

ADR 2012-19

45 North Hill Drive
Suite 100
Warrenton, VA 20186
p/540-341-8808
f/540-341-8809

April 18, 2012

Anthony Herman
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
2012 APR 19 PM 12:36
OFFICE OF GENERAL
COUNSEL

Re: Advisory Opinion Request

Dear Mr. Herman,

Pursuant to 2 U.S.C. § 473f and 11 C.F.R. § 112.1, America Future Fund (AFF), by and through the undersigned counsel, requests an advisory opinion on the questions set forth below. AFF seeks to broadcast a series of television advertisements about American energy policy, the proposal to require religious institutions to pay for insurance policies that cover certain abortion-causing drugs (abortifacients), and the Patient Protection and Affordable Care Act in general. AFF does not, however, want to subject itself to the burden of filing electioneering communications reports for these advertisements, and does not want to risk being compelled to violate its donors' privacy expectations as the result of ongoing litigation in *Van Hollen v. FEC* (D.D.C., Civil Action No. 11-0766 (ABJ)). AFF wishes to speak out on issues of national policy significance with minimal government intrusion into its affairs. Accordingly, AFF seeks the Commission's opinion on whether any of eight proposed television advertisements include one or more references to a clearly identified candidate for Federal election, as that phrase is used in the definition of "electioneering communication."

I. Proposed Advertisements

Requestor wishes to produce and distribute a series of broadcast television advertisements within 30 days of upcoming primary elections and within 60 days of the November general election on both local broadcast television stations and national cable outlets.

Proposed scripts for these proposed advertisements are attached as Exhibits 1 – 8 and summarized below.

Advertisement #1

Requestor's first proposed advertisement, see Exhibit 1, is an issue ad that calls on "this Administration"/"the Administration," and "the White House," to develop "an American energy plan that actually works for America." The advertisement would also include a visual depiction of the White House. Via on-screen text, the viewer would be instructed to "Call the White House at (202) 456-1414." In this proposed advertisement, the ad's narrator quotes a White House official/representative who stated, "We must end our dependence on foreign oil."

Advertisement #2

Requestor's second proposed advertisement, see Exhibit 2, is similar to Advertisement #1, but refers "the government" (rather than to "the administration" and "the White House") and includes images of the Washington Monument (rather than the White House). Via on-screen text, the viewer would be instructed to "Call the White House at (202) 456-1414."

This proposed script includes the use of President Obama's voice stating, "We must end our dependence on foreign oil." The advertisement, however, will not identify the speaker in any way. Only those familiar with President Obama's voice will know that it is President Obama speaking.

Advertisement #3

Requestor's third proposed advertisement, see Exhibit 3, is similar to Advertisements #1 and #2, and references "the government" (rather the "the administration" and "the White House") and includes images of the Washington monument (rather than the White House). Via on-screen text, the viewer would be instructed to "Call the White House at (202) 456-1414."

This proposed script includes the use of the White House press secretary's voice stating "We must end our dependence on foreign oil." The advertisement, however, will not identify the speaker in any way. Only those familiar with the White House press secretary's voice will know that it is press secretary speaking.

Advertisement #4

Requestor's fourth proposed advertisement, see Exhibit 4, is an issue ad that calls on viewers to contact Secretary of Health and Human Services Kathleen Sebelius to register their opposition to a proposed requirement forcing "religious institutions to pay for abortion-causing drugs." The advertisement refers to "the government" and Secretary Sebelius. This advertisement would include a visual depiction of the Health and Human Services Building in Washington, DC.

Advertisement #5

Requestor's fifth proposed advertisement, see Exhibit 5, is a variation of Advertisement #4 that refers to "the Administration" (rather than "the government") in the context of urging viewers to contact Secretary Sebelius to register their opposition to a requirement forcing "religious institutions to pay for abortion-causing drugs." The advertisement would also include a visual depiction of the White House.

Advertisement #6

Requestor's sixth proposed advertisement, see Exhibit 6, is an issue ad that discusses the Patient Protection and Affordable Care Act on its two-year anniversary, and refers to the legislation as "government run healthcare."

Advertisement #7

Requestor's seventh proposed advertisement, see Exhibit 7, is an issue ad that discusses the Patient Protection and Affordable Care Act on its two-year anniversary, and refers to the legislation as "Obamacare."

