint identifies
14 "Boyfriend" as well as four other online advertisements that were not disclosed but
15 appear to have been part of the \$7.4 million ad buy referenced in IWV's press release.⁷⁴
16 Five of these advertisements contain disclaimers explicitly stating that IWV was
17 responsible for the ads; the other two advertisements do not contain disclaimers but direct
18 the viewer to a website, which was a project of IWV.

19 As described in IWV's press release, the advertisements identified by the Complaint
20 focus on women voters expressing their disappointment in President Obama's first term as a
21 mistake they will not repeat.⁷⁵ For example, "Boyfriend" states the following:⁷⁶

⁷³ Compl., Ex. 26.

⁷⁴ *Id.* at 21-22, Ex. 20 (IWV 2012 FEC Form 5 Year-End Report).

⁷⁵ *Id.* at 20-22, Ex. 26.

⁷⁶ IWV, *Boyfriend*, YOUTUBE (June 1, 2012), https://www.youtube.com/watch?v=8asJMw_T61Q (cited by Compl. at 21).

1 electoral purpose to be used in “battleground” states with respect to “[w]omen voters” who are
2 “ready to move on to someone who is more dependable,”⁷⁸ the advertisement as a whole
3 indicates that IWV’s spending on it should be counted towards indicating that IWV’s major
4 purpose was the nomination or election of federal candidates.⁷⁹

5 Further, Higgins’ own words reinforces this conclusion by clarifying that IWV’s purpose
6 in creating and disseminating the “Boyfriend” series was to further the electoral defeat of
7 Obama. First, in October 2012, Higgins stated in a press release:

8 There are a lot of women who voted, for legitimate and understandable reasons,
9 for President Obama, and who were emotionally really committed to his promises
10 of delivering hope and change, but who now are facing real disappointment, have
11 learned better, and don’t want to make the same mistake twice. We hear this over
12 and over, and try to capture this sentiment in our progression of “Seemed Perfect”
13 ads (Boyfriend, Feeling Guilty, Mr. Dependable), so that other women having the
14 same thoughts know they are not alone in feeling that way.⁸⁰

15 Second, in a 2015 speech, Higgins recounts how she and a colleague produced the ads:

16 But I was working in 2012 on trying to move women who were soft Obama
17 approvers into being Obama-disapproving and I wanted to make an ad that they
18 would like and that they would think was speaking to them from somebody who
19 understood them and that they would then share with their friends. . . . And then
20 we pivoted at the very end where you have two women on a couch, talking about
21 this relationship that had not worked for the last 4 years. It had started with such
22 promise but he’d been so disappointing in so many possible ways and at the very
23 end you zoom in on a hope and change poster and Obama winks or smiles. It’s
24 incredibly funny and when we showed it[,] we were able to move disapproval 9
25 points in the right direction and diminish approval by 6 points. And, so, we did a
26 series of these ads and they worked really well.⁸¹

⁷⁸ Compl., Ex. 26.

⁷⁹ Cf. *McConnell v. FEC*, 540 U.S. 93, 127 (2003) (citing expert testimony by “campaign professionals” who “testified that the most effective ads, like the most effective commercials for products such as Coca-Cola, should, and did, avoid the use of the magic words”), *overruled in part by Citizens United v. FEC*, 558 U.S. 310 (2010).

⁸⁰ *Seemed Perfect Ads Harness Women’s Emotions*, BIZPAC REVIEW (Oct 29, 2012), <http://www.bizpacreview.com/2012/10/29/seemed-perfect-ads-harness-womens-emotions-6521> (stating “media release” at end of article).

⁸¹ Compl., Ex. 34 at 5 (Heather Higgins Freedom Center Speech).

1 Accordingly, the statements above further show that, while “Boyfriend,” was not a reported
2 expenditure, it was nonetheless indicative of a major purpose to nominate or elect a federal
3 candidate.

4 Other Online Advertisements Identifying Obama

5 IWV also released several other anti-Obama video ads in 2012 before the general
6 election — “Talk America,” “Stolen Dreams,” “Gas Prices,” and “American Dream” — that the
7 Complaint alleges were part of the \$7.4 million ad buy referenced in IWV’s press release above.
8 Although we cannot definitively conclude that these ads were part of that ad buy, the Response
9 provides no specific information rebutting the allegations that these ads were part of the effort
10 “targeting women voters in the presidential election.”⁸² As set forth below, at least three of the
11 four ads reflect a campaign-related purpose.

