Exhibit 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 6589
American Action Network	)	

STATEMENT OF REASONS OF
CHAIRMAN LEE E. GOODMAN AND
COMMISSIONERS CAROLINE C. HUNTER AND MATTHEW S. PETERSEN

In this matter, we must determine if the American Action Network ("AAN" or "Respondent"), a social welfare organization exempt from taxation under section 501(c)(4) of the Internal Revenue Code, is a "political committee" under the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"). To ensure that the First Amendment-protected freedoms of speech and association are not infringed upon, courts have narrowly construed the Act's definition of "political committee." These court decisions, which stretch back nearly forty years, properly tailor the Act to afford non-profit issue advocacy groups substantial room to discuss the issues they deem salient and to protect them from burdensome political committee registration, reporting, and regulatory requirements. Such groups may expressly advocate the election or defeat of candidates without losing these protections, as long as the group's major purpose is not the nomination or election of federal candidates.[1]

In this matter, Respondent's major purpose was not the nomination or election of a federal candidate. Rather, its public statements, organizational documents, and overall spending history objectively indicate that the organization's major purpose has been issue advocacy and grassroots lobbying and organizing. Accordingly, we could not vote to find that AAN violated the Act by failing to register and report as a political committee.[2]

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[1] As the Supreme Court has explained, "the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various issues, but campaigns themselves generate issues of public interest." *Buckley v. Valeo*, 424 U.S. 1, 42 (1976).

[2] MUR 6589 (AAN), Certification (June 24, 2014).

I. PROCEDURAL BACKGROUND

A. THE COMPLAINT

The Complaint in this matter alleges that AAN violated the Federal Election Campaign Act of 1971, as amended ("the Act"), by failing to register and report as a political committee.[3] Specifically, the Complaint alleges that "AAN made expenditures aggregating in excess of $1,000 during 2010"[4] and that "[a]s demonstrated by its extensive spending on federal campaign activity, AAN's major purpose between July 23, 2009 and June 30, 2011 was the nomination or election of federal candidates."[5] The Complaint concludes that "[b]y failing to register as a political committee, AAN violated 2 U.S.C. § 433(a) and 11 C.F.R. § 102.1(d),"[6] and that "[b]y failing to file [periodic] reports, AAN violated 2 U.S.C. § 434(a)(4) and 11 C.F.R. § 104.1(a)."[7]

B. THE RESPONSE

The Respondent denies these allegations, asserting that "AAN is not a political committee."[8] AAN does not challenge the Complaint's allegation that it made expenditures aggregating in excess of $1,000 during 2010. Rather, the Respondent denies that it had the requisite major purpose, stating "AAN does not have the type of 'major purpose' that *Buckley* [*v. Valeo*] and other cases require before political committee burdens may be imposed on an organization."[9]

Specifically, the Response rejects the Complaint's "flawed legal understanding" that "every electioneering communication is evidence of an intent to influence elections" and is therefore indicative of a major purpose to nominate or elect candidates to federal office.[10] The Response instead notes that "[m]any electioneering communications constitute issue advocacy" and asserts that "AAN's issue advocacy activities — even those that constitute electioneering communications — cannot be included in its 'major purpose' calculation."[11]

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3 MUR 6589 (American Action Network), Complaint.

4 *Id.* at 6.

5 *Id.* at 7. The Complaint specifically alleges that "66.8 percent" of AAN's spending during the first two years of its existence was for independent expenditures and electioneering communications. *Id.*

6 *Id.*

7 *Id.* at 8.

8 MUR 6589 (AAN), Response at 1.

9 *Id.* at 25 (citing *Buckley v. Valeo*, 424 U.S. 1 (1976)).

10 *Id.* at 2.

11 MUR 6589 (AAN), Response at 2.

C. COMMISSION ACTION

On June 24, 2014, the Commission considered and voted on this matter.[12] The Complaint failed to convince the required four Commissioners that there is reason to believe AAN violated the Act and the matter was dismissed.[13] As the controlling decision makers,[14] we are issuing this Statement of Reasons to set forth the Commission's rationale for not finding reason to believe and dismissing the matter.[15]

II. FACTUAL BACKGROUND

AAN is "'an independent nonprofit 501(c)(4) organization' incorporated under Delaware law, that 'is not affiliated with or controlled by any political group.'"[16] AAN describes itself as an "action tank," the mission of which is to "create, encourage and promote center-right policies based on the principles of freedom, limited government, American exceptionalism, and strong national policy."[17]

AAN was founded in 2009.[18] In the two fiscal years following its establishment that are in the record before us, AAN reports that it spent over $27 million.[19] AAN built a "premier grassroots advocacy organization"; developed a "clear mission statement"; organized a "high-caliber Board of Directors"; and promulgated "clear internal procedures, reviews, and

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12 *See* MUR 6589 (AAN), Certification (June 24, 2014).

13 *See* 2 U.S.C. § 437g(a)(2) (four-vote requirement).

14 *FEC v. Nat'l Republican Senatorial Comm.*, 966 F.2d 1471, 1476 (D.C. Cir. 1992) ("[W]hen the Commission deadlocks 3-3 and so dismisses a complaint, that dismissal, like any other, is judicially reviewable under § 437g(a)(8).... [T]o make judicial review a meaningful exercise, the three Commissioners who voted to dismiss must provide a statement of their reasons for so voting." (citing *Democratic Cong. Campaign Comm. v. FEC*, 831 F.2d 1131, 1133 (D.C. Cir. 1987))).

15 *See id.* ("Since those Commissioners constitute a controlling group for purposes of the decision, their rationale necessarily states the agency's reasons for acting as it did." (citing *Democratic Cong. Campaign Comm.*, 831 F.2d at 1134–35)).

16 MUR 6589 (AAN), Response at 3 (quoting AAN, *About, available at* http://americanactionnetwork.org/aan/about).

17 MUR 6589 (AAN), Complaint at Exhibit A (Form 990: Return of Organization Exempt from Income Tax 2009); *see also* MUR 6589 (AAN), Supplemental Response (Form 990: Return of Organization Exempt from Income Tax 2010).

18 MUR 6589 (AAN), Complaint at 3.

19 *See* MUR 6589 (AAN), Supplemental Response (Form 990: Return of Organization Exempt from Income Tax 2010) (reporting total expenses of $1,446,675 in fiscal year 2009 and $25,692,334 in fiscal year 2010).

legal processes."[20] AAN hired staff, established core policy areas of interest, and created what it describes as a "cutting edge technological platform for grassroots advocacy."[21]

In furtherance of its mission, AAN hosted educational activities and grassroots policy events.[22] For example, it conducted over twenty interactive "Learn and Lead" issue briefings with over 1000 activists from around the country and guest speakers — including Senators, Congressmen, former Secretaries and Ambassadors for the U.S. Government — to educate grassroots leaders about "critical issues" facing our country with regard to energy, education, tax policy, immigration, national security, spending and health care, and other center-right principles.[23]

A significant amount of AAN's activity during this time period was television and digital advertising to educate the public on subjects important to AAN. Commission records indicate that AAN spent at least $17 million on such advertisements in the first two years of its existence.[24] A small portion of these advertisements — roughly $4 million worth — advocated the election or defeat of particular federal candidates.[25] The vast majority of AAN's advertisements, though, focused on issues central to AAN's mission – topics like fiscal responsibility, heath care reform, regulatory reform and other policy matters considered by the United States Congress.[26] Because some of these issue advertisements were broadcast in close proximity to an election, they were reported to the Commission as "electioneering communications."[27] All told, AAN spent approximately $13 million on issue advertisements

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[20] MUR 6589 (AAN), Complaint at Exhibit A (Form 990: Return of Organization Exempt from Income Tax 2009); MUR 6589 (AAN), Supplemental Response (Form 990: Return of Organization Exempt from Income Tax 2010).

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] MUR 6589 (AAN), First General Counsel's Report at 4 (indicating that AAN spent over $4 million on independent expenditures and over $13 million on electioneering communications between 2009-2011).

[25] These advertisements – known as "independent expenditures" – were reported to the Commission in accordance with 2 U.S.C. § 434(c), (g). Information in the record before the Commission indicates that from 2009-2010, AAN reported that it spent $4,097,962.29 on express advocacy "independent expenditures." *Id.* at 4 n.1. AAN and Complainant report the figure as $4,096,910.

[26] MUR 6589 (AAN), Complaint at Exhibit A (Form 990: Return of Organization Exempt from Income Tax 2009); MUR 6589 (AAN), Supplemental Response (Form 990: Return of Organization Exempt from Income Tax 2010); *see* Appendix A (transcript of advertisements citing in the Complaint).

[27] An "electioneering communication" is defined as any broadcast, cable, or satellite communication which (a) refers to a clearly identified candidate for federal office, (b) is publicly distributed within 60 days before a general election or 30 days before a primary election, and (c) is targeted to the relevant electorate. 2 U.S.C. § 434(f)(3); 11 C.F .R. § 100.29. The term "electioneering communication" does not include a communication that constitutes an expenditure or an independent expenditure. 2 U.S.C. § 434(f)(3)(B)(ii). A communication is "targeted to the relevant electorate" when it can be received by 50,000 or more persons in the congressional district the candidate seeks to represent. 11 C.F.R. § 100.29(b)(5)(i).

during its first two fiscal years. That spending alone constituted nearly half of the organization's $27 million in total disbursements over the same time period.[28] Coupled with its other mission-specific spending (*e.g.*, its extensive "Learn and Lead" program), the vast majority of AAN's spending was devoted to the discussion of issues central to its organizational mission and not to the nomination or election of a federal candidate.