Advertisement #8

Requestor's eighth proposed advertisement, see Exhibit 8, is an issue ad that discusses the relationship between "Romneycare" and the national health care law. "Romneycare" is a commonly-used name for the Massachusetts health care insurance law of 2006 (Chapter 58 of the Acts of 2006 of the Massachusetts General Court, entitled An Act Providing Access to Affordable, Quality, Accountable Health Care).

II. Legal Background

The Bipartisan Campaign Reform Act of 2002 (BCRA) defines the term “electioneering communication” as:

any broadcast, cable, or satellite communication which – (I) *refers to a clearly identified candidate for Federal office*; (II) is made within – (aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or (bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has the authority to nominate a candidate, for the office sought by the candidate; and (III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

2 U.S.C. § 434(f)(3)(A)(i) (emphasis added).

Under Commission regulations, the phrase “refers to a clearly identified candidate”:

means that the candidate’s name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as “the President,” “your Congressman,” or “the incumbent,” or through an unambiguous reference to his or her status as a candidate such as “the Democratic presidential nominee” or “the Republican candidate for Senate in the State of Georgia.”

11 C.F.R. § 100.29(b)(2). This definition repeats pre-existing language found at 11 C.F.R. § 100.17 (defining “clearly identified”).¹

The Commission noted in 2002 that “[t]his approach appears to be consistent with legislative intent.” Final Rule on Electioneering Communications, 67 Fed. Reg. 65,190, 65,192 (Oct. 23, 2002). 11 C.F.R. § 100.17 is based on 2 U.S.C. § 431(18), in which Congress declared that “clearly identified” “means that – (A) the name of the candidate involved appears; (B) a photograph or drawing of the candidate appears; or (C) the identity of the candidate is apparent by unambiguous reference.”

¹ 11 C.F.R. § 100.17 is the result of the 1995 consolidation of 11 C.F.R. § 106.1(d) (defining “clearly identified”) and 11 C.F.R. § 109.1(b)(3) (defining “clearly identified candidate”). See Final Rule on Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35,292, 35,293 (July 6, 1995).

In 2002, the Commission considered, but declined to adopt, a specific regulatory exemption within the electioneering communication framework “that would have exempted a communication that refers to a bill or law by its popular name where that name happens to include the name of a Federal candidate, if the popular name is the sole reference to a Federal candidate.” Final Rule on Electioneering Communications, 67 Fed. Reg. 65,190, 65,200 (Oct. 23, 2002).² The Commission explained:

The Commission is persuaded by the examples cited by the commenters and other examples from its own history of enforcement actions that communications that mention a candidate’s name only as part of a popular name of a bill can nevertheless be crafted in a manner that could reasonably be understood to promote, support, attack or oppose a candidate. Furthermore, this type of exemption is not necessary because communications can easily discuss proposed or pending legislation without including a Federal candidate’s name by using a variety of other means of identifying the legislation. In addition, the Commission recognizes that there are valid concerns as to which names to include in a bill’s popular name, which are not necessarily resolved by the mechanical use of the name of only the original sponsor. Nor would this approach adequately address the names of the sponsors of amendments to the legislation. Consequently, the final rules do not include an exemption for such communications.

Final Rule on Electioneering Communications, 67 Fed. Reg. 65,190, 65,201 (Oct. 23, 2002).

III. Questions Presented

As noted above, Requestor wishes to produce and distribute a series of broadcast television advertisements. Proposed scripts are attached as Exhibits 1 – 8.

Advertisement #1

Requestor’s first proposed advertisement, see Exhibit 1, is an issue ad that calls on “the Administration” and “the White House” to develop “an American energy plan that actually works for America.” The advertisement would also include visuals of the White House. Via on-screen text, the viewer would be instructed to “Call the White House at (202) 456-1414.”

² BCRA specifies that the term “electioneering communication” does not include “any other communication exempted under such regulations as the Commission may promulgate (consistent with the requirements of this paragraph) to ensure the appropriate implementation of this paragraph, except that under any such regulation a communication may not be exempted if it meets the requirements of this paragraph and is described in [2 U.S.C. § 431(20)(A)(iii) (referring to public communications that PASO a clearly identified candidate for Federal office)].”

Are any of the following voice-over references considered references to a clearly identified candidate for federal office: (1) "this Administration"; (2) "the Administration"; (3) "the White House; or (4) the instruction to "Call the White House at (202) 456-1414"? Is a visual depiction of the White House, as proposed in this ad script, a reference to a clearly identified candidate for Federal office?

