



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**AND ELECTRONIC MAIL**

**SEP 09 2019**

Noah Bookbinder  
Executive Director  
Citizens for Responsibility and Ethics  
in Washington  
1101 K Street, N.W.  
Washington, DC 20005  
nbookbinder@citizensforethics.org

RE: MUR 6538R  
Americans for Job Security

Dear Mr. Bookbinder:

This is in reference to the complaint and supplemental information you filed with the Federal Election Commission concerning possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Americans for Job Security ("AJS"). On October 18, 2016, the Commission found that there was reason to believe that AJS violated 52 U.S.C. §§ 30102, 30103, and 30104 and conducted an investigation in this matter. On September 3, 2019, the Commission accepted a signed conciliation agreement with AJS to resolve its violations of the Act. Accordingly, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). Copies of the conciliation agreement with AJS and the Factual and Legal Analysis are enclosed for your information.

If you have any questions, please contact Jonathan Peterson, at (202) 694-1525, or Amanda Andrade, at (202) 694-1343.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Lee", is written over a light blue circular stamp.

Jin Lee

Acting Assistant General Counsel

Enclosure  
Conciliation Agreement  
Factual & Legal Analysis

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2  
3 In the Matter of )

4 )  
5 Americans for Job Security )

MUR 6538R  
6 )

7  
8 **CONCILIATION AGREEMENT**  
9

10 This matter was initiated by a signed, sworn, and notarized complaint filed by Citizens  
11 for Responsibility and Ethics in Washington. Upon remand from the United States District  
12 Court for the District of Columbia, <sup>1</sup>the Federal Election Commission ("Commission") found  
13 reason to believe that Americans for Jobs Security ("AJS") violated 52 U.S.C. §§ 30102, 30103,  
14 and 30104 by failing to organize, register, and report with the Commission as a political  
15 committee.

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

18 I. The Commission has jurisdiction over AJS and the subject matter of this  
19 proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C.  
20 § 30109(a)(4)(A)(i).

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

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

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

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

Applicable Law

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

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

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

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

17          5.     An electioneering communication is a broadcast, cable, or satellite  
18    communication that: (1) refers to a clearly identified federal candidate; (2) is made within 60  
19    days before a general election or 30 days before a primary election; and (3) is targeted to the  
20    relevant electorate. 52 U.S.C. § 30104(f)(3)(A)(i); 11 C.F.R. § 100.29(a). A communication is  
21    “targeted to the relevant electorate” when it can be received by 50,000 or more persons in the  
22    district the candidate seeks to represent. 11 C.F.R. § 100.29(b)(5).

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

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

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

<sup>3</sup>     *Id.*

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

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

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

12 Facts

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

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

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

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

1           11. In 2008 AJS aired its first electioneering communications, a year after the  
2 Supreme Court invalidated the corporate and union ban on electioneering communications in  
3 *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007).

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

8           13. Also in 2010, AJS ran numerous electioneering communications,  
9 including: "Agree," "Thank You," "Back to Work," "Outsource," "Brink," "Earmarks," "Talk is  
10 Cheap," "Pennsylvania Jobs," "Instrumental," and "Ants." Under the court's ruling, each of  
11 these ads "contribut[e] to a 'major purpose' of nominating or electing a candidate for federal  
12 office."<sup>7</sup>

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

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

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

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

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

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

3           VI.    AJS will take the following actions:

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

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

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

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

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

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

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

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


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



1 FOR THE COMMISSION:

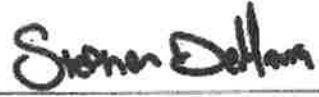
2 Lisa J. Stevenson  
3 Acting General Counsel  
4

5 BY:

6   
7 Charles Kitcher  
8 Acting Associate General Counsel  
9 for Enforcement

9/9/19  
Date

10 FOR THE RESPONDENT:

11   
12 Stephen DeMaura  
13 Americans for Job Security

8/28/19  
Date

1 **FEDERAL ELECTION COMMISSION**  
2 **FACTUAL AND LEGAL ANALYSIS**  
3

4 MUR: 6538R  
5

6 RESPONDENT: Americans for Job Security and Stephen DeMaura in his official capacity  
7 as treasurer  
8  
9

10 **I. INTRODUCTION**

11 This matter was generated by a complaint filed by Citizens for Responsibility and Ethics  
12 in Washington and Melanie Sloan.<sup>1</sup> The complaint alleges that Americans for Job Security  
13 (“AJS”) violated the Federal Election Campaign Act of 1971, as amended, (the “Act”) by failing  
14 to organize, register, and report as a political committee.

15 The Commission originally considered the complaint in MUR 6538 (Americans for Job  
16 Security), but there was an insufficient number of votes to find reason to believe that AJS  
17 violated 52 U.S.C. §§ 30102 (“Organization of political committees”), 30103 (“Registration of  
18 political committees”), and 30104 (“Reporting requirements”).<sup>2</sup> Accordingly, the Commission  
19 closed its file in MUR 6538. The Commission’s decision was challenged in *CREW v. FEC, et*  
20 *al.*, No. 1:14-cv-01419. On September 19, 2016, the U.S. District Court for the District of  
21 Columbia held that the dismissal was contrary to law, and remanded the case to the Commission  
22 for proceedings consistent with that Opinion.<sup>3</sup> Pursuant to the court’s remand, this matter was  
23 reopened and numbered MUR 6538R.

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<sup>1</sup> See 52 U.S.C. § 30109(a)(1).