III. LEGAL BACKGROUND

Understanding the responsibilities and burdens that come with political committee status is important to appreciate what is at stake in this case and why groups tailor their spending to avoid triggering burdensome regulation. It also helps understand the courts' decisions narrowing the scope and application of the Act.

As the Supreme Court has recognized, "PACs are burdensome alternatives" that are "expensive to administer and subject to extensive regulations":

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[28] As a general rule, the Commission assesses an organization's major purpose by reference to its entire history. *See* MUR 6396 (Crossroads GPS), Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen at 24 n.101 ("Often one can assess an organization's true major purpose only by reference to its entire history"); *see also* MUR 6081 (American Issues Project), Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioners Caroline C. Hunter and Matthew S. Petersen (looking at four years of an organization's history). However, here the administrative record before the Commission includes only the organization's first two years of spending history. From its founding in July 2009 through June 2011, AAN reported spending $27,139,009. During its fiscal year 2009, which ran from July 23, 2009 to June 30, 2010, AAN reported spending $1,446,675. *See* MUR 6589 (AAN), Complaint at Exhibit A (Form 990: Return of Organization Exempt from income Tax 2009). Of this, $987,251 was spent on the "program services expenses," while $164,555 went to "management and general expenses" and $294,869 went to "fundraising expenses." *Id.* In fiscal year 2010, AAN raised $27,479,384 and spent $25,692,334. *See* MUR 6589 (AAN), Supplemental Response (Form 990: Return of Organization Exempt from income Tax 2010). Of this, $25,255,343 was spent on "program service expenses," while $191,329 was spent on "management and general expenses" and $245,662 was spent on "fundraising expenses." *Id.* The Commission has looked at narrower two-year time frames when the administrative record covered shorter periods. S*ee generally GOPAC*, 917 F. Supp. at 862-66 (reviewing, among other things, GOPAC's *1989-1990* Political Strategy Campaign Plan and Budget) (emphasis added); *Malenick*, 310 F. Supp. 2d at 235 (citing Pl.'s Mem., Ex. 1 (Stipulation of Fact signed and submitted by Malenick and Triad Inc., to the FEC on January 28, 2000, "listing numerous 1995 and 1995 Triad materials announcing these goals") and Ex. 47 ("Letter from Malenick, to Cone, dated Mar. 30, 1995") among others); *id.* at n.6 (citing to Triad Stip. ¶¶ 4.16, 5.1-5.4 for the value of checks forwarded to "intended federal candidate or campaign committees in *1995 and 1996*.") (emphasis added)MUR 5751 (The Leadership Forum), General Counsel's Report #2 at 3 (OGC cited IRS reports showing receipts and disbursements from 2002-2006 before concluding that the Respondent had not crossed the statutory threshold for political committee status); MUR 5753 (League of Conservation Voters 527, *et al.*), Factual and Legal Analysis at 11 & 18 (the Commission determined that Respondents "were required to register as political committees and commence filing disclosure reports with the Commission by no later than their initial receipt of contributions of more than $1,000 in July 2003," citing to Respondents' disbursements "during the *entire 2004 election cycle*" while evaluating their major purpose) (emphasis added); MUR 5754 (MoveOn.org Voter Fund), Factual and Legal Analysis at 12 &13 (the Commission looked to disbursements "[d]uring the *entire 2004 election cycle*" and cited to specific solicitations and disbursements made during calendar year 2003 in assessing the Respondent's major purpose) (emphasis added). Note, the legal underpinnings of MURs 5754 (MoveOn.org Voter Fund) and 5753 (League of Conservation Voters 527, *et al.*) have been undermined for other reasons by *EMILY's List v. FEC*, 581 F.3d 1, 12-14 (D.C. Cir. 2009).

> For example, every PAC must appoint a treasurer, forward donations to the treasurer promptly, keep detailed records of the identities of the persons making donations, preserve receipts for three years, and file an organization statement and report changes to this information within 10 days. . . .
>
> And that is just the beginning. PACs must file detailed monthly reports with the FEC, which are due at different times depending on the type of election that is about to occur:
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> > These reports must contain information regarding the amount of cash on hand; the total amount of receipts, detailed by 10 different categories; the identification of each political committee and candidate's authorized or affiliated committee making contributions, and any persons making loans, providing rebates, refunds, dividends, or interest or any other offset to operating expenditures in an aggregate amount over $200; the total amount of all disbursements, detailed over 12 different categories; the names of all authorized or affiliated committees to whom expenditures aggregating over $200 have been made; persons to whom loan repayments or refunds have been made; the total sum of all contributions, operating expenses, outstanding debts and obligations, and the settlement terms of the retirement of any debt or obligation.[29]

Moreover, in addition to the disclosure burdens described above, a political committee — even a so-called "super PAC" that operates independently of a candidate — remains subject to certain prohibitions even in the post-*Citizens United* world.[30]

Characterizing the onerous requirements that attach to political committee status as "just disclosure" does not alleviate the attendant burden. Not all disclosure regimes are created equal. The responsibilities that come with one-time, event-specific disclosure[31] are a far cry from the ongoing, all-encompassing reporting and regulatory burdens faced by FECA political committees.[32] Indeed, it is a "mistake" to interpret the Supreme Court's recent endorsement of event-driven disclosure as "giving the government a green light to impose political-committee

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[29] *Citizens United v. FEC*, 558 U.S. 310, 337-338 (2010) (quoting *McConnell v. FEC*, 540 U.S. 93, 331-332 (2003)).

[30] *See* 2 U.S.C. § 441e(a)(1) (making it unlawful for a foreign national to directly or indirectly make "a contribution or donation of money or other thing of value . . . in connection with a Federal, State, or local election"); *see also* 11 C.F.R. § 115.2 (prohibiting contributions by Federal contractors).

[31] *See, e.g.*, 434(c), 434(f), and 434(g).

[32] *See Wis. Right to Life, Inc. v. Barland*, 751 F.3d 804, 824 (7th Cir. 2014) (noting that "[a] one-time, event-driven disclosure rule is far less burdensome than the comprehensive registration and reporting system imposed on political committees"); *cf. Citizens United*, 558 U.S. at 366-371.

status on every person or group that makes a communication about a political issue that also refers to a candidate."[33]

In short, the regulatory obligations, prohibitions, and First Amendment impingements associated with political committee status are weighty and extensive. As shown below, this is why courts have narrowed the reach of the Act's "political committee" definition to ensure that issue advocacy groups are not chilled from engaging in First Amendment-protected speech and association.

A. Pre-*Buckley* Judicial Treatment of the Act's Definition of "Political Committee"

The Act 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."[34]

Soon after FECA's enactment, during the period between 1972 and 1976, several courts considered vagueness and overbreadth challenges to the Act's political committee definition. From the outset, the judiciary warned that absent imposition of a limiting construction on this definition, "[t]he dampening effect on first amendment rights . . . would be intolerable."[35] Particularly troubling, courts admonished, was the prospect that "organizations which express views on topical issues involving . . . positions adopted by office-seekers" would have "their associational rights . . . encroached upon" by the disclosure burdens applicable to political committees.[36] It was "abhorrent" to think that "every position on any issue, major or minor, taken by anyone would be a campaign issue and any comment upon it in, say, . . . an advertisement would" subject an organization to political committee disclosure burdens.[37] This was particularly true for "nonpartisan issue groups which in a sense seek to 'influence' an election, *but only by influencing the public to demand of candidates that they take certain stands on the issues*."[38]

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[33] *Barland*, 751 F.3d at 836-37.

[34] 2 U.S.C. § 431(4)(A); 11 C.F.R. § 100.5.

[35] *United States v. Nat'l Comm. for Impeachment*, 469 F.2d at 1142. This opinion was adopted by the D.C. Circuit in *Buckley*, 519 F.2d 821, 863 n.112 (D.C. Cir. 1975) (per curiam), *aff'd in part*, 424 U.S. 1 (1976), and cited by the Supreme Court in *Buckley*, 424 U.S. 1 at 79 n.106.

[36] *ACLU v. Jennings*, 366 F. Supp. 1041, 1055 (D.D.C. 1973), vacated as moot sub nom., *Staats v. ACLU*, 422 U.S. 1030 (1975); *see also id.* at 1056 (recognizing that "controversial organizations" like the ACLU must be excluded from coverage as a political committee).

[37] *Nat'l Comm. for Impeachment*, 469 F.2d at 1142 (footnote omitted); *see also id.* at 1139, 1142 (applying "fundamental principles of freedom of expression" in explaining that "every little Audubon Society chapter [should not] be a 'political committee,' [simply because] 'environment' is an issue in one campaign after another").

[38] *Buckley*, 519 F.2d at 863 n.112 (emphasis added).