12 Consider, for example, “Talk America” and “Stolen Dreams:”

13 Talk America

14 All across America women are talking. We voted for President Obama. But our
15 hope has turned to worry. Our costs are rising for health care, gas and groceries,
16 but homes are worth less. President Obama says the economy is getting better but
17 our family budgets aren’t. It’s getting harder to trust what he says. Obama made
18 so many big promises. But he’s only made it worse. It’s been three years.
19 Obama should be accountable. Join us at Better Direction.org.⁸³

20 Stolen Dreams

21 All across America women are talking. We wanted a nation of hope and
22 opportunity. It costs more to live. But we are not making more. Obama’s budget
23 will add more debt than every prior president combined. We wanted President
24 Obama to succeed. But defending him is exhausting. His policies don’t match

⁸² *Id.* at 20.

⁸³ IWV, *Talk America*, YOUTUBE (May 30, 2012), https://www.youtube.com/watch?v=_IVjjtnP7RA (cited by Compl. at 21-22).

1 his words. He's making things worse not better. It's been three years. We're
2 tired of the excuses. Join us at Better Direction.org.⁸⁴

3 Although these advertisements stop short of expressly advocating the defeat of Obama, they are
4 best understood to be encouraging viewers to vote against him in the next election. "Talk
5 America" explicitly references voting by stating "We voted for President Obama," and then
6 criticizes Obama by stating he has made things "worse," and concludes, "Obama should be held
7 accountable." "Stolen Dreams" similarly describes voters' disappointment in Obama and
8 concludes, "We're tired of the excuses." In addition, both ads attack Obama's character by
9 questioning his trustworthiness: "[i]t's getting harder to trust what he says"; "[h]is policies don't
10 match his words"; and neither of the ads request the viewer to contact Obama's office regarding
11 any issues or public policy matters. Accordingly, and in conjunction with the explicitly electoral
12 purpose of IWV's "Boyfriend" series of advertisements, Talk America and Stolen Dreams reflect
13 a major purpose to nominate or elect a federal candidate.⁸⁵

14 In "American Dream," the speaker first describes the expanding federal budget and high
15 taxes and then ends by stating:

16 When he campaigned back in 2008, Barack Obama promised he'd cut the deficit
17 in half. Instead, he's borrowed as much money in just four years as it took the
18 last administration eight years to borrow. And our national debt is so high, each
19 of my children already owes almost 50,000 dollars. How will we ever leave our

⁸⁴ IWV, *Stolen Dreams*, YOUTUBE (May 30, 2012), https://www.youtube.com/watch?v=_ZXlyL2WLRE, (cited by Compl. at 22).

⁸⁵ The ads end by directing viewers to www.abetterdirection.org. Although we have located some archived webpages for the website, we do not have access to the full site, and it is unclear as to whether the site did or did not contain any campaign-related content. The few web pages accessible via web archive contain discussion of various issues, but also contain statements which leave open the question as to whether other parts of the site encouraged action to defeat Obama. *See, e.g.*, <https://web.archive.org/web/20120912035948/http://abetterdirection.org:80/issues/2787496/Gas-Prices> ("Unfortunately, the Obama Administration has been moving us in the wrong direction We need a better direction to reduce unnecessary barriers to energy develop [sic] to ensure we have an energy supply that will meet our needs and lead to lower energy prices."); *see also* <https://web.archive.org/web/20120912035936/http://abetterdirection.org:80/issues/2787741/Health-Care-and-Medical-Insurance>; <https://web.archive.org/web/20120912035959/http://abetterdirection.org:80/issues/2787740/Lost-American-Dream>; <https://web.archive.org/web/20120912035954/http://abetterdirection.org:80/issues/2787498/Unemployment>.

1 kids a better life when we are starting them off like that? Parents are supposed to
2 make life easier for their children not the other way around. I don't think that we,
3 as a nation, can afford another four years like the last four.⁸⁶

4 Similar to the previous advertisements, "American Dream" also reflects a campaign-related
5 purpose. Although the ad does not directly tell viewers to "vote against" Obama, the ad
6 explicitly references Obama's broken campaign promise to cut the deficit and ends by stating
7 that the nation could not "afford another four years like the last four," implying that Obama
8 should not be re-elected for another term. Accordingly, "American Dream" is indicative of a
9 major purpose to nominate or elect a federal candidate.