<sup>2</sup> See Certification, MUR 6538 (Americans for Job Security) (June 27, 2014), *available at* <http://eqs.fec.gov/eqsdocsMUR/14044361730.pdf>.

<sup>3</sup> *CREW v. FEC*, 2016 WL 5107018 (D.D.C. September 19, 2016) (“*CREW v. FEC*”).

As discussed below, consistent with the Court’s instructions, the Commission finds reason to believe that Americans for Job Security violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize, register, and report as a political committee.

## II. FACTUAL AND LEGAL ANALYSIS

### A. Facts

#### 1. AJS

Americans for Job Security, a tax-exempt entity organized under section 501(c)(6) of the Internal Revenue Code, was founded in 1997.<sup>4</sup> Stephen DeMaura is the President and Treasurer.<sup>5</sup> AJS describes itself as an “independent, bi-partisan, pro-business issue advocacy organization” whose chief goal is “educating the public on issues of importance to businesses and encouraging a strong job-creating economy that promotes a pro-growth agenda.”<sup>6</sup> Its articles of incorporation state that it is incorporated for the purpose of uniting “in a common organization businesses, business leaders, entrepreneurs, and associations of businesses” and to “promote the common business interests of its members . . . by helping the American public to better understand public policy issues of interest to business.”<sup>7</sup> According to its tax return, “the organization promotes governmental policy that reflects economic issues of the workplace” by “educating the public through television, radio, and newspaper and direct mail advertising . . . .”<sup>8</sup>

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<sup>4</sup> Compl. at 3; Resp. at 2-3. The administrative complaint, responses, vote certifications and other documents related to MUR 6538 are publicly available at <http://eqs.fec.gov/eqs/searcheqs.jsessionid=DB4F18785BEEF61E76AF65FCD107CE2C?SUBMIT=continue>.

<sup>5</sup> Compl. at 3.

<sup>6</sup> Resp. at 3; *see* <https://web.archive.org/web/20091113131843/http://www.savejobs.org/aboutajs.php>. The organization’s website appears to no longer be active.

<sup>7</sup> Resp. at 11.

<sup>8</sup> Form 990, Return of Organization Exempt from Income Tax (2009) at 2, *available at* <http://eqs.fec.gov/eqsdocsMUR/14044360317.pdf>.

2. AJS's Activities

AJS states that it received approximately \$54 million in membership dues and assessments and spent approximately \$51 million on its activities and communications between its establishment in 1997 and 2012.<sup>9</sup> AJS cites several examples of its “economic issue advocacy communications and activities” from 2004 through 2006, including communications about the “death tax” and the establishment of an asbestos trust fund.<sup>10</sup> After the Supreme Court lifted the prohibition on certain corporate “electioneering communications”<sup>11</sup> in *FEC v. Wisconsin Right to Life, Inc.* (“*WRTL II*”),<sup>12</sup> AJS began making electioneering communications. In 2008, the first election following the Court’s decision, AJS reported spending \$10,322,302 on forty-three electioneering communications. In 2010, the Supreme Court in *Citizens United v. FEC*<sup>13</sup> struck down the Act’s prohibition on corporate independent expenditures and the remaining prohibition on corporate and union funding of electioneering communications. Following *Citizens United v. FEC*, AJS reported making independent expenditures totaling \$4,908,847<sup>14</sup> and electioneering communications totaling \$4,556,518<sup>15</sup> in the months leading up to the 2010 election. According

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<sup>9</sup> Resp., Attach. 1. ¶ 3.

<sup>10</sup> *Id.* at 3-4. AJS’s activities between 2000 and 2006 were the subject of MURs 5910 and 5694. The Commission failed to find that there was reason to believe that AJS was a political committee or that its advertisements contained express advocacy, on a 3-3 vote.

<sup>11</sup> An “electioneering communication” is “any broadcast, cable, or satellite communication which — (I) refers to a clearly identified candidate for federal office; (II) is made within [30 or 60 days of certain elections]; and (III) in the case of a communication which refers to a candidate for an office other than President and Vice President, is targeted to the relevant electorate.” 52 U.S.C. § 30104(f)(3)(A).

<sup>12</sup> 551 U.S. 449 (2007).

<sup>13</sup> 130 S. Ct. 876 (2010).

<sup>14</sup> AJS October 2010 Quarterly Report at 1 (amended Jan. 13, 2017), *available at* <http://docquery.fec.gov/pdf/551/201701139041387551/201701139041387551.pdf>; 2010 Year End Report at 1, *available at* <http://docquery.fec.gov/pdf/422/11930290422/11930290422.pdf>.

<sup>15</sup> *See infra* notes 65-74.

1 to its tax return, AJS received \$12,411,684 and spent \$12,417,809 between November 1, 2009,  
2 and October 31, 2010.<sup>16</sup>

3 AJS describes its issue advocacy campaigns as “particularly active during campaign  
4 season” because “campaign season is when the majority of Americans are debating and focused  
5 on public policy.”<sup>17</sup> AJS lists several “issues of the day” that it attempts to influence: reducing  
6 taxes; tort reform; free markets and free trade; transportation; education reform; health care  
7 reform and modernization; and energy.<sup>18</sup>

## 8 **B. Analysis**

### 9 **1. The Test for Political Committee Status**

11 The Act and Commission regulations define a “political committee” as “any committee,  
12 club, association or other group of persons which receives contributions aggregating in excess of  
13 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000  
14 during a calendar year.”<sup>19</sup> In *Buckley v. Valeo*,<sup>20</sup> the Supreme Court held that defining political  
15 committee status “only in terms of the annual amount of ‘contributions’ and ‘expenditures’”  
16 might be overbroad, reaching “groups engaged purely in issue discussion.”<sup>21</sup> To cure that  
17 infirmity, the Court concluded that the term “political committee” “need only encompass  
18 organizations that are under the control of a candidate or the *major purpose of which is the*

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<sup>16</sup> Form 990, Return of Organization Exempt from Income Tax (2009) at 1.