There was not a "shred of history in the Act that would tend to indicate that Congress meant to go so far" as to require issue groups to register as political committees.[39] A thorough review of the legislative history showed that, with respect to the political committee definition, "[c]ongressional concern was with political campaign financing, not with the funding of movements dealing with national policy."[40] In fact, Congress elected not to regulate directly as political committees many "liberal, labor, environmental, business and conservative organizations,"[41] including those who "frequently and necessarily refer to, praise, criticize, set forth, describe or rate the conduct or actions of clearly identified public officials who may also happen to be candidates for federal office."[42] Instead, Congress subjected these organizations to separate disclosure requirements under an independent provision of the Act, 2 U.S.C. § 437a (1974).[43] The D.C. Circuit, however, declared this statute unconstitutional in *Buckley* in a ruling that was not appealed to the Supreme Court[44] and "apparently accept[ed]" by lawmakers.[45] Thus, Congress and the courts made clear that the political committee disclosure burdens did not apply to issue-advocacy organizations.

As a result, even racially-tinged, character-assaulting advertisements like the following — published *less than two weeks* before the 1972 presidential election — did not and could not trigger political committee status:

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39 *Nat'l Comm. for Impeachment*, 469 F.2d at 1142.

40 *ACLU*, 366 F. Supp. at 1141-42.

41 120 Cong. Rec. H10333 (daily ed., Oct. 10, 1974).

42 *Buckley*, 519 F.2d at 871 (internal quotation marks omitted).

43 Congress "made it abundantly clear that it intended section 437a to reach beyond the other disclosure provisions of the Act." *Buckley*, 519 F.2d at 876. The statute provided that "[a]ny person (other than an individual) who expends any funds or commits any act directed to the public for the purpose of influencing the outcome of an election, or who publishes or broadcasts to the public any material referring to a candidate (by name, description, or other reference) advocating the election or defeat of such candidate, setting forth the candidate's position on any public issue, his voting record, or other official acts (in the case of a candidate who holds or has held Federal office), or otherwise designed to influence individuals to cast their votes for or against such candidate or to withhold their votes from such candidate shall file reports with the Commission as if such person were a political committee. The reports filed by such person shall set forth the source of the funds used in carrying out any activity described in the preceding sentence in the same detail as if the funds were contributions . . . ." 2 U.S.C. § 437a (1974).

44 *See Buckley v. Valeo*, 424 U.S. at 10 & n.7. In so holding, the court rejected congressional concerns that the law was necessary to demand disclosure from organizations that "use their resources for political purposes, [but which] conceal the interests they represent solely because [of] the technical definitions of political committee, contribution, and expenditure." H.R.Rep.No.93-1438, 93d Cong., 2d Sess. 83 (1974); *see also id.* (explaining that the provision would "require any organization which expends any funds or commits any act directed to the public for the purpose of influencing the outcome of an election").

45 *See Buckley*, 519 F.2d at 863 n.112 (observing that, while making other changes to the political committee definition, Congress did not materially alter the provision in response to the narrowing constructions imposed by *Jennings* and *National Committee for Impeachment*).

AN OPEN LETTER TO PRESIDENT RICHARD M. NIXON IN OPPOSITION TO HIS STAND ON SCHOOL SEGREGATION

Dear Mr. President:

We write because we believe that you are taking steps to create an American apartheid. That, we know, is a nasty charge. Yet that is the direction the House of Representatives took us on August 17, 1972. On that date, the House voted 282-102 to prohibit federal courts from taking effective action to end school segregation. . . .

We believe instead that the ultimate source of pressure behind this shameful bill has been you, Mr. President.

During the last six months, you have encouraged the resentments and fears of whites, and made open enemies of blacks. You have made scapegoats of the federal courts, and attacked the rule of law itself. You have cut the middle ground out from under the feet of reasonable men. We find it hard to imagine a more cynical use of presidential power.

In the House of Representatives only 102 members stood fast against you.** Now the issue is before the Senate. We urge you to back off from the path to apartheid, and withdraw your support for this bill.

** [To readers:] Let them hear from you. They deserve your support in their resistance to the Nixon administration's bill.[46]

Other, similar advertisements likewise did not count toward political committee status, including one that was "derogatory to the President's stand on the Vietnam war," even though "the President is a candidate for re-election . . . and the war is a campaign issue."[47]

Thus, from the outset, courts recognized that although "[p]ublic discussion of public issues which also are campaign issues readily and often unavoidably draws in candidates and their positions, their voting records and other official conduct,"[48] such discussions do not convert an organization into a political committee. To the contrary, courts have emphazied how "the interest of a group engaging in nonpartisan discussion ascends to a high plane, while the governmental interest in disclosure correspondingly diminishes.[49]

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46 *ACLU*, 366 F. Supp. at 1058; *see also Buckley*, 519 F.2d at 873 (referencing this discussion).

47 *Nat'l Comm. for Impeachment*, 469 F.2d at 1138, 1142.

48 *Buckley*, 519 F.2d at 875.

49 *Id.* at 873.

B. *Buckley's* "Major Purpose" Test

In response to both vagueness and overbreadth concerns, the Court in *Buckley* limited the scope of the Act's definition in two ways.[50] First, the Court circumscribed the Act's $1,000 statutory threshold by construing the definition of expenditure "to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate."[51] Second, to address concerns that the broad definition of "political committee" in the Act "could be interpreted to reach groups engaged purely in issue discussion," the Court held 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."[52]

Buckley fashioned these limitations to prevent the Act from "encompassing both issue discussion and advocacy of a political result"; thus, the major purpose limitation ensures that issue advocacy organizations are not swept into the Act's burdensome regulatory scheme.[53] Regulation of electoral groups, the Court held, was constitutionally acceptable; regulation of issue groups was not. Therefore, the major purpose test serves to distinguish between the two.

The Court reaffirmed this distinction in *FEC v. Massachusetts Citizens for Life*,[54] noting that all "organizations whose major purpose is not campaign advocacy, but who occasionally make independent expenditures on behalf of candidates, are subject only to these [independent expenditure-specific reporting] regulations."[55] Then, with respect to the nonprofit corporation at issue, the Court held that its "central organizational purpose is issue advocacy, although it occasionally engages in activities on behalf of political candidates,"[56] elaborating that if a group's "independent spending become[s] so extensive that the organization's major purpose may be regarded as campaign activity, the corporation would be classified as a political committee."[57]

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50 *Buckley*, 424 U.S. at 79.

51 *Id.* at 80 (footnote omitted). According to the Court, "[t]his reading is directed precisely to that spending that is unambiguously related to the campaign of a particular federal candidate." *Id.* Specifically, "communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" *Id.* at 44 n.52.

52 *Id.* at 79.

53 *Id.* (footnotes omitted).

54 479 U.S. 238 (1986) ("*MCFL*").

55 *Id.* at 252-253.

56 *Id.* at 252 n.6. The phrase "engages in activities on behalf of political candidates" seems to have been used interchangeably with the term "independent expenditures." *Compare id.* at 252-253 with *id.* at 252 n.6.

57 *Id.* at 262 (citing *Buckley*, 424 U.S. at 79). *See also North Carolina Right to Life, Inc. v. Leake*, 525 F.3d 274, 287-88 (4th Cir. 2008) ("*NCRTL*") (explaining that Buckley's major purpose test requires that the nomination or election of a candidate must be *the* (*i.e.*, sole and exclusive) major purpose of an organization, not merely *a* (*i.e.*, one of several) major purpose).

C. Lower Court Clarifications of the "Major Purpose" Test

Since *Buckley*, lower courts have further clarified the contours of the major purpose test. For instance, in *Wisconsin Right to Life, Inc. v. Barland*,[58] the Seventh Circuit summed up the Supreme Court's precedent as requiring the major purpose of "express election advocacy" before Wisconsin could impose state-level political committee burdens.[59] According to the Seventh Circuit, "[t]o avoid overbreadth concerns in this sensitive area, *Buckley* held that independent groups not engaged in express election advocacy as their major purpose cannot be subjected to the complex and extensive regulatory requirements that accompany the PAC designation."[60] Because of similarities between the Act's political committee disclosure provisions and the regulation at issue, the court held that the major purpose construction limiting the Act similarly limited the state's regulation. Therefore, the rule at issue was only "a reasonably tailored disclosure rule for independent organizations engaged in express election advocacy as their major purpose."[61]

Other courts have applied the major purpose doctrine in a similar manner. In *New Mexico Youth Organized v. Herrera*,[62] the Tenth Circuit identified two methods for determining a group's major purpose: "an examination of the organization's central organizational purpose"; or a "comparison of the organization's electioneering spending with overall spending to determine whether the preponderance of expenditures is for express advocacy or contributions to candidates."[63] Relying on both *MCFL* and *Colorado Right to Life Comm., Inc. v. Coffman*,[64] the *NMYO* court held that not only was there no preponderance of spending on express advocacy, there was no indication of any spending on express advocacy at all.[65] Thus, the defendant could not be forced to register and report as a political committee.

The Fourth Circuit also has expounded upon how to assess a group's central organizational purpose in *NCRTL*.[66] The Fourth Circuit explained that "if an organization

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58 751 F.3d 804 (7th Cir. 2014)

59 *Id.* at 838, 839.

60 *Id.* at 839.

61 *Id.* at 842.

62 611 F.3d 669 (10th Cir. 2010) ("*NMYO*").

63 *Id.* at 678.

64 498 F.3d 1137 (10th Cir. 2007).