10 Although the anti-Obama ads described above appear to be part of the \$7.4 million ad
11 buy referenced in IWV's press release, we do not have definitive information as to what portion
12 of the \$7.4 million should be attributed to IWV's campaign-related purpose given that IWV
13 reported only \$154,900 for two of the advertisements in the series ("Mr. Dependable" and
14 "Feeling Guilty") to the Commission; IWV did not report any payments for the other
15 advertisements in the series in reports filed with the Commission or in its 2012 990 report to the
16 IRS. While IWV states that it was one of several partners in the ad buy, it only identifies one
17 partner organization, Let Freedom Ring, which itself reported making just \$224,086 in
18 independent expenditures in 2012.⁸⁷ Furthermore, IWV's press release references the "various

⁸⁶ IWV, *American Dream*, YOUTUBE (Apr. 26, 2012), <https://www.youtube.com/watch?v=EtNkXc8XmGQ> (cited by Compl. at 22). This ad also ends by directing viewers to www.abetterdirection.org.

⁸⁷ Let Freedom Ring, Inc., FEC Form 5, Report of Independent Expenditures Made and Contributions Received, 2012 Year-End Report (Jan. 24, 2013); Let Freedom Ring, Inc., FEC Form 5, Report of Independent Expenditures Made and Contributions Received, 2012 April Quarterly Report (Apr. 11, 2012).

1 focus groups, polls, and online tests during the summer” that were conducted prior to the actual
2 ad buy.⁸⁸

3 In addition to evidence suggesting that IWV did not report significant portions of its
4 campaign-related spending, there are significant discrepancies between the political spending
5 IWV reported to the Commission versus such spending it reported to the IRS. For example,
6 while IWV reported independent expenditures of \$961,019 to the Commission in 2012, the
7 organization only reported \$383,542 in political expenditures to the IRS, raising a question as to
8 the accuracy of its reporting given that political expenditures, by definition, should include
9 independent expenditures.

10 Accordingly, the available information supports a reasonable inference that IWV spent
11 millions of dollars in unreported campaign-related activity for some part of the \$7.4 million ad
12 buy and supporting activity. Given IWV's self-identified involvement in that multi-million
13 dollar disbursement, and considered jointly with its total budget of \$5,040,110 in 2012, the
14 available information supports a reasonable inference that IWV continued to be a political
15 committee in 2012.

16 iii. *2014 Election Cycle Activities*

17 As in the two prior election cycles, publicly available information suggests discrepancies
18 between IWV's reports to the IRS and the Commission in the 2014 election cycle and suggests

⁸⁸ Compl., Ex. 26. In the press release, IWV claimed that the focus groups, polls, and online tests, described above, found the ad campaign to be highly effective. *Id.*

1 that IWV's reported spending did not encompass all of its campaign-related activities.⁹⁰ In
2 particular, while IWV reported spending approximately \$160,000 in independent expenditures
3 supporting Mark Sanford in the 2013 special election in South Carolina's 1st District, IWV's
4 public statements indicate that it spent more than \$250,000 to elect Sanford. According to a
5 press release on IWV's website and an article authored by Higgins in *Politico*, IWV played a
6 "unique and critical role in Mark Sanford's victory"⁹¹ and "[h]elp[ed] Mark Sanford turn it
7 around."⁹² In particular, IWV spent four days of message testing "to 10,000 likely voting
8 Republican and Independent households, then went into the field to see if there were any
9 differences between a control group and our message recipients," and finally "spent about
10 \$250,000 in the last week of the campaign" running broadcast, cable, and print advertising as
11 well as live get-out-the-vote calls and "innovative, non-advocacy, factual, interactive quiz
12 calls."⁹³ These statements support the Complaint's assertion that IWV engaged in other
13 unreported activities relating to the Sanford race beyond the \$160,000 it reported in advertising
14 costs for independent expenditures.⁹⁴

⁹⁰ See *supra* notes 31-32, 34-35 and accompanying text (showing IWV reporting more calendar year 2014 FEC independent expenditures than 2014 calendar year IRS political expenditures, which, by definition, should include independent expenditures). The Complaint also alleges that IWV spent \$1.5 million on political activities and paid over \$1.1 million to vendors who are known for their political work. Compl. at 14; see *supra* notes 31, 34.

