

Lynn

AMENDMENT

OFFERED IN THE HOUSE

TO: CSSB 284(FIN)

- 1 Page 8, lines 14 - 16:
- 2 Delete "10 days after an independent expenditure has been made. However, an
- 3 independent expenditure that exceeds \$250 and that is made within nine days of an election
- 4 shall be reported to the commission not later than"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSB 284(FIN)

1 Page 3, line 18:

2 Delete "**to the person that exceed \$100 in the aggregate in a year**"

3

4 Page 3, line 21, following "**name**":

5 Insert "**and address of the contributor and, for contributions in excess of \$50 in**

6 **the aggregate during a calendar year, the name**"

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
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MEMORANDUM

April 10, 2010

SUBJECT: Equal protection concern
(Amendment 26-LS1448\ P.20 for CSSB 284(FIN))

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Pierson

FROM: Alpheus Bullard *TLB*
Legislative Counsel

This memorandum accompanies the amendment referenced above. I have one comment.

This amendment requires a person, making an independent expenditure supporting or opposing a candidate or ballot proposition or question in a state election, to disclose to the Alaska Public Offices Commission the names and addresses of all contributors who have made contributions to the person for the purpose of influencing the outcome of an election, and for contributors who contribute in excess of \$50 in the aggregate during a calendar year, the name, address, principal occupation, and employer of the contributor. This is the same disclosure standard as that required of candidates in state elections under AS 15.13.040(a).

Under AS 15.13.040(b), a group making expenditures in coordination with a candidate's campaign is only required to report the date and amount of each contribution, name, address, principal occupation, and the employer of the group's contributors of in excess of \$100 in the aggregate during a calendar year.

Establishing a less stringent disclosure regime for groups making expenditures than for persons making independent expenditures may give rise to a legal challenge based on equal protection grounds. "The common question in addressing equal protection cases is whether two groups of people who are treated differently are similarly situated and thus entitled to equal treatment."¹ In order for a classification to be valid under the state's equal protection test, it must be reasonable, not arbitrary, and must bear a fair and substantial relation to a legitimate governmental objective. Wilson v. Municipality of Anchorage, 669 P.2d 569, 572 (Alaska 1983). Alaska evaluates equal protection claims

¹ Anderson v. State, 78 P.3d 710, 718 (Alaska 2003).

using a sliding scale.² There are several steps involved. First, the court determines the importance of the interest impaired by the challenged statute. Then the court looks at the purposes served by the statute. Finally, the court looks at how well the statutory means fits the purpose.

If a court were to conclude that a group making expenditures in a state election and a person making independent expenditures were similarly situated, i.e. entities attempting to influence a state election through expenditures, a court would examine the purpose served by the two different disclosure standards. In State v. Alaska Civil Liberties Union, 978 P.2d 597 (1999), the Alaska Supreme Court observed that existing campaign finance jurisprudence was based on the threat of corruption. Id. at 606 - 607. Independent expenditures, by definition, do not give rise to the same threats of quid pro quo corruption. The Supreme Court has recently concluded that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." Citizens United v. Federal Election Commission, No. 08-205, 558 U.S. ___, Slip op. at 42 (January, 2010).

When a group makes expenditures in coordination with a candidate's campaign, the potential for quid pro quo corruption, or its appearance, is present, yet under this amendment, that group would have to reveal less about its contributors of under \$100 in the aggregate during a year than would a person making independent expenditures to influence the outcome of the same election. The court could conclude that this presents an equal protection issue. If there are reasons to require greater disclosure of contributor information from persons making independent expenditures than from groups making contributions and expenditures, these should be articulated in testimony in support of the disclosure standard proposed by the amendment.

If you have any questions, do not hesitate to contact me.

TLAB:plm
10-218.plm

Enclosure

² Matanuska-Susitna Borough School v. State, 931 P.2d 391, 396 (Alaska 1997).

AMENDMENT

OFFERED IN THE HOUSE
TO: CSSB 284(FIN)

BY REPRESENTATIVE RAMRAS

1 Page 8, following line 11:

2 Insert a new subsection to read:

3 "(e) Contributors required to be identified under (a)(2)(C) of this section must
4 be listed in order of the amount of their contributions. If more than three of the largest
5 contributors to a person paying for a communication contribute equal amounts, the
6 person may select which of the contributors of equal amounts to identify under
7 (a)(2)(C) of this section. In no case shall a person be required to identify more than
8 three contributors under (a)(2)(C) of this section."