<sup>17</sup> <https://web.archive.org/web/20091113131843/http://www.savejobs.org/aboutajs.php> (“In addition, since the media and public officials only focus on media markets where there are hotly contested political campaigns, we select the media markets we advertise in accordingly.”).

<sup>18</sup> <https://web.archive.org/web/20091114124504/http://www.savejobs.org/issues.php>.

<sup>19</sup> 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

<sup>20</sup> 424 U.S. 1 (1976).

<sup>21</sup> *Id.* at 79.

1 *nomination or election of a candidate.*”<sup>22</sup> Accordingly, under the statute as thus construed, an  
2 organization that is not controlled by a candidate must register as a political committee only if  
3 (1) it crosses the \$1,000 threshold and (2) it has as its “major purpose” the nomination or election  
4 of federal candidates.

5 a. The Commission’s Case-By-Case Approach to Major Purpose

6 Although *Buckley* established the major purpose test, it provided no guidance as to the  
7 proper approach to determine an organization’s major purpose.<sup>23</sup> In *Massachusetts Citizens for*  
8 *Life v. FEC* (“*MCFL*”),<sup>24</sup> the Supreme Court identified an organization’s independent spending  
9 as a relevant factor in determining an organization’s major purpose.<sup>25</sup>

10 Following *Buckley*, the Commission adopted a policy of determining on a case-by-case  
11 basis whether an organization is a political committee, including whether its major purpose is the  
12 nomination or election of federal candidates.<sup>26</sup> The Commission has since periodically  
13 considered proposed rulemakings to craft a bright-line rule regarding the major purpose test;  
14 however, the Commission consistently has declined to do so.<sup>27</sup>

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<sup>22</sup> *Id.* (emphasis added).

<sup>23</sup> See, e.g., *Real Truth About Abortion, Inc. v. FEC* (formerly *Real Truth About Obama v. FEC*), 681 F.3d 544, 556 (4th Cir. 2012), *cert. denied*, 81 U.S.L.W. 3127 (U.S. Jan. 7, 2013) (No. 12-311) (“*RTAA*”).

<sup>24</sup> 479 U.S. 241, 249, 263 (1986) (“*MCFL*”).

<sup>25</sup> *Id.* at 249, 262.

<sup>26</sup> Political Committee Status, 72 Fed. Reg. 5,596 (Feb. 7, 2007) (Supplemental Explanation and Justification) (“Supplemental E&J”).

<sup>27</sup> See, e.g., Independent Expenditures; Corporate and Labor Organization Expenditures, 57 Fed. Reg. 33,548, 33,558-59 (July 29, 1992) (Notice of Proposed Rulemaking); Definition of Political Committee, 66 Fed. Reg. 13,681, 13,685-86 (Mar. 7, 2001) (Advance Notice of Proposed Rulemaking); see also Summary of Comments and Possible Options on the Advance Notice of Proposed Rulemaking on the Definition of “Political Committee,” Certification (Sept. 27, 2001) (voting 6-0 to hold proposed rulemaking in abeyance).

1 In 2004, for example, the Commission issued a notice of proposed rulemaking asking  
2 whether the agency should adopt a regulatory definition of “political committee.”<sup>28</sup> The  
3 Commission declined to adopt a bright-line rule, noting that it had been applying the major  
4 purpose test “for many years without additional regulatory definitions,” and concluded that “it  
5 will continue to do so in the future.”<sup>29</sup>

6 b. Challenges to the Commission’s Major Purpose Test and the  
7 Supplemental E&J  
8

9 When the Commission’s decision in the 2004 rulemaking not to adopt a regulatory  
10 definition was challenged in litigation, the district court in *Shays v. FEC* rejected plaintiffs’  
11 request that the Commission initiate a new rulemaking.<sup>30</sup> The court found, however, that the  
12 Commission had “failed to present a reasoned explanation for its decision” to engage in case-by-  
13 case decision-making, rather than rulemaking, and remanded the case to the Commission to  
14 explain its decision.<sup>31</sup>

15 Responding to the remand, the Commission issued a Supplemental E&J to further  
16 elaborate on its 2004 decision to apply a case-by-case approach and to provide the public with  
17 additional guidance as to its process for determining political committee status.<sup>32</sup> The  
18 Supplemental E&J explained that “the major purpose doctrine requires fact-intensive analysis of

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<sup>28</sup> See Political Committee Status, 69 Fed. Reg. 11,736, 11,745-49 (Mar. 11, 2004) (Notice of Proposed Rulemaking).

<sup>29</sup> See Final Rules on Political Committee Status, Definition of Contribution, and Allocation for Separate Segregated Funds and Nonconnected Committees, 69 Fed. Reg. 68,056, 68,064-65 (Nov. 23, 2004).

<sup>30</sup> *Shays v. FEC*, 424 F. Supp. 2d 100, 117 (D.D.C. 2006) (“*Shays I*”).

<sup>31</sup> *Id.* at 116-17.

<sup>32</sup> Supplemental E&J, 72 Fed. Reg. 5595.