⁹¹ Compl., Ex. 33 (*IWV's Unique and Critical Role in Mark Sanford's Victory*).

⁹² Heather R. Higgins and William W. Pascoe, III, *Helping Mark Sanford Turn It Around*, POLITICO (May 8, 2013), <http://www.politico.com/story/2013/05/helping-mark-sanford-turn-it-around-091071> ("Higgins and Pascoe").

⁹³ *Id.* Although IWV characterizes the "quiz calls" as non-advocacy, it also states that they "used the same documented information conveyed in our ads." *Id.*; see also Compl., Ex. 33. Although we have determined that the ads reflected a campaign-related purpose, it is unclear from the current record as to whether those calls could have constituted federal campaign activity given that we have no information regarding the actual text of the calls.

⁹⁴ See Compl. at 10.

1 Furthermore, IWV's website, which has touted the organization's "86% success rate,"⁹⁵
2 describes its 2014 spending by pronouncing:

3 Senate Races - IWV devoted its major expenditures in 8 key states by providing
4 residents with fact-based insights and information about how free market
5 solutions and greater personal liberty can help families like theirs. These better
6 informed citizens elected 7 out of 8 conservative candidates who they felt would
7 best represent and support them and their interests.⁹⁶

8 In summarizing its 2014 successes, IWV does not describe any activities other than activities
9 resulting in electoral success. Thus, the statement above indicates that IWV spent its "major
10 expenditures" or a majority of expenses for Senate races in 2014.

11 Despite IWV's statement, IWV's disclosure reports filed with the Commission reflect
12 that it spent approximately 14% of its total budget on federal campaign activity, which consisted
13 of \$783,403 in independent expenditures that year.⁹⁷ Yet, IWV's 2014 Form 990 filed with the
14 IRS supports a reasonable inference that there may have been other campaign-related expenses
15 that were not disclosed as such. For example, IWV reported spending \$898,775 on active
16 engagement, \$364,881 on polling, \$243,500 on grassroots, and \$45,880 on communications.
17 Although we have no specific information as to those expenses, based on previous election
18 cycles and IWV's public statements on its website, the payments reported to the IRS may have
19 been related to message testing, polling, and focus groups that did not constitute independent

⁹⁵ IWV, *Success Stories*, *supra* note 12; *see also* Compl., Ex. 27 (indicating "an 86% success rate" on October 12, 2016).

⁹⁶ IWV, *Success Stories*, *supra* note 12; *see also* Compl., Ex. 27.

⁹⁷ *See supra* Figure A.

1 expenditures but nevertheless reflected a major purpose of nominating or electing candidates.⁹⁹
2 Accordingly, based upon IWV's spending to elect Mark Sanford in 2013 as well as its statements
3 concerning its 2014 expenditures, the factual record supports a reasonable inference IWV
4 engaged in substantial unreported federal campaign activity and remained a political committee
5 in 2014.

6 3. Conclusion

7 In 2010, IWV clearly met the statutory threshold for becoming a political committee by
8 making over \$1,000 in expenditures. And, the record concerning IWV's reported independent
9 expenditures, its unreported paid advertising, and its additional expenses in support of those
10 activities that year and over the next four years further indicates that IWV had a major purpose to
11 nominate or elect federal candidates.¹⁰⁰ More broadly, IWV's spending and statements about its
12 activity appear to reflect a shift in its receipts and spending starting in 2010, supporting the
13 Complaint's contention that the organization's major purpose had changed.¹⁰¹ Accordingly, we
14 recommend that the Commission find reason to believe that IWV violated 52 U.S.C. §§ 30102,

⁹⁹ IWV also reported making substantial grants to two other 501(c)(4) organizations in 2014: \$1.35 million to American Commitment for "education on healthcare" and \$493,000 to Let Freedom Ring, a 501(c)(4), for "healthcare." Compl. at 15, Ex. 12 (IWV 2014 Form 990, Schedule I). While both American Commitment and Let Freedom Ring reported independent expenditures in 2014 and were thus active in federal campaigns, we have no information as to the purpose of IWV's grants to those organizations. IWV contends that the grants were accompanied by correspondence stating that the funds must be used for a social welfare purpose although it does not provide any documentation in support of its position. Resp. at 13.