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MEMORANDUM

April 10, 2010

SUBJECT: Note (Amendment 26-LS1448\P.21 for CSSB 284(FIN))

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Pierson

FROM: Alpheus Bullard *ALB*
Legislative Counsel

This note accompanies the amendment described above.

Please note this amendment to CSSB 284(FIN) is drafted to address what may happen if more than a person's three largest contributors contribute equal amounts in the 12-month period before the date of a communication. This is consistent with the committee's adoption of amendment P.9 earlier today. Amendment P.9 requires that a person, other than an individual or candidate, identify only the person's three largest contributors (instead of five as required by CSSB 284(FIN)).

If you have questions, please do not hesitate to contact me.

TLAB:plm
10-219.plm

AMENDMENT

By: Rep. Herron

OFFERED IN THE SENATE

TO: CSSB 284(FIN)

1 Page 5, line 9:

2 Delete "a new section"

3 Insert "new sections"

4

5 Page 6, following line 7:

6 Insert a new section to read:

7 "Sec. 15.13.069. Certain expenditures that comply with charitable gaming
8 provisions permitted. Notwithstanding another provision of this title, a charitable
9 gaming permittee that is a qualified organization under AS 05.15.690 may use the net
10 proceeds of a raffle or lottery to make expenditures for the purposes permitted under
11 AS 05.15.150(a)(3)."

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MEMORANDUM

March 16, 2010

SUBJECT: Use of Proceeds of Charitable Gaming Raffles and Lotteries for Political Purposes (Work Order No. 26-LS1505\A)

TO:

FROM: Gerald P. Luckhaupt *GLP*
Legislative Counsel

You have asked for an short explanation of the problems certain charitable gaming permittees are experiencing in using the proceeds of raffles and lotteries for political purposes.

AS 05.15.150(a) lists the uses to which the proceeds of charitable gaming may be directed.

(a) The authority to conduct the activity authorized by this chapter is contingent upon the dedication of the net proceeds of the charitable gaming activity to the awarding of prizes to contestants or participants and to political, educational, civic, public, charitable, patriotic, or religious uses in the state. "Political, educational, civic, public, charitable, patriotic, or religious uses" means uses benefiting persons either by bringing them under the influence of education or religion or relieving them from disease, suffering, or constraint, or by assisting them in establishing themselves in life, or by providing for the promotion of the welfare and well-being of the membership of the organization within their own community, or through aiding candidates for public office or groups that support candidates for public office, or by erecting or maintaining public buildings or works, or lessening the burden on government, but does not include

(1) the direct or indirect payment of any portion of the net proceeds of a bingo or pull-tab game to a lobbyist registered under AS 24.45;

(2) the erection, acquisition, improvement, maintenance, or repair of real, personal, or mixed property unless it is used exclusively for one or more of the permitted uses; or

(3) the direct or indirect payment of any portion of the net proceeds of a charitable gaming activity, except the proceeds of a raffle and lottery,

March 16, 2010

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(A) to aid candidates for public office or groups that support or oppose candidates for public office;

(B) to a political party or to an organization affiliated with a political party; or

(C) to a group, as that term is defined in AS 15.13.400, or a political group, as that term is defined in AS 15.60, that seeks to influence the outcome of an election.

Generally, the proceeds of charitable gaming cannot be directed to political purposes except as permitted under AS 05.15.150(a)(3)(italicized above) for raffles and lotteries.

Even though the charitable gaming statutes allow political uses of the proceeds of raffles and lotteries, the Alaska Public Offices Commission statutes and regulations apparently restrict or limit corporations from contributing to political groups (including the corporation's political action committee). So, as I understand it, a charitable gaming permittee that is a corporation is restricted from using the proceeds of raffles and lotteries as permitted by AS 05 due to the provisions of AS 15.

One way to resolve this would be to just provide that the provisions of AS 15 do not restrict a charitable gaming permittee from using the proceeds of a raffle or lottery as permitted by AS 05.15.150(a). See 26-LS1505\A which I have previously provided to you.

GPL:lmb

10-010.lmb

AMENDMENT # _____

TO: HB 284(FIN) (26-LS1448\P)

BY REPRESENTATIVE HOLMES

1 Page 8, line 4, following “transmitted”:

2 Delete “solely”

3

4 Page 8, lines 4-5, following “audio media:

5 Insert “and in the communication that includes an audio component”

6

7 Page 8, lines 7-11:

8 Delete all material

9 Insert “This communication was paid for by (person’s name), whose top
10 contributors are (the name of the largest contributors to the person under
11 AS 15.13.090(a)(2)(C)).”