1 a group's campaign activities compared to its activities unrelated to campaigns."<sup>33</sup> The  
2 Commission stated that the determination of an organization's major purpose "requires the  
3 flexibility of a case-by-case analysis of an organization's conduct that is incompatible with a  
4 one-size fits-all rule," and that "any list of factors developed by the Commission would not likely  
5 be exhaustive in any event, as evidenced by the multitude of fact patterns at issue in the  
6 Commission's enforcement actions considering the political committee status of various  
7 entities."

8 To determine an entity's "major purpose," the Commission explained that it considers a  
9 group's "overall conduct," including public statements about its mission, organizational  
10 documents, government filings (*e.g.*, IRS notices), the proportion of spending related to "Federal  
11 campaign activity (*i.e.*, the nomination or election of a Federal candidate)," and the extent to  
12 which fundraising solicitations indicate funds raised will be used to support or oppose specific  
13 candidates.<sup>34</sup> The Commission stated in the Supplemental E&J that it compares how much of an  
14 organization's spending is for "*federal campaign activity*" relative to "activities that [a]re not  
15 campaign related."<sup>35</sup>

16 After the Commission issued the Supplemental E&J, the *Shays I* plaintiffs again  
17 challenged, under the Administrative Procedure Act,<sup>36</sup> the Commission's case-by-case approach  
18 to political committee status. In *Shays II*, the district court rejected the challenge, upholding the

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<sup>33</sup> *Id.* at 5601-02.

<sup>34</sup> *Id.* at 5597, 5605.

<sup>35</sup> *Id.* at 5601, 5605 (emphasis added).



1 Commission's case-by-case approach as an appropriate exercise of the agency's discretion.<sup>37</sup>  
2 The court recognized that "an organization . . . may engage in many non-electoral activities so  
3 that determining its major purpose requires a very close examination of various activities and  
4 statements."<sup>38</sup>

5 In 2012, in *Real Truth About Abortion, Inc. v. FEC*, the Fourth Circuit rejected a  
6 constitutional challenge to the Commission's case-by-case determination of major purpose.<sup>39</sup>  
7 The court upheld the Commission's approach, holding that *Buckley* "did not mandate a particular  
8 methodology for determining an organization's major purpose," and therefore the Commission  
9 was free to make that determination "either through categorical rules or through individualized  
10 adjudications."<sup>40</sup> The court concluded that the Commission's case-by-case approach was  
11 "sensible, . . . consistent with Supreme Court precedent and does not unlawfully deter protected  
12 speech."<sup>41</sup> The Fourth Circuit concluded that the Supplemental E&J provides "ample guidance  
13 as to the criteria the Commission might consider" in determining an organization's political  
14 committee status and therefore is not unconstitutionally vague.<sup>42</sup>

15 The Commission's application of the major purpose test was recently considered in  
16 *CREW v. FEC*, following the Commission's dismissal of allegations in MUR 6538 that two  
17 organizations, including AJS, were required to register and report as political committees. The

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<sup>37</sup> *Shays v. FEC*, 511 F. Supp. 2d 19, 24 (D.D.C. 2007) ("*Shays II*").

<sup>38</sup> *Id.* at 31.

<sup>39</sup> *RTAA*, 681 F.3d 544.

<sup>40</sup> *Id.* at 556.

<sup>41</sup> *Id.* at 558.

<sup>42</sup> *Id.*; see also *Free Speech v. FEC*, 720 F.3d 788 (10th Cir. 2013) (quoting *RTAA* and upholding Commission's case-by-case method of determining political committee status), *cert. denied*, 572 U.S. \_\_ (2014).

1 Court held that the dismissal was contrary to law, finding that the controlling Commissioners'  
2 statement of reasons adopted erroneous standards for determining (1) which spending indicates  
3 the “major purpose” of nominating or electing a candidate, and (2) the relevant time period for  
4 evaluating a group’s spending. The Court instructed the Commission, when examining the  
5 organization’s major purpose, to look beyond express advocacy and consider whether the other  
6 communications at issue indicate a “campaign-related purpose.”<sup>43</sup> The Court also held that the  
7 Commission’s analysis of the relevant time period for evaluating a group’s spending must retain  
8 the flexibility to account for changes in an organization’s major purpose over time.<sup>44</sup>

9 c. Organizational and Reporting Requirements for Political  
10 Committees  
11

12 Political committees — commonly known as “PACs” — must comply with certain  
13 organizational and reporting requirements set forth in the Act. PACs must register with the  
14 Commission, file periodic reports for disclosure to the public, appoint a treasurer who maintains  
15 its records, and identify themselves through “disclaimers” on all of their political advertising, on  
16 their websites, and in mass e-mails.<sup>45</sup>

17 In the wake of the Supreme Court’s decision in *Citizens United v. FEC*,<sup>46</sup> which struck  
18 down the Act’s prohibitions on corporate independent expenditures and electioneering  
19 communications, the D.C. Circuit held in *SpeechNow.org v. FEC* that political committees that

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<sup>43</sup> *CREW v. FEC* at 11.

<sup>44</sup> *Id.* at 25 (citing *MCFL*, 479 U.S. at 262 (“recognizing that a group’s ‘spending [may] become so extensive that the organization’s major purpose may be regarded as campaign activity [such that] the corporation would be classified as a political committee.’ (emphasis added)”).

<sup>45</sup> *See* 52 U.S.C. §§ 30102-30104; 11 C.F.R. §110.11(a)(1).