¹⁰⁰ Indeed, in a 2015 speech, Higgins summarized IWV's activities as follows: "[a]nd so for the last 5 years, I have been working to provide the margin that matters in races that are toss-ups or worse. We have had a string of wins because when we look at these things we try to think, how do you play chess rather than playing checkers?" Compl., Ex. 34 at 3. She then compares IWV to the National Rifle Association as follows: "[a]nd we approach it much as the way the NRA does. When the NRA decides that they want a particular candidate to be elected because he's good on their issue, sometimes they run ads on guns, but very often they run ads on something entirely different and never even mention guns because their goal is to win the race, not to make themselves feel good about the ads that they've run." *Id.*

¹⁰¹ See, e.g., Factual & Legal Analysis at 14-15, MUR 6538R (Americans for Job Security) (examining whether respondent's major purpose may have changed over time); cf. CREW I, 209 F. Supp. 3d at 94 (noting "that an organization's major purpose can *change*" (citing *MCFL*, 479 U.S. at 262) (emphasis in original)).

1 30103, and 30104 by failing to organize, register, and report as a political committee beginning
2 in 2010.

3 While the underlying violations arise from activity beginning in 2010, the five-year
4 statute of limitations at 28 U.S.C. § 2462 does not bar injunctive relief, such as requiring that
5 IWV register as a political committee and file disclosure reports beginning in 2010.¹⁰² As noted
6 above, once IWV became a political committee, it also had an ongoing obligation to file
7 disclosure reports with the Commission.¹⁰³ Indeed, the Commission approved precisely that type
8 of injunctive relief in MUR 6538R (Americans for Job Security), which resulted in the disclosure
9 of the respondent’s contributions and expenditures during the relevant time period, even though
10 much of the activity fell outside the five year statute of limitations.¹⁰⁴ A further similarity
11 between this matter and the Americans for Job Security matter may be present in the way the
12 organizations’ major purpose appeared to change around the time of *Citizens United* but such
13 activity lasted only several election cycles.¹⁰⁵ Consistent with that matter, the Commission may
14 seek relief from IWV.

¹⁰² See *FEC v. Christian Coal.*, 965 F. Supp. 66, 71 (D.D.C. 1997) (holding that injunctive relief is not a penalty); *FEC v. Nat’l Republican Senatorial Comm.*, 877 F. Supp. 15, 20-21 (D.D.C. 1995) (same).

¹⁰³ 52 U.S.C. § 30103(d)(1); 11 C.F.R. § 102.3(a)(1); *CREW v. American Action Network*, No. 18-cv-945 (CRC), 2019 WL 4750248, at *14 (D.D.C. Sept. 30, 2019) (“FECA requires political committees to disclose, see 52 U.S.C. § 30104, and political committees must disclose that information in perpetuity until they take certain steps to terminate that status.”); see also Advisory Op. 1997-47 (Hansen) (“Under the Act and Commission regulations, a political committee is a continuing organization until specific action is taken to terminate the registration of, or disband, the committee.”); Federal Election Commission, *Campaign Guide for Nonconnected Committees* at 93 (May 2008) (noting that a “committee’s reporting obligation does not end until the Commission notifies the committee that the termination report has been accepted”).

¹⁰⁴ See Conciliation Agreement at 5-6, MUR 6538R (Americans for Job Security); cf. *CREW*, 2019 WL 4750248 *14 (finding that court may order defendant to disclose activity post-dating the alleged conduct in the administrative complaint when fashioning an equitable remedy).

¹⁰⁵ Compare Second Gen. Counsel’s Rpt. at 22, MUR 6538R (Americans for Job Security) (noting that, following an earlier increase in spending related to federal elections, Americans for Job Security spent a smaller proportion of its funds on federal elections during the 2012 election cycle).

