

CREW | citizens for responsibility and ethics in washington

November 4, 2015

The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Ave., NW
Washington, DC 20224

By electronic mail (IRS.Commissioner@IRS.gov) and First Class mail

Re: Supplement to Complaint Against Conservative Solutions Project, Inc.

Dear Commissioner Koskinen:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully writes to supplement its October 20, 2015 complaint against the Conservative Solutions Project, Inc. (“CSP”), an organization claiming to be a non-profit exempt from taxation pursuant to section 501(c)(4) of the Internal Revenue Code (“tax code”), for violating the tax code by operating primarily to influence political campaigns and for the private benefit of Sen. Marco Rubio (R-FL).¹

As CREW explained in its earlier complaint, since June 2015, CSP has spent or committed to spend millions of dollars on air time to broadcast television advertisements that support Sen. Rubio’s campaign for president. Under the IRS’s interpretation of the tax code, section 501(c)(4) organizations must be primarily engaged in social welfare activity, which does not include participation in political campaigns. As CSP’s ads that promote Sen. Rubio’s campaign and his private interests seem to be the group’s primary activity, the group appears to be violating the tax code.

Since CREW filed its complaint, additional information about CSP’s planned spending and its advertisements has come to light further demonstrating that CSP’s primary purpose is to support Sen. Rubio’s campaign for president. The ads CSP already had broadcast as of two weeks ago were transparent attempts to enhance Sen. Rubio’s image with voters, and they constitute political activity under tax law. CSP has since released two new advertisements that similarly are designed to boost Sen. Rubio’s campaign. Their political nature is highlighted by contracts CSP’s agents signed with television stations broadcasting the advertisements that characterize them as “supporting Marco Rubio” in the presidential primary. In addition, the amount of future air time CSP has reserved to broadcast these and presumably similar ads appears to be larger than previously known, further suggesting the group’s primary purpose is not social welfare.

¹ CREW submits this letter in lieu of Form 13909; a copy is being sent to the Dallas office. The original complaint is available at http://crew.3cdn.net/ec56d3c05c15d78afa_hom6i0req.pdf.

One of CSP's new advertisements is similar to its earlier ads in that it uses lengthy footage of Sen. Rubio to portray him to voters as patriotic and aggressive on national security issues.² Nearly all of the content of the new ad is audio or video footage of a speech Sen. Rubio gave to a political action committee in 2012.³ The ad begins with a narrator saying "national security solutions require clear voices," then shows Sen. Rubio saying that if "we retreat" then "the space" will be filled by countries that "don't believe in the things we believe in."⁴ It continues showing Sen. Rubio asking "who will win" in the 21st century, "will it be our ideas of freedom, democracy, and free enterprise, or will it be their ideas of state-owned enterprises or totalitarianism?"⁵ This ad concludes with a photo of Sen. Rubio in front of a large American flag and urging viewers to "learn more" at CSP's website.⁶ Like CSP's earlier ads, this one clearly constitutes political activity. It showcases Sen. Rubio, expresses approval for his position, is not part of any ongoing series of communications by CSP on this issue, and is not linked to any legislation and thus could not be related to a scheduled vote. Furthermore, the timing of the ad, which is running in Iowa and New Hampshire, is related to the upcoming Republican presidential caucuses and primaries.

The second new advertisement ostensibly is related to a tax plan Sen. Rubio released in March 2015 with another senator, Sen. Mike Lee (R-UT), but also actually is designed to promote Sen. Rubio's presidential campaign.⁷ In this ad, a narrator extolls the merits of the tax plan, including saying it has "new ideas for a new age,"⁸ a statement that echoes Sen. Rubio's call for "a new president for a new age" and "original ideas for a new American century."⁹ The advertisement's real purpose is demonstrated by the visual "call to action" at the end. Showing a large photograph of Sen. Rubio in the foreground (with another photo of Sen. Lee placed behind him), the words "Support Marco Rubio" appear in large letters next to Sen. Rubio's face.¹⁰ Below that, but in far smaller letters, appear the words "and Mike Lee's plan."¹¹ As a result, the visual impact of the ad is to urge voters to "Support Marco Rubio."¹² This ad also constitutes political activity and a private benefit to Sen. Rubio. It features Sen. Rubio, expresses approval for his position, and is not part of any ongoing series of communications by CSP on this issue. Even though the ad superficially urges viewers to call their senators to support the tax plan, it is not related to a vote on the legislation because no vote is scheduled on it. Rather, the timing of the ad, which is being shown in Iowa and New Hampshire, is related to the upcoming Republican presidential caucuses and primaries.