65 *NMYO*, 611 F.3d at 678; *see also Free Speech v. FEC*, 720 F. 3d 788, 797 (10th Cir. 2013), *cert. denied* –S. Ct. --, No. 13-772 (May 19, 2014) ("The determination of whether the election or defeat of federal candidates for office is *the* major purpose of an organization, not simply *a* major purpose, is inherently a comparative task, and in most instances it will require weighing the importance of some of a group's activities against others.") (quoting *Real Truth About Abortion v. FEC*, 681 F.3d 544, 556 (4th Cir. 2012)).

66 525 F.3d at 289.

explicitly states, in its bylaws or elsewhere, that influencing elections is its primary objective, or if the organization spends the majority of its money on supporting or opposing candidates, that organization is under 'fair warning' that it may fall within the ambit of *Buckley*'s test."[67]

At the district court level, the court in *FEC v. GOPAC, Inc.*[68] rejected the use of a fundraising letter lacking express advocacy as evidence that the group's major purpose was the election or defeat of a candidate, finding that "[a]lthough [a Federal candidate] is mentioned by name, the letter does not advocate his election or defeat nor was it directed at [that candidate's] constituents. . . . Instead, the letter attacks generally the Democratic Congress, of which [the candidate] was a prominent member, and the franking privilege . . . and requests contributions."[69] In *FEC v. Malenick*,[70] the court relied on only express advocacy communications, rather than communications that merely mentioned a candidate, in concluding that the major purpose test was met.[71] In both *Malenick* and *GOPAC* the courts examined the public and non-public statements, as well as the spending and contributions, by particular groups to determine if the major purpose of each organization was the nomination or election of a federal candidate.

D. The Standard for Identifying Genuine Issue Speech

The courts have appropriately rejected attempts to count issue speech — even that which references federal candidates — as evidence that a group has met *Buckley's* major purpose test. A contrary conclusion would undermine the objective of the major purpose limitation: to ensure that issue advocacy organizations are not regulated as political committees. In *Buckley*, the Supreme Court observed:

> [T]he distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various issues, but campaigns themselves generate issues of public interest.[72]

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67 *Id.*

68 917 F. Supp. 851 (D.D.C. 1996).

69 *Id.*. at 863-64.

70 310 F. Supp. 2d 230 (D.D.C. 2005).

71 *Id.* at 234-236 (noting the 60 fax alerts that the group sent in which it "advocated for the election of specific federal candidates").

72 424 U.S. at 42.

The Supreme Court in *FEC v. Wisconsin Right to Life, Inc.*[73] provided explicit guidance regarding how to distinguish electoral advocacy from issue speech. As the Court explained, "[i]ssue advocacy conveys information and educates. An issue ad's impact on an election, if it exists at all, will come only after the voters hear the information and choose — uninvited by the ad — to factor it into their voting decisions."[74] The Court went on to conclude that "[d]iscussion of issues cannot be suppressed simply because the issues may also be pertinent in an election."[75]

In holding that the ads at issue in *WRTL II* were genuine issue ads, the Court noted that they "focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter,"[76] and rejected the notion that any of the following characteristics would render a communication electoral advocacy:

- If it contains an appeal to contact a candidate;
- If it mentions a candidate in relation to an issue;
- If it is disseminated in close proximity to elections, rather than near actual legislative votes on issues;
- If it is aired when the Congress is not in session;
- If it cross-references a website that contains express advocacy;
- If the group running the communication had in the past expressly advocated the election or defeat of the candidate referenced in the advertisement; or
- If it merely mentions — or even promotes or criticizes — a federal candidate.[77]

The Seventh Circuit reinforced the importance of broad protections for issue-related speech in *Barland* — a case involving state regulations that were "specifically designed to bring issue advocacy within the scope of the state's PAC regulatory system."[78] Applying *Buckley*, the court found the regulation to be "fatally vague and overbroad"[79] and "a serious chill on debate

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73 551 U.S. 449 (2007) ("*WRTL II*").

74 *Id.* at 470.

75 *Id.* at 474.

76 *Id.* at 470.

77 *Id.* at 470-73.

78 751 F.3d 804, 834 (7th Cir. 2014).

79 *Id.* at 835.

about political issues,"[80] noting that the "pervasive" regulatory burdens of political committee status are not "relevantly correlated and reasonably tailored to the public's informational interest for "issue-advocacy groups that only occasionally engage in express advocacy."[81]

E. The Commission's Application of the "Major Purpose" Test

Since *Buckley*, the Commission has determined the major purpose of an organization on a case-by-case basis, rejecting on multiple occasions the invitation to adopt a bright line rule governing the analysis. In 2004, the Commission published a Notice of Proposed Rulemaking to "explore[] whether and how [it] should amend its regulations defining whether an entity is a . . . political committee"[82] and in particular whether the regulatory definition of political committee "should be amended by incorporating the major purpose requirement."[83] The Commission sought comment on four tests for determining whether an entity had the requisite major purpose.[84] These proposed tests would have examined — to varying degrees — an organization's avowed purpose, its spending, and its tax status.[85]

The Commission concluded that "incorporating a 'major purpose' test into the definition of 'political committee' [was] inadvisable" and declined to adopt any of the proposed standards.[86] This decision was challenged in federal district court. The court found that the Commission's decision was not arbitrary and capricious but did order the Commission to provide a more detailed explanation of that decision.[87] In response, the Commission issued a Supplemental Explanation and Justification in 2007.[88] This Supplemental E&J did not issue or explain a new rule. Rather, it elaborated upon the Commission's ongoing case-by-case approach to the major purpose test, explaining that "[a]pplying the major purpose doctrine . . . requires the flexibility of a case-by-case analysis of an organization's conduct that is incompatible with a one-size-fits-all rule."[89] To that end, the Commission indicated that determining a group's major

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[80] *Id.* at 837.

[81] *Id.* at 841.

[82] *Notice of Proposed Rulemaking on Political Committee Status*, 69 Fed. Reg. 11736, 11736 (Mar. 11, 2004).

[83] *Id.* at 11743.

[84] *Id.* at 11745.

[85] *See Id.* at 11745-11749; *see also Final Rules on Political Committee Status, Definition of Contribution, and Allocation for Separate Segregated Funds and Nonconnected Committees*, 69 Fed. Reg. 68056, 68064-68065 (Nov. 23, 2004) ("2004 E&J") (explaining that the Commission considered – and rejected – two additional tests (for a total of six) prior to adopting the E&J.

[86] 2004 E&J, 69 Fed. Reg. at 68065.

[87] *Shays v. FEC*, 424 F.Supp.2d 100, 115-16 (D.D.C. 2006).

[88] *Supplemental Explanation and Justification, Political Committee Status*, 72 Fed. Reg. 5596 (Feb. 7, 2007) ("2007 Supplemental E&J").

[89] *Id.* at 5601.

purpose requires "flexiblity" and a "fact-intensive," "case-by-case" consideration of a number of indicators unique to each organization.[90]

This central premise of the 2007 Supplemental E&J has been upheld by several courts.[91] For example, the Fourth Circuit in *Real Truth About Abortion v. FEC* concluded that "[t]he determination of whether the election or defeat of federal candidates for office is *the* major purpose of an organization . . . is inherently a comparative task, and in most instances it will require weighing the importance of some of a group's activities against others."[92] This flexible, comparative approach remains at the core of the Commission's major purpose analysis today.

While the basic approach to political committee status outlined in the 2007 Supplemental E&J remains valid, some portions of the guidance contained therein have been superseded by subsequent case law and Commission interpretations. Among these portions is the reference to certain older administrative matters which were cited as relevant examples. Though the 2007 Supplemental E&J does not articulate a rule defining the major purpose test, it points to the public files of closed enforcement cases as historical "guidance as to how the Commission has applied the statutory definition of 'political committee' together with the major purpose doctrine."[93] However, the value of a number of the Commission's past political committee enforcement matters cited in the 2007 Supplemental E&J has been diminished by intervening decisions both by courts and by the Commission.

For example, the 2007 Supplemental E&J was issued prior to the Court's decision in *WRTL II*,[94] which clarified the distinction between issue and electoral advocacy.[95] And recently, *Barland* reinforced *WRTL II*'s holding that genuine issue advertisements cannot be regulated as electoral advocacy.[96] Wisconsin's rule defining political committees was narrower in some respects than the federal definition of "electioneering communication." It applied only to

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90 *Id.* at 5601-05.

91 *See, e.g., Free Speech v. FEC*, 720 F. 3d 788 (10th Cir. 2013), *cert. denied* 134 S. Ct.2288, No. 13-772 (2014); *Real Truth About Abortion v. FEC*, 681 F.3d 544 (4th Cir. 2012) ("*RTAA*"); *Shays v. FEC*, 511 F. Supp.2d 19 (D.D.C. 2007) ("*Shays II*").

92 681 F.3d at 556 (emphasis in the original). The *RTAA* court also noted that the inquiry to assess an organization's major purpose "would not necessarily be an intrusive one" as "[m]uch of the information the Commission would consider would already be available in that organization's government filings or public statements." *Id.* at 558.

93 2007 Supplemental E&J, 72 Fed. Reg. at 5604

94 The 2007 Supplemental E&J was issued on February 7, 2007. *See* 72 Fed. Reg. 5595. *WRTL II* was decided on June 25, 2007. 551 U.S. 449 (2007).

95 *See WRTL II*, 551 U.S. at 478-479 ("Issue ads like WRTL's are by no means equivalent to contributions, and the quid-pro-quo corruption interest cannot justify regulating them. To equate WRTL's ads with contributions is to ignore their value as political speech.").