1 **B. Independent Expenditure Reporting Allegation**

2 The Complaint also alleges that even if IWV were not a political committee, it failed to
3 disclose independent expenditures in “at least one election.”¹⁰⁶ Specifically, the Complaint
4 claims that IWV failed to report \$250,000 in independent expenditures made in support of Scott
5 Brown in the 2010 Massachusetts Senate race.¹⁰⁷ The independent expenditures at issue are
6 identified in the Complaint as a radio ad and two robocalls cited by IWV in a press release and
7 on its website.¹⁰⁸ Our review of IWV’s disclosure reports filed with the Commission indicates
8 that IWV reported independent expenditures totaling \$231,735 for telephone calls and a radio ad
9 in support of Brown in January 2010.¹⁰⁹ Moreover, although the Complaint refers to
10 independent expenditure reporting errors in “at least one election,”¹¹⁰ all of the activity identified
11 by the Complaint regarding independent expenditure reporting errors would fall outside the five
12 year statute of limitations.¹¹¹ Accordingly, we recommend that the Commission exercise its
13 prosecutorial discretion and dismiss the allegation that Independent Women’s Voice violated 52
14 U.S.C. § 30104(c) by failing to report independent expenditures.¹¹²

¹⁰⁶ Compl. at 1, 22-23; *see also* 52 U.S.C. § 30104(c), (g) (setting out reporting requirements); 11 C.F.R. § 109.10 (same).

¹⁰⁷ Compl. at 22-23.

¹⁰⁸ *Id.* at 23, Exs. 27-28.

¹⁰⁹ *See* IWV, FEC Form 5, Report of Independent Expenditures Made and Contributions Received (Jan. 16, 2010); IWV, FEC Form 5, Report of Independent Expenditures Made and Contributions Received (Jan. 18, 2010). IWV failed to file a 2010 April Quarterly Report, but no Request for Additional Information was sent by the Commission. Thus, the expenses reported may be estimates rather than the actual amounts paid.

¹¹⁰ Compl. at 22.

¹¹¹ *See* 28 U.S.C. § 2462.

¹¹² *See Heckler v. Chaney*, 470 U.S. 821 (1985).

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9 **V. RECOMMENDATIONS**

- 10 1. Find reason to believe that Independent Women's Voice violated 52 U.S.C.
11 §§ 30102, 30103, and 30104, by failing to organize, register, and report as a
12 political committee;
- 13 2. Dismiss the allegation that Independent Women's Voice violated 52 U.S.C.
14 § 30104(c) by failing to report independent expenditures;
- 15 3. Approve the attached Factual and Legal Analysis;
- 16 4. Authorize compulsory process; and

1 5. Approve the appropriate letters.

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Lisa J. Stevenson
Acting General Counsel

January 21, 2020

Date

Charles Kitcher

Charles Kitcher
Acting Associate General Counsel for
Enforcement

Jin Lee /by CK

Jin Lee
Acting Assistant General Counsel

Anne B. Robinson

Anne B. Robinson
Attorney

Attachments:

1. Appendix

1 **MUR 7181 (Independent Women’s Voice)**

2 **Appendix to First General Counsel’s Report**

3 1. Case Closed¹

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| AUDIO | VIDEO |
|--|--|
| <p>Voice over: There’s a candidate for office claiming to be a moderate.</p> <p>But his file shows otherwise.</p> <p>72 votes for higher taxes.</p> <p>Failing grades from non-partisan taxpayer groups.</p> <p>He even hired indicted Governor Blagojevich’s advisor, who wanted to trade Barack Obama’s Senate seat.</p> <p>Who is this tax raising liberal?</p> <p>Visit TheCaseIsClosed.com and see the full file. Independent Women’s Voice is responsible for the content of this ad.</p> | <p>Empty desk and chairs in an office</p> <p>Graphic: Folder titled “Confidential, Approved, Democratic Congressional Committee”</p> <p>Rolodex on a desk</p> <p>Graphic: “Fiscal Records, Natl Taxpayers Union Rating,” “2006 F, 2005 F, 2004 F”</p> <p>Graphic: “Reformer? –hired Blagojevich’s advisor (who tried to trade Obama’s Senate seat)</p> <p>Empty desk and chair with “Ed Case” nameplate</p> <p>Graphic: www.theCaseIsClosed.com Paid for by Independent Women’s Voice. Not authorized by any candidate or candidate’s committee. www.iwvoice.org</p> |

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¹ IWV, *Case Closed*, YOUTUBE (May 6, 2010), https://www.youtube.com/watch?v=D8Uh0EALdM0&feature=player_embedded (cited by Compl. at 18-19).

