

Public Citizen Drops Challenge to Dismissal Of Complaint on Americans for Job Security

In the wake of a key Supreme Court ruling loosening campaign finance restrictions, the watchdog group Public Citizen has moved to drop a court challenge to the FEC's dismissal of an enforcement matter involving the pro-business group Americans for Job Security (AJS) (Public Citizen Inc. v. FEC, D.D.C., No. 09-762, stipulation of dismissal filed 3/12/10).

Craig Holman of Public Citizen told BNA in a March 15 e-mail that the case was dropped because of the Supreme Court's January ruling in *Citizens United v. FEC* (U.S. No. 08-205, 1/21/10; [2683 Money & Politics Report, 1/22/10](#)). That ruling voided a key charge that AJS had illegally used corporate funds for electioneering purposes, Holman said.

In *Citizens United*, the Supreme Court struck down a decades-old ban on direct corporate and union campaign spending in federal elections.

"Particularly in light of recent developments in campaign finance law that present more urgent issues to be addressed," Holman said, "we determined that going forward with this litigation was not the best use of our resources despite our continued belief that the [FEC] erred in determining not to investigate further whether AJS was a political committee."

AJS Attorney: Courts Upheld Speech Rights

An attorney representing AJS, William McGinley of the firm Patton Boggs, told BNA in an e-mail that Public Citizen's latest move "confirms that AJS's issue ads complied with law."

McGinley added: "The federal courts have consistently held that the First Amendment protects the free speech rights of organizations such as AJS to discuss important issues of the day in their advertisements." After recent court decisions, he said, "Public Citizen was forced to admit that its legal theories were flawed and acknowledge that the First Amendment closes the door on this type of speech-chilling scheme."

McGinley said AJS's activity was protected not only under the *Citizens United* ruling but also by another recent federal appeals court ruling in *EMILY's List v. FEC* (D.C. Cir., No. 08-5422, 9/18/09; [2602 Money & Politics Report, 9/21/09](#)).

The FEC had no comment on the development.

Attorneys for the FEC and Public Citizen had agreed late last year to put off action in the watchdog group's court challenge until the Supreme Court's *Citizens United* ruling was handed down ([2617 Money & Politics Report, 10/14/09](#)). The Public Citizen lawsuit originally was filed in April 2009, following the FEC's dismissal of administrative complaints against AJS.

Ads Helped Republicans in Key Races

The FEC enforcement matters involving AJS primarily involved the pro-business group's sponsorship of television ads favoring Republican Senate candidates in a number of key races. For example, the Senate campaign of Sen. Bob Casey (D-Pa.), who defeated then-incumbent Republican Sen. Rick Santorum in a 2006 race, cited a number of AJS television ads in Pennsylvania that were critical of Casey or praised Santorum.

The FEC said last spring that it would not pursue enforcement complaints filed by Public Citizen and the Casey campaign against AJS—known as Matters Under Review (MURs) 5910 and 5964—because of a deadlocked vote by the six FEC commissioners regarding whether to commence a full investigation.

Public Citizen's lawsuit against the FEC was the first court challenge to a series of deadlocked, party-line votes by the FEC commissioners, which have resulted in dismissals of a number of campaign finance enforcement cases. Complaints against AJS were dismissed by a 3-3 vote of the commissioners, with the three FEC Republicans—Caroline Hunter, Donald McGahn, and Matthew Petersen, now the FEC chairman—voting to drop the charges. The three FEC Democrats—Cynthia Bauerly, Steven Walther, and Ellen Weintraub—voted to pursue further enforcement action.

The FEC revealed when it dismissed complaints against AJS that another group, which ran ads critical of Santorum and called itself the Lantern Project, also would not be investigated. FEC staff attorneys recommended dropping a complaint (MUR 5854) against the Lantern Project, and the commissioners voted 4-1 to support the recommendation. The three FEC Republicans and Democrat Bauerly, now the FEC vice chair, voted to dismiss the Lantern Project matter.

\$40 Million in Ads, Funding Sources Undisclosed

AJS says it has sponsored about \$40 million worth of political advertising—virtually all favoring Republicans—during numerous congressional and other campaigns over the last decade. The organization has never disclosed its source of funding and has claimed exemption from rules applying to FEC-regulated political committees.

AJS is one of a number of so-called Section 501(c) or Section 527 groups that have been active in recent elections, some favoring Republicans and others favoring Democrats.

Public Citizen charged that AJS should be treated as a regulated political committee by the FEC. As such, it would have been required to disclose its funding sources and limit its receipts of contributions.

The FEC's Republican commissioners indicated in dismissing the enforcement matter against AJS that the organization should not be regulated because it did not engage in “express advocacy” of election or defeat of candidates in its television ads and other communications. The FEC Republicans cited previous court decisions they said indicated that the Constitution prohibits regulation of messages capable of being viewed as something other than a campaign ad.

In the Citizens United case, a 5-4 majority of the justices ruled that a nonprofit organization receiving funding from business corporations had a constitutional right to spend money on all types of political messages—including express advocacy—without being restricted by the FEC.

By Kenneth P. Doyle