Requestor seeks the Commission's confirmation that the proposed references and images are not the equivalent of referencing "the President" (*see* 11 C.F.R. § 100.29(b)(2)), nor are they "unambiguous references" to President Barack Obama.

Advertisement #2

Requestor's second proposed advertisement, see Exhibit 2, is similar to Advertisement #1, but references "the government" (rather than "the Administration" and "the White House") and includes images of the Washington Monument (rather than the White House). Via on-screen text, the viewer would be instructed to "Call the White House at (202) 456-1414."

This proposed script includes the use of President Obama's voice stating "We must end this dependence on foreign oil." The advertisement, however, will not identify the speaker in any way. Only those familiar with President Obama's voice will know that it is President Obama speaking.

Does proposed Advertisement #2 contain any reference to a clearly identified candidate for Federal office?

Advertisement #3

Requestor's third proposed advertisement, see Exhibit 3, is similar to Advertisements #1 and #2, and references "the government" (rather than "the administration" and "the White House") and includes images of the Washington monument (rather than the White House). Via on-screen text, the viewer would be instructed to "Call the White House at (202) 456-1414."

This proposed script includes the use of the White House press secretary's voice stating "We must end this dependence on foreign oil." The advertisement, however, will not identify the speaker in any way. Only those familiar with the White House press secretary's voice will know that it is press secretary speaking.

Does proposed Advertisement #3 contain any reference to a clearly identified candidate for Federal office?

Advertisement #4

Requestor's fourth proposed advertisement, see Exhibit 4, calls on viewers to contact Secretary of Health and Human Services Kathleen Sebelius to register opposition to a proposed requirement forcing "religious institutions to pay for abortion-causing drugs." The advertisement refers to "the government" and Secretary Sebelius, and includes a visual depiction of the Health and Human Services Building in Washington, DC.

Does proposed Advertisement #4 contain any reference to a clearly identified candidate for Federal office?

Advertisement #5

Requestor's fifth proposed advertisement, see Exhibit 5, is a variation of Advertisement #4 that refers to "the Administration" (rather than "the government") in the context of urging viewers to contact Secretary Sebelius to register opposition to a requirement forcing "religious institutions to pay for abortion-causing drugs." This advertisement would include a visual depiction of the White House.

As in this advertisement, where a reference to "the Administration" is used to refer to an executive branch agency and/or cabinet official, does such a reference to "the Administration" qualify as a reference to a clearly identified candidate for Federal office?

Does proposed Advertisement #5 contain any reference to a clearly identified candidate for Federal office?

Advertisement #6

Requestor's sixth proposed advertisement, see Exhibit 6, is an issue ad that discusses the Patient Protection and Affordable Care Act on its two-year anniversary, and refers to that legislation as "government run healthcare."

Does proposed Advertisement #6 contain any reference to a clearly identified candidate for Federal office?

Advertisement #7

Requestor's seventh proposed advertisement, see Exhibit 7, is an issue ad that discusses the Patient Protection and Affordable Care Act on its two-year anniversary, and refers to that legislation as "Obamacare."

The Patient Protection and Affordable Care Act is known to the public and discussed in the media almost exclusively as "Obamacare." The President himself recently "embraced" the term. According to a *Washington Post* report,

Even as the Supreme Court begins oral arguments over the constitutionality of President Obama's health care law today, the incumbent and his reelection team have made a critical strategic decision to embrace the term "Obamacare."

"You want to call it Obamacare — that's okay, because I do care," Obama said at a fundraiser in Atlanta late last week. Then on Friday, the White House urged supporters of the law to tweet why they backed it with the hashtag "#ilikeobamacare." And on Sunday, White House senior adviser David Plouffe threw down the political gauntlet on the term; "I'm convinced at the end of the decade, the Republicans are going to regret turning this [into] 'Obamacare,'" Plouffe said on "Fox News Sunday."

The decision to throw their arms politically around "Obamacare" — initially a pejorative term coined by Republicans to deride the Affordable Care Act and compare it to Hillary Clinton's failed "Hillarycare" effort — is a significant shift in how the president and his team talk about the law.