1 3. Feeling Guilty³
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| AUDIO | VIDEO |
|--|---|
| <p>Woman 1: Don't feel guilty. Woman 2: I supported him for four years. Some of the things that happened weren't his fault. Woman 1: Why are you always making excuses for him? Woman 2: I miss the way he used to make me feel. Woman 1: Oh, please! Woman 2: Don't say I told you so. I need you to be supportive. Woman 1: I'm sorry. The point is he's not the man you thought he was. Woman 2: He's never gonna change. I have to move on. Woman 1: How does that feel? Woman 2: It feels liberating.</p> <p>Voice over: You know you deserve better.</p> | <p>Two women sitting at a table in a restaurant.</p> <p>Dramatic Cut to Obama caricature as Edvard Munch's The Scream.</p> <p>Graphic: Independent Women's Voice. Let Freedom Ring. Paid for the Independent Woman's [sic] Voice (IWVOICE.ORG) & Let Freedom Ring (LetFreedomRingUSA.com). Not authorized by any candidate or any candidate's committee.</p> |

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³ IWV, *Feeling Guilty*, YOUTUBE (Oct. 13, 2016), <https://www.youtube.com/watch?v=C8gpo2JkFZM> (cited by Compl. at 21).

1 4. Boyfriend⁴
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| AUDIO | VIDEO |
|--|---|
| <p>Woman 1: I was so excited at first. He seemed so perfect.</p> <p>Woman 2: They always do.</p> <p>Woman 1: And I could listen to him talk for hours.</p> <p>Woman 2: Did he ever do more than talk?</p> <p>Woman 1: I wanted to believe him. I trusted him.</p> <p>Woman 2: Melissa. We all did.</p> <p>Woman 1: I'm tired of waiting for him to get his act together. It's been almost four years.</p> <p>Woman 2: You can't change him.</p> <p>Woman 1: He always has an excuse for everything. There's always somebody else to blame.</p> <p>Woman 2: You can't live on excuses.</p> <p>Woman 1: Why do I always fall for guys like this?</p> <p>Voice Over of Woman 2: You know you deserve better.</p> | <p>Two women sitting on a couch with coffee mugs.</p> <p>Camera pans back to reveal an Obama "Hope" poster in between the two women. Close up on poster. Obama winks at camera.</p> <p>Graphic: For Better Solutions. Join Us. ABetterDirection.org. Paid for by Independent Women's Voice. IWVoice.org</p> |

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⁴ IWV, *Boyfriend*, YOUTUBE (June 1, 2012), https://www.youtube.com/watch?v=8asJMw_T61Q (cited by Compl. at 21).

1 5. Talk America⁵
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| AUDIO | VIDEO |
|---|--|
| <p>Voice over: All across America women are talking.</p> <p>We voted for President Obama. But our hope has turned to worry.</p> <p>Our costs are rising for health care, gas and groceries, but homes are worth less.</p> <p>President Obama says the economy is getting better but our family budgets aren’t.</p> <p>It’s getting harder to trust what he says.</p> <p>Obama made so many big promises.</p> <p>But he’s only made it worse.</p> <p>It’s been three years. Obama should be accountable.</p> <p>Voice over: Join us at Better Direction.org.</p> | <p>Images of various women texting and messaging via laptops, cell phones, interspersed with graphics of messages.</p> <p>Graphic of Text Message: “I’m really worried.”</p> <p>Graphic of Text Message: Sharon: “I get so angry when I buy gas.”</p> <p>Graphic of Email: “If we can be responsible with our money, why can’t they?”</p> <p>Graphic of Text: Denise: “Just another smooth talking politician.”</p> <p>Graphic of Text: “Enough with the excuses.”</p> <p>Graphic of Email: “We need a better direction.”</p> <p>Graphic: For Better Solutions. Join us. ABetterDirection.org. Paid for by Independent Women’s Voice. IWVoice.org</p> |

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⁵ IWV, *Talk America*, YOUTUBE (May 30, 2012), https://www.youtube.com/watch?v=_IVjjtnP7RA (cited by Compl. at 21-22).