96 *Barland*, 751 F.3d at 834-35.

communications made within 30 days of a primary election or 60 days of a general election that name or depict a federal candidate and "refers to the candidate's 'personal qualities, character, or fitness' or 'supports or condemns' the candidate's record or 'position or stance on issues.'"[97] Nevertheless, *Barland* rejected this approach, holding that Wisconsin's provision improperly captured genuine issue advertisements and "under *Buckley* and *Wisconsin Right to Life II* must be narrowly construed to apply only to independent spending for express advocacy and its functional equivalent."[98] Thus, reliance on the advertisements cited in the 2007 Supplemental E&J is undermined to the extent that the advertisements cited therein constitute issue advocacy, as later clarified by the Court in *WRTL II* and the Seventh Circuit in *Barland*.[99]

While the fundamental approach to determining political committee status set forth in the 2007 Supplemental E&J —*i.e.*, a flexible, fact-intensive analysis of relevant factors — remains sound,[100] many of the enforcement matters contained therein have been undermined by subsequent judicial decisions, a development the Commission has adapted to through its case-by-case approach over time.

* * * *

In sum:

- The Act's definition of political committee only reaches those groups that have as their only major purpose the nomination or election of a federal candidate; a group that has as its major purpose the discussion of issues, including political issues, may not be regulated as a political committee under the Act.

- Genuine issue speech does not lose its character merely by mentioning – or even promoting or criticizing – a federal candidate.

- The Commission will apply the major purpose doctrine on a case-by-case basis, taking into consideration the unique facts and circumstances involved with a particular group.

With those principles in mind, we turn to AAN.

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97 *Id.* at 834 (quoting GAB § 1.28(3)(b)).

98 *Id.* at 835. None of AAN's advertisements are the "functional equivalent" of express advocacy. Moreover, after *WRTL II*, almost all electioneering communications are genuine issue ads.

99 *Free Speech* and *RTAA* are fully consistent with this limitation. *Free Speech* and *RTAA* upheld the case-by-case approach outlined in the 2007 Supplemental E&J. *Barland* and other cases such as *NMYO* clarified the application of the major purpose test within the case-by-case approach upheld in *Free Speech* and *RTAA*.

100 2007 Supplemental E&J, 72 Fed. Reg. at 5601.

IV. ANALYSIS OF AAN'S MAJOR PURPOSE

As explained above, since its adoption, the Act's definition of "political committee" has been the subject of judicial scrutiny. The Supreme Court held in *Buckley* that the definition as adopted by Congress impermissibly swept within its ambit groups engaged primarily in issue discussion. For this reason, the Court narrowly construed the definition of political committee to reach only groups that (1) meet the statutory definition *and* (2) have as their major purpose the *nomination or election* of a federal candidate. AAN's major purpose is not the nomination or election of a federal candidate under the second prong.

A. AAN Met the Statutory Threshold for Political Committee Status

Based upon its filings with the Commission, AAN clearly crossed the statutory threshold for political committee status by making over $1,000 in independent expenditures in both calendar year 2009 and calendar year 2010.[101] The question thus is whether AAN's singular major purpose is the nomination or election of a federal candidate.

B. AAN Does not have the Requisite Major Purpose for Political Committee Status

While not the only factors that may be considered, the following two factors are most relevant in this case: (1) assessing AAN's central organizational purpose by examining its public and non-public statements; and (2) analyzing AAN's spending on campaign activities with its spending on activities unrelated to the election or defeat of a federal candidate, including the group's genuine issue speech.[102]

1. AAN's Central Organization Purpose is Not the Nomination or Election of a Federal Candidate

AAN's organizational documents and official public statements indicate that AAN was organized to promote public policy and engage in issue advocacy. AAN's stated organizational purpose is to "create, encourage and promote center-right policies based on the principles of freedom, limited government, American exceptionalism, and strong national security . . . by engaging the hearts and minds of the American people and spurring them into active participation in our democracy."[103] AAN's stated purpose is thus issue-centric: to create, encourage, and promote a set of policy preferences.

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[101] While the Complaint does not distinguish between 2009 and 2010 spending, OGC notes that "[t]he Commission's records put the total [spending on independent expenditures] at $4,097,962.29 for the two year period. Approximately $4,044,572 of that total was spent during 2010," meaning approximately $53,390 was spent on independent expenditures in 2009. MUR 6589 (AAN), First General Counsel's Report at 4 n.1.

[102] We note that neither OGC nor Complainants argued that any factor other than statements or spending support their conclusions that AAN has as its major purpose the nomination or election of a federal candidate.

[103] MUR 6589 (AAN), Response at 3 (quoting AAN, *About, available at* http://americanactionnetwork.org/aan/about); *see also* MUR 6589 (AAN), Complaint at Exhibit A (Form 990:

Furthermore, AAN is a 501(c)(4) nonprofit organization.[104] Electing this tax status is a significant public statement of purpose. By law, organizations claiming tax exempt status under section 501(c)(4) must be "operated exclusively for the promotion of social welfare."[105] Under Internal Revenue Service regulations, "[t]he promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office."[106] Thus, section 501(c)(4) organizations may not have "participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office" as their primary purpose. Senator McCain, one of the principal Senate sponsors of the Bipartisan Campaign Reform Act ("BCRA"), stated in comments to the Commission during its political committee rulemaking that "under existing tax laws, Section 501(c) groups . . . cannot have a major purpose to influence federal elections, and are therefore not required to register as federal political committees, as long as they comply with their tax law requirements."[107] Similarly, reform groups such as Public Citizen have noted that "a legitimate 501(c) organization should not have to fear that it will become a political committee simply by engaging in political issue-related criticism of public officials."[108] Thus, while tax status is not dispositive, it is relevant, particularly given that the Respondents were well aware of their limitations under a 501(c) exemption.[109] Based upon AAN's official public statements and chosen tax status, AAN's central organizational purpose is not the nomination or election of a candidate to federal office.

Return of Organization Exempt from Income Tax 2009); MUR 6589 (AAN), Supplemental Response (Form 990: Return of Organization Exempt from Income Tax 2010).

104 *Id.*

105 26 U.S.C. § 501(c)(4)(2).

106 26 C.F.R. § 1.501(c)(4)-1(a)(2)(ii).

107 Comments of John McCain and Russell D. Feingold on Reg. 2003-07 (Political Committee Status) (Apr. 2, 2004), attached Statement of Senator John McCain, Senate Rules Committee, March 10, 2004 at 2. *See* 26 U.S.C. § 501(c)(4)(A) (providing tax exempt treatment to "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.").

108 Comment of Public Citizen on Reg. 2003-07 (Political Committee Status) at 10 (Apr. 5, 2004). Public Citizen went on to observe that "[e]ntities that do not have as their major purpose the election or defeat of federal candidates, *such as 501(c) advocacy groups*, but which may well be substantially engaged in political activity, should remain subject to regulation for only the narrow class of activities – express advocacy and electioneering communications – explicitly established under current federal election law, as amended by [McCain-Feingold]." *Id.* at 2.

109 *See, e.g.*, MUR 6589 (AAN), Supplemental Response at 1-2 (noting that between 2009-2011 "at most, only 19% of AAN's spending was for political activities" as the IRS defines them, "a phrase that is broader in scope than the FEC's express advocacy standard.").

2. The Majority of AAN's Activity was Focused on the Discussion of Issues, Not the Nomination or Election of a Federal Candidate

The Complaint's conclusion relies entirely upon AAN's spending pattern, alleging that "[a]s demonstrated by its extensive spending on federal campaign activity, AAN's major purpose between July 23, 2009 and June 30, 2011 was the nomination or election of federal candidates."[110] This allegation is flawed in that it is based on an impermissibly broad test to assess AAN's relative spending and major purpose.

Here, in order to determine whether "independent spending" has "become so extensive," the Commission must compare a group's spending on electoral advocacy against its spending on activities unrelated to campaigns, including genuine issue advocacy.[111] AAN's record of spending indicates that while nominating or electing candidates may have been *a* purpose of the organization in the time period in question, it was not *the* major purpose of the organization.

As noted above, AAN was formed in July 2009.[112] During its fiscal year 2009, which ran from July 23, 2009 to June 30, 2010, AAN reported spending $1,446,675.[113] In fiscal year 2010, AAN reported raising $27,479,384 and spending $25,692,334.[114] In total, AAN reported spending $27,139,009 from its founding in July 2009 through June 2011. Of that, AAN reported spending approximately $4,096,910 on independent expenditures.[115]

The vast majority — if not all — of AAN's remaining spending went to further purposes other than the nomination or election of a candidate. For example, AAN reports on tax returns filed for both years, that some of that spending went towards"[f]ound[ing] and buil[ding] a premier grassroots advocacy organization with a clear mission statement," which included recruiting a high caliber Board of Directors, developing clear internal procedures, reviews and legal processes, hiring staff, establishing core policy areas of interest, and creating a "cutting edge technological platform for grassroots advocacy."[116]

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110 MUR 6589 (AAN), Complaint at 7.

111 *MCFL*, 479 U.S. at 262.