<sup>46</sup> 130 S. Ct. 876 (2010).

engage only in independent expenditures are not subject to contribution limits.<sup>47</sup> These political committees, often referred to as independent expenditure-only political committees or Super PACs, continue to be subject, however, to the reporting requirements of 2 U.S.C. §§ 432, 433, and 434(a) [now 52 U.S.C. §§ 30102, 30103, and 30104(a)], and the organizational requirements of 2 U.S.C. §§ 431(4) and 431(8) [now 52 U.S.C. §§ 30101(4) and 30101(8)]. The district court in *CREW v. FEC* concluded that “the majority of circuits have concluded that . . . disclosure requirements [related to registration and reporting] are not unduly burdensome.”<sup>48</sup>

## 2. Application of the Test for Political Committee Status to AJS

### a. Statutory Threshold

To assess whether an organization has made an “expenditure,” the Commission analyzes whether spending on any of an organization’s communications made independently of a candidate constitute express advocacy under 11 C.F.R. § 100.22.<sup>49</sup> In 2010, AJS made more than \$4.9 million in independent expenditures.<sup>50</sup> Thus, AJS far exceeded the \$1,000 statutory threshold for political committee status.<sup>51</sup>

### b. Major Purpose

AJS states in its response to the complaint in MUR 6538, on its website, and in its tax returns that its major purpose is not to engage in federal campaign activity but rather to advocate

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<sup>47</sup> 599 F.3d 686, 696 (D.C. Cir. 2010).

<sup>48</sup> See *CREW v. FEC* at 10 (quoting *Yamada v. Snipes*, 786 F.3d 1182, 1195 (9th Cir.), *cert. denied sub nom., Yamada v. Shoda*, 136 S. Ct. 569 (2015)).

<sup>49</sup> See Supplemental E&J at 5606.

<sup>50</sup> See *supra* at 3.

<sup>51</sup> See 52 U.S.C. § 30101 (4)(A); 11 C.F.R. § 100.5.

1 issues and educate the public.<sup>52</sup> The Commission noted in the Supplemental E&J that it may  
2 consider such statements made by an organization in its analysis of an organization's major  
3 purpose,<sup>53</sup> but that such statements are not necessarily dispositive.<sup>54</sup> Under the Commission's  
4 case-by-case approach, the Commission considers the organization's "overall conduct,"  
5 including its disbursements, activities, and statements.<sup>55</sup> In this case, AJS's proportion of  
6 spending related to federal campaign activity compared to its total spending is alone sufficient to  
7 indicate that its major purpose had become the nomination or election of federal candidates.

8 AJS reported spending approximately \$4,908,847 on independent expenditures during the  
9 2010 election cycle, spending which clearly indicates a purpose to elect or nominate federal  
10 candidates. As noted, AJS reported making electioneering communications totaling \$4,556,518.  
11 In *CREW v. FEC*, the Court instructed the Commission to consider not only independent  
12 spending on express advocacy but also spending on electioneering communications that indicate  
13 a "campaign-related purpose" when determining whether an organization's major purpose is the  
14 nomination or election of federal candidates.<sup>56</sup> Thus, following the Court's instruction in *FEC v.*  
15 *CREW*, and pursuant to the Commission's case-by-case, fact intensive approach to evaluating  
16 political committee status and major purpose, the Commission has determined that AJS ran

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<sup>52</sup> Resp. at 1, 11; <https://web.archive.org/web/20091113131843/http://www.savejobs.org/aboutajs.php> ; Form 990, Return of Organization Exempt from Income Tax (2009) at 1, 2.

<sup>53</sup> Supplemental E&J at 5606.

<sup>54</sup> See *Real Truth About Obama v. FEC*, No. 3:08-cv-00483, 2008 WL 4416282, at \*14 (E.D. Va. Sept. 24, 2008) ("A declaration by the organization that they are *not* incorporated for an electioneering purpose is not dispositive.") (emphasis in original), *aff'd*, 575 F.3d 342 (4th Cir. 2009), *vacated on other grounds*, 130 S. Ct. 2371 (2010), *remanded and decided*, 796 F. Supp. 2d 736, *affirmed sub nom. Real Truth About Abortion v. FEC*, 681 F.3d 544 (4th Cir. 2012), *cert. denied*, 81 U.S.L.W. 3127 (U.S. Jan. 7, 2013) (No. 12-311).

<sup>55</sup> Supplemental E&J at 5597.

<sup>56</sup> *CREW v. FEC* at 11.

1 electioneering communications during the period leading up to the 2010 election that, though not  
2 necessarily express advocacy, support a conclusion that there is reason to believe that the group's  
3 major purpose is the nomination or election of federal candidates.<sup>57</sup>

4 Consider, for example, "Agree," "Back to Work," and "Pennsylvania Jobs":

5 Agree<sup>58</sup>

6 Behind closed doors, Washington decides the future of our health care. With no  
7 transparency or accountability, they're slashing Medicare and raising taxes, and  
8 only listening to the special interests. One Massachusetts leader says, "Slow  
9 down. Get health care right." Scott Brown says, "Protect Medicare. Don't raise  
10 taxes. Listen to the people, not the lobbyists." Call Scott Brown and tell him you  
11 agree. Washington should listen to us on health care for a change.

12 Back to Work<sup>59</sup>

13 Washington is a cesspool filled with political insiders who think more  
14 government is the solution. Not Ken Buck. Ken Buck stands up to the insiders in  
15 both parties. Ken Buck's conservative plan to get Colorado back to work: No to  
16 bailouts. No to debt. No to big government spending. Yes to low taxes for job  
17 creation that helps families. Call Ken Buck. Tell him to keep fighting for smaller  
18 government and policies that support taxpayers.