Chris Cillizza and Aaron Blake, President Obama embraces 'Obamacare' label. But why?, *Washington Post* (March 26, 2012).³ See also Jeff Mason, Obama campaign: Obamacare not a bad word after all, *Reuters* (March 26, 2012).⁴

Now that both sides of the political aisle, the general public, and the news media all use the term "Obamacare" to refer to the Patient Protection and Affordable Care Act, it is, as a practical matter, impossible to participate in this national discussion without also using the term "Obamacare." In addition, it is not at all clear that the term "Obamacare" is understood by the

³ See http://www.washingtonpost.com/blogs/the-fix/post/president-obama-embraces-obamacare-label-but-why/2012/03/25/gIQARJ5qaS_blog.html.

⁴ See <http://www.reuters.com/article/2012/03/26/us-usa-campaign-obamacare-idUSBRE82P14E20120326>.

general public as either pejorative or complimentary – it is simply shorthand for a piece of legislation.

The proposed ad includes on-screen text that reads, “White House will not mark two-year anniversary of Obamacare,” and “Obamacare” is also spoken in voice over at the beginning and end of the ad.

Is this reference to the “White House” a reference to a clearly identified candidate for Federal office? Is the proposed reference to “Obamacare” a reference to a clearly identified candidate for Federal office?

Does the Commission’s decision in 2002 not to adopt a broad regulatory exemption for “communications that mention a candidate’s name only as part of a popular name of a bill” mean that such references are, *per se*, treated as references to a clearly identified candidate for Federal office? 67 Fed. Reg. at 65,201. Or, does this 2002 decision mean simply that the Commission chose not to adopt a difficult-to-administer regulatory exemption, but may still, on a case-by-case basis, determine that a specific communication that mentions a candidate’s name only as part of a popular name of a bill does not constitute a reference to a clearly identified candidate for Federal office for purposes of the electioneering communications provisions? In a factually distinct situation involving commercial advertisements, the Commission explained:

The decision not to adopt a blanket exemption for such communications, however, does not preclude the Commission from making a determination that the specific facts and circumstances of a particular case indicate that certain advertisements do not refer to a clearly identified Federal candidate and, hence, do not constitute electioneering communications.

Advisory Opinion 2004-31 (Russ Darrow).

In Advisory Opinion 2004-31 (Russ Darrow), the Commission voted 4-0 to grant an exception to the literal terms of the electioneering communication provision where the supposed “reference to a clearly identified candidate for Federal office” was determined to be a reference to something (or someone) else entirely. In that matter, Russ Darrow, Jr., was a candidate for U.S. Senate. Russ Darrow, Jr., was the founder, CEO, and Chairman of the Board of the Russ Darrow Group, Inc., a car dealership. His son, Russ Darrow III, was “primarily responsible for all day-to-day operations, plan, and business activities” of the business. Russ Darrow III had appeared in the dealership’s TV ads for over a decade. The question presented to the Commission was whether TV ads that contained the name “Russ Darrow” would be treated as

electioneering communications. The Commission determined that the ads would not be electioneering communications because the reference to "Russ Darrow" was most reasonably construed as a reference to either Russ Darrow III or the car dealership, rather than a reference to Russ Darrow, Jr., the candidate. The Commission made clear that "[t]his conclusion rests on the factual circumstances presented in which the use of the name 'Russ Darrow' refers to a business or to another individual who is not a candidate."

In comments submitted to the Commission in connection with Advisory Opinion 2004-31, commenters, who often claim to accurately represent the views of the sponsors of the Bipartisan Campaign Reform Act, urged the Commission to resolve the matter in precisely this manner. They wrote:

We submit that the Commission should resolve this request on the basis of its unique factual circumstances. The ad scripts attached to the AOR show that most uses of the name "Russ Darrow" is [sic] in the context of stating the company's name: "Russ Darrow Cadillac," "Russ Darrow Kia," "Russ Darrow Toyota," etc. Thus, the use of the name "Russ Darrow" here is a reference to a business, and thus, by definition, not to a 'clearly identified candidate.' Accordingly, this use of the name does not trigger the electioneering communications provisions of the law, since the proposed business ads would not be a broadcast that "refers to a clearly identified candidate for Federal office." 11 C.F.R. § 100.29(a)(1).

Comments of Democracy 21, Campaign Legal Center, and Center For Responsive Politics on Advisory Opinion Request 2004-31 (Russ Darrow) (Aug. 13, 2004).