112 MUR 6589 (AAN), Complaint at 3.

113 MUR 6589 (AAN), Complaint at Exhibit A (Form 990: Return of Organization Exempt from Income Tax 2009). Of this, $987,251 was spent on the "program services expenses," while $164,555 went to "management and general expenses" and $294,869 went to "fundraising expenses." *Id.*

114 MUR 6589 (AAN), Supplemental Response (Form 990: Return of Organization Exempt from Income Tax 2010). Of this, $25,255,343 was spent on "program service expenses," while $191,329 was spent on "management and general expenses" and $245,662 was spent on "fundraising expenses." *Id.*

115 MUR 6589 (AAN), First General Counsel's Report at 4 n.1.

116 MUR 6589 (AAN), Complaint at Exhibit A (Form 990: Return of Organization Exempt from Income Tax 2009); MUR 6589 (AAN), Supplemental Response (Form 990: Return of Organization Exempt from Income Tax 2010).

AAN also spent its funds on conducting over 20 policy interactive briefings called "Learn and Lead," which featured Senators, Congressmen, and former Secretaries and Ambassadors for the U.S. Government about critical issues facing our country with regards to energy, education, tax policy, immigration, national security, spending and health care.[117]

Most significantly, AAN expended substantial sums on sponsoring grassroots issue advocacy, including producing and airing television and digital advertising, "focused on fiscal responsibility, [health care] reform, regulatory reform and other federal legislative issues considered by the United States Congress."[118]

Specifically, AAN reported spending roughly $13 million on issue advertisements. These are genuine issue advertisements.[119] They "focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter,"[120] discussing a number of salient policy issues including federal spending, the stimulus, tax relief, health care, and cap and trade. Moreover, they contain no references to elections, candidacies, or political parties. Consistent with what the Court has said, advertisements that mention a candidate in the course of discussing an issue and, in some cases, contained an appeal to contact that candidate are still genuine issue advertisements.[121] Nor do the advertisements lose their character as genuine issue advertisements merely because they were disseminated in close proximity to an election or aired when Congress was not in session.[122] The Court has made clear: the "[d]iscussion of issues cannot be suppressed simply because the issues may also be pertinent in an election."[123] Thus, even if these advertisements may have been relevant to an election, they are still genuine issue advertisements.

Accordingly, the roughly $13 million that AAN spent on these genuine issue advertisements indicate that its purpose was something other than the nomination or election of a federal candidate. Indeed, the roughly $4.1 million that AAN spent on independent expenditures between 2009 and 2011 was the totality of its spending that was for the purpose of nominating or influencing the election of a federal candidate and represented approximately 15% of its total expenses during the same period. This is hardly "so extensive that the organization's major purpose may be regarded as campaign activity."[124]

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117 *Id.*

118 MUR 6589 (AAN), Supplemental Response (Form 990: Return of Organization Exempt from Income Tax 2010).

119 *See* Appendix A (transcript of advertisements cited in the Complaint).

120 *WRTL II*, 551 U.S. at 470.

121 *Id.* at 470-473.

122 *Id.* at 470-473.

123 *Id.* at 474.

124 *MCFL*, 479 U.S. at 262 (citing *Buckley*, 424 U.S. at 79).

Since AAN's central organizational purpose is not the nomination or election of a federal candidate and its independent spending to support the nomination or election of a federal candidate is not so extensive that its major purpose may be regarded as campaign activity, AAN's major purpose is not the nomination or election of a federal candidate. Accordingly, AAN is not a political committee. Rather, it is an issue advocacy group that occasionally speaks out on federal elections. This is precisely the type of group the major purpose test was adopted to spare the "burdensome alternative" of political committee status.[125]

V. THE FIRST GENERAL COUNSEL'S REPORT

Based on the above facts, OGC nevertheless recommend that the Commission find reason to believe that "AAN had as its major purpose the nomination or election of federal candidates during 2010" and, accordingly, should have "organiz[ed], register[ed], and report[ed] as a political committee."[126] OGC largely based this recommendation on two flawed premises: first, that any communication that supports or opposes a clearly identified federal candidate but does not contain express advocacy is indicative of major purpose; and second, that an organization's spending is evaluated through the limited lens of a single calendar year.

A. THE RELEVANT SPENDING MAY NOT ENCOMPASS GENUINE ISSUE ADVERTISEMENTS

The legal theory proposed in the First General Counsel's Report ostensibly relies on the Commission's 2007 Supplemental E&J,[127] which explained the Commission's decision *not* to adopt a bright-line rule for applying the major purpose analysis. In particular, OGC cites to a

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125 *See Citizens United*, 558 U.S. at 337 (describing generally the burdens associated with political committee status); *see also supra* Part III (discussing burdens on political committees under the Act).

126 MUR 6589 (American Action Network), First General Counsel's Report at 3. While the Commission has erroneously strayed into the vague notion of generalized "campaign activity," rather than *Buckley*'s more limited nomination or election of federal candidates, *see, e.g.*, MUR 5365 (Club for Growth), General Counsel's Report #2 at 3, 5 ("[T]he vast majority of CFG's disbursements are for federal campaign activity" and concluding CFG "has the major purpose of federal campaign activity."), the Commission more recently has abided by *Buckley*'s mandate: that major purpose encompasses only activity expressly directed at the nomination or election of federal candidates. *See, e.g.*, MUR 6396 (Crossroads GPS), Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen; MUR 6081 (American Issues Project), Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioners Caroline C. Hunter and Matthew S. Petersen; MUR 5541 (The November Fund), Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn; Federal Election Commission's Brief for the Respondents in Opposition at 4, *The Real Truth About Obama, Inc., v. FEC*, 130 S. Ct. 2371 (2010) (No. 09-724) ("*RTAO*") ("[A]n entity that is not controlled by a candidate need not register as a political committee unless its 'major purpose' is the nomination or election of federal candidates."); Brief of Appellees Federal Election Commission and United States Department of Justice at 5, *RTAO*, 575 F.3d 342 (4th Cir. 2009) (No. 08-1977) ("[A] non-candidate-controlled entity must register as a political committee -- thereby becoming subject to limits on the sources and amounts of its contributions received -- only if the entity crosses the $1,000 threshold of contributions or expenditures and its 'major purpose' is the nomination or election of federal candidates.").

127 2007 Supplemental E&J, 72 Fed. Reg. at 5601.

series of decade-old enforcement matters (and the communications at issue therein), to arrive at its recommendation, that for purposes of determining political committee status, "communications that support or oppose a clearly identified Federal candidate, but do not contain express advocacy"[128] are indicative of a major purpose of nominating or electing a federal candidate. Relying on vague, ambiguous terms, it appears that the relevant criteria for OGC's determination are: (1) a reference to clearly identified federal candidate, (2) criticism of or opposition to that candidate, and (3) the timing of the communication being shortly before the election.[129]

OGC's analysis fails to distinguish between advertisements that support or oppose the election of a candidate and those that reference a candidate in the course of supporting or opposing an issue with which that candidate is involved. Nor does OGC acknowledge that such a distinction exists, notwithstanding judicial precedent that stands precisely for that proposition.[130] Indeed, the illustrative value of the Commission's past political committee enforcement matters cited in the 2007 Supplemental E&J has, in large part, been diminished by intervening decisions both by courts and by the Commission. Under *WRTL II*, many of the advertisements and communications at issue in those cases were genuine issue speech and, therefore, may not serve as the trigger to political committee status.

Indeed, as noted above, the *Barland* court reviewed a provision that required groups to register and report as political committees if they spent a small amount on certain communications prior to an election. This provision is remarkably similar to the standard advocated by OGC to determine which of AAN's admittedly non-express advocacy communications nevertheless "supported or opposed" a federal candidate.

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128 MUR 6589 (AAN), First General Counsel's Report at 13.

129 *Id.* at 21.

130 *See, e.g., WRTL II*, 551 U.S. at 470-473.

	PROVISION REVIEWED IN *BARLAND*[131]	OGC STANDARD[132]
Candidate Reference	"[A] clearly identified candidate"	"[A] clearly identified federal candidate"
Content	"[R]efers to the candidate's personal qualities, character, or fitness or supports or condemns the candidate's record or position or stance on issues"	"[C]riticizes or opposes a candidate"
Timing	"[W]ithin 30 days of a primary, or 60 days of a general election"	"[R]un in the candidate's respective state shortly before a primary or election"

In particular, OGC looks to whether an advertisement has "a clearly identified federal candidate," "criticizes or opposes a candidate," or is "run in the candidate's respective state shortly before a primary or election."[133] In *Barland*, the Court held that a law requiring registration and reporting based on advertisements that had "a clearly identified candidate," "refers to the candidate's personal qualities, character, or fitness or supports or condemns the candidate's record or position or stance on issues," and is aired "within 30 days of a primary, or 60 days of a general election"[134] on the grounds that such provision "is fatally vague and overbroad"[135] and "is a serious chill on debate about political issues."[136] Considering the similarities between the Wisconsin's standard and OGC's proposed standard here, the Seventh Circuit's holding is a rejection of the approach recommended by OGC.[137]

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131 *Barland*, 751 F.3d at 834.

132 MUR 6589 (AAN), First General Counsel's Report at 13.

133 *Id.*

134 *Barland*, 751 F.3d at 834.

135 *Id.* at 835.

136 *Id.* at 837.

