

BEFORE THE INTERNAL REVENUE SERVICE

REQUEST FOR INVESTIGATION

COMPLAINT TO THE U.S. INTERNAL REVENUE SERVICE REQUEST FOR INVESTIGATION

Re: The Americans for Job Security, EIN 52-2062978

INTRODUCTION

Strong evidence demonstrates that Americans for Job Security (AJS) devoted a majority of its resources in its fiscal years 1999, 2001, 2003 and 2005 (primarily covering calendar years 2000, 2002, 2004 and 2006) to activities intended to influence the outcomes of elections. These activities contradicted the organization's reports to the IRS that it had no such expenditures for each of the years concerned (except for fiscal year 2005, as its Form 990 tax return for that year is not yet available on Guidestar.org, a repository for such forms).

To judge the degree to which AJS engaged in influencing elections in the years covered in this complaint, we analyzed 32 of the organization's advocacy communications in the context of IRS Rev. Rule 2004-06. The rule, published in January 2004, included six factors that "tend to show" that an advocacy communication is for an exempt function under Section 527(e)(2) and five factors that "tend to show" that an advocacy communication is not for an exempt function under Section 527(e)(2).¹ Every single one – 32 out of 32 – of AJS's communications analyzed in this complaint satisfied a clear majority of the factors in favor of a communication being deemed an exempt function under Section 527(e)(2) and each satisfied only a slim minority, if any, of the factors pointing against a communication being deemed an exempt function under the section.

AJS's predilection for electioneering is manifest in other ways, including a common-sense reading of its ads. Consider these:

*"Pennsylvania families relax a little more these days because Rick Santorum is getting things done every day ... Call and say thanks, because Rick Santorum is the one getting it done."*²

–Television commercial, November 2005

¹ See Rev. Rul 2004-6, Jan. 26, 2004. Section 527(e)(2) is the aspect of the federal code that defines activities intended to influence elections. A message deemed as being for an "exempt function" under Section 527(e)(2) can fairly be described as a message intended to influence elections.

² Field report provided to Public Citizen.

*“[John] Kerry wants to repeal the prescription drug benefits seniors now receive. Kerry’s prescription for failure: fewer choices; more government; more paperwork; higher costs. Call Senator Kerry ... and let him know that American Seniors deserve better.”*³

–Direct mail message to a resident of Bradenton, Fla., October 2004

*“Think hard about what your healthcare and prescription drugs would be like under Al Gore.” Gore’s ideas for gas taxes are “so extreme, if they ever came to pass, Americans would truly be Gored at the pump.”*⁴

–Television commercial, November 2000

AJS states that it has a tax-exempt purpose of permitting “businesses to work together to promote a strong job-creating economy in which workers have good job opportunities and businesses can thrive” and lists “educating the public on economic issues with a pro-market, pro-paycheck message” as its sole program service accomplishment in furtherance of that purpose.⁵ But the organization shows little fealty to its purported purpose in its communications. In fact, the sole common denominators of AJS’s messages appear to be diminishing the electoral prospects of Democratic candidates for office or aiding the prospects of Republican candidates. In 2002, for example, the organization attacked Democratic candidates for breaking a promise not to run for a third term, taking money from special interests, being soft on crime, being anti-senior citizen, and getting “too comfortable in Washington.” Meanwhile, the group praised Republican candidates for obtaining aid for ranchers, helping to pass the No Child Left Behind Act, and championing legislation to remove disruptive kids from classrooms.

The organization’s failure to provide accurate reports in its annual tax returns of its expenditures to influence elections constituted a violation of its assertions to the IRS, under penalty of perjury, that its tax forms were “true, correct and complete.” Its failure to provide accurate accounting of its expenditures to influence elections also likely resulted in tax avoidance. Organizations operating under Section 501(c) of the tax code are required to pay taxes, at the highest corporate rate, on their political expenditures or net investment income for the year, whichever is less.⁶

The fact that AJS’s advocacy communications were intended to influence elections combined with the organization’s representation that it invested the vast majority of its resources on advertisements leads to the inescapable conclusion that the group was primarily engaged in influencing elections in the years covered in this complaint. IRS rules prohibit Section (501)(c)(6) groups from engaging primarily in activities to influence elections.⁷

AJS’s practice of operating primarily as a political organization while filing under the less onerous disclosure rules that apply to 501(c)(6) organizations poses adverse consequences for the

³ Field report provided to Public Citizen.

⁴ CMAG reports.

⁵ Americans for Job Security, Form 990, 2003.

⁶ See 26 C.F.R. 1.527-6 and IRC 527(b).

⁷ Guidance provided on IRS Web site (available at <http://apps.irs.gov/charities/nonprofits/article/0,,id=163922,00.html>). See also John Francis Reilly and Barbara A. Braig Allen, “Political Campaign and Lobbying Activities of IRC 501(c)(4), (c)(5), and (c)(6) Organizations, Exempt Organizations Technical Instruction Program for FY 2003, p. L2.

United States that are far greater than any tax avoidance the group may have realized. The organization has used its tax status to pump millions of dollars into electioneering ads without affording the viewers, listeners and readers of these messages an opportunity to know who is behind them.

The organization acknowledges that keeping its donors' identities secret is part of its strategy. AJS President (and sole paid employee) Michael Dubke has repeatedly said that the group does not reveal its donors' names because doing so would distract from its message.⁸ While this strategy might work well for Americans for Job Security, it runs counter to the public interest and, as this complaint will show, the law. Voters would be better able to evaluate the credibility of messages disseminated by the group if they were able to learn which "Americans" were behind them. The group's degree of electioneering prohibits it from using the anonymity afforded by 501(c) status to shield its contributors' identities from public view.

While protecting the integrity of electoral campaigns in the United States has not historically been a core mission of the IRS, it is nonetheless a responsibility with which the agency is charged in the context of its oversight of 501(c) groups. It is vital that the IRS take action to police 501(c) groups that abuse electioneering rules. To fail to do so would reward those who flout the law, punish those who abide by it and deny voters access to information to which they are entitled.

This complaint will also be submitted to the Federal Election Commission (FEC). The FEC traditionally held that only communications invoking the "magic words," such as "vote for" or "vote against," could satisfy the "express advocacy" standard that allows for federal regulation of political speech. But, in December 2006 the commission fined three groups registered under Section 527 for engaging in express advocacy without registering as political committees even though they did not invoke the magic words. "If an organization receives contributions or makes expenditures in excess of \$1,000, and its major purpose is involvement in campaign activity, it must register with the Commission and abide by the contribution restrictions and reporting requirements of the Federal Election Campaign Act," the FEC said in a press release announcing the fines.⁹

It must be stressed, however, that the IRS standard for electioneering speech is broader than the standard historically used by the FEC. It defines a political expenditure as "one intended to influence the selection, nomination, election, or appointment of anyone to a federal, state, or local public office ..." without requiring that an express advocacy standard be met.¹⁰ The IRS also has a right to regulate speech by groups that avail themselves of 501(c) tax status without

⁸ For example, Dubke told the *Omaha World-Herald*, "We find that sticking to a strict mantra of not discussing our members allows our issue to come to the forefront." From C. David Kotok and Jake Thompson, "Political Ad's Donors Are Kept Secret," *Omaha World-Herald*, Oct 27, 2000, as quoted in "Issue Ad Disclosure: Recommendations for a New Approach," Campaign Finance Institute Task Force on Disclosure, February 2001.

⁹ "FEC Collects \$630,000 in Civil Penalties from Three 527 Organizations," Federal Election Commission Press Release, Dec. 13, 2006.

¹⁰ IRS Form 990 Instructions, Line 81.

fear of treading on their First Amendment rights, as IRS Commissioner Mark Everson succinctly noted in the run-up to the 2006 elections.¹¹

If the IRS concurs with the findings in this complaint, it should:

- Revoke AJS's 501(c) status;
- Collect back taxes for AJS's undeclared electioneering activities; and
- Require AJS to pay penalties for violating its tax-exempt status, dating to fiscal year 1999.

¹¹ In an interview with Chris Matthews on MSNBC's Hardball on Sept. 25, 2006, IRS Commissioner Mark Everson said, "First, religious liberty and freedom of speech, those are underpinnings of our society, of our democracy. You have a constitutional right to that. But there is no constitutional right to a tax exemption."

IRS JURISDICTION AND ENFORCEMENT AUTHORITY

Section 501(c) groups are required to disclose the extent of their expenditures intended to influence the outcomes of elections. Section 501(c) groups are required to disclose their political expenditures on Line 81 of IRS Form 990. In its instructions for Line 81, the IRS defines a political expenditure as “one intended to influence the selection, nomination, election, or appointment of anyone to a federal, state, or local public office, or office in a political organization, or the election of Presidential or Vice Presidential electors.”¹²

The IRS prohibits organizations registered under Section 501(c)(6) of the tax code from being primarily engaged in activities to influence the outcomes of elections. In guidance provided on its Web site, the IRS states: “Participating directly or indirectly, or intervening, in political campaigns on behalf of or in opposition to any candidate for public office does not further exempt purposes under section 501(c)(6). However, a IRC Section 501(c)(6) business league may engage in some political activities, so long as that is not its primary activity.”¹³

Section 501(c) groups may be required to pay taxes on their expenditures to influence elections. Federal regulations provide that organizations operating under Section 501(c) that expend money for an exempt function within the meaning of Section 527(e)(2) (the section of the federal code that governs electioneering expenditures) are subject to taxes assessed at the highest corporate rate on an amount equal to the lesser of either:

- The net investment income of such organization for the taxable year; or
- The aggregate amount expended during the taxable year for an exempt function.¹⁴

¹² IRS Form 990 Instructions, Line 81.

¹³ Guidance provided on IRS Web site (<http://apps.irs.gov/charities/nonprofits/article/0,,id=163922,00.html>). *See also* John Francis Reilly and Barbara A. Braig Allen, “Political Campaign and Lobbying Activities of IRC 501(c)(4), (c)(5), and (c)(6) Organizations, Exempt Organizations Technical Instruction Program for FY 2003,” p. L2.

¹⁴ *See* 26 C.F.R. 1.527-6 and IRC 527(b).

METHODOLOGY

Buttressed by other data, the allegations in this complaint flow primarily from a comprehensive analysis of communications disseminated by AJS in the context of IRS Revenue Ruling 2004-6. That ruling provided guidance on determining whether an advocacy activity by a Section 501(c)(4), Section 501(c)(5) or Section 501(c)(6) organization constitutes “an exempt function within the meaning of Section 527(e)(2).”¹⁵

The term “exempt function” within the meaning of Section 527(e)(2) regards actions “influencing or attempting to influence the selection, nomination, election or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed. By its terms §527(e)(2) includes all attempts to influence the selection, nomination, election, or appointment of the described officials.”¹⁶

While observing that “all the facts and circumstances” need to be taken into account when analyzing an advocacy communication, Revenue Ruling 2004-06 put forth six factors that “tend to show that an advocacy communication on a public policy issue is for an exempt function under §527(e)(2)” and five factors that “tend to show than an advocacy communication on a public policy issue is not for an exempt function under §527(e)(2).”¹⁷

The factors that Revenue Ruling 2004-06 enumerates which tend to show that an advocacy communication *is for an exempt function* under §527(e)(2) are:

- a. The communication identifies a candidate for public office;
- b. The timing of the communication coincides with an electoral campaign;
- c. The communication targets voters in a particular election;
- d. The communication identifies that candidate’s position on the public policy issue that is the subject of the communication;
- e. The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications; and
- f. The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

The factors that Revenue Ruling 2004-06 enumerates that tend to show that an advocacy communication *is not for an exempt function* under §527(e)(2) are:

¹⁵ Rev. Rul 2004-6, Jan. 26, 2004.

