

HB

177

Moved by
Berkowitz
FAILS

AMENDMENT #1

OFFERED IN THE HOUSE

BY REPRESENTATIVE BERKOWITZ

TO: CSHB 177(STA)

1 Page 1, line 1, following "Act":

2 Insert "increasing the civil penalties and amending the criminal penalties for
3 violation of Alaska's campaign finance statutes;"

4

5 Page 2, following line 5:

6 Insert a new bill section to read:

7 "* Sec. 3. AS 15.13.390(a) is amended to read:

8 (a) A person who fails to register when required by AS 15.13.050(a) or who
9 fails to file a properly completed and certified report within the time required by AS
10 15.13.040(d) - (f), 15.13.060(b) - (d), 15.13.080(c), 15.13.110(a)(1), (3), or (4), (e), or
11 (f) is subject to a civil penalty of not more than \$100 [\$50] a day for each day the
12 delinquency continues as determined by the commission subject to right of appeal to
13 the superior court. A person who fails to file a properly completed and certified report
14 within the time required by AS 15.13.110(a)(2) or 15.13.110(b) is subject to a civil
15 penalty of not more than \$1000 [\$500] a day for each day the delinquency continues
16 as determined by the commission subject to right of appeal to the superior court. A
17 person who violates a provision of this chapter, except a provision requiring
18 registration or filing of a report within a time required as otherwise specified in this
19 section, is subject to a civil penalty of not more than \$100 [\$50] a day for each day the
20 violation continues as determined by the commission, subject to right of appeal to the
21 superior court. An affidavit stating facts in mitigation may be submitted to the
22 commission by a person against whom a civil penalty is assessed. However, the
23 imposition of the penalties prescribed in this section or in AS 15.13.380 does not
24 excuse that person from registering or filing reports required by this chapter."

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Renumber the following bill section accordingly.

Page 2, following line 30:

Insert new bill sections to read:

**** Sec. 5.** AS 15.56.012(c) is amended to read:

(c) Campaign misconduct in the first degree is a **class C felony** [CLASS A MISDEMEANOR].

*** Sec. 6.** AS 15.56.014(c) is amended to read:

(c) Campaign misconduct in the second degree is a **class A** [CLASS B] misdemeanor.

*** Sec. 7.** AS 15.56.016(b) is amended to read:

(b) Campaign misconduct in the third degree is a **class B misdemeanor** [VIOLATION]."

Moved by
Berkowitz
FAILS

AMENDMENT #2

OFFERED IN THE HOUSE BY REPRESENTATIVE BERKOWITZ
TO: CSHB 177(STA)

1 Page 1, line 2, following "statutes;":
2 Insert "applying certain campaign finance restrictions to ballot propositions and
3 questions;"

4
5 Page 2, following line 5:

6 Insert a new bill section to read:

7 "* Sec. 3. AS 15.13.040(d) is amended to read:

8 (d) Every individual, person, or group making a contribution or expenditure
9 shall make a full report, upon a form prescribed by the commission, of

10 (1) contributions made to a candidate or group and expenditures made
11 on behalf of a candidate or group

12 (A) as soon as the total contributions and expenditures to that
13 candidate or group reaches \$500 in a year; and

14 (B) for all subsequent contributions and expenditures to that
15 candidate or group in a year whenever the total contributions and expenditures
16 to that candidate or group that have not been reported under this paragraph
17 reaches \$500;

18 (2) [UNLESS EXEMPTED FROM REPORTING BY (h) OF THIS
19 SECTION,] any expenditure whatsoever for advertising in newspapers or other
20 periodicals, on radio, or on television; or, for the publication, distribution, or
21 circulation of brochures, flyers, or other campaign material for any candidate or ballot
22 proposition or question."

23
24 Renumber the following bill section accordingly.