19 Pennsylvania Jobs<sup>60</sup>

20 Washington politicians are on a spending spree. Bigger government. Earmarks.  
21 Bailouts and debt have pushed our country to the brink. Pennsylvania needs  
22 relief. Barack Obama and Washington politicians don't get it. They want higher  
23 taxes and bigger government. Pat Toomey has a commonsense plan to get  
24 Pennsylvania back to work. Cut the red tape, so Pennsylvania small businesses  
25 are free to create jobs. Cut the spending. No more earmarks and no more

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<sup>57</sup> While the Commission analyzes several of AJS's ads, the scripts for all ads before the Commission, as well as the amounts that AJS spent on each ad, are included in an appendix.

<sup>58</sup> AJS spent \$479,268 on this advertisement. [http://docquery.fec.gov/cgi-bin/fecimg/?\\_10930863308+0](http://docquery.fec.gov/cgi-bin/fecimg/?_10930863308+0).

<sup>59</sup> AJS spent \$143,300, \$171,700, and \$126,496 on this advertisement. [http://docquery.fec.gov/cgi-bin/fecimg/?\\_10930858544+0](http://docquery.fec.gov/cgi-bin/fecimg/?_10930858544+0); [http://docquery.fec.gov/cgi-bin/fecimg/?\\_10930863356+0](http://docquery.fec.gov/cgi-bin/fecimg/?_10930863356+0); [http://docquery.fec.gov/cgi-bin/fecimg/?\\_10930869654+0](http://docquery.fec.gov/cgi-bin/fecimg/?_10930869654+0).

<sup>60</sup> The transcript for this advertisement is attached to the AJS Response as "Complaint Communication #33." AJS spent \$72,100 on this advertisement. [http://docquery.fec.gov/cgi-bin/fecimg/?\\_10991128553+0](http://docquery.fec.gov/cgi-bin/fecimg/?_10991128553+0).

1           bailouts. Toomey wants to end deficit spending — and return money to families  
2           and job creators. The Toomey plan: getting Pennsylvania working again. As a  
3           small businessman Toomey created jobs and knows what it takes to make a  
4           payroll. Pat Toomey: fiscal discipline, lower taxes, and common sense economic  
5           policies. Call Pat Toomey at 434-809-7994 and tell him you support his common  
6           sense plan to get Pennsylvania back to work.

7           None of these ads expressly refers to candidacies or elections. However, “Back to Work”  
8           refers to “political insiders” and “insiders in both parties,” and “Pennsylvania Jobs” refers to  
9           “Washington politicians.” Each ad favorably contrasts the identified candidate’s background or  
10          positions against activity conducted in Washington. None of the individuals identified in these  
11          ads was a federal officeholder when the ads ran and thus was in no position to affect the federal  
12          political activities, issues, or programs mentioned in the ads. Statements in these ads  
13          encouraging the individuals to maintain their positions on the identified issues have no nexus  
14          with the legislative process. More to the point, Buck and Toomey were in no position to  
15          implement either of their plans unless they were elected, and Brown’s position on federal health  
16          care policy would likely be of minimal significance to legislative activities in Washington unless  
17          Brown were first elected to the Senate. Therefore, “Agree,” “Back to Work,” and “Pennsylvania  
18          Jobs” are indicative of a major purpose to nominate or elect a federal candidate.

19          Another ad, “Talk is Cheap,”<sup>61</sup> offers criticism rather than praise of a subject candidate:

20               Liberal politicians will say anything, but talk is cheap. Take Jane Norton.  
21               [Norton clip] “The federal government is overspending, it’s overtaxing, it’s  
22               overregulating...” Wait, what’s the real Norton record? Norton pushed the  
23               largest tax hike in Colorado history. As a regulator, she managed a multimillion  
24               dollar surge in government spending. Yep, talk is cheap, but Jane Norton’s real  
25               record has cost us plenty. Tell Jane Norton: no more high taxes and spending.

26          “Talk is Cheap” does not expressly mention candidacies or elections, though it identifies Norton  
27          as a “[l]iberal politician[]” and includes an image of Senator Michael Bennet, whom Norton

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<sup>61</sup>           AJS spent \$585,800 on this advertisement. [http://docquery.fec.gov/cgi-bin/fecimg/?\\_10931075321+0](http://docquery.fec.gov/cgi-bin/fecimg/?_10931075321+0).

1 would have faced in the general election had she won the primary. The ad criticizes Norton for  
2 decisions (presumably) made during her term as Colorado's Lieutenant Governor, by stating that  
3 her decisions have "cost [Coloradoans] plenty." The ad also suggests that Norton's record is  
4 inconsistent with her public statements on those same issues. Norton, however, was not an  
5 officeholder at the state or federal level when the ad ran and in no position to affect the federal  
6 political activities, issues, or programs mentioned in the ads. Thus, the call to action — to "[t]ell  
7 Jane Norton: no more high taxes and spending" — has no nexus with the legislative process.  
8 Therefore, "Talk is Cheap" is indicative of a major purpose to nominate or elect a federal  
9 candidate.