¹⁶ Rev. Rul 2004-6, Jan. 26, 2004.

¹⁷ Rev. Rul 2004-6, Jan. 26, 2004.

- a. The absence of any one or more of the factors listed in a) through f) above;
- b. The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence;
- c. The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication);
- d. The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation); and
- e. The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication.

Public Citizen analyzed 32 communications disseminated by AJS since the group's fiscal year 1999 (which began Nov. 1, 1999) in the context of each of the 11 factors enumerated in Revenue Ruling 2004-06. The set of communications analyzed includes each message for which Public Citizen was able to obtain a transcript or, in the case of direct mail messages, a copy of the communication.¹⁸

Some subjectivity may be required in interpreting whether messages meet the criteria for some of the factors in Rev. Rule 2004-06.

Specifically, in cases in which some factors did not lend themselves to a bright-line test, Public Citizen adopted the following interpretations:

- Factor: "The timing of the communication coincides with an electoral campaign."

Messages satisfying either of two criteria were answered in the affirmative.

1. If the message was disseminated in the 60 days before a general election involving a candidate mentioned in the message or the 30 days before a primary involving the candidate, it was scored as coinciding with an electoral campaign. This is the timing standard governing electioneering communications in the Bipartisan Campaign Reform Act (BCRA).

2. If candidates or independent groups had already begun making significant expenditures affecting a candidate mentioned in an Americans for Job Security message, the message was scored as coinciding with an electoral campaign.

¹⁸ The communications were culled from press reports; from the Campaign Media Analysis Group, which captures television advertisements via satellite; and from field reports provided to Public Citizen.

- Factors:
 - “The communication identifies that candidate’s position on the public policy issue that is the subject of the communication;” and
 - “The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications.”

Certain messages disseminated by AJS did not clearly identify a public policy issue. Often, messages focused on the character or beliefs of a candidate. In cases in which the issue of the communication *was* a candidate, the message was credited with satisfying the factors above.

- Factor: “The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.”

A general opposition to taxes was a theme of many of the AJS communications. Although many of these messages appeared more concerned with candidates than any given issue, those that mentioned taxes were scored as being part of an ongoing series of substantially similar communications.

One factor required contextual data that Public Citizen lacked in its analysis regarding a few communications:

- Factor: “The communication targets voters in a particular election.”

In two cases, Public Citizen was unable to learn where messages were disseminated. In such instances, the factor was scored “Unknown.” It should be noted that in both instances, the context of the communications strongly suggests that they were directed at voters who held sway over the candidates they mentioned. We encourage the IRS to use its investigative authority to learn the media markets to which the communications were directed.

ANALYSIS

I. AJS failed to provide an accurate accounting of its expenditures to influence elections (i.e., its political expenditures) on Line 81 of its Form 990 tax returns for fiscal years 1999, 2001, and 2003 (which largely covered calendar years 2000, 2002 and 2004).¹⁹ The group also disseminated communications intended to influence elections in its fiscal year 2005, for which a Form 990 is not yet available on Guidestar.org, a repository for such forms.

The complaint demonstrates that AJS's expenditures for advocacy communications were intended to influence elections by presenting the results of an analysis of scripts of 32 such communications in the context of a test disseminated by the IRS within Rev. Rule 2004-06. The test provides six factors that tend to indicate that an advocacy communication warrants categorization as an exempt communication under Section 527(e)(2), the portion of the tax code reserved for activities intended to influence the outcomes of elections. The test also provides five factors that tend to show that an advocacy communication does not warrant categorization as an exempt activity under Section 527(e)(2).²⁰

Each communication for which Public Citizen was able to obtain a transcript that was disseminated by Americans for Job Security in its fiscal years 1999, 2001, 2003 and 2005 satisfied a clear majority of criteria outlined in Rev. Rule 2004-06 that tend to show that a communication warrants categorization as exempt under Section 527(e)(2). Each communication failed to satisfy more than a slim minority of criteria that disfavor a communication being categorized as exempt under Section 527(e)(2). [See Figure 1]

Figure 1: Analysis of 32 Americans for Job Security Communications Disseminated Between Jan. 1, 2000, and Oct. 31, 2006, Under Revenue Ruling 2004-06

Year	Number of Americans for Job Security Communications Identified	Number of Americans for Job Security Communications Satisfying a Clear Majority of Factors Pointing in Favor of Categorization as Political
2000	8	8
2002	9	9
2004	10	10
2006	5	5
Total	32	32

In fact, the only substantive factor that disfavored categorization as political for *any* AJS communication identified in this complaint was that granting credit for a communication that is part of “an ongoing series of substantially similar advocacy communications.” This complaint generously credits AJS ads that pertained to tax issues as satisfying this criterion, although even these ads appeared far more concerned with affecting the public’s views on political candidates rather than specific tax issues.

¹⁹ Americans for Job Security 1999 Form 990, 2001 Form 990, 2003 Form 990.

²⁰ Rev. Rul 2004-6, Jan. 26, 2004.

Findings of other researchers and supplemental information relating to certain communications further support Public Citizen's conclusion that AJS's ads were primarily intended to influence elections. For example, a panel of researchers at the Wisconsin Advertising Project at the University of Wisconsin, Madison, and the Brennan Center for Justice at New York University reviewed television advertisements broadcast by Americans for Job Security in 2000. The Wisconsin Advertising Project resumed the study for 2002. The advertising databases were compiled by the Campaign Media Analysis Group (CMAG), a business specializing in political consulting and reporting. CMAG collected television ads that aired in the top 75 media markets across the nation in 2000, and the top 100 media markets in 2002 (capturing more than 80 percent of American households in each year). The researchers concluded that each of the AJS ads they reviewed in 2000 and 2002 was intended to influence the outcomes of elections, as opposed to influencing public officials' positions on issues.²¹

Americans for Job Security has run at least three ad campaigns helping the prospects of candidates with whom the groups' advisers have connections. For example, one of AJS's advisers headed the effort to recruit John Sununu (R-N.H.) to run for the Senate in 2002, after which Sununu did run. In 2002, Americans for Job Security ran ads attacking Sununu's opponent.²²

Another adviser to the group was a longtime political consultant to former Sens. Slade Gorton (R-Wash.) and Frank Murkowski (R-Alaska.). In 2000, Americans for Job Security broadcast ads praising Gorton during his re-election campaign and attacking Maria Cantwell, who was seeking the Democratic nomination to challenge Gorton;²³ In 2002, the group ran ads criticizing Murkowski's likely opponent while Murkowski was seeking election as governor.²⁴ The group's tendency to broadcast ads about politicians with whom its advisers have relationships further supports the conclusion that Americans for Job Security is primarily concerned with affecting the prospects of candidacies rather than the outcomes of issues.

The group's close relationships with certain candidates also has been evidenced, on occasion, by the content of its advertisements. In 2002, the group ran an advertisement praising John Thune, a member of the House of Representatives seeking election to the U.S. Senate. The ad's content, according to a newspaper article, looked the same as that of Thune's ads, except for a disclaimer that said "Paid for By Americans for Job Security."²⁵ In 2004, the group ran an ad attacking former Alaska Gov. Tony Knowles (D), who was seeking election to the U.S. Senate against

²¹ Craig Holman and Luke McLoughlin, *Buying Time 2000: Television Advertising in the 2000 Federal Elections* (New York: Brennan Center for Justice, 2002); Nicholas Confessore, "Bush's Secret Stash," *Washington Monthly*, May 2004; and "2002 Spending By Groups Which Had 527s," Wisconsin Advertising Project, June 23, 2004.

²² "Two Pro-Business Interest Groups Target Shaheen in Ads," *Congress Daily*, Oct. 25, 2002.

²³ "Issue Ad Disclosure: Recommendations for a New Approach," Campaign Finance Institute Task Force on Disclosure, February 2001.

²⁴ APOC Says Outside Attack Ads Broke Campaign Laws, Associated Press, Dec. 7, 2002.

²⁵ Mike Madden, "Democrats Call Group Running Ads 'Shadowy,'" *Argus Leader*, Oct. 25, 2002.

Sen. Lisa Murkowski (R-Alaska).²⁶ The individuals appearing in the ad included the head of Murkowski's campaign in Ketchikan, Alaska, and a woman listed at the time as the assistant treasurer of the Alaska Republican Party. (A party spokesman said she no longer worked there.)²⁷ The ad did not disclose the individuals' connections to Murkowski or the state Republican Party. In 2006, AJS broadcast an advertisement praising Sen. Rick Santorum (R-Pa.). The ad's footage mirrored footage used in an advertisement financed by Santorum's re-election committee.²⁸

A. AJS reported that it had no political expenditures from Nov. 1, 1999 to Oct. 31, 2000.²⁹ Analysis of transcripts of communications disseminated by the group contradicts the group's report, as do other findings pertaining to the group's activities that year.

Public Citizen analyzed eight communications distributed by AJS in light of the six factors in Rev. Rule 2004-06 that tend to show that an advocacy communication was for an exempt function under Section 527(e)(2) and the five factors that tend to show that an advocacy communication was not for an exempt function.

Each of the ads satisfied a clear majority of criteria that point in favor of an advocacy communication being for an exempt function under Section 527(e)(2) and each failed to satisfy more than a slim minority of criteria pointing against an advocacy communication being for an exempt function.

Public Citizen's conclusions are buttressed by findings of researchers at the Wisconsin Advertising Project at the University of Wisconsin, Madison. Panelists in the Wisconsin study were asked to judge whether advertisements mentioning federal candidates' names were intended to influence the outcomes of elections or to influence the outcomes of public policy issues. They concluded that 100 percent of AJS's television advertisements that they reviewed from 2000 were intended to influence candidate elections rather than public policy.³⁰

Certain communications disseminated by AJS in its fiscal year 1999 warrant special attention because of the circumstances surrounding them.

- **2000 Washington U.S. Senate Race**

AJS spent an estimated \$500,000 to \$800,000 on advertisements that either disparaged U.S. Senate candidate Maria Cantwell (D) or praised incumbent Sen. Slade Gorton (R).³¹

²⁶ Gwen Glazer, "Knowles Touts Drug Plan, Takes Hit On Jobs," *National Journal*, July 7, 2004.