1 6. Stolen Dreams⁶
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| AUDIO | VIDEO |
|---|--|
| <p>Voice over: All across America women are talking.</p> <p>We wanted a nation of hope and opportunity.</p> <p>It costs more to live. But we are not making more.</p> <p>Obama's budget will add more debt than every prior president combined.</p> <p>We wanted President Obama to succeed. But defending him is exhausting.</p> <p>His policies don't match his words. He's making things worse not better.</p> <p>It's been three years. We're tired of the excuses.</p> <p>Voice over: Join us at Better Direction.org.</p> | <p>Images of various women messaging each other interspersed with graphics of messages.</p> <p>Graphic of Email Message: Subject line: "Hope?" Message: "Now I have more concerns than hope."</p> <p>Graphic of Email Message: Subject line: "Re: Hope?" Message: "I'm learning to do more with less."</p> <p>Graphic of Email: Subject line: "Re: Re: Hope?" Message: "How will we leave our children a better life?"</p> <p>Graphic of Email: Subject line: "FWD: Hope?" Message: "We deserve better leadership?"</p> <p>Graphic of Email: Subject line: "Re: FWD: Hope?" Message: "He's stealing the American Dream."</p> <p>Graphic of Email: Subject line: "Re: Re: FWD: Hope?" Message: "Why do I keep falling for guys like this?"</p> <p>Graphic: For Better Solutions. Join us. ABetterDirection.org. Paid for by Independent Women's Voice. IWVoice.org</p> |

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⁶ IWV, *Stolen Dreams*, YOUTUBE (May 30, 2012), https://www.youtube.com/watch?v=_ZXlyL2WLRE, (cited by Compl. at 22).

1 7. Gas Prices (What do you feel when you go buy gas?)⁷

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| AUDIO | VIDEO |
|--|---|
| <p>Woman 1: I don't know about you but when I fill up my gas tank these days, I get sticker shock.</p> <p>Woman 2: The week Barack Obama was sworn in as president, gas was selling in the United States for less than two dollars a gallon. Last week it was almost four dollars a gallon. More than twice as much.</p> <p>Woman 3: I've got better things to do with my family's money than burn it in my gas tank.</p> | <p>Graphic: What do you feel when you go to buy gas?</p> <p>Various women speaking to camera.</p> <p>Graphic: www.aBetterDirection.org</p> |

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⁷ IWV, *Gas Prices*, YOUTUBE (Apr. 27, 2012), <https://www.youtube.com/watch?v=c7-kZO9HQB4> (cited by Compl. at 22).

1 8. American Dream (What do you think has gone wrong?)⁸
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| AUDIO | VIDEO |
|---|--|
| <p>Woman: First, the federal government is spending so much and piling up so much debt on our children that we're making it virtually impossible for them to live a better life than we have. This year the federal government will spend about 3.8 trillion dollars. Now to most of us, those numbers are just too big to comprehend. But what I can comprehend is the change in the spending, because the government is spending 30% more this year than it did just four years ago. I don't know any families that are spending 30% more this year than they did four years ago. Do you? In fact, most families I know are spending less this year than they did four years ago. Why should the government be any different? And where do they get that money to pay for all that spending? From you and me and our neighbors in the form of taxes. And what they don't collect from taxes, they borrow. And that's where we get to the second problem. The federal government is borrowing way too much money. When my family spends more than we earn, we have to find ways to cut spending. But, the government doesn't think that way. Instead of cutting spending to match its resources, government just borrows money and sends the bill to future generations. In other words, to our children. Going back to World War II, the federal government's share of the national economy was about one out of every five dollars spent. But for the last several years, because of this explosion of spending, the federal government is now spending one out of every four dollars in the economy. It doesn't take an advanced degree to see that's not sustainable. When he campaigned back in 2008, Barack Obama promised he'd cut the deficit in half. Instead, he's borrowed as much money in just four years as it took the last administration eight years to borrow. And our national</p> | <p>Graphic: What do you think has gone wrong?</p> <p>Woman speaking directly to the camera.</p> |

⁸ IWV, *American Dream*, YouTube (Apr. 26, 2012), <https://www.youtube.com/watch?v=EtNkXc8XmGQ> (cited by Compl. at 22).

debt is so high, each of my children already owes almost 50,000 dollars. How will we ever leave our kids a better life when we are starting them off like that? Parents are supposed to make life easier for their children, not the other way around. I don't think that we, as a nation, can afford another four years like the last four.

Graphic:
www.aBetterDirection.org

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