1

2 Page 2, following line 30:

3 Insert new bill sections to read:

4 **"* Sec. 5.** AS 15.56.014(a) is amended to read:5 (a) A person commits the crime of campaign misconduct in the second degree
6 if the person7 (1) knowingly circulates or has written, printed or circulated a letter,
8 circular, or publication relating to an election, to a candidate at an election, or an
9 election proposition or question without the name and address of the author appearing
10 on its face;11 (2) [EXCEPT AS PROVIDED BY AS 15.13.090(b),] knowingly
12 prints or publishes an advertisement, billboard, placard, poster, handbill, paid-for
13 television or radio announcement, or other communication intended to influence the
14 election of a candidate or outcome of a ballot proposition or question without the
15 words "paid for by" followed by the name and address of the candidate, group, or
16 individual paying for the advertising or communication and, if a candidate or group,
17 with the name of the campaign chair;18 (3) knowingly writes or prints and circulates, or has written, printed
19 and circulated, a letter, circular, bill, placard, poster, or advertisement in a newspaper,
20 on radio or television21 (A) containing false factual information relating to a candidate
22 for an election;

23 (B) that the person knows to be false; and

24 (C) that would provoke a reasonable person under the
25 circumstances to a breach of the peace or that a reasonable person would
26 construe as damaging to the candidate's reputation for honesty, integrity, or the
27 candidate's qualifications to serve if elected to office.28 * Sec. 6. AS 15.13.010(d), 15.13.040(h), 15.13.065(c), 15.13.084(1), 15.13.090(b), and
29 15.13.140 are repealed."



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Alaska State Capitol Juneau, Alaska 99801-1181

SPONSOR STATEMENT

COMMITTEE SUBSTITUTE FOR HOUSE BILL 177 (STA)

"An Act placing special interest organizations within the definition of 'group' for purposes of Alaska's campaign finance statutes; and requiring disclosure of the true source of campaign contributions."

In 1999, the Alaska Supreme Court in ACLU v. State upheld Alaska's ban on political contributions and independent expenditures by corporations and labor unions. But the court also held that entities must be allowed to make independent expenditures if "(1) they cannot participate in business activities, (2) they have no shareholders who have a claim on corporate earnings, and (3) they are independent from the influence of business corporations." The court also suggested that entities, which meet these three criteria, must be permitted to make political contributions.

The committee substitute for House Bill 177 clarifies that non-group entities that meet these three criteria may make contributions and independent expenditures. It also subjects them to the same rules--including contribution limits and reporting requirement--as other groups that participate in political campaigns.



Alaska State Legislature

HOUSE OF REPRESENTATIVES
Alaska State Capitol Juneau, Alaska 99801-1181

SECTIONAL ANALYSIS COMMITTEE SUBSTITUTE FOR HOUSE BILL 177 (STA)

"An Act placing special interest organizations within the definition of 'group' for purposes of Alaska's campaign finance statutes; and requiring disclosure of the true source of campaign contributions."

Section 1: Adds a new section to uncodified law by giving this bill a short title: Full Disclosure of Campaign Finance Act.

Section 2: Amends AS 15.13.040(b). Contributions, expenditures, and supplying of services to be reported. This section requires groups to disclose the contributor of contributions in excess of \$100. Contributor is defined as the true source of the contribution. The true source of income is the original source of the contribution.

Section 3: Amends AS 15.13.400(5). Definitions. The definition of group is amended to include special interest organizations that fall within the mandatory exception to corporate contribution bans identified in *Federal Election Commission v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), by incorporating, into statute, the three part test cited by the Alaska Supreme Court in *State v. Alaska Civil Liberties Union*, 978 P.2d at 612.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 177
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title: An act placing certain special interest BRU: Alaska Public Offices Commission
groups within the definition of "group..." Component: _____
Sponsor: House Rules Committee
Requester: House State Affairs Committee Component Number: 70

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	42.5	0.0	0.0	0.0	0.0	0.0
Travel	4.1	2.5	2.5	2.5	2.5	2.5
Contractual	23.2	23.2	23.2	23.2	23.2	23.2
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	70.8	26.7	26.7	26.7	26.7	26.7