²⁷ Jason Moore, "Knowles Decries Third-Party Ad In Senate Race," KTUU Channel 2 Broadcasting, July 2, 2004 and Liz Ruskin, "Murkowski Team Denies Role in Anti-Knowles Ad," *Anchorage Daily News*, July 8, 2004.

²⁸ Kimberly Hefling, "Third Party Group, Santorum Campaign Use Same Footage," Associated Press, Dec. 3, 2005.

²⁹ Americans for Job Security, Form 990, 1999.

³⁰ Craig Holman and Luke McLoughlin, *Buying Time 2000: Television Advertising in the 2000 Federal Elections* (New York: Brennan Center for Justice, 2002).

³¹ "Issue Ad Disclosure: Recommendations for a New Approach," Campaign Finance Institute Task Force on Disclosure, February 2001.

Republican consultant Eddie Mahe was reportedly paid \$108,000 by Gorton's campaign in 1999 and the first half of 2000.³² Americans for Job Security President Michael Dubke acknowledged that Mahe served as an adviser in forming Americans for Job Security in 1997.³³

- **2000 Michigan U.S. Senate Race**

In 2000, Americans for Job Security spent a reported \$700,000 on television commercials mentioning Sen. Spencer Abraham (R-Mich.) and Rep. Debbie Stabenow (D-Mich.), who was challenging Abraham.³⁴

Newsweek reported in June 2000 that then-Senate Majority Leader Trent Lott (R-Miss.) held a meeting with a group of lobbyists in which he expressed outrage at "vicious" ads running against Abraham. A participant in the meeting said that Lott asked the lobbyists to finance counter-attack ads. Lott then gave meeting participants the phone number and address of Americans for Job Security.³⁵

Americans for Job Security ran an ad campaign against Stabenow. The content of one of the commercials broadcast by the group appeared to express Lott's anger over the ads running against Abraham. "Who's smearing Senator Abraham with negative attack ads?" a portion of the commercial said. "An extremist group charged with bigotry and racism. The *Detroit News* says they have 'an ugly agenda.' Yet Debbie Stabenow is so desperate she won't denounce this campaign of fear. Call Stabenow. Ask her to drop the smear campaign."³⁶

Scripts and analyses of eight individual Americans for Job Security communications disseminated between October 31, 1999 and Oct. 31, 2000 are below.

³² Joel Connelly, "TV Ad Blitz Targets Cantwell Spots Placed by Insurance-Industry Trade Group Irks Gorton's Opponent; His Chief of Staff Denies Any Role," *Seattle Post-Intelligencer*, Aug. 31, 2000.

³³ Ben Spiess, "Soft Money: Outside Group Talked to Men with Murkowski Ties," *Anchorage Daily News*, June 13, 2002.

³⁴ Nicholas Confessore, "Saving Private Abraham," *The American Prospect*, Nov. 20, 2000, as quoted in "Issue Ad Disclosure: Recommendations for a New Approach," Campaign Finance Institute Task Force on Disclosure, February 2001.

³⁵ Michael Isikoff, "The Secret Money Chase," *Newsweek*, June 5, 2000.

³⁶ CMAG Reports.

Americans for Job Security Communication 1

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Spencer Abraham (R) v. Debbie Stabenow (D)
 Office Sought: U.S. Senate (Michigan)
 Primary or General / Year of Election: General / 2000

Details and Content of Advocacy Message

Medium: Television commercial
 Last Confirmed Date Message Was Disseminated: May 12, 2000

Narrator: "The Michigan Chamber of Commerce calls Senator Spence Abraham 'a champion for Michigan jobs' for proposing the bipartisan Abraham plan to train American workers and create new high-tech jobs. So who's smearing Senator Abraham with negative attack ads? An extremist group charged with bigotry and racism. The *Detroit News* says they have 'an ugly agenda.' Yet Debbie Stabenow is so desperate she won't denounce this campaign of fear. Call Stabenow. Ask her to drop the smear campaign."
Source: CMAG Reports

Analysis of Americans for Job Security Communication 1 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ³⁷		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?	√		
Total	6	0	
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?		√	
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	0	5	

³⁷ See, e.g., Michael Isikoff, "The Secret Money Chase," *Newsweek*, June 5, 2000.

Americans for Job Security Communication 2

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: George W. Bush (R) v. Al Gore (D)
 Office Sought: President
 Primary or General / Year of Election: General / 2000

Details and Content of Advocacy Message

Medium: Television commercial
 Last Confirmed Date Message Was Disseminated: Nov. 6, 2000³⁸

Narrator: "Think hard about what your healthcare and prescription drugs would be like under Al Gore. One in four seniors could lose their good private coverage. Just one chance to join Al Gore's drug plan or be left out forever. A one size fits all plan picked by the government where bureaucrats would end up deciding what medicines you can get. And you'd pay up to \$600 a year more straight out of your Social Security check for the privilege. So think hard America."
Source: CMAG reports.

Analysis of Americans for Job Security Communication 2 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	5	1	
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?	√		
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	1	4	

³⁸ Although records indicate that this ad was only broadcast from Nov. 1, 2000 to Nov. 6, 2000, the first few dates in American For Job Security's fiscal year 2000, this message is included in the fiscal year 1999 analysis because the ad was almost certainly produced in fiscal year 1999. The ad began running on the first day of the group's fiscal year 2000.

Americans for Job Security Communication 3

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: George W. Bush (R) v. Al Gore (D)
 Office Sought: President
 Primary or General / Year of Election: General / 2000

Details and Content of Advocacy Message

Medium: Television commercial
 Last Confirmed Date Message Was Disseminated: Nov. 6, 2000³⁹

Narrator: "Are you taxed enough already? Not according to Al Gore. Gore plans to squeeze more money out of middle class families at the gasoline pump. Gore cast the tie-breaking vote to raise gas taxes 4.3 cents a gallon. He admits he'll add more taxes on gasoline with what he calls a CO₂ tax. Gore supported a call to raise taxes so much that gas would cost \$3 a gallon. And Gore's ideas are so extreme, if they ever came to pass, Americans would truly be Gored at the pump."

Source: CMAG Reports.

Analysis of Americans for Job Security Communication 3 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	5	1	
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?	√		
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	1	4	

³⁹ Although this ad ran as late as Nov. 6, 2000, it began running at least as early as Oct. 30, 2000, according to the CMAG database. Therefore, it was broadcast within AJS's 1999 fiscal year.

Americans for Job Security Communication 4

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Slade Gorton (R) (incumbent) v. Democrat to be determined
 Office Sought: U.S. Senate (Washington)
 Primary or General / Year of Election: General / 2000

– and –

Opponents: George W. Bush (R) v. Al Gore (D)
 Office Sought: President
 Primary or General / Year of Election: General / 2000

Details and Content of Advocacy Message

Medium: Television commercial
 Last Confirmed Date Message Was Disseminated: June 20, 2000

Narrator: "It's time to face the facts about the Snake River. Removal of the dams would add over 700,000 trucks to our highways with a price tag of over \$300 million. Breach the dams and say goodbye to clean, affordable energy. Plan on adding more to your electric bill each month. No dams and more than 2,200 jobs evaporate. Family farms fail. Taxes soar. Land values plummet.

Say no to Al Gore. Help preserve the Columbia River basin. Support Slade Gorton in his fight to save Snake River.

Source: "Americans for Gorton's Job Security," *National Journal*, June 20, 2000.

Analysis of Americans for Job Security Communication 4 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ⁴⁰		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	5	1	

⁴⁰ This communication targeted Al Gore in part. By July 2000, Gore's presidential campaign was in full swing.

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?	√		
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	1	4	

Americans for Job Security Communication 5

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Slade Gorton (R) (incumbent) v. Democrat to be determined
 Office Sought: U.S. Senate (Washington)
 Primary or General / Year of Election: General / 2000

Details and Content of Advocacy Message

Medium: Television commercial
 Last Confirmed Date Message Was Disseminated: June 20, 2000

Jeff Gordon, Gordon Brothers Winery: If we lose the dam, we lose our employment base; we lose our way of life.

John Givens, Port of Kennewick: It would take an additional 700,000 tractor-trailer loads a year on our highways to replace the cargo now being carried on the river if the dams are breached.

Ralph Thomsen, T & R Farms: And it's not about fish, and it's not about dams, and it's not about water quality. It's about federal intervention of states' rights. This is about politics.

Narrator: Help preserve the Columbia River basin. Support Slade Gorton in his fight to save [the] Snake.

Source: "Americans for Gorton's Job Security," National Journal, June 20, 2000.

Analysis of Americans for Job Security Communication 5 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ⁴¹		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	5	1	

⁴¹ See, e.g., "Senate Report Washington: He'd Rather Be Fishing?" American Political Network, May 30, 2000. The article announced that Gorton had begun his campaign that week with a 20 city tour.

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?	√		
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	1	4	

Americans for Job Security Communication 6

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Slade Gorton (R) (incumbent) v. Democrat to be determined

Office Sought: U.S. Senate (Washington)

Primary or General / Year of Election: General / 2000

Details and Content of Advocacy Message

Medium: Television commercial

Last Confirmed Date Message Was Disseminated: June 20, 2000

Narrator: "This is the Snake, one of America's most magnificent rivers. It provides affordable energy, helps agriculture feed millions. It's environmentally friendly for transportation, the economic backbone of the Columbia River basin.

Now the Clinton-Gore administration may breach the dams, wiping out commerce, agriculture, recreation and clean, reliable electricity. Destroying the dams would dramatically increase cost and damage this pristine environment. Help preserve the Columbia River basin. Support Senator Gordon in his fight to save the Snake."

Source: "Americans For Gorton's Job Security," *National Journal*, June 20, 2000.

Analysis of Americans for Job Security Communication 6 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ⁴²		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	5	1	
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?	√		
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	1	4	

⁴² See, e.g., "Senate Report Washington: He'd Rather Be Fishing," American Political Network, May 30, 2000. The article announced that Gorton had begun his campaign that week with a 20 city tour.

Americans for Job Security Communication 7

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Maria Cantwell (D) v. Deborah Senn (D)
 Office Sought: U.S. Senate (Washington)
 Primary or General / Year of Election: Primary / 2000

Details and Content of Advocacy Message

Medium: Television commercial
 Last Confirmed Date Message Was Disseminated: Sept. 8, 2000

Narrator: "What is it with politicians like Maria Cantwell? They think with our pocket books. She voted for higher taxes on gasoline, home electricity ... she even voted to raise tax rates on Social Security ... Maria Cantwell actually voted to raise taxes on Washington state's retired working families by 70 percent. Politicians like Maria Cantwell think it's OK to tax our hard-earned Social Security. Maria Cantwell talks like she's from our Washington. Problem is, she's from the other Washington."

Source: Lauren Mandell, "Cantwell's Record on the Spot," *National Journal*, Sept. 8, 2000.