While the factual circumstances of Advisory Opinion 2004-31 are different, and we agree that the Opinion does not create any broadly applicable precedent, the same basic logic of the Opinion applies to proposed Advertisement #7. The factual circumstances presented here make clear that the reference to "Obamacare," which of course includes the name "Obama," is most reasonably construed as a reference to a piece of legislation. It is, in the context presented, *not* a reference to President Obama the candidate. The ad contains no other language or imagery that could be construed as referencing the Presidential election; it focuses solely on the negative effects of "Obamacare" that the legislation's original supporters have not discussed. Accordingly, a fact-specific exemption, as was granted in Advisory Opinion 2004-31, is appropriate here and is consistent with Commission precedent.

Advertisement #8

Requestor's eighth proposed advertisement, see Exhibit 8, is an issue ad that discusses the relationship between "Romneycare" and the national health care law. "Romneycare" is a commonly-used name for the Massachusetts health care insurance law of 2006 (Chapter 58 of the Acts of 2006 of the Massachusetts General Court, entitled An Act Providing Access to Affordable, Quality, Accountable Health Care). The law, as enacted, was based on a proposal by then-Governor Romney. Governor Romney signed most of the legislation, but vetoed several portions as well. These vetoed portions were subsequently overridden by the Massachusetts legislature.⁵ Thus, while the legislation is commonly referred to as "Romneycare," Governor Romney did not support the entirety of that legislation.

Is the reference to "Romneycare" in proposed Advertisement #8 a reference to a clearly identified candidate for Federal office?

IV. Conclusion

Please do not hesitate to contact us if we can provide any further information to the Commission as it considers this request. We will be available for questions at the Commission's open session consideration of this request.

Sincerely,



Jason Torchinsky
Michael Bayes

Counsel to American Future Fund

⁵ See generally Massachusetts Health Reform Timeline, Health Care For All MA available at <http://hcfama.org/index.cfm?fuseaction=Page.viewPage&pageId=839&parentID=736&nodeID=2>.

Exhibit 1

VIDEO	AUDIO
Gas prices/pumps	(music up & under) <u>ANNCR:</u> Since this Administration began, gas prices are up 104%. And the U.S. <u>still</u> spends over \$400 billion a year on foreign oil.
Image of White House	<u>ANNCR:</u> The White House says: We must end our dependence on foreign oil...(:03) [narrator's voice]
Oil rig/science labs	<u>ANNCR:</u> But the Administration <u>stopped</u> American energy exploration....
b-roll of "Denied" Stamp with image of White House	and <u>banned</u> most American oil and gas production — the White House wants <u>foreign</u> countries to drill – so we can buy from <u>them</u> .
middle east oil	<u>Keeping</u> us dependent on foreign oil – and crippling our economy.
<i>on-screen text:</i> Call the White House at (202) 456-1414.	Tell the White House it's time for an American energy plan...that actually works for <u>America</u> .

Exhibit 2

VIDEO	AUDIO
Gas prices/pumps	<p>(music up & under)</p> <p><u>ANNCR:</u> Since 2008 began, gas prices are up 104%.</p> <p>And the U.S. <i>still</i> spends over \$400 billion a year on foreign oil.</p>
Image of Washington Monument	<p><u>ANNCR:</u> The government says:</p> <p>"We must end our dependence on foreign oil..."(:03) [<i>President Obama's voice</i>]</p>
Oil rig/science labs	<p><u>ANNCR:</u> But the government <i>stopped</i> American energy exploration....</p>
b-roll of "Denied" Stamp with image of Washington Monument	<p>and <i>banned</i> most American oil and gas production — the government wants <i>foreign</i> countries to drill – so we can buy from <i>them</i>.</p>
middle east oil	<p><u>Keeping</u> us dependent on foreign oil – and crippling our economy.</p>
	<p>Tell the government it's time for an American energy plan...that actually works for <i>America</i>.</p>

Exhibit 3

VIDEO	AUDIO
Gas prices/pumps	(music up & under) ANNCR: Since 2008 began, gas prices are up 104%. And the U.S. <u>still</u> spends over \$400 billion a year on foreign oil.
Image of Washington Monument	ANNCR: The government says: "We must end our dependence on foreign oil..."(:03) [WH Press Secretary's voice]
Oil rig/science labs	ANNCR: But the government <u>stopped</u> American energy exploration....
b-roll of "Denied" Stamp with image of Washington Monument	and <u>banned</u> most American oil and gas production — the government wants <u>foreign</u> countries to drill – so we can buy from <u>them</u> .
middle east oil	<u>Keeping</u> us dependent on foreign oil – and crippling our economy.
<i>on-screen text:</i> Call the White House at (202) 456-1414.	Tell the government it's time for an American energy plan...that actually works for <u>America</u> .