137 At minimum, this explicit rejection casts grave constitutional doubt on OGC's expansive approach. As the Court has recently stated, "by analogy to the rule of statutory interpretation that avoids questionable constitutionality -- validly conferred discretionary executive authority is properly exercised . . . to avoid serious constitutional doubt." *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247, 2259 (2013); *see also Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Contr. Trades Council*, 485 U.S. 568, 575 (1988) (although a regulatory agency's interpretation of its own statute is generally accorded deference, "where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress.") (citing *NLRB v. Catholic Bishops of Chicago*, 440 U.S. 490, 500 (1979)); *Department of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 346 (2000)

Similarly, the court in *GOPAC* rejected "the Commission's plea for a broadening of the *Buckley* concept,"[138] reasoning that "the terms 'partisan electoral politics' and 'electioneering' raise virtually the same vagueness concerns as the language 'influencing any election for Federal office,' the raw application of which the *Buckley* Court determined would impermissibly impinge on First Amendment values."[139]

In short, the approach adopted by OGC in this matter cannot be squared with these court holdings.

B. IT IS INAPPROPRIATE AND ARBITRARY TO FOCUS AAN'S MAJOR PURPOSE ANALYSIS ON A SINGLE CALENDAR YEAR

Furthermore, OGC continues to advance a calendar year approach to apply the major purpose analysis.[140] This approach has never been formally adopted by the Commission, and we have previously explained why such an approach is myopic, distortive, and legally erroneous.[141]

OGC contends that a calendar year test "provides the firmest statutory footing for the Commission's major purpose determination" because the Act defines political committee "in terms of expenditures made or contributions received '*during a calendar year*.'"[142] However, determining an organization's major purpose via a narrow snapshot of time ignores the point of the major purpose test. The major purpose limitation is intended to act as a constraint, saving the Act's definition of "political committee" by restricting it to groups with the clearest electoral focus – those with the nomination or election of a candidate for federal office as their major

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(Scalia, J., concurring in part) ("[I]t is our practice to construe the text [of a statute] in such fashion as to avoid serious constitutional doubt.").

Moreover, the constitutional doubts raised here militate in favor of cautious exercise of our prosecutorial discretion. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985) ("[A]n agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion.").

138 *GOPAC*, 917 F. Supp. at 861.

139 *Id.* Similarly, in *Malenick* the court held that the major purpose test was met, only relied on express advocacy communications, rather than communications that merely mentioned a candidate. 310 F. Supp. 2d at 235 (noting the sixty fax alerts that the group sent in which it "advocated for the election of specific federal candidates").

140 MUR 6589 (AAN), First General Counsel's Report at 23.

141 This is not the first occasion for OGC's novel calendar year theory. We have written extensively about our views on this theory and, in particular, the problems it presents. *See* MUR 6396 (Crossroads GPS), Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen at 20-23; MUR 6081 (American Issues Project), Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioners Caroline C. Hunter and Matthew S. Petersen at 14-25.

142 MUR 6589 (AAN), First General Counsel's Report at 23-24 (quoting 2 U.S.C. § 431(4)).

purpose.[143] While the calendar-year approach superficially attempts to root itself in the statute, it provides precisely the same rigid, "one-size-fits-all rule" roundly rejected by the Commission.[144]

Assessing an organization's major purpose by reference to its activities in a single calendar year renders an artificial and indeed distorted picture of the organization.[145] *Buckley*'s concept of an "organization" manifests its major purpose over its lifetime of existence and activities.[146]

Moreover, the artificial window of a single calendar year would inevitably subject many issue-based organizations to the burdens of political committee status. An examination of a group's major purpose is necessarily an after-the-fact exercise. In these cases, the Commission must determine whether a group properly refrained from registering and reporting as a political committee. A short artificial time period such as a calendar year often provides an incomplete and distorted picture of that group's major purpose.[147] For example, imagine a group created in the middle of an election year that intends to — and in fact does — remain operating after the election ends on a fiscal-year, rather than calendar-year basis. Assume such an organization could devote 10 percent of its resources to express advocacy prior to the election, then spend the other 90 percent of its resources that fiscal year on post-election issue advocacy, and still be considered a political committee under OGC's proposed approach if its issue advocacy spending occurred in the calendar year following the election. The organization's major purpose

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[143] *See, e.g.*, 2007 Supplemental E&J at 5602 ("[E]ven if the Commission were to adopt a regulation encapsulating the judicially created major purpose doctrine, that regulation could only serve to limit, rather than to define or expand, the number or type of organizations regarded as political committees.").

[144] *Id.* According to *RTAA*, the Commission is not "foreclose[d] ... from using a more comprehensive methodology." 681 F.3d at 557. But *RTAA* never approved the Commission using a *less* comprehensive, selective methodology that would frustrate the reason for the major purpose test, which is precisely what would happen if the Commission limited the scope of the major purpose analysis to a single calendar year without consideration of any other spending outside that window.

[145] The fact that the statutory definition of political committee relies upon $1,000 of expenditures or contributions in a calendar year is not relevant to an assessment of that organization's longstanding major purpose for which it was created and as manifested throughout its existence. The Act imposes a bright line that, according to *Buckley*, was unconstitutionally over-inclusive, and, thus, the Court imposed an intention-based standard as a further filter. It is unclear why that arbitrary statutory timeframe is appropriate when *RTAA* rejected the argument that "the major purpose test requires a bright-line, two-factor test." 681 F.3d at 557. It makes little sense that a case-by-case standard that, according to *Shays II*, "requires a very close examination of various activities and statements," would reject a broader examination. 511 F. Supp. 2d at 31.

[146] "Often one can assess an organization's true major purpose only by reference to its entire history." MUR 6396 (Crossroads GPS), Statement of Reasons of Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Petersen at 24 n.101; *see also* MUR 6081 (American Issues Project), Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioners Caroline C. Hunter and Matthew S. Petersen (looking at four years of an organization's history).

[147] The fact that the statutory definition relies upon expenditures or contributions in a calendar year is not relevant to the major purpose for which a group was created. The Act as originally written imposes a bright line that, according to *Buckley*, was unconstitutionally over-inclusive, and, thus, the Court imposed an intention-based standard as a further filter. It is unclear why that arbitrary statutory timeframe is appropriate when *RTAA* rejected the argument that "the major purpose test requires a bright-line, two-factor test." 681 F.3d at 557.

determination would be based upon a distinct minority of its spending within the first twelve months of its operation. Despite the group's best efforts to minimize its election-related expenditures, the Commission would ignore the timeframe the group used to determine *ex ante* its major purpose.

If the group in the example above were branded as a political committee, it would be subjected to the Commission's regulatory and reporting burdens in perpetuity. Under Commission regulations, "only a committee which will no longer receive any contributions or make any disbursements that would otherwise qualify it as a political committee may terminate, provided that such committee has no outstanding debts and obligations."[148] Thus, in order to stop filing burdensome reports, a committee would have to surrender its political rights and agree not to make *any* independent expenditures, regardless of the organization's major purpose.[149]

As one reputable commentator has stated, "[u]nsurprisingly, most citizens begin to focus on and become engaged in political debate once election day approaches."[150] Thus, linking issues to candidates and elections is quite common. But if a group continues to be active past that election date, such spending is also evidence of its true purpose.[151] The Commission must take that reality into account.

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148 11 C.F.R. § 102.3(a).

149 We are aware of only one enforcement matter in which an ongoing state political committee was later deemed to have crossed the line of federal political committee status, and by negotiation in a conciliation agreement, it was allowed to skip registration and reporting with the Commission by submitting its state campaign finance reports on the condition that it forego making federal expenditures and contributions in the future and/or register as a political committee subject to the ongoing reporting rules in perpetuity in the future. *See* MUR 5492 (Freedom, Inc.), Conciliation Agreement at ¶¶ 3, 4.

150 Kirk L. Jowers, *Issue Advocacy: If It Cannot Be Regulated When It Is Least Valuable, It Cannot Be Regulated When It Is Most Valuable*, 50 Cath. U. L. Rev. 65, 76 (Fall 2000).

151 Interestingly, the Commission has, in the past, relied, in part, on the fact that an organization ceased active operations at the end of the election cycle in question when determining that the major purpose test had been met. *See* 2007 Political Committee Supplemental E&J, 72 Fed. Reg. at 5605 (summarizing MUR 5511 (Swiftboat Vets) and MUR 5754 (MoveOn.org)). If the Commission may consider the lack of activity in the calendar year following an election as relevant for determining major purpose, then certainly it must look at and evaluate actual activity undertaken in the next calendar year.

VI. CONCLUSION

AAN is an "issue-advocacy groups that only occasionally engage[d] in express advocacy."[152] As such, it cannot and should not be subject to the "pervasive" and burdensome" requirements of registering and reporting as a political committee. For that reason, and in exercise of our prosecutorial discretion,[153] we voted against finding reason to believe AAN violated the Act by failing to register and report as a political committee.

152 *Barland*, 751 F.3d at 841, 842.

153 *See Heckler* at 831; *see also supra* note 137.

LEE E. GOODMAN
Chairman

7/30/14
Date

CAROLINE C. HUNTER
Commissioner

7/30/14
Date

MATTHEW S. PETERSEN
Commissioner

7/30/14
Date

Appendix A

1. "Back Pack"

> There's a lot on the backs of our kids today, thanks to Congressman [*Gerry Connolly/Tom Perriello/Tim Walz*]. [*Connolly/Perriello/Walz*] loaded our kids up with nearly eight hundred billion in wasteful stimulus spending. Then added nearly a trillion more for Pelosi's health care takeover. A debt of fourteen trillion. Now Congress wants to pile on more spending. How much more can our children take? Call Congressman [*Connolly/Perriello/Walz*]. Tell him to vote to cut spending this November. It's just too much.