Analysis of Americans for Job Security Communication 7 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	5	1	
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?	√		
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	1	4	

Americans for Job Security Communication 8

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Ben Nelson (D) v. Don Stenberg (R)
 Office Sought: U.S. Senate (Nebraska)
 Primary or General / Year of Election: General / 2000

Details and Content of Advocacy Message

Medium: Television commercial
 Last Confirmed Date Message Was Disseminated: Nov. 6, 2000⁴³

Narrator: “Ben Nelson is not even coming close to telling the full story.”

Nelson: “This issue is about intentionally distorting the facts.”

Narrator: “Nelson vigorously fought the EPA’s plan.”

Gov. Mike Johanns: “If Don Stenberg’s standing up for Nebraska, if he had done anything less, he would not have been doing his job. We all want safe, clean drinking water. The question is: Who should set the standards? Ben Nelson is siding with Al Gore who wants more federal regulation of our water.”

Narrator: “If we can’t trust Ben Nelson on clean water, when can we trust him?”

Source: CMAG Reports.

Analysis of Americans for Job Security Communication 8 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√		
The communication targets voters in a particular election?	√		
The communication identifies that candidate’s position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?	√		
Total	6	0	

⁴³ Although this ad ran as late as Nov. 6, 2000, it began running on Oct. 20, 2000, according to the CMAG database. Therefore, it was broadcast within AJS’s 1999 fiscal year.

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?		√	
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	0	5	

B. AJS reported that it had no political expenditures from Nov. 1, 2001 to October 31, 2002.⁴⁴ Analysis of transcripts of communications disseminated by the group in the context of Rev. Rule 2004-06 contradicts the group’s report, as do other findings pertaining to the group’s activities that year.

Public Citizen analyzed 10 communications distributed by AJS in light of the six factors in Rev. Rule 2004-06 that tend to show that an advocacy communication was “for an exempt function” under Section 527(e)(2) and the five factors that tend to show that an advocacy communication was “not for an exempt function.”

Each of the ads satisfied a clear majority of criteria that point in favor of an advocacy communication being for an exempt function under Section 527(e)(2) and each failed to satisfy more than a slim minority of criteria pointing against an advocacy communication being for an exempt function.

Public Citizen’s conclusions were buttressed by findings of researchers at the Wisconsin Advertising Project at the University of Wisconsin, Madison. Panelists in the Wisconsin study were asked to judge whether advertisements depicting federal candidates were intended to influence the outcomes of elections or to influence the outcomes of public policy issues. They concluded that 100 percent of AJS’s 2002 television advertisements that they reviewed were intended to influence elections.⁴⁵

This finding is further supported by the same study’s analysis of the timing of AJS’s 2002 ads . AJS’s commercials were aired 2,172 times in the nation’s top 100 media markets during calendar year 2002. Each mentioned a federal candidate and each was broadcast in the two months leading up to the general election.⁴⁶

⁴⁴ Americans for Job Security, Form 990, 2001.

⁴⁵ “2002 Spending By Groups Which Had 527s,” Wisconsin Advertising Project, June 23, 2004. (Note: Although the title of this document suggested that it was limited to analysis of Section 527 groups, the piece commingled Section 527 and Section 501(c) groups.)

⁴⁶ Ken Goldstein and Joel Rivlin, “Political Advertising in the 2002 Elections,” Wisconsin Advertising Project, Oct. 29, 2003.

Certain communications disseminated by AJS in its fiscal year 2001 warrant special attention because their circumstances supplement an analysis conducted under Rev. Rule 2004-06.

- **2002 Missouri U.S. Senate Race**

In 2002, Americans for Job Security broadcast advertisements praising Jim Talent, a former member of Congress from Missouri who was challenging Sen. Jean Carnahan for a seat in the U.S. Senate. “A career working to make families safe and secure, and with three young children of his own he’s not about to stop. Jim Talent. Experience makes a difference,” the ad said in part.⁴⁷

Talent, at the time the ad aired, was not an elected or appointed official and, thus, lacked the capacity to take action in support of any issues promoted by AJS. Given Talent’s lack of an official position, advocacy communications focused on him while he was involved in a Senate campaign could only be categorized as exempt under Section 527(e)(2).

- **2002 Minnesota U.S. Senate Race**

In 2002, AJS spent about \$1 million on advertisements critical of Paul Wellstone.⁴⁸ A comment made to a newspaper reporter by Americans for Job Security President Michael Dubke, apparently in reference to Wellstone, reveals that the group’s communications were meant to influence the public’s views on individuals rather than issues.

“We think we’re just pointing out the truth of things – one politician who says one thing in Minnesota and does another in Washington, and another guy who actually tries to get around all the B.S. and get something done.”⁴⁹

Any advertisements broadcast during a campaign season that make distinctions about candidates’ integrity or competence almost certainly warrant categorization as exempt communications under Section 527(e)(2).

- **2002 Alaska Gubernatorial Race**

In 2002, AJS broadcast ads attacking the administration of Gov. Tony Knowles and Lt. Gov. Fran Ulmer. Ulmer was seeking the governor’s seat.

“After eight years of Tony Knowles and Fran Ulmer, we’ve got lower income, budget deficits and our kids are fleeing Alaska,” one of the ads said. “Call Knowles/Ulmer and ask them what happened to the last eight years of broken promises.”⁵⁰

⁴⁷ CMAG Reports.

⁴⁸ Patricia Lopez, “Mysterious Group Spends \$1 Million On Anti-Wellstone Campaign,” *Minneapolis Star-Tribune*, Oct. 23, 2002.

⁴⁹ Mike Madden, “Democrats Call Group Running Ads ‘Shadowy,’” *Argus Leader*, Oct. 25, 2002.

⁵⁰ Ben Spiess, “New Anti-Knowles Ad Ignites More Debate,” *Anchorage Daily News*, June 8, 2002.

The Alaska Public Offices Commission ruled that the ads broke state campaign laws that require disclosure of contributions and expenditures intended to influence the outcomes of elections.⁵¹

Ulmer's opponent on the November ballot was Republican Frank Murkowski. In the months before the ad campaign began, Murkowski's campaign supplied Americans for Job Security with economic data.⁵² Americans for Job Security President Michael Dubke said he consulted with Eddie Mahe Jr. about whether to initiate an ad campaign. Mahe, who acted as an adviser to Americans for Job Security when the group was being formed in 1988, served as an adviser to Murkowski's U.S. Senate campaigns in 1980, 1986 and 1992.⁵³ Although a news story published in Alaska in June 2002 said that Mahe did not work directly for Murkowski's 2002 gubernatorial campaign, the Washington, D.C., Capitol Hill newspaper *Roll Call* reported the same month that the Eddie Mahe Co, then newly merged with another firm, "is carrying over its contract to work for Sen. Frank Murkowski (R-Alaska), who is running for governor this year."⁵⁴

Dubke also spoke with Tony Motley before deciding whether to run the ads. Motley's daughter previously had worked in Murkowski's congressional office and worked for his 2002 gubernatorial campaign.⁵⁵

Murkowski's campaign manager said he knew in advance that the AJS's ads would run.⁵⁶

- **2002 South Dakota U.S. Senate Race**

In 2002, AJS broadcast ads in South Dakota that reportedly used identical footage to that which was used by the ads sponsored by the campaign of Rep. John Thune (R-S.D.), who was challenging Sen. Tim Johnson (D-S.D.). "The ads, which tout Thune's work getting federal money for ranchers and farmers suffering from a catastrophic drought, look just like Thune's own ads, except for a 'Paid for by Americans for Job Security' logo toward the end" a newspaper account said. AJS purchased the footage from the same company that produced ads for Thune.⁵⁷

⁵¹ APOC Says Outside Attack Ads Broke Campaign Laws, Associated Press, Dec. 7, 2002. (Note: The advocacy communication to which this article refers is not included in the quantitative analysis of AJS's 2002 communications because a transcript could not be obtained.)

⁵² "Murkowski Says He Wants Attack Ads Stopped," Associated Press, July 3, 2002.

⁵³ Ben Spiess, "Soft Money: Outside Group Talked to Men with Murkowski Ties," *Anchorage Daily News*, June 13, 2002.

⁵⁴ Lauren W. Whittington and Ben Pershing, "ShopTalk," *Roll Call*, June 20, 2002. See also, Ben Spiess, "Soft Money: Outside Group Talked to Men with Murkowski Ties," *Anchorage Daily News*, June 13, 2002.

⁵⁵ Ben Spiess, "Soft Money: Outside Group Talked to Men with Murkowski Ties," *Anchorage Daily News*, June 13, 2002.

⁵⁶ Ben Spiess, "New Anti-Knowles Ad Ignites More Debate," *Anchorage Daily News*, June 8, 2002.

⁵⁷ Mike Madden, "Democrats Call Group Running Ads 'Shadowy,'" *Argus Leader*, Oct. 25, 2002.

- **2002 New Hampshire U.S. Senate Race**

In 2002, AJS broadcast ads critical of Gov. Jeanne Shaheen (D), who was engaged in a close campaign for a U.S. Senate seat against John Sununu. Dave Carney, who was affiliated with AJS from its outset, headed the effort to recruit Sununu to enter the campaign.⁵⁸

Scripts of AJS's messages identified by Public Citizen as being disseminated between Nov. 1, 2001 and Oct. 31, 2002 are below.

⁵⁸ "Two Pro-Business Interest Groups Target Shaheen In Ads," *Congress Daily*, Oct. 25, 2002 and Jim VandeHei, "Pro-GOP Group Plans \$100 Million 'Issue Ad' Blitz," *Roll Call*, Jan. 15, 1998.

Americans for Job Security Communication 9

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Wayne Allard (R) (incumbent) v. Tom Strickland (D)
 Office Sought: U.S. Senate (Colorado)
 Primary or General / Year of Election: General / 2002

Details and Content of Advocacy Message

Medium: Television commercial
 Last Confirmed Date Message Was Disseminated: Oct. 21, 2002

Narrator: "He meets folks in small town cafes and fairground meeting rooms, Senator Wayne Allard. The *Rocky Mountain News* has called him the 'traveling man' for nearly 500 town meetings he's held since becoming a Senator. A veterinarian by trade, born and raised in Colorado, Wayne Allard has been a steady hand in Washington, instrumental in President Bush's No Child Left Behind Act, a citizen legislator. Call Senator Allard. Tell him thanks for standing up for Colorado and a strong America."

Source: CMAG Reports.

Analysis of Americans for Job Security Communication 9 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?	√		
Total	6	0	
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?		√	
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	0	5	

Americans for Job Security Communication 10

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Tom Harkin (D) (incumbent) v. Greg Ganske (R)

Office Sought: U.S. Senate (Iowa)

Primary or General / Year of Election: General / 2002

Details and Content of Advocacy Message

Medium: Radio commercial

Last Confirmed Date Message Was Disseminated: June 30, 2002

Ruth: "Lloyd, we just got a letter from the IRS."

Lloyd: "Ruth, what's wrong?"

Ruth: "They say we owe more taxes."

Lloyd: "Bull----. Dad always paid his taxes even in the worst of times."