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	70.8	26.7	26.7	26.7	26.7	26.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	70.8	26.7	26.7	26.7	26.7	26.7

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporarily	1	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Brooke Miles Phone 907-276-4176
Division: Alaska Public Offices Commission Date/Time 3/21/01 1:31PM
Approved by: Jim Duncan, Commissioner Date 3/21/01
Agency: Department of Administration

For distribution information, call the Governor's Legislative Office

This is staff's estimate of the fiscal impact of HB 177. The Commission will not have an opportunity to review the legislation and staff's recommendation for a fiscal note until their next meeting on March 29th and 30th, 2001.

SB 177 amends the financial disclosure law and will result in additional costs to the Commission.

This bill will permit a proliferation of non-group entities described by the Alaska Supreme Court in its decision in State of Alaska v. Alaska Civil Liberties Union [ACLU]. Current regulations have narrowly interpreted this area of law and set forth a process through which non-profit corporations may qualify to participate in election campaign activities. HB 177, however, does not prescribe a procedure for the entities to "qualify" or to certify that they, in fact, meet the 3-part test set out by the Alaska Supreme Court in ACLU and referenced in this measure.

In the first year only, additional personal service funding is required to pay for a temporary regulations specialist to promulgate regulations implementing the changes.

Travel funding will enable staff to educate persons involved with non-group entities about the campaign disclosure law.

The Commission's staff anticipates that this legislation will result in an increase of public inquiries and complaints. Contractual funding is to pay for revisions of the written materials and postage and educational materials to cover an anticipated increase in investigation costs.

Supply funding is to pay for paper, printing and postage.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 15, 2001

SUBJECT: True Source of Funds (HB177)

TO: Representative Brian Porter
Speaker of the House of Representatives
Attn: Tom Wright

FROM: Kathryn L. Kurtz *KK*
Legislative Counsel

You asked about the term "true source." Essentially, this term requires that, when contributions to a candidate are made through a third party conduit, something which is generally prohibited but might be attempted by someone seeking to evade the campaign contribution limits, the identity of the original source of the contribution be disclosed.

Alaska law requires groups to disclose the source of all contributions over \$100 that they receive, including the name and occupation of the contributor. AS 15.13.040(b). Federal law has a similar requirement, 2 U.S.C. 434(b)(3), and both federal law and Alaska law prohibit a person or group from making a contribution in the name of another person, 2 U.S.C. 441(f), AS 15.13.074(b).

The federal law has been interpreted to require disclosure of the "true source" of political contributions, rather than just the name of the person in whose name the money is given.¹ In U.S. v. Hsia, the "true source" was a non-profit religious organization not eligible to make political campaign contributions. Instead of contributing directly, this organization worked with the defendant, Hsia, who solicited contributions for the campaign from numerous individuals, who were then reimbursed by the religious organization. Hsia also arranged to channel funds from a foreign national who was ineligible to make campaign contributions through a number of individuals. The court concluded that the federal statute's "demand for identification of the 'person . . . who makes a contribution' is *not* a demand for a report on the person in whose name money is given; it refers to the true source of the money."²

¹ U.S. v. Hsia, 176 F.3d 517, 524 (D.C. Cir. 1999), interpreting 2 U.S.C. sec. 434(b)(3) and 2 U.S.C. 441(f); *see also* U.S. v. Kanchanalak, 192 F.3d 1037 (D.C.Cir. 1999).

² *Id.* (emphasis in original)

Representative Brian Porter
March 15, 2001
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In another recent federal case, corporate employees, friends, and family members were solicited to make campaign contributions to designated candidates, and those contributions were then reimbursed by the corporation.³ The defendants responded to the indictment by arguing that the anti-conduit provision in 2 U.S.C. 441(f) was unconstitutional. The third circuit found this argument frivolous⁴, noting that "[p]roscription of conduit contributions (with the concomitant requirement that the true source of contributions be disclosed) would seem to be at the very core" of the United States Supreme Court's analysis in Buckley v. Valeo, 424 U.S. 1 (1976), and concluded that the federal prohibition on conduit contributions served a compelling state interest.⁵

KLK:glc
01-242.glc

Enclosure

³ Mariani v. Federal Election Commission, 212 F.3d 761 (3rd Cir. 2000).