AAN reported spending $1,210,000 on three versions of this communication.

2. "Bucket"

> We send tax money to Washington and what does Russ Feingold do with it? Eight hundred billion dollars for the jobless stimulus. Two point five trillion for a healthcare plan that hurts seniors. A budget that forces us to borrow nine trillion dollars. And when he had a chance at reform, he voted against the Balanced Budget Amendment. Russ Feingold and our money. What a mess. [SUPER: Russ Feingold. What a mess.].

AAN reported spending $290,395 on seven versions of this communication.

3. "Extreme"

> [On-Screen Text:] *Nancy Pelosi is not extreme. Compared to Annie Kuster. Kuster supported the trillion dollar government Healthcare takeover. But says it didn't go far enough. $525 billion in new taxes for government Healthcare. Now, Kuster wants $700 billion in higher taxes on families and businesses. And $846 billion in job killing taxes for cap and trade. Nancy Pelosi is not extreme. Compared to Annie Kuster.*

AAN reported spending $875,000 on this communication.

4. "Leadership"

> [Announcer:] Herseth Sandlin on health care: [Herseth Sandlin:] "I stood up to my party leadership and voted no." [Announcer:] The truth is Herseth Sandlin supports keeping Obamacare, a trillion dollar health care debacle, billions in new job-killing taxes. It cuts five hundred billion from Medicare for seniors then spends our money on health care for illegal immigrants. Tell Congresswoman Herseth Sandlin to vote for repeal in November.

AAN reported spending $146,135 on this communication.

5. "Mess"

> A government health care mess thanks to Nancy Pelosi and Chris Murphy. Five hundred billion in Medicare cuts, free health care for illegal immigrants, thousands of new IRS agents, jail time for anyone without coverage, and now a forty-seven percent increase in Connecticut health care premiums. Forty-seven percent! Call Chris Murphy. Tell him to repeal his government health care mess.

AAN reported spending $137,900 on this communication.

6. "Naked"

> [Announcer:] How can you tell the taxpayers in Congressman Gerry Connolly's district? We're not so tough to spot. Connolly stripped us with a wasteful stimulus, spent the shirts off our backs. [On-Screen Text:] *$14 Trillion Debt.* [Announcer:] Connolly is taking money from our pockets to put in Washington's pockets. [Actor:] "Now I don't have any pockets." [Announcer:] Now, Congress wants to strip us bare with more spending. Call Congressman Connolly. Tell him: vote to cut spending this November.

AAN reported spending $2,092,975 on this communication.

7. "New Hampshire"

> Winter's here soon. Guess Congressman Hodes has never spent nights sleepless, unable to pay utility bills. Why else would he vote for the cap-and-trade tax? Raise electric rates by ninety percent? Increase gas to four dollars? Cost us another two million jobs? Kelly Ayotte would stop the cap-and-trade tax. Cold.

AAN reported spending $484,999 on this communication.

8. "Order"

> [On-screen text:] *If Nancy Pelosi gave an order . . . would you follow it? Mike Oliverio would. Oliverio says he would support Pelosi in Washington. After all, Oliverio voted himself a 33% pay raise. Oliverio voted for higher taxes. Even on gas. And Oliverio won't repeal Obama's $500 billion Medicare cuts. So what will Mike Oliverio do in Washington? Whatever Nancy Pelosi tells him to.*

AAN reported spending $225,000 on this communication.

9. "Ouch"

> During her eighteen years in Washington, Patty Murray voted for the largest tax increase in history, and repeatedly against tax relief. But this November, Murray promises to vote for a huge tax hike on small businesses. Ever heard of helping small businesses, Patty? Tell Senator Murray "ouch!" We can't afford more tax hikes.

AAN reported spending $652,584.69 on this communication.

10. "Promise"

> Spending in Washington is out of control . . . Representative Hodes promised he'd fight wasteful spending. Hodes hasn't kept that promise. He voted for Pelosi's Stimulus bill . . . . For the auto bailout . . . For massive government-run health care. Trillions in new spending. As New Hampshire families struggle . . . Paul Hodes continues the wasteful spending spree with our tax dollars. Tell Congressman Hodes to stop voting for reckless spending.

AAN reported spending $14,896.34 on this communication.

11. "Quit Critz"

> He was our district economic development director when we lost jobs and unemployment skyrocketed. Mark Critz. He supports the Obama-Pelosi agenda that's left us fourteen trillion in debt. Mark Critz. And instead of extending tax cuts for Pennsylvania families and businesses, he voted with Nancy Pelosi to quit working and leave town. Mark Critz. Tell Congressman Critz that Pennsylvania families need tax relief this November, not more government.

AAN reported spending $177,310 on this communication.

12. "Read This" (Rick Boucher)

> [On-screen text] *Rick Boucher wants to keep you in the dark. About his Washington Cap and Trade deal. Boucher sided with Nancy Pelosi. For billions in new energy taxes. That will kill thousands of Virginia jobs. But Rick Boucher didn't just vote for Cap and Trade. The Sierra Club called Boucher the "linchpin" of the entire deal. Call Rick Boucher. Tell him no more deals.*

AAN reported spending $226,000 on this communication.

13. "Read This" (Health Care)

> [On-screen text:] *Congress doesn't want you to read this. Just like* [Charlie Wilson/Jim Himes/Chris Murphy]. [Charlie Wilson/Jim Himes/Chris Murphy] *& Nancy Pelosi rammed through government healthcare. Without Congress reading all the details. $500 billion in Medicare cuts. Free healthcare for illegal immigrants. Even Viagra for convicted sex offenders. So tell* [Charlie Wilson/Jim Himes/Chris Murphy] *to read this: In November, Fix the healthcare mess Congress made.*

AAN reported spending $1,065,000 on three versions of this communication.

14. "Repeal"

> Obamacare. A trillion-dollar health care debacle. Yet Congressman Critz says he opposes repealing it. It means five hundred billion in new job-killing taxes. Cuts billions from Medicare for seniors. And spends our tax dollars on health insurance for illegal immigrants. Yet Congressman Critz says he wants to keep it. Tell Congressman Mark Critz to vote for repeal in November.

AAN reported spending $435,000 on this communication.

15. "Ridiculous"

> Ridiculous stimulus! Courtesy of Charlie Wilson and Nancy Pelosi. Three million for a turtle tunnel. Two hundred thousand for Siberian lobbyists. Half a million to study Neptune. Two million to photograph exotic ants and one hundred fifty thousand to watch monkeys on drugs. The only thing Wilson and Pelosi's stimulus didn't do? Fix Ohio's economy. Call Charlie Wilson. Tell him to keep the tax cuts, ditch the stimulus.

AAN reported spending $505,000 on this communication.

16. "Secret"

> Remember this? [PELOSI:] "We have to pass the bill so that you can, uh, find out what is in it." Now we know what Pelosi and Mark Schauer were hiding. A trillion-dollar health care debacle. Billions in new job-killing taxes. They cut five hundred billion from Medicare for seniors, then spent our money on health insurance for illegal immigrants. In November, tell Congressman Mark Schauer to vote for repeal."

AAN reported spending $370,000 on this communication.

17. "Skype"

> Person 1: Hey, what's up?
> Person 2: Hey. You have to check out the article I just sent you. Apparently, convicted rapists can get Viagra paid for by the new health care bill.
> Person 1: Are you serious?
> Person 2: Yep. I mean, Viagra for rapists? With my tax dollars? And Congressman Perlmutter voted for it.
> Person 1: Perlmutter voted for it?
> Person 2: Yep. I mean, what is going on in Washington?
> Person 1: We need to tell Perlmutter to repeal it in November.

AAN reported spending $1,430,000 on two versions of this communication.

18. "Taxes"

> Congressman Mark Critz. We know he opposes repealing Obamacare, which means five hundred billion in new job-killing taxes. Now Congressman Critz wants to raise taxes on small businesses, a devastating blow to a weak economy. Congressman Critz even voted to delay extending child tax credits for families. Tell Congressman Mark Critz to vote to extend the tax cuts in November.

AAN reported spending $435,000 on this communication.

19. "Wallpaper"

> Congressman Kurt Schrader is wallpapering Washington with our tax money. Schrader spent nearly eight hundred billion on the wasteful stimulus that created few jobs but allowed big executive bonuses. He threw nearly a trillion at Pelosi's health care takeover and voted to raise the national debt to over fourteen trillion. Now Congress wants to raise taxes. Call Congressman Schrader. Tell him to vote for a tax cut this November to stop wallpapering Washington with our tax dollars.

AAN reported spending $1,600,000 on five versions of this communication

20. "Wasted"

> America is thirteen trillion in debt yet Congresswoman Herseth Sandlin keeps on spending, voting for the eight hundred billion stimulus they promised would create jobs. Instead, our money was wasted upgrading offices for DC bureaucrats, studying African ants, and building road crossings for turtles. Now they want to do it again. Tell Congresswoman Herseth Sandlin to vote "no" on a second, wasteful stimulus in November.

AAN reported spending $231,000 on this communication.