10 Turning to the relevant time period for evaluating AJS' spending, AJS argues that its  
11 independent expenditures represent "a very minor portion" of its overall activities since its  
12 founding in 1997.<sup>62</sup> In *CREW v. FEC*, the Court ruled that the Commission's analysis of the  
13 relevant time period for evaluating a group's spending must be flexible to account for changes in  
14 an organization's major purpose over time.<sup>63</sup>

15 AJS spent no money on electioneering communications prior to the Supreme Court's  
16 decision in *WRTL II*, then shifted its activities towards electioneering communications leading up  
17 to the 2008 election. After the Supreme Court struck the prohibition on corporate independent  
18 expenditures in *Citizens United v. FEC*, AJS allocated more of its resources to campaign-related  
19 spending. Consistent with the Court's instructions, the Commission must consider AJS's  
20 election-related spending in 2010 as evidence that the organization's major purpose might have  
21 changed. Absent detailed information about AJS's spending and activities in subsequent years,

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<sup>62</sup> Resp. at 2, 5.

<sup>63</sup> *Id.* at 11-12.

1 the record evidence of AJS's spending in 2010 provides reason to believe that AJS's major  
2 purpose had become the nomination or election of federal candidates.

3 In sum, for roughly a year before the 2010 election, AJS spent a total of \$12,417,809.  
4 More than half of this amount was for independent expenditures (\$4,908,847) and the  
5 electioneering communications analyzed above (\$1,578,664). The Commission has never set a  
6 threshold on the proportion of spending on major purpose activities required for political  
7 committee status and declines to do so now. Without determining whether it is *necessary* to  
8 cross a 50 percent threshold to determine an organization's major purpose, it is *sufficient* in this  
9 case, based on the available information, to find reason to believe that AJS's major purpose had  
10 become the nomination or election of federal candidates.<sup>64</sup>

### 11 C. Conclusion

12 Because AJS made over \$1,000 in expenditures during calendar year 2010, and the  
13 available information indicates that its major purpose had become the nomination or election of  
14 federal candidates, the Commission finds reason to believe that AJS violated 52 U.S.C.  
15 §§ 30102, 30103, and 30104 by failing to organize, register, and report as a political committee.

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<sup>64</sup> Since (as shown above) AJS spent a sufficient proportion of its funds on both express advocacy communications and electioneering communications indicating a "campaign-related purpose" to justify a reason-to-believe finding, it is not necessary to analyze each ad.



Appendix

i. Agree<sup>65</sup>

Behind closed doors, Washington decides the future of our health care. With no transparency or accountability, they're slashing Medicare and raising taxes, and only listening to the special interests. One Massachusetts leader says, "Slow down. Get health care right." Scott Brown says, "Protect Medicare. Don't raise taxes. Listen to the people, not the lobbyists." Call Scott Brown and tell him you agree. Washington should listen to us on health care for a change.

ii. Thank You<sup>66</sup>

[Traditional Indian music is playing. There is a person of apparent south Asian descent, dressed in traditional garb and standing in front of stock footage of an Indian market.]

Person: "Thank you, Bill Halter. Thank you!"

[Screen shows an image of Bill Halter and the text: "Bill Halter off-shored American jobs to Bangalore, India while our economy struggled."]

Narrator: "While millionaire Bill Halter was a highly-paid director of a U.S. company, they exported American jobs to Bangalore, India."

[Person #2, also of apparent south Asian descent, appears in front of stock footage of an Indian family.]

Person #2: "Bangalore needs many, many jobs. Thank you, Bill Halter."

[Screen shows an image of Bill Halter and the text: "Support job creation here. Don't send jobs overseas."]

Narrator: "With almost 65,000 Arkansans out of work, we need jobs, too."

[Person #3, also of apparent south Asian descent, appears in front of stock footage of a street in India.]

Person #3: "Thank you. Thank you, Bill Halter."

[Screen shows an image of Bill Halter and the text: "While American families struggle, Bangalore says, 'Thanks Bill Halter.'"]

Narrator: "Bangalore says, 'Thanks, Bill Halter.' Arkansas, tell Bill Halter, 'Thanks for nothing.'"

<sup>65</sup> AJS spent \$479,268 on this advertisement. [http://docquery.fec.gov/cgi-bin/fecimg/?\\_10930863308+0](http://docquery.fec.gov/cgi-bin/fecimg/?_10930863308+0).

<sup>66</sup> AJS spent \$913,096 on this advertisement. [http://docquery.fec.gov/cgi-bin/fecimg/?\\_10030321386+0](http://docquery.fec.gov/cgi-bin/fecimg/?_10030321386+0).

iii. Outsource<sup>67</sup>

Arkansas families are struggling. Thousands out of work. Politicians? They say one thing and do another. Bill Halter says he has never outsourced American jobs. [Picture of Halter and text: "Not a single one of those companies has moved jobs overseas."] But the facts say when he was a highly-paid corporate director, his company outsourced jobs to India. Those jobs could have boosted a community here in Arkansas, but all they boosted was Bill Halter's company's bottom line. Call Bill Halter. Tell him to support job creation here in America.

iv. Back to Work<sup>68</sup>

Washington is a cesspool filled with political insiders who think more government is the solution. Not Ken Buck. Ken Buck stands up to the insiders in both parties. Ken Buck's conservative plan to get Colorado back to work: No to bailouts. No to debt. No to big government spending. Yes to low taxes for job creation that helps families. Call Ken Buck. Tell him to keep fighting for smaller government and policies that support taxpayers.

v. Brink<sup>69</sup>

Our country is at the brink. Colorado families and workers need relief. Yet Jane Norton supported the largest tax hike in Colorado history, costing us billions. And Jane Norton's record on government spending? The state bureaucracy she managed grew by \$43 million in just three years. Record taxes and reckless spending has cost Colorado jobs. Call Jane Norton. Tell her no more tax hikes and big government spending.

vi. Earmarks<sup>70</sup>

Reckless spending, earmarks, debt, bankrupting our country. Politicians and insiders are at the trough. Take Billy Long, who says he's against earmarks. But while on the airport board of directors, he voted to use more than \$3 million in Congressional earmarks for a brand new bus terminal — a terminal that now sits

<sup>67</sup> AJS spent \$490,000 on this advertisement. [http://docquery.fec.gov/cgi-bin/fecimg/?\\_10930863250+0](http://docquery.fec.gov/cgi-bin/fecimg/?_10930863250+0).