VIDEO	AUDIO
<p>B-Roll: Americana/Washington Monument/U.S. Supreme Court/U.S. Capitol</p>	<p><u>ANNCR:</u> The most basic American right... The First amendment freedom of religion.</p>
<p>Images of newspaper headlines</p>	<p>But the Government is taking a stand on a critical question of religious liberty. <i>Against</i> the U.S. Catholic Bishops ...and people of faith across the country.</p>
<p>churches/families</p>	<p>Forcing religious institutions to pay for abortion-causing drugs... Violating their conscience and religious beliefs.</p>
<p>HHS building image On-screen text: Call Secretary Sebelius at 1-877-696-6775</p>	<p>Call Secretary Sebelius, tell her it's wrong for her and the government to trample the most basic American right.</p>

Exhibit 5

VIDEO	AUDIO
Americana/Washington Monument/U.S. Supreme Court/U.S. Capitol	<u>ANNCR:</u> The most basic American right... The First amendment freedom of religion.
Images of HHS building	But the Administration is taking a stand on a critical question of religious liberty. <i>Against</i> the U.S. Catholic Bishops ...and people of faith across the country.
churches/families	Forcing religious institutions to pay for abortion-causing drugs... Violating their conscience and religious beliefs.
White House footage and images On-screen text: Call Secretary Sebelius at 1-877-696-6775	Call Secretary Sebelius, tell her it's wrong for her and the Administration to trample the most basic American right.

Exhibit 6

VISUALS	AUDIO
<p>Toddler throwing a tantrum</p> <p>A frustrated parent holding a toddler</p> <p>TEXT: "White House will not mark two-year anniversary" of health care law (Washington Free Beacon, 3/19/12)</p>	<p>VO: The Terrible Twos.</p> <p>VO: All parents dread the phase.</p> <p>VO: And now that government run healthcare is turning two, its own parents don't even want to celebrate.</p> <p>VO: The health care law is showing all the Terrible Two warning signs...</p>
<p>More b-roll of toddlers, as appropriate.</p> <p>TEXT: [As much as a] "3 percent increase in health insurance premiums" (FactCheck.org, 1/4/12)</p> <p>TEXT: "CBO: ... to cost twice as much" (Fox News, 3/16/12)</p> <p>TEXT: [Many workers] "will not, in fact, be able to keep what they currently have" (Time, 6/24/10)</p> <p>TEXT: "...allies get waivers..." (Washington Examiner, 5/23/11)</p> <p>TEXT: "crushing penalties" (Human Events, 3/4/12)</p>	<p>VO: Mood swings... Temper tantrums...</p> <p>VO: It was supposed to lower premiums, now it's going to cost you more.</p> <p>VO: Yes, the Terrible Twos are more expensive than you think...</p> <p>VO: The toddler will tend to say "no" a lot.</p> <p>VO: Some parents will give in to the child's every demand. Doing so can have short-term benefits, but in the long term, this will create a monster.</p> <p>VO: Sadly, most parents have to pay the price for not complying with these mandates.</p>
<p>TEXT: "White House will not mark two-year anniversary" of health care law (Washington Free Beacon, 3/19/12)</p>	<p>VO: So...Since its family won't wish its health care law a happy birthday...</p>
<p>TEXT: "Happy 2nd Birthday,. Meh."</p> <p>TEXT: "AmericanFutureFund.com"</p>	<p>VO: I guess <u>we'll</u> have to. Happy Birthday national, government run healthcare, may none of your wishes come true.</p>