Ruth: "We owe taxes 'cause he died?"

Lloyd: "He paid taxes when he worked. He paid taxes on this land. Now he dies and he has to pay more? Who'll the hell thought up that doozy?"

Ruth: "Senator Harkin just voted to keep the death tax."

Lloyd: "Tom Harkin actually voted to tax people 'cause they died?"

Ruth: "What's going to happen?"

Lloyd: We're going to have to sell the farm."

Ruth: "No, Lloyd, we're going to call [Tom Harkin] and tell him our folks paid their fair share and to keep his money-grubbing hands off our farm."

Narrator: "Call Tom Harkin. Tell him to protect small businesses and family farms and to stop taxing the dead."

Source: Mark H. Rodeffer, "Conservatives Hit Dems in Farm States," *National Journal*, June 19, 2002.

Analysis of Americans for Job Security Communication 10 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ⁵⁹		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	5	1	

⁵⁹ See, e.g., Will Lester, "Candidates Spent Over \$100M This Year," Associated Press, June 13, 2002.

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?	√		
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	1	4	

Americans for Job Security Communication 11

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Paul Wellstone (D) (incumbent) v. Norm Coleman (R)
 Office Sought: U.S. Senate (Minnesota)
 Primary or General / Year of Election: General / 2002

Details and Content of Advocacy Message

Medium: Television commercial
 Last Confirmed Date Message Was Disseminated: Oct. 19, 2002

Narrator: "Take a good look at Paul Wellstone. He is not who you think he is. Before Wellstone was elected, he promised he wouldn't take any PAC money, he said he was afraid he would lose his soul. Yet over the past two years, he has accepted over two million dollars in special interest money. And before Wellstone became a career politician, he also promised to only serve two terms. Now he's around for a third? Call Paul Wellstone, tell him promises are meant to be kept."

Source: CMAG Reports.

Analysis of Americans for Job Security Communication 11 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?	√		
Total	6	0	
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?		√	
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	0	5	

Americans for Job Security Communication 12

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Paul Wellstone (D) (incumbent) v. Norm Coleman (R)

Office Sought: U.S. Senate (Minnesota)

Primary or General / Year of Election: General / 2002

Details and Content of Advocacy Message

Medium: Radio ad

Last Confirmed Date Message Was Disseminated: June 19, 2002

<p>Ruth: "Lloyd, we just got a letter from the IRS."</p> <p>Lloyd: "Ruth, what's wrong?"</p> <p>Ruth: "They say we owe more taxes."</p> <p>Lloyd: "Bull----. Dad always paid his taxes even in the worst of times."</p> <p>Ruth: "We owe taxes 'cause he died?"</p> <p>Lloyd: "He paid taxes when he worked. He paid taxes on this land. Now he dies and he has to pay more? Who'll the hell thought up that doozy?"</p> <p>Ruth: "Senator Wellstone just voted to keep the death tax."</p> <p>Lloyd: "Paul Wellstone actually voted to tax people 'cause they died?"</p> <p>Ruth: "What's going to happen?"</p> <p>Lloyd: We're going to have to sell the farm."</p> <p>Ruth: "No, Lloyd, we're going to call Paul Wellstone and tell him our folks paid their fair share and to keep his money-grubbing hands off our farm."</p> <p>Announcer: "Call Paul Wellstone. Tell him to protect small businesses and family farms and to stop taxing the dead."</p> <p><i>Source:</i> Mark H. Rodeffer, "Conservatives Hit Dems in Farm States," <i>National Journal</i>, June 19, 2002.</p>

Analysis of Americans for Job Security Communication 12 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ⁶⁰		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	5	1	

⁶⁰ See, e.g., Will Lester, "Candidates Spent Over \$100M This Year," Associated Press, June 13, 2002.

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?	√		
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	1	4	

Americans for Job Security Communication 13

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Jean Carnahan (D) (incumbent) v. Jim Talent (R)

Office Sought: U.S. Senate (Missouri)

Primary or General / Year of Election: General / 2002

Details and Content of Advocacy Message

Medium: Television commercial

Last Confirmed Date Message Was Disseminated: Oct. 22, 2002

Narrator: "Jim Talent, 16 years in public service, working to improve the quality of life for Missouri's children and families. In Congress, he championed legislation to remove disruptive and violent students from classrooms, so kids could learn and be safe. As chairman of the Small Business Committee, he fought for affordable health insurance for uninsured employees of small businesses. A career working to make families safe and secure, and with three young children of his own he's not about to stop. Jim Talent. Experience makes a difference."

Source: CMAG Reports.

Analysis of Americans for Job Security Communication 13 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√		
The communication targets voters in a particular election?			√
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?	√		
Total	5	0	1
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?			√
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	0	4	1

Americans for Job Security Communication 14

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Jean Carnahan (D) (incumbent) v. Jim Talent (R)
 Office Sought: U.S. Senate (Missouri)
 Primary or General / Year of Election: General / 2002

Details and Content of Advocacy Message

Medium: Radio ad
 Last Confirmed Date Message Was Disseminated: June 19, 2002

Ruth: "Lloyd, we just got a letter from the IRS."

Lloyd: "Ruth, what's wrong?"

Ruth: "They say we owe more taxes."

Lloyd: "Bull----. Dad always paid his taxes even in the worst of times."

Ruth: "We owe taxes 'cause he died?"

Lloyd: "He paid taxes when he worked. He paid taxes on this land. Now he dies and he has to pay more? Who'll the hell thought up that doozy?"

Ruth: "Senator Carnahan just voted to keep the death tax."

Lloyd: "Jean Carnahan actually voted to tax people 'cause they died?"

Ruth: "What's going to happen?"

Lloyd: "We're going to have to sell the farm."

Ruth: "No, Lloyd, we're going to call Jean Carnahan and tell her our folks paid their fair share and to keep her money-grubbing hands off our farm."

Narrator: "Call Jean Carnahan. Tell her to protect small businesses and family farms and to stop taxing the dead."

Source: Mark H. Rodeffer, "Conservatives Hit Dems in Farm States," *National Journal*, June 19, 2002.

Analysis of Americans for Job Security Communication 14 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ⁶¹		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	5	1	

⁶¹ See, e.g., "More Than \$100M In Political TV Ads in 2002; Big Four Primaries Spent \$64M Alone, Fastest Pace of Spending in Non-Presidential Year," Press Release of the Wisconsin Advertising Project at the University of Wisconsin, June 13, 2002.

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?	√		
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	1	4	

Americans for Job Security Communication 15

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Jeanne Shaheen (D) v. John Sununu (R)

Office Sought: U.S. Senate (New Hampshire)

Primary or General / Year of Election: General / 2002

Details and Content of Advocacy Message

Medium: Television commercial

Last Confirmed Date Message Was Disseminated: Oct. 21, 2002

Narrator: "Jeanne Shaheen, can we still trust her? Before she became governor, Shaheen pledged to oppose any new taxes, but as governor, she broke her word. She proposed a new statewide property tax, a new sales tax, even a capital gains tax. Taxes that would hurt New Hampshire, taxes that would hurt families, taxes that would cost even more jobs. Call Jeanne Shaheen, tell her trust is more important than an empty slogan."

Source: CMAG Reports.

Analysis Americans for Job Security Communication 15 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	5	1	
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?	√		
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	1	4	

Americans for Job Security Communication 16

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Tim Johnson (D) (incumbent) v. John Thune (R)

Office Sought: U.S. Senate (South Dakota)

Primary or General / Year of Election: General / 2002

Details and Content of Advocacy Message

Medium: Radio commercial

Last Confirmed Date Message Was Disseminated: June 20, 2002

<p>Ruth: "Lloyd, we just got a letter from the IRS."</p> <p>Lloyd: "Ruth, what's wrong?"</p> <p>Ruth: "They say we owe more taxes."</p> <p>Lloyd: "Bull----. Dad always paid his taxes even in the worst of times."</p> <p>Ruth: "We owe taxes 'cause he died?"</p> <p>Lloyd: "He paid taxes when he worked. He paid taxes on this land. Now he dies and he has to pay more? Who'll the hell thought up that doozy?"</p> <p>Ruth: "Senator [Johnson]] just voted to keep the death tax."</p> <p>Lloyd: "Tim Johnson actually voted to tax people 'cause they died?"</p> <p>Ruth: "What's going to happen?"</p> <p>Lloyd: We're going to have to sell the farm."</p> <p>Ruth: "No, Lloyd, we're going to call [Tim Johnson] and tell him our folks paid their fair share and to keep his money-grubbing hands off our farm."</p> <p>Narrator: "Call Tim Johnson. Tell him to protect small businesses and family farms and to stop taxing the dead."</p> <p><i>Source:</i> Mark H. Rodeffer, "Conservatives Hit Dems in Farm States," <i>National Journal</i>, June 19, 2002.</p>
--

Analysis of Americans for Job Security Communication 16 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ⁶²		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	5	1	

⁶² See, e.g., Bob von Sternberg, "Another Pivotal Senate Race, Right Next Door In South Dakota, Campaign Money is Flowing, and Folks Are Saying that It's Going to Be Nasty," (Minneapolis) *Star-Tribune*, June 23, 2002.

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?	√		
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	1	4	

Americans for Job Security Communication 17

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Ron Kirk (D) v. John Cornyn (R)
 Office Sought: U.S. Senate (Texas)
 Primary or General / Year of Election: General / 2002

Details and Content of Advocacy Message

Medium: Television commercial
 Last Confirmed Date Message Was Disseminated: Oct. 29, 2002

Narrator: "Who is the real Ron Kirk? He claims to support President Bush but recently Kirk said he now opposes making the Bush tax cuts permanent. In fact, he thinks some of the tax cuts shouldn't even go into effect. Kirk says he supports Texas jobs, yet he's taken thousands from an extreme anti-defense group whose goals include cuts in America's space program. Even the *Houston Chronicle* reports Kirk to say one thing to the public, and another to the party insiders. Call. Ask him, who is the real Ron Kirk today?"

Source: CMAG Reports.

Analysis of Americans for Job Security Communication 17 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√		
The communication targets voters in a particular election?			√
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	4	1	1
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?	√		
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	1	4	

C. AJS reported that it had no political expenditures from Nov. 1, 2003 to Oct. 31, 2004.⁶³ Analysis in the context of Rev. Rule 2004-06 of transcripts of communications disseminated by the group contradicts this report, as do other findings pertaining to the group’s activities that year.

Public Citizen analyzed 10 communications distributed by AJS in light of the six factors in Rev. Rule 2004-06 that tend to show that an advocacy communication was for an exempt function under Section 527(e)(2) and the five factors that tend to show that an advocacy communication was not for an exempt function

Each of the ads satisfied at least a vast majority of criteria that point in favor of the communication being categorized as being for an exempt function under Section 527(e)(2) and each failed to satisfy more than a slim minority of criteria that would point against an advocacy communication being categorized as being for an exempt function.

At least one communication disseminated by AJS in its fiscal year 2003 warrants special attention because of the circumstances surrounding it.