<sup>68</sup> AJS spent \$143,300, \$171,700, and \$126,496 on this advertisement. [http://docquery.fec.gov/cgi-bin/fecimg/?\\_10930858544+0](http://docquery.fec.gov/cgi-bin/fecimg/?_10930858544+0); [http://docquery.fec.gov/cgi-bin/fecimg/?\\_10930863356+0](http://docquery.fec.gov/cgi-bin/fecimg/?_10930863356+0); [http://docquery.fec.gov/cgi-bin/fecimg/?\\_10930869654+0](http://docquery.fec.gov/cgi-bin/fecimg/?_10930869654+0).

<sup>69</sup> AJS spent \$318,874 and \$175,956 on this advertisement. [http://docquery.fec.gov/cgi-bin/fecimg/?\\_10930941615+0](http://docquery.fec.gov/cgi-bin/fecimg/?_10930941615+0); [http://docquery.fec.gov/cgi-bin/fecimg/?\\_10991002213+0](http://docquery.fec.gov/cgi-bin/fecimg/?_10991002213+0).

<sup>70</sup> AJS spent \$45,100 on this advertisement. [http://docquery.fec.gov/cgi-bin/fecimg/?\\_10931073407+0](http://docquery.fec.gov/cgi-bin/fecimg/?_10931073407+0).

1 empty. The Billy Long bus terminal to nowhere. Call Billy Long and tell him  
2 you're sick of earmarks and bus terminals to nowhere.

3  
4 vii. Talk is Cheap<sup>71</sup>

5  
6 Liberal politicians will say anything, but talk is cheap. Take Jane Norton.  
7 [Norton clip] "The federal government is overspending, it's overtaxing, it's  
8 overregulating...." Wait, what's the real Norton record? Norton pushed the  
9 largest tax hike in Colorado history. As a regulator, she managed a multimillion  
10 dollar surge in government spending. Yep, talk is cheap, but Jane Norton's real  
11 record has cost us plenty. Tell Jane Norton: no more high taxes and spending.

12  
13 viii. Pennsylvania Jobs<sup>72</sup>

14  
15 Washington politicians are on a spending spree. Bigger government. Earmarks.  
16 Bailouts and debt have pushed our country to the brink. Pennsylvania needs  
17 relief. Barack Obama and Washington politicians don't get it. They want higher  
18 taxes and bigger government. Pat Toomey has a commonsense plan to get  
19 Pennsylvania back to work. Cut the red tape, so Pennsylvania small businesses  
20 are free to create jobs. Cut the spending. No more earmarks and no more  
21 bailouts. Toomey wants to end deficit spending — and return money to families  
22 and job creators. The Toomey plan: getting Pennsylvania working again. As a  
23 small businessman Toomey created jobs and knows what it takes to make a  
24 payroll. Pat Toomey: fiscal discipline, lower taxes, and common sense economic  
25 policies. Call Pat Toomey at 434-809-7994 and tell him you support his common  
26 sense plan to get Pennsylvania back to work.

27  
28 ix. Instrumental<sup>73</sup>

29  
30 The economy's in a tailspin. Unemployment on the rise. And they just continue  
31 the spending, taxing, and bailouts. Harry Teague was instrumental in passing a  
32 job-killing cap-and-trade bill. Teague's tax would mean higher electric rates for  
33 families, higher gas prices, and cost us up to 12,000 jobs in New Mexico. Tell  
34 Harry Teague to stop his reckless spending, bailouts, and job-killing taxes.  
35

<sup>71</sup> "Talk is Cheap" is available at <https://www.youtube.com/watch?v=BF-4Bz9wRwE>. AJS spent \$585,800 on this advertisement. [http://docquery.fec.gov/cgi-bin/fecimg/?\\_10931075321+0](http://docquery.fec.gov/cgi-bin/fecimg/?_10931075321+0).

<sup>72</sup> The transcript for this advertisement is attached to the AJS Response as "Complaint Communication #33." AJS spent \$72,100 on this advertisement. [http://docquery.fec.gov/cgi-bin/fecimg/?\\_10991128553+0](http://docquery.fec.gov/cgi-bin/fecimg/?_10991128553+0).

<sup>73</sup> AJS spent \$54,572 on this advertisement. [http://docquery.fec.gov/cgi-bin/fecimg/?\\_10030421366+0](http://docquery.fec.gov/cgi-bin/fecimg/?_10030421366+0).

x.      Ants<sup>74</sup>

Have you heard about how Joe Manchin supported the Obama stimulus, then wasted money on turtle tunnels, ant research and cocaine for monkeys? But that's not their only waste. Their stimulus wasted money on studying the atmosphere of Neptune, hunting for dinosaur eggs in China, and even the International Accordion Festival. We asked for jobs. What we got was waste. Really. Tell Obama and Manchin not to stimulate us anymore.

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<sup>74</sup>

AJS spent \$980,256 on this advertisement. [http://docquery.fec.gov/cgi-bin/fecimg/?\\_10931695957+0](http://docquery.fec.gov/cgi-bin/fecimg/?_10931695957+0).