² See https://www.youtube.com/watch?v=8fJkrGuAJ_k.

³ See <https://www.youtube.com/watch?v=KEdyViVg1i4>.

⁴ See https://www.youtube.com/watch?v=8fJkrGuAJ_k.

⁵ *Id.*

⁶ *Id.*

⁷ See <https://www.youtube.com/watch?v=9Q76c0muYi0>.

⁸ *Id.*

⁹ Marco Rubio for President website, "We Need a New President for a New Age" page, available at <https://marcorubio.com/we-need-a-new-president-for-a-new-age/>.

¹⁰ See <https://www.youtube.com/watch?v=9Q76c0muYi0>.

¹¹ *Id.*

¹² A screenshot of this part of the ad is attached as Exhibit A.

The political nature of these ads is demonstrated further by contracts that were signed by CSP's agents to buy Iowa and New Hampshire air time from television stations and filed with the Federal Communications Commission. Many of the contracts assert the ads being broadcast support Sen. Rubio's campaign. For example, one describes the ad as for "Conservative Solutions Project, supporting Marco Rubio, NH Presidential Primary."¹³ Another contract describes the ads as for "Marco Rubio, 2016 Feb, President," adding that "both spots support Rubio."¹⁴ One contract even apparently confused CSP with its affiliated super PAC, Conservative Solutions PAC, describing ad time bought by CSP as "Conservative Solutions PAC in support of Marco Rubio, NH Presidential Primary, 2/9/16/ election."¹⁵

New information also is available about the amount of money CSP plans to spend on broadcasting these ads and others that likely will be intended to promote Sen. Rubio's campaign. CREW's initial complaint quoted news reports stating CSP had already spent at least \$6 million on television air time and had reserved another \$2 million in additional time through February. Last week, an internal memo recently prepared by the presidential campaign of former Florida Governor Jeb Bush was obtained by the news media.¹⁶ The memo contains that campaign's calculations of the amount of money other candidates and outside groups supporting them already have spent on air time, and the "future total spending" by those campaigns and groups to reserve air time.¹⁷ Campaigns carefully monitor the air time of their competitors, making it likely the Bush campaign's calculations are accurate. The memo classified CSP as a "Pro-Rubio" group, and asserted CSP already had spent \$7.38 million as of October 19.¹⁸ Moreover, the Bush campaign calculated CSP has reserved \$12.8 million in additional air time from October 20 through February 23, 2016.¹⁹ According to the memo, nearly all CSP's reserved air time is in the first three Republican caucus and primary states, with \$3.94 million in Iowa, \$4.98 million in New Hampshire, and \$3.21 million in South Carolina.²⁰ It is possible the Bush campaign memo is conflating time reserved by both CSP and Conservative Solutions PAC – a recent report by political ad tracker Kantar Media CMAG said all "Pro-Rubio" outside groups, including "super PACs and other groups supporting" him, had committed to spending millions of

¹³ Contract with WPTZ/WNNE, October 22, 2015, available at https://stations.fcc.gov/collect/files/57476/Political%20File/2015/Non-Candidate%20Issue%20Ads/Conservative%20Solutions%20Project/CSPProject_10-26-15%20Amended%20%2814456282257372%29.pdf.

¹⁴ Contract with KCCI, October 21, 2015, available at [https://stations.fcc.gov/collect/files/33710/Political%20File/2015/Non-Candidate%20Issue%20Ads/Conservative%20Solutions%20Project/Conservative%20Solutions%20Project%2010-26%20-%202011-01-15/Conservative%20Solutions%20Project%2010.26-11.01.15%20NAB%20pb-18%20Updated%2011-2-15%20\(14464821065212\)_pdf](https://stations.fcc.gov/collect/files/33710/Political%20File/2015/Non-Candidate%20Issue%20Ads/Conservative%20Solutions%20Project/Conservative%20Solutions%20Project%2010-26%20-%202011-01-15/Conservative%20Solutions%20Project%2010.26-11.01.15%20NAB%20pb-18%20Updated%2011-2-15%20(14464821065212)_pdf).

¹⁵ Contract with WPTZ/WNNE, October 1, 2015, available at https://stations.fcc.gov/collect/files/57476/Political%20File/2015/Non-Candidate%20Issue%20Ads/Conservative%20Solutions%20Project/CSPProject_10-12-15%20%2814438084480977%29.pdf.