- **2004 Alaska U.S. Senate Race**

In 2004, AJS broadcast advertisements criticizing Tony Knowles, a Democrat and former Alaska governor seeking election to represent the state in the U.S. Senate. The ads were notable both for the fact that Knowles was not a public official at the time and because some of the people appearing in the ad had connections to Knowles’ opponent, Republican Sen. Lisa Murkowski, or the Alaska Republican Party.

One of the ads began: “When Tony Knowles was governor, I had a great many friends that chose to leave Alaska. They didn’t actually choose – they had to leave Alaska, because there weren’t opportunities here.” It concluded with a screen message: “Ask Tony Knowles his plans to bring our children back to Alaska.”⁶⁴

Since Knowles held no government position at the time the ad was aired, he had no standing to implement a plan to bring children back to Alaska or to carry out any other public policy matters of concern to AJS.

The ad included footage of several individuals criticizing Knowles’ performance as governor. One critic was the coordinator of Lisa Murkowski’s campaign in Ketchikan, Alaska.⁶⁵ Another critic was listed as the Alaska Republican Party’s assistant treasurer at the time the ad ran, although the party denied she still worked for it. The ad did not disclose their affiliations.⁶⁶

⁶³ Americans for Job Security, Form 990, 2003.

⁶⁴ Gwen Glazer, “Knowles Touts Drug Plan, Takes Hit On Jobs,” *National Journal*, July 7, 2004.

⁶⁵ Liz Ruskin, “Murkowski Team Denies role in Anti-Knowles Ad,” *Anchorage Daily News*, July 8, 2004.

⁶⁶ Jason Moore, “Knowles Decries Third-Party Ad in Senate Race,” *KTUU*, July 2, 2004.

The fact that the ad was devoted to criticizing a candidate for office who held no official position makes it almost impossible to determine that the ad could escape categorization as an exempt expenditure within the definition of Section 527(e)(2).

Scripts of AJS messages identified by Public Citizen as being disseminated between Nov. 1, 2001 and Oct. 31, 2002 are listed below.

Americans for Job Security Communication 18

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Lisa Murkowski (R) v. Tony Knowles (D)
 Office Sought: U.S. Senate (Alaska)
 Primary or General / Year of Election: General / 2004

Details and Content of Advocacy Message

Medium: Television commercial
 Last Confirmed Date Message Was Disseminated: July 7, 2004

TV ad opens with a woman speaking to the audience. "When Tony Knowles was governor, I had a great many friends that chose to leave Alaska. They didn't actually choose – they had to leave Alaska, because there weren't opportunities here."

Man tells viewers: "You can't just drive to the next town to find work. You'd have to literally leave your home; there's nowhere else to go."

Second man: "Probably Alaska's greatest export is our children searching for jobs."

Third man: "You know, if you don't have a living-wage job, then you have no option but to leave the community."

The woman concludes: "Tony Knowles may think flipping burgers is a good job, but it's not the future I want for my daughters."

The screen reads: "Ask Tony Knowles his plans to bring our children back to Alaska."

Source: Gwen Glazer, "Knowles Touts Drug Plan, Takes Hit On Jobs," *National Journal*, July 7, 2004.

Analysis of Americans for Job Security Communication 18 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ⁶⁷		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?	√		
Total	6	0	
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?		√	
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	

⁶⁷ See, e.g., Mike Chambers, "Former Democratic Governor Gives Party a Shot at Traditionally GOP Senate Seat in Alaska," Associated Press, July 1, 2004.

The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	0	5	

Americans for Job Security Communication 19

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Pete Coors (R) v. Ken Salazar (D)
 Office Sought: U.S. Senate (Colorado)
 Primary or General / Year of Election: General / 2004

Details and Content of Advocacy Message

Medium: Television commercial
 Last Confirmed Date Message Was Disseminated: August 8, 2004

Narrator: "Summitville Mine. A Canadian company pulled \$130 million worth of gold out of Colorado, but left behind the worst cyanide spill in American history. Seventeen miles of dead river. Over \$230 million in estimated clean-up costs. Ken Salazar ran the Department of Natural Resources at the time, and his agency's lax oversight was blamed in part for the disaster. To make matters worse, as attorney general, Ken Salazar cut deals with the foreign millionaire responsible, and others, rather than fight to get more money for the clean-up. The result? Summitville mine produces \$130 million worth of gold and the worst environmental disaster in Colorado history. The person responsible pays less than \$30 million toward the clean-up, sticking taxpayers with a bill of more than \$100 million...and counting. Call Ken Salazar and tell him to fight for Colorado taxpayers for a change."

Source: "Senate 2004 Colorado: Toxic New Ad Targets Salazar," *The Hotline*, Aug. 25, 2004.

Analysis of Americans for Job Security Communication 19 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ⁶⁸		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?	√		
Total	6	0	
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?		√	
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	0	5	

⁶⁸ See, e.g., "Salazar Spends \$900,000 for TV Ads," Associated Press, Aug. 18, 2004

Americans for Job Security Communication 20

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: George W. Bush (R) (Incumbent) v. John Kerry (D)
 Office Sought: President
 Primary or General / Year of Election: General / 2004

Details and Content of Advocacy Message

Medium: Direct mail
 Last Confirmed Date Message Was Disseminated: n/a

Text of direct mail piece mailed to a resident of Bradenton, Fla.: "John Kerry voted against a comprehensive prescription drug benefit making prescription drugs more affordable and accessible to seniors.

"But it gets worse.

"Kerry wants to repeal the prescription drug benefits seniors now receive. Kerry's prescription for failure: fewer choices, more government, more paperwork, higher costs.

"Call Senator Kerry at (202) 224-2742 and let him know that Americans seniors deserve better."

Source: Field report provided to Public Citizen.

Analysis of Americans for Job Security Communication 20 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ⁶⁹		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	5	1	
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?	√		
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	1	4	

⁶⁹ Message cites remarks by Kerry on Jan. 1, 2004, by which time Kerry's presidential campaign was in full swing.

Americans for Job Security Communication 21

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: George W. Bush (R) (incumbent) v. John Kerry (D)
 Office Sought: President
 Primary or General / Year of Election: General / 2004

Details and Content of Advocacy Message

Medium: Direct mail
 Last Confirmed Date Message Was Disseminated: n/a

Text of direct mail piece mailed to a resident of Bradenton, Fla.: "John Kerry. Healthcare headache.

"John Kerry's plan for healthcare means fewer choices for seniors, more government control, boxes of new paperwork and higher healthcare and drug costs.

"But it gets worse. Kerry wants to repeal the prescription drug benefits seniors now receive.

"Call Senator Kerry at (202) 224-2742 and let him know that Americans seniors deserve better."

Source: Field report provided to Public Citizen.

Analysis of Americans for Job Security Communication 21 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ⁷⁰		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	5	1	
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?	√		
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	1	4	

⁷⁰ Message cites remarks by Kerry on Jan. 1, 2004, by which time Kerry's presidential campaign was in full swing.

Americans for Job Security Communication 22

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: George W. Bush (R) (incumbent) v. John Kerry (D)

Office Sought: President

Primary or General / Year of Election: General / 2004

Details and Content of Advocacy Message

Medium: Direct mail

Last Confirmed Date Message Was Disseminated: n/a

Text of direct mail piece mailed to a resident of Sarasota, Fla.: "The cost of prescription drugs is skyrocketing. And, seniors too often have had to pay the full price.

"But, John Kerry didn't do anything about it. In fact, Kerry has missed 36 votes making prescription drugs more affordable and accessible to senior citizens and giving seniors more choices and better benefits. That's right. Kerry let us down 36 times when we needed him to pass the biggest improvement in senior health care in almost 40 years.

"But it gets worse. Now, he says that he wants to repeal the prescription drug plan, which was endorsed by the AARP. Kerry's plan will result in fewer choices, more government, more paperwork and higher costs."

"Call Senator Kerry at (202) 224-2742 and let him know that Americans seniors deserve better."

Analysis of Americans for Job Security Communication 22 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ⁷¹		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	5	1	
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?		√	
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?	√		
Total	1	4	

⁷¹ Message cites remarks by Kerry on Jan. 1, 2004, by which time Kerry's presidential campaign was in full swing.

Americans for Job Security Communication 23

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Richard Burr (R) v. Field
 Office Sought: U.S. Senate (North Carolina)
 Primary or General / Year of Election: Primary / 2004

Details and Content of Advocacy Message

Medium: Television commercial
 Last Confirmed Date Message Was Disseminated: June 10, 2004

Narrator: "What will it take to get North Carolina moving? Experience. Leadership. Richard Burr. In Congress, Burr fought to keep jobs here, while attracting new businesses. He blocked unfair trade practices seven times, voting against giving China special trade status. A small businessman for 17 years, Burr has the leadership required to protect jobs of our working families. Call Richard Burr. Tell him thanks for being a conservative, common sense voice for North Carolina."

Source: Meg Kinnard, "Tarheel Senate Ads Get Down to Business," *National Journal*, June 10, 2004.

Analysis of Americans for Job Security Communication 23 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ⁷²		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?	√		
Total	6	0	
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?		√	
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	0	5	

⁷² See, e.g., Jim Morrill, "Bowles Ad Will Take Break During Reagan Memorials," *Charlotte Observer*, June 9, 2004.

Americans for Job Security Communication 24

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Tim Holden (D) (incumbent) v. Scott Paterno (R)
 Office Sought: U.S. House (Pennsylvania)
 Primary or General / Year of Election: General / 2004

Details About Advocacy Message

Medium: Telemarketing call
 Last Confirmed Date Message Was Disseminated: Oct. 21, 2004

<p>Text of recorded telemarketing call: "I'm calling to let you know that Tim Holden voted to increase taxes on Social Security by 70 percent.</p> <p>"You will be receiving mail concerning Holden's record of raising taxes on seniors, small businesses and working families."</p> <p>"This recorded call is from Americans for Job Security."</p> <p>"Not only did Holden vote to raise taxes on working seniors by 70 percent but, when given the chance to fix his mistake and reduce taxes on seniors, Holden voted no."</p> <p>"Keep an eye on your mailbox."</p> <p><i>Source:</i> Field report provided to Public Citizen.</p>

Analysis of Americans for Job Security Communication 24 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	5	1	
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?	√		
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	1	4	

Americans for Job Security Communication 25

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Jim DeMint (R) v. Inez Tenenbaum (D)
 Office Sought: U.S. Senate (South Carolina)
 Primary or General / Year of Election: General / 2004

Details and Content of Advocacy Message

Medium: Television commercial
 Last Confirmed Date Message Was Disseminated: Aug. 3, 2004

Narrator: "The Tenenbaum education plan: No Bureaucrat Left Behind. In four years, Tenenbaum doubled the number of bureaucrats making more than \$50,000 per year, while schools were forced to cut teaching positions. In one year alone, her department spent more than \$4 million on travel and over \$675,000 on catered meals. Now she wants even more: as much as \$2 billion in new taxes. Inez Tenenbaum. Wasteful spending and higher taxes."