Exhibit 7

VISUALS	AUDIO
<p>Toddler throwing a tantrum</p> <p>A frustrated parent holding a toddler</p> <p>TEXT: "White House will not mark two-year anniversary of Obamacare" (Washington Free Beacon, 3/19/12)</p>	<p>VO: The Terrible Twos.</p> <p>VO: All parents dread the phase.</p> <p>VO: And now that Obamacare is turning two, its own parents don't even want to celebrate.</p> <p>VO: The health care law is showing all the Terrible Two warning signs...</p>
<p>More b-roll of toddlers, as appropriate.</p> <p>TEXT: [As much as a] "3 percent increase in health insurance premiums" (FactCheck.org, 1/4/12)</p> <p>TEXT: "CBO: Obamacare to cost twice as much" (Fox News, 3/16/12)</p> <p>TEXT: [Many workers] "will not, in fact, be able to keep what they currently have" (Time, 6/24/10)</p> <p>TEXT: "...allies get waivers..." (Washington Examiner, 5/23/11)</p> <p>TEXT: "crushing penalties" (Human Events, 3/4/12)</p>	<p>VO: Mood swings... Temper tantrums...</p> <p>VO: It was supposed to lower premiums, now it's going to cost you more.</p> <p>VO: Yes, the Terrible Twos are more expensive than you think...</p> <p>VO: The toddler will tend to say "no" a lot.</p> <p>VO: Some parents will give in to the child's every demand. Doing so can have short-term benefits, but in the long term, this will create a monster.</p> <p>VO: Sadly, most parents have to pay the price for not complying with these mandates.</p>
<p>TEXT: "White House will not mark two-year anniversary of Obamacare" (Washington Free Beacon, 3/19/12)</p>	<p>VO: So...Since its family won't wish its health care law a happy birthday...</p>
<p>TEXT: "Happy 2nd Birthday, Obamacare. Meh."</p> <p>TEXT: "AmericanFutureFund.com"</p>	<p>VO: I guess <u>we'll</u> have to. Happy Birthday Obamacare, may none of your wishes come true.</p>

Exhibit 8

VISUALS	AUDIO
<p>White House photo</p> <p>CLIP: http://www.youtube.com/watch?v=WxZK0spa1vl&feature=youtu.be (using only a portion that does not clearly identify any candidate for Federal office)</p>	<p>VO: Liberals marked the 5th anniversary of Romneycare with a video.</p> <p>VO: They would like you to believe Romneycare and the national healthcare law are the same. But, are they?</p>
<p>FOOTAGE of Tea Party Rallies and Town Halls.</p>	<p>VO: Romneycare was developed to meet the needs of one state, Massachusetts, with a population of 6.6 million people</p> <p>VO: The national law blanketed the entire country with a one-size-fits all approach to serve 313 million people!</p> <p>VO: When Romneycare was passed in Massachusetts, it had broad bipartisan support.</p> <p>VO: The national law was passed along party lines and was wildly unpopular—who can forget the tea party protests and townhalls?</p>
<p>Map of the United States PHOTO: U.S. Capitol Building</p> <p>Photo: Birthday Cake</p>	<p>VO: Today, two years after it was passed more than half of American voters are opposed to the national health care .</p> <p>VO: No wonder the government let the law's 2nd birthday pass without notice.</p>
	<p>VO: National healthcare: Romneycare's evil twin.</p>

RECEIVED
FEDERAL ELECTION
COMMISSION

2012 APR 26 PM 4:56

OFFICE OF GENERAL
COUNSEL



AFF AOR re: electioneering communications

Mike Bayes

to:

rknop@fec.gov

04/26/2012 04:49 PM

Cc:

Jason Torchinsky, Mike Bayes

Hide Details

From: Mike Bayes <jmbayes@hvjlaw.com>

To: "rknop@fec.gov" <rknop@fec.gov>,

Cc: Jason Torchinsky <jtorchinsky@hvjlaw.com>, Mike Bayes <jmbayes@hvjlaw.com>

2 Attachments



Revised Exhibit 7.pdf Revised Exhibit 8.pdf

Bob,

Please find attached revised copies of Exhibits 7 and 8 of AFF's AOR regarding electioneering communications. If you need any additional information, please let us know.

(As of now, the link to the video in Exhibit 8 is here, <http://www.youtube.com/watch?v=WxZK0spa1yl&feature=youtu.be>.)

Thanks,
Mike

HoltzmanVogel Josefiak PLLC	
Michael Bayes <i>Senior Associate</i>	
Fax	(540) 341-8809
Work	(540) 341-8808
Mobile	(571) 235-7130
jmbayes@hvjlaw.com	www.hvjlaw.com

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department and IRS regulations, we inform you that, unless expressly indicated otherwise, any federal tax advice contained in this communication (including any attachments) is not intended or written by HoltzmanVogel Josefiak PLLC to be used, and cannot be used by the taxpayer, for the purpose of (i) avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein (or any attachments).

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.