¹⁶ David Catenese, *Jeb Bush's Campaign Blueprint*, *U.S. News and World Report*, October 29, 2015, available at <http://www.usnews.com/news/blogs/run-2016/2015/10/29/jeb-bushs-campaign-blueprint>.

¹⁷ Excerpts from the memo are attached as Exhibit B, and the full memo is available at <https://assets.documentcloud.org/documents/2490797/jeb.pdf> ("Bush Campaign Memo").

¹⁸ Bush Campaign Memo at 44.

¹⁹ *Id.* at 53.

²⁰ *Id.* at 54.

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dollars in the three states as of October 29.²¹ In any event, the figures suggest CSP may be planning to spend significantly more on political advertisements than previously known, which provides further support for the conclusion that the primary purpose of CSP is to support Sen. Rubio's campaign.

After CREW filed its complaint, CSP's spokesman, who is also the spokesman for Conservative Solutions PAC, claimed CSP's ads are "certainly not about any specific elected official or candidate."²² The information in CREW's initial complaint and this supplement, however, indicate the ads are designed to support Sen. Rubio's campaign for president and that CSP appears to be primarily operated to support Sen. Rubio's campaign for president and for Sen. Rubio's private benefit. Section 501(c)(4) should not be used as a vehicle to promote the political advancement and private benefit of a single candidate. CREW again urges the IRS to investigate CSP and, should it find that CSP has violated its tax-exempt status, take appropriate action.

Thank you again for your prompt attention to this matter.

Sincerely,



Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics in Washington

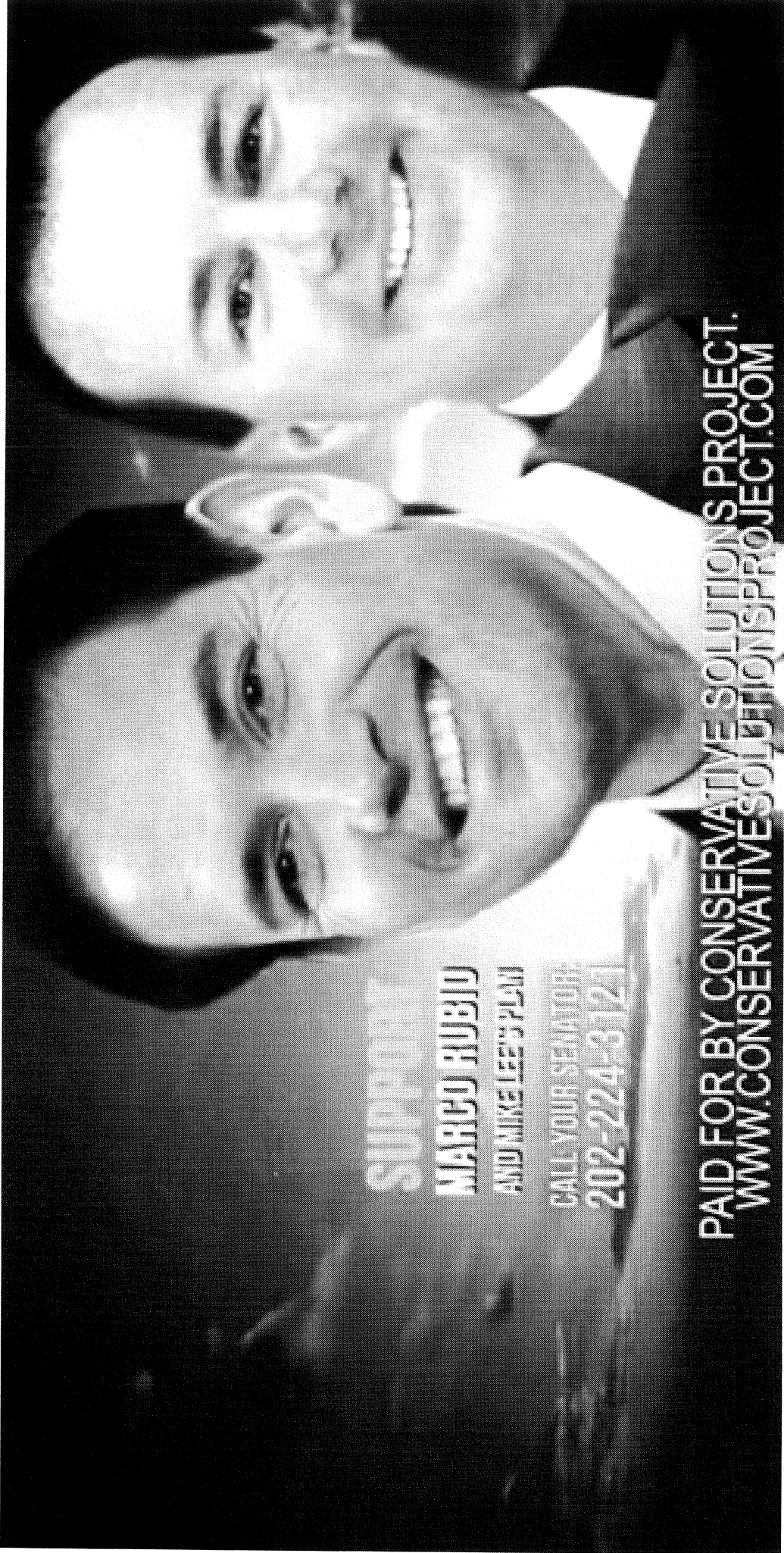
Encls.