The screen reads: "Call Inez Tenenbaum and tell her we don't need her wasteful spending and higher taxes."

Source: Meg Kinnard, "Tenenbaum Makes Her On-Air Debut," *National Journal*, Aug. 3, 2004.

Analysis of Americans for Job Security Communication 25 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ⁷³		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	5	1	
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?	√		
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	1	4	

⁷³ See, e.g., Jacob Jordan, "Tenenbaum Releases First Television Ad," Associated Press, Aug. 2, 2004.

Americans for Job Security Communication 26

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Tommy Merritt v. Field
 Office Sought: State Senate (Texas)
 Primary or General / Year of Election: Primary / 2004

Details About Advocacy Message

Medium: Radio commercial
 Last Confirmed Date Message Was Disseminated: January 2004

Male: "You can't make this up. According to the *San Antonio Express News*, Tommy Merritt introduced a quote stupid bill that would allow people to simply hand a police officer a pre-paid coupon when they got pulled over for speeding.

Female: "Our tax dollars hard at work. "

Male: "No wonder Merritt doesn't get anything done in Austin."

Female: "What do you mean?"

Male: "Well, in eight years, Merritt's passed exactly eight bills and he's never earned any kind of leadership role. I always wondered how he did down there."

Female: "Well, unfortunately, he still tries to get things done. He recently announced his support for expanding the state sales tax to include nearly all services, like auto repair and funeral services. He even wants to tax health care. As if health care wasn't already expensive enough."

Male: "That's Tommy Merritt. Stupid bills and higher taxes."

Narrator: "Call Tommy Merritt at 903-238-9100, and tell him to stop wasting his time trying to raise our taxes."

Source: Field report provided to Public Citizen.

Analysis of Americans for Job Security Communication 26 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ⁷⁴		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	5	1	

⁷⁴ See, e.g., Dave McNeely, "Perry Denies Knowing of Attack Ads," *Austin American-Statesman*, Jan. 29, 2004.

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?	√		
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	1	4	

Americans for Job Security Communication 27

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Tommy Merritt v. Field
 Office Sought: State Senate (Texas)
 Primary or General / Year of Election: Primary / 2004

Details and Content of Advocacy Message

Medium: Radio commercial
 Last Confirmed Date Message Was Disseminated: January 2004

Narrator No. 1: "This is the Texas legislative update. State Representative Tommy Merritt announced his support for expanding the state sales tax to cover nearly all services including manufacturing, agricultural products, like timber, and even funeral services. It would also tax hair dressers, dry cleaners and even auto repairs. Now back to the music."

Narrator No. 2: "Higher taxes on businesses like that will only mean fewer jobs."

Narrator No. 3: "Maybe it's a good thing that Merritt only passed eight bills in eight years and hasn't earned any kind of leadership role in the legislature. I mean, we don't need more taxes. It does make me feel good that the only thing that is keeping us from higher taxes and fewer jobs is the fact that Tommy Merritt can't get anything done."

Narrator No. 4: "Call Tommy Merritt at 903-238-9100 and tell him to stop wasting his time trying to raise our taxes."

Source: Field report provided to Public Citizen.

Analysis of Americans for Job Security Communication 27 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ⁷⁵		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	5	1	

⁷⁵ See, e.g., Dave McNeely, "Perry Denies Knowing of Attack Ads," *Austin American-Statesman*, Jan. 29, 2004.

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?	√		
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	1	4	

D. Public Citizen obtained transcripts of five AJS communications that were disseminated between Nov. 1, 2005 and Oct. 31, 2006. Each appeared intended to influence the outcomes of elections when analyzed in the context of Rev. Rule 2004-06.

Public Citizen analyzed five communications distributed by AJS in light of the six factors in Rev. Rule 2004-06 that tend to show that an advocacy communication was for an exempt function under Section 527(e)(2) and the five factors that tend to show that an advocacy communication was not for an exempt function.⁷⁶

Each of the ads satisfied at least a vast majority of criteria that point in favor of the communication being categorized as being for an exempt function under Section 527(e)(2) and each failed to satisfy more than a slim minority of criteria that would point against an advocacy communication being categorized as being for an exempt function.

Notably, AJS's Form 990 for its fiscal year 2005 (which ended Oct. 31, 2006) is not yet available on Guidestar.org, a repository for such forms. Therefore, we do not know if the organization will continue its practice of reporting no political expenditures. Ads that AJS broadcast during its fiscal year 2005 are described below as evidence that the group was primarily involved in influencing elections during that year.

At least one communication disseminated by AJS in fiscal year 2005 warrants special attention because the circumstances surrounding it supplement the analysis conducted in the context of Rev. Rule 2004-06.

2006 Pennsylvania Senate Race

- In November 2005, the group began running ads touting Pennsylvania Sen. Rick Santorum's promise to guarantee Social Security for those 55 and older. The ads featured a grandfather and grandson. Also in November 2005, Santorum's campaign began running an ad on the Internet touting Santorum's promise to guarantee Social Security to those 55 and older. Santorum's ads featured the same grandfather and the same grandson as the AJS ads.⁷⁷

The AJS ads were distributed to television stations on November 23. Santorum's Internet ads began running November 25. Both AJS and Santorum's campaign said it was a coincidence that both groups chose the same stock footage for their ads, but this claim seems highly unlikely. If AJS and the Santorum campaign did coordinate their message, that fact would dismiss out of hand any pretense that AJS's advertisements were intended to influence anything but an election.

⁷⁶ In a recent report, the Campaign Finance Institute reported that Americans for Job Security ran ads in two House races (in Indiana and Minnesota) and disseminated prerecorded telephone calls in an Oklahoma House Republican primary in 2006. These communications are not included here as Public Citizen did not obtain transcripts of the messages.

⁷⁷ Kim Hefling, "Third Party Group, Santorum Campaign Use Same Footage," Associated Press, Dec. 3, 2005.

Americans for Job Security Communication 28

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Rick Santorum (R) (incumbent) v. Bob Casey (D)
 Office Sought: U.S. Senate (Pennsylvania)
 Primary or General / Year of Election: General / 2006

Details About Advocacy Message

Medium: Television commercial
 Last Confirmed Date Message Was Disseminated: July 10, 2006

Narrator: “The recent tax cuts have given me the help I need to raise salaries and hire additional folks. Bob Casey wants to take those tax cuts away. That’ll hurt. If Casey raises taxes on small businesses, it’ll hurt the little guy like me, and the people I employ, making it harder for me to hire more help, and pay my guys more. It makes no sense. Bob Casey needs to do better for small businesses in Pennsylvania. We need a strong economy, not higher taxes.”

Source: Field report provided to Public Citizen.

Analysis of Americans for Job Security Communication 28 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ⁷⁸		
The communication targets voters in a particular election?	√		
The communication identifies that candidate’s position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	5	1	
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?	√		
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	1	4	

⁷⁸ See, e.g., Kimberly Hefling, “Third Party Group, Santorum Campaign Use Same Footage,” Associated Press, Dec. 3, 2005.

Americans for Job Security Communication 29

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Rick Santorum (R) (incumbent) v. Bob Casey (D)
 Office Sought: U.S. Senate (Pennsylvania)
 Primary or General / Year of Election: General / 2006

Details and Content of Advocacy Message

Medium: Television commercial
 Last Confirmed Date Message Was Disseminated: June 1, 2006

Narrator: “Doing a good job requires dedication. Yet, as treasurer, Bob Casey has skipped work more than 43 percent of the time. In fact, just three months after being sworn in as treasurer, Bob Casey was already skipping work to look for another job. If you missed that much work, would you keep your job? Call Bob Casey and tell him we expect an honest day’s work for a honest day’s pay.”

Source: Field report provided to Public Citizen.

Analysis of Americans for Job Security Communication 29 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ⁷⁹		
The communication targets voters in a particular election?	√		
The communication identifies that candidate’s position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?	√		
Total	6	0	
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?		√	
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	0	5	

⁷⁹ See, e.g., Kimberly Hefling, “Third Party Group, Santorum Campaign Use Same Footage,” Associated Press, Dec. 3, 2005.

Americans for Job Security Communication 30

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Rick Santorum (R) (incumbent) v. Bob Casey (D)
 Office Sought: U.S. Senate (Pennsylvania)
 Primary or General / Year of Election: General / 2006

Details About Advocacy Message

Medium: Television commercial
 Last Confirmed Date Message Was Disseminated: April 4, 2006

Narrator: “These are serious times that call for serious leaders. Yet, as treasurer, Bob Casey has skipped work more than 43 percent of the time. In fact, just three months after being sworn in as treasurer, Bob Casey was already skipping work to look for another job. With a record like that can we really count on Bob Casey to be there for us when it matters the most? Call Bob Casey. Tell him we need serious leaders in these serious times.”

Source: Field report provided to Public Citizen.

Analysis of Americans for Job Security Communication 30 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ⁸⁰		
The communication targets voters in a particular election?	√		
The communication identifies that candidate’s position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?	√		
Total	6	0	
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?		√	
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	0	5	

⁸⁰ See, e.g., Kimberly Hefling, “Third Party Group, Santorum Campaign Use Same Footage,” Associated Press, Dec. 3, 2005.

Americans for Job Security Communication 31

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Rick Santorum (R) (incumbent) v. Bob Casey (D)
 Office Sought: U.S. Senate (Pennsylvania)
 Primary or General / Year of Election: General / 2006

Details and Content of Advocacy Message

Medium: Television commercial
 Last Confirmed Date Message Was Disseminated: Nov. 29, 2005

Narrator: “These days Edgar’s afternoons are reserved for grandkids. Like thousands of Pennsylvania seniors, he’s enjoying retirement, because Rick Santorum is protecting his Social Security. Santorum sponsored legislation guaranteeing Americans 55 and over the Social Security they deserve, fighting to make sure Congress can’t touch it in the future. Because seniors worked so hard to pay into it Santorum’s ensuring it’s there when they need it. Call and say ‘thanks.’ Rick Santorum’s the one getting it done.”

Source: Field report provided to Public Citizen.

Analysis of Americans for Job Security Communication 31 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ⁸¹		
The communication targets voters in a particular election?	√		
The communication identifies that candidate’s position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	5	1	
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?	√		
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	1	4	

⁸¹ See, e.g., Kimberly Hefling, “Third Party Group, Santorum Campaign Use Same Footage,” Associated Press, Dec. 3, 2005.

Americans for Job Security Communication 32

Contest that Advocacy Message May Have Been Intended to Influence

Opponents: Rick Santorum (R) (incumbent) v. Bob Casey (D)

Office Sought: U.S. Senate (Pennsylvania)

Primary or General / Year of Election: General / 2006

Details and Content of Advocacy Message

Medium: Television commercial

Last Confirmed Date Message Was Disseminated: Nov. 15, 2005

Narrator: "Most Saturdays they get together in the park, 8 a.m. sharp. Pennsylvania families relax a little more these days because Rick Santorum is getting things done every day. Over \$300 billion in tax relief. Eliminating the marriage penalty. Increasing the per child tax credit. All done. And now Rick Santorum's fighting to eliminate unfair taxes on family businesses. Call and say thanks, because Rick Santorum is the one getting it done."