⁴ *Id.* at 765.

⁵ *Id.* at 775.

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MEMORANDUM

March 21, 2001

SUBJECT: Nonprofit Groups and Alaska Campaign Finance Law (HB 177,
Work Order No. 22-LS0406\O)

TO: Representative Pete Kott, Chair
House Rules Committee

FROM: Kathryn L. Kurtz *KK*
Legislative Counsel

The purpose of this memo is to clarify the legal landscape surrounding House Bill 177. This bill would include non-group entities qualified to make campaign contributions and expenditures in the definition of "group," making them subject to the same limits and disclosure requirements as groups. In case this provision is found unconstitutional, this draft also contains a contingent amendment which would only require non-group entities to disclose their funding sources and expenditures. It also includes a clause clarifying that "contributor" means the true source of funds rather than the nominal contributor for purposes of the group disclosure requirement.

Buckley v. Valeo: the Foundation of Campaign Finance Law

Buckley v. Valeo¹ is the source of modern campaign finance law. In that case, the Supreme Court upheld some parts of the federal election campaign act, and invalidated others. That decision established the validity of contribution limits, and disclosure requirements. Contribution limits can be justified to the extent they are narrowly tailored to prevent corruption or the appearance of corruption. Disclosure requirements can be justified by the state's interest in providing information about candidates and their funding sources to voters. Buckley v. Valeo rejected expenditure limits, including limits on independent expenditures expressly advocating the election or defeat of a candidate, limits on personal expenditures by candidates, and limits on total campaign expenditures.²

¹ Buckley v. Valeo, 424 U.S. 1 (1976).

² Although expenditure limits cannot be imposed universally, some states have incorporated them into public financing schemes, whereby a candidate is eligible to receive matching funds if the candidate voluntarily agrees to abide by expenditure limits. These voluntarily expenditure limits have been upheld. See Rosenstiel v. Rodriguez, 101 F.3d 1544 (8th Cir. 1996), Kennedy v. Gardner, 1999 WL 814273 (D.N.H. Sept. 30, 1999).

Representative Pete Kott, Chair
House Rules Committee
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The basic principles of Buckley remain good law, but they have been refined in the intervening years. Contribution limits are generally permissible, but there are two important exceptions. Even though business corporations and unions may be prohibited from contributing to candidate campaigns, contributions and independent expenditures by corporations and unions to influence the outcome of *initiative* campaigns can not be barred.³ Also, there is new case law suggesting that contributions by political parties to their own candidates can not be limited.⁴ In both cases, courts have concluded that corruption does not pose a real threat, so there is no sufficient justification for burdening speech.

Buckley v. Valeo distinguished between "express advocacy" and "issue advocacy" for purposes of regulating independent expenditures. "The government can regulate express advocacy but issue advocacy cannot be prohibited or regulated."⁵ Even statutes regulating communications that "unambiguously refer to a candidate" or "implicitly advocate the success or defeat" of a candidate have been deemed irreconcilable with the first amendment as interpreted in Buckley v. Valeo, since they attempt to regulate more than just express advocacy.⁶ Similarly, a regulation prohibiting corporations from making independent expenditures for communications using the name or likeness of a candidate within 45 days of an election was held to be overbroad.⁷ In this context, "regulation" covers disclosure laws as well as attempts to ban certain independent expenditures outright.

"Express advocacy" is limited to "communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'"⁸ Many courts have taken this as a bright line

³ First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978); Montana Chamber of Commerce v. Argenbright, No. 98-36256 (9th Cir., Sept. 26, 2000).