cc: IRS-EO Classification

²¹ Elizabeth Wilner, GOP Presidential Primary TV and Radio Spend Through February 2016, *Cook Political Report*, October 29, 2016, available at <http://cookpolitical.com/story/8972>.

²² S.V. Date, Rubio Relying on Secret Donors to Finance Ad Blitz, *National Journal*, October 23, 2015, available at <http://www.nationaljournal.com/s/91284/rubio-relying-secret-donors-finance-ad-blitz?mref=issue>.

EXHIBIT A



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MARCO RUBIO
AND MIKE LEE'S PDUJ
CALL YOUR SENATOR:
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EXHIBIT B

Jeb!
2016

Q3 Mission 2016: Campaign Briefing

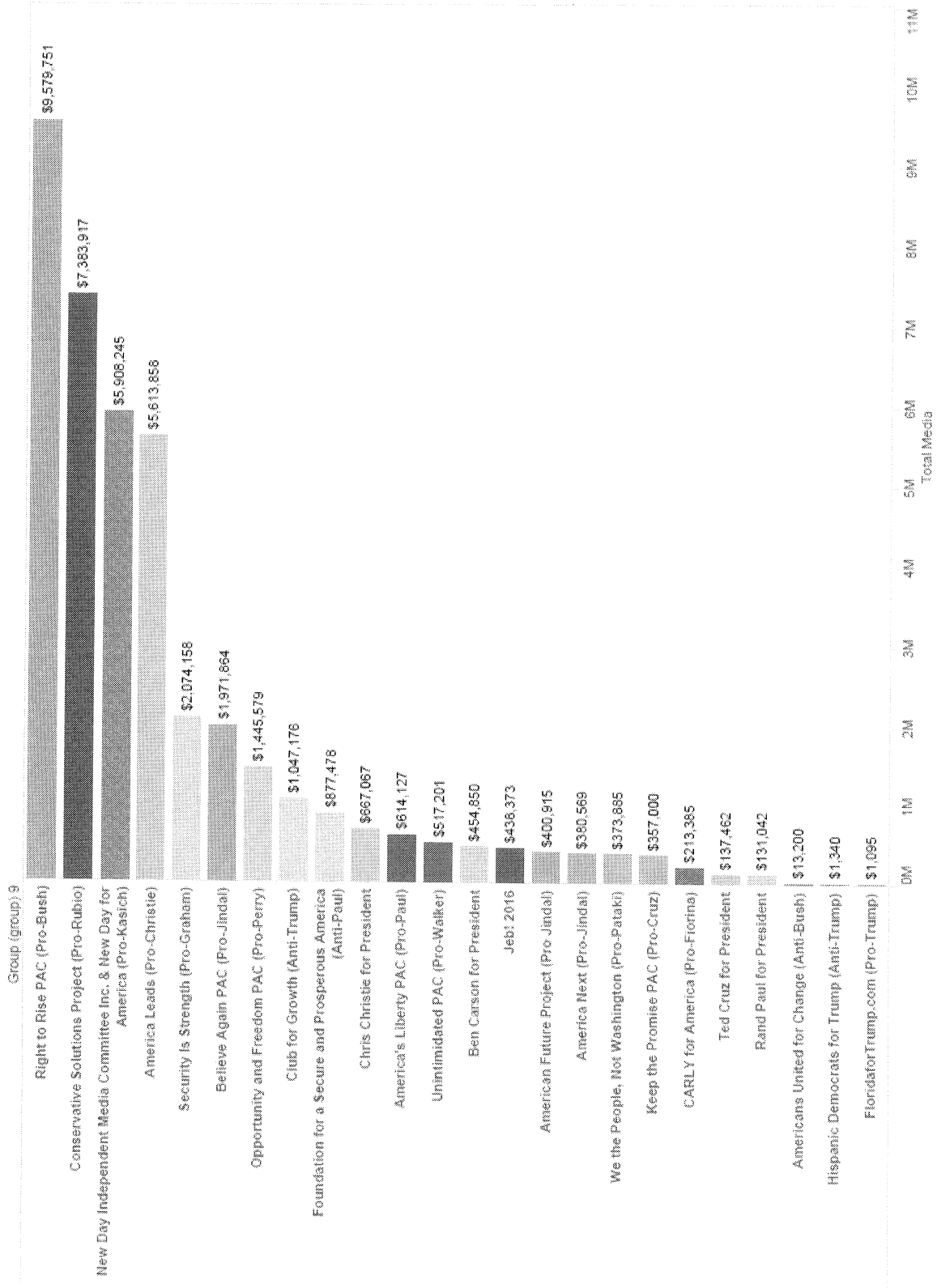
with

Jeb 2016 Senior Staff

October 26, 2015