Source: Field report provided to Public Citizen.

Analysis of Americans for Job Security Communication 32 in the Context of Rev. Rul. 2004-06

Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue Is for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The communication identifies a candidate for public office?	√		
The timing of the communication coincides with an electoral campaign?	√ ⁸²		
The communication targets voters in a particular election?	√		
The communication identifies that candidate's position on the public policy issue that is the subject of the communication?	√		
The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications?	√		
The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue?		√	
Total	5	1	
Factors that Tend to Show that an Advocacy Communication on a Public Policy Issue is Not for An Exempt Function Under § 527(e)(2)	Yes	No	Unknown
The absence of any one or more of the factors listed in a) through f) above?	√		
The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence?		√	
The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)?		√	
The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)?		√	
The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication?		√	
Total	1	4	

⁸² See, e.g., Kimberly Hefling, "Third Party Group, Santorum Campaign Use Same Footage," Associated Press, Dec. 3, 2005.

II. Overwhelming evidence indicates that in each of its fiscal years 1999, 2001 and 2003 AJS was primarily engaged in influencing elections, in violation of its Section 501(c)(6) status.

In each year since its fiscal year 2000 report to the IRS, AJS has described its primary exempt purpose to the IRS the same way:

The organization permits businesses to work together to promote a strong job-creating economy in which workers have good job opportunities and businesses can thrive. The organization promotes government policy that reflects economic issues of the workplace.⁸³

The group annually reports to the IRS that its chief program service accomplishment is “educating the public on economic issues with a pro-market, pro-paycheck message.”⁸⁴

In reality, a review of the actions of AJS for its fiscal years 1999, 2001 2003 (as well as 2005, for which no Form 990 is yet available on Guidestar.org, a repository for such forms) reveals no consistent activity other than praising Republican candidates for political office or, more frequently, criticizing Democratic candidates. Ads broadcast by AJS in the years covered in this study attacked Democratic candidates for office for such purported offenses as:

- Failing to denounce ads that AJS’s ad said were smearing the Democrat’s opponent;
- Talking “like she’s from our Washington” when “she’s from the other Washington”;
- Not deserving trust on the issue of clean water, leading the ad’s narrator to ask “when can we trust him?”;
- Breaking a promise not to run for a third term;
- Taking money from special interests; and
- Being soft on crime.

AJS praised Republican candidates for:

- Obtaining government aid for ranchers;
- Helping to pass the No Child Left Behind Act;
- Championing legislation to remove disruptive kids from classrooms;
- Helping Pennsylvania families relax a little more these days because the candidate “is getting things done every day”; and
- Attending nearly 500 town meetings since becoming a senator and for being “a steady hand in Washington.”

None of these messages served to advance the types of objectives for which AJS’s claims tax-exempt status, such as promoting “a strong job-creating economy.”⁸⁵ This section of analysis

⁸³ Americans for Job Security, 990 Forms, 2000-2003.

⁸⁴ Americans for Job Security, 990 Forms, 2000-2003.

⁸⁵ *See, e.g.*, Americans for Job Security, Form 990, Statement 3, 2003.

will show that the majority of AJS's expenditures in its fiscal years 1999, 2001, 2003 and 2005 were intended to influence the outcome of elections and that the combination of AJS's expenditures and other factors leads to an inescapable conclusion that the group was primarily engaged in influencing the outcomes of elections in those years.

A. AJS's reports to the IRS and news reports indicate that the group spent the vast majority of its money on advertising in its fiscal years 1999, 2001 and 2003. Coupling this information with findings from Section I of this argument leads to the inescapable conclusion that AJS spent the vast amount of its budgets for these years on communications intended to influence elections.

- In 2000, AJS reportedly spent about \$9 million on political ads.⁸⁶ Calendar year 2000 correlated closely with AJS's fiscal year 1999, which covered Nov. 1, 1999 to Oct. 31, 2000. The group's total expenditures in its fiscal year 1999 were \$10.9 million.⁸⁷
- In its fiscal year 2001 filing with the IRS, which covered Nov. 1, 2001 to Oct. 31, 2002, AJS reported expenditures of \$4.5 million on "Media Svcs/Placement" out of total expenditures of \$5.3 million.⁸⁸
- In its fiscal year 2003 filing with the IRS, which covered Nov. 1, 2003 to Oct. 31, 2004, AJS reported expenditures of \$3.8 million on "Media Services/Placement" out of total expenditures of \$6 million.⁸⁹

The figures above establish that AJS spent the vast majority of its budgets for the years listed above on advertisements. Section I of this argument established that nearly all, if not all, of AJS's communications in the years studied sought to influence the outcomes of elections. Therefore, one can safely conclude that AJS spent the vast majority of its budget in the years studied on advertisements intended to influence the outcomes of elections.

B. The extent of AJS's efforts to influence elections leaves no room to reach any conclusion but that the group was primarily engaged in influencing elections in its fiscal years 1999, 2001 and 2003, a violation of the terms of its tax status.

IRS rules prohibit 501(c)(6) groups from being primarily involved in influencing elections.⁹⁰ This case next turns to the question of how "primary" is defined and whether AJS's activities to influence elections constituted a primary activity.

A task force of the American Bar Association noted in 2004 that the IRS has not created a "single method for measuring whether certain activities are primary or less-than primary." The

⁸⁶ Nicholas Confessore, "Bush's Secret Stash," *Washington Monthly*, May 2004.

⁸⁷ Americans for Job Security, Form 990, 1999.

⁸⁸ Americans for Job Security, Form 990, Statement 2, 2001.

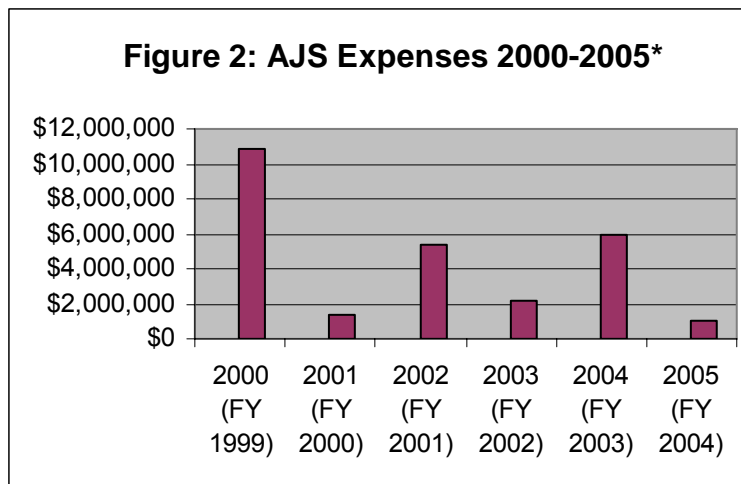
⁸⁹ Americans for Job Security, Form 990, Statement 2, 2003.

⁹⁰ Guidance provided on IRS Web site (<http://apps.irs.gov/charities/nonprofits/article/0,,id=163922,00.html>). See also John Francis Reilly and Barbara A. Braig Allen, "Political Campaign and Lobbying Activities of IRC 501(c)(4), (c)(5), and (c)(6) Organizations, Exempt Organizations Technical Instruction Program for FY 2003, p. L2.

task force noted that factors that “may or may not be relevant depending on the circumstances” include “levels and uses of expenditures, revenues, assets, resources, surpluses, the number of beneficiaries, or the time devoted by employees or volunteers, the levels of management and general expenses, and fundraising expenses.”⁹¹

Even in the absence of a bright line test for determining primary activities, the facts and circumstances clearly point toward a conclusion that AJS was primarily engaged in influencing its fiscal years 1999, 2001 and 2003. An IRS inquiry will be required to evaluate the group’s work in 2005.

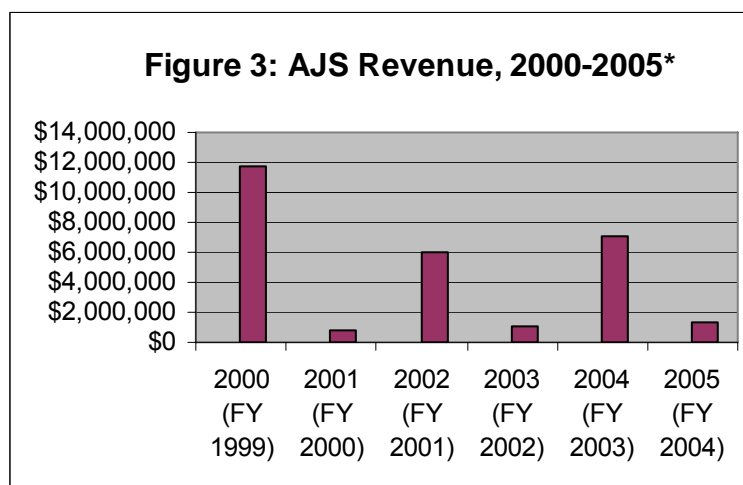
This complaint has demonstrated that the group’s levels and uses of its expenditures and revenues point squarely to a primary focus on influencing elections; the group’s spending on a year-to-year basis has risen in even years, when most elections are held. and fallen dramatically in odd years. [See Figures 2 and 3, below]



Source: AJS, 990 forms

* AJS’s fiscal years run from Nov. 1 to Oct. 31. The years in this chart reflect the calendar years that most closely correlated with the fiscal years. I.e., 2000 in the chart above regards AJS’s disclosure for its fiscal year 1999, which ran from Nov. 1, 1999 to Oct. 31, 2000.

⁹¹ American Bar Association Exempt Organizations Committee’s Task Force on Section 501(c)(4) and Politics, “Comments of the Individual Members of the Exempt Organization’s Committee’s Task Force on Section 501(c)(4) and Politics,” May 25, 2004.



Source: AJS, 990 forms

* AJS's fiscal years run from Nov. 1 to Oct. 31. The years in this chart reflect the calendar years that most closely correlated with the fiscal years. I.e., 2000 in the chart above regards AJS's disclosure for its fiscal year 1999, which ran from Nov. 1, 1999 to Oct. 31, 2000.

Further, AJS reported to the IRS having only one paid employee in each of the years covered in this complaint, minimizing the prospect that the group engaged in significant activities beyond its placement of millions of dollars of television advertisements.⁹²

These factors, taken together demonstrate that AJS engaged primarily in influencing elections in 1999, 2001 and 2003, when all the facts and circumstances are considered.

C. The IRS should investigate the allegations in this report and take decisive action should the allegations be substantiated.

If the IRS concurs with the findings in this complaint, it should:

- Revoke AJS's 501(c) status;
- Collect back taxes for AJS's undeclared electioneering activities; and
- Require AJS to pay penalties for violating its tax-exempt status, dating to fiscal year 1999.

⁹² Americans for Job Security 990 forms, fiscal years 1999-2004.