⁴ Missouri Republican Party v. Lamb, 227 F.3d 1070 (8th Cir. 2000) held that limiting the amount a political party could contribute to its own candidates violated the first amendment. Meanwhile, the tenth circuit has concluded that a federal law limiting coordinated expenditures by political parties and candidates for Congress is unconstitutional. Federal Election Commission v. Colorado Republican Federal Campaign Committee, 213 F.3d 1221 (10th Cir. 2000), *certiorari granted* 121 S.Ct. 296, 69 USLW 3249 (U.S. Oct. 10, 2000). Neither of these cases are controlling precedent in Alaska, however, the United States Supreme Court has agreed to review the Colorado case. Oral argument was held Wednesday, February 28. If the Colorado decision is upheld, the constitutionality of AS 15.13.070(d) will need to be reviewed.

⁵ Planned Parenthood Affiliates v. Miller, 21 F.Supp.2d 740, 743 (E.D.Mich. 1998), *interpreting* Buckley v. Valeo, 424 U.S. 1 (1976) and Massachusetts Citizens for Life, 479 U.S. 238 (1986).

⁶ Citizens for Responsible Government State Political Action Committee v. Davidson, 2000 WL 1902427 at 14 (10th Cir. Colo. Dec. 26, 2000); Vermont Right to Life Committee, Inc. v. Sorrell, 221 F.3d 376, 387 (2nd Cir. 2000).

⁷ Planned Parenthood Affiliates v. Miller, 21 F.Supp.2d 740 (E.D.Mich. 1998)

⁸ Buckley v. Valeo, 424 U.S. at 44, n. 52.

Representative Pete Kott, Chair
House Rules Committee
March 21, 2001
Page 3

standard requiring the use of "magic words" expressly advocating the election or defeat of a candidate.⁹ The Ninth Circuit has interpreted this aspect of the Buckley decision more broadly than other courts, finding the context and timing of a communication relevant to whether the communication constitutes express advocacy.¹⁰ Oregon has adopted the Ninth Circuit's view,¹¹ but the state of Washington has rejected the contextual approach.¹²

State v. Alaska Civil Liberties Union: Evaluating the Validity of Alaska' Campaign Finance Law

Alaska's campaign finance law was challenged, and largely upheld, by the Alaska Supreme Court in State v. Alaska Civil Liberties Union.¹³ That decision did, however, point out a problem with two sections, AS 15.13.074 and AS 15.13.135, which, combined with the limited definition of "group" in AS 15.13.400(5), could be read as prohibiting not only business corporations and unions, but also non-business entities from making contributions and independent expenditures for express advocacy. That goes against federal precedent, which holds that you cannot bar an entity from making campaign contributions if the entity meets the following criteria:

- 1) it doesn't participate in business activities;
- 2) it has no shareholders with a claim on corporate earnings; and
- 3) is independent from the influence of business corporations.¹⁴

⁹ See for example Perry v. Bartlett, 231 F.3d 155, 160-161 (4th Cir. 2000) (rejecting a statute regulating communications made with an intent to influence the outcome of an election as overbroad); Faucher v. Federal Election Commission, 928 F.2d 468, 472 (1st Cir. 1991) (interpreting Buckley as providing a "bright-line express advocacy test").

¹⁰ Federal Election Commission v. Furgatch, 807 F.2d 857, 865 (9th Cir. 1987) ("We conclude that speech need not include any of the words listed in Buckley to be express advocacy under the [Federal Election Campaign] Act, but it must, when read as a whole, and with limited reference to external events, be susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate.")

¹¹ State ex rel Crumpton v. Keisling, 982 P.2d 3 (Or. App. 1999) ("The heart of the Furgatch approach, as applied to the Oregon law, is to determine whether the nature of the publication *as a whole* is clearly to support or oppose an candidate for office. the purpose is not to search for magic words--which careful drafters can, as in this case, usually avoid--but to find the essential message that the publication communicates to the reader.")

¹² Washington State Republican Party v. Washington State Public Disclosure Commission, 4 P.3d 808, 820-821 (Wash. 2000).

¹³ State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999).

¹⁴ *Id.* at 