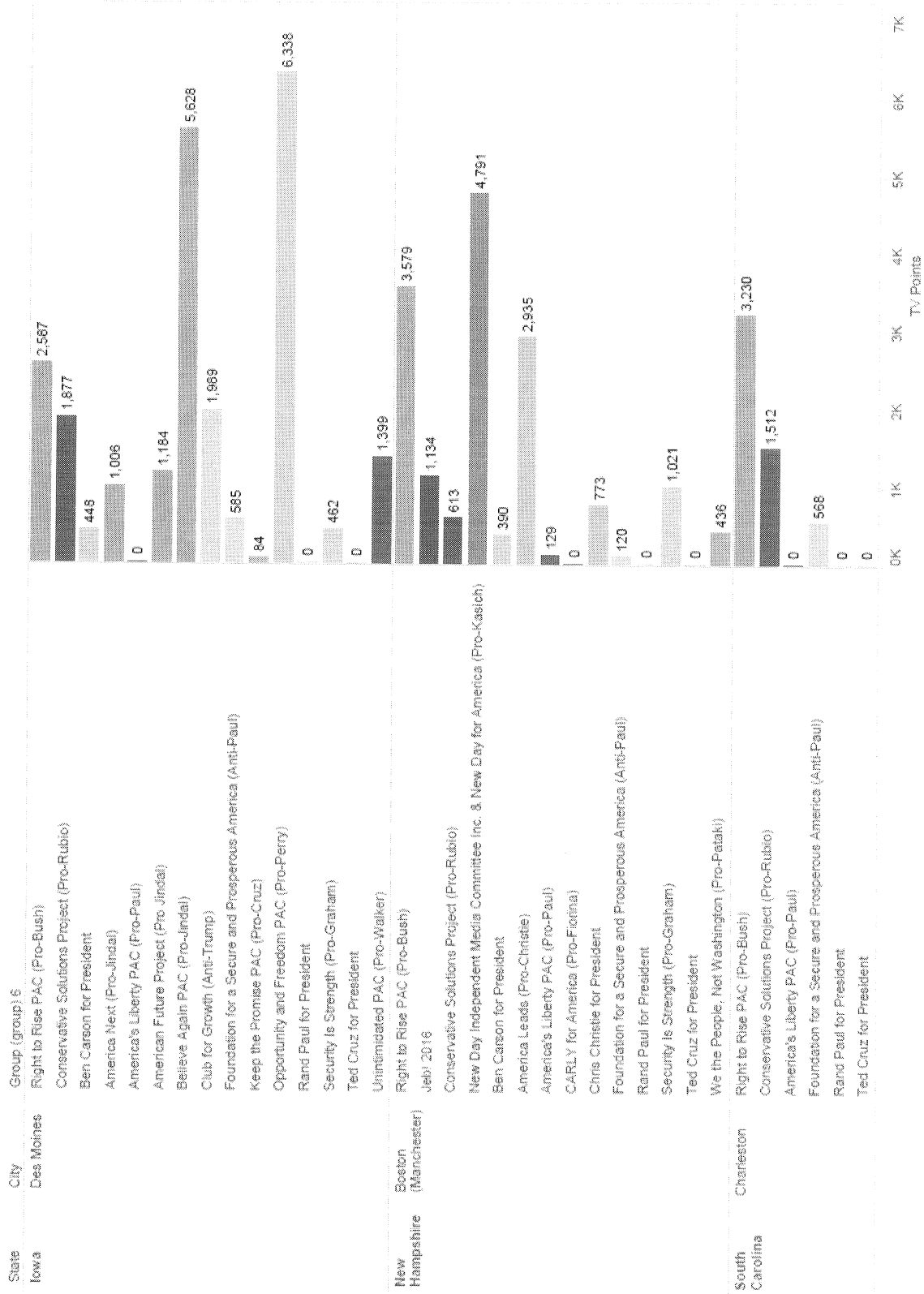
Competitive Spending to Date

Total Spending by Candidate/PAC: 4.5-10.19



Past GRPs by State

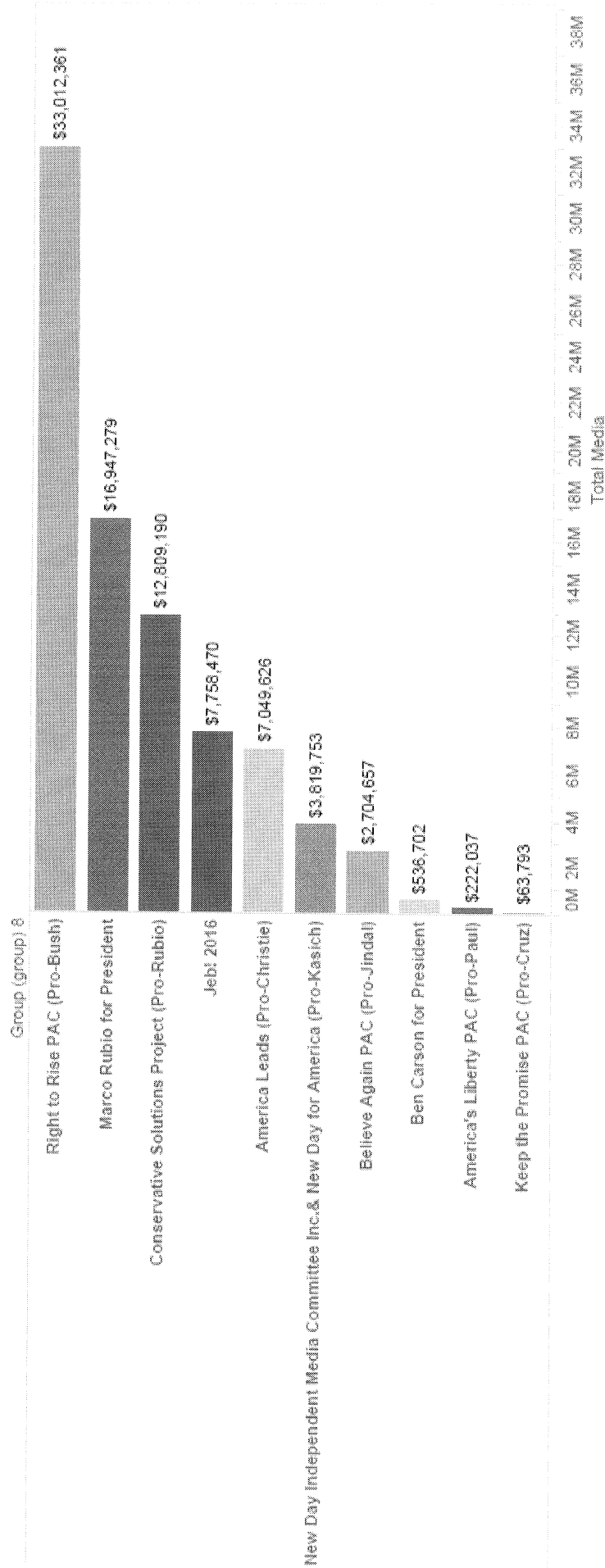
Past Total GRPs by State 4.5-10.19



0K 1K 2K 3K 4K 5K 6K 7K
TV Points

Advance Placed Media

Future Total Spending 10.20-2.23



Advance Placed Media

Future Spending by State 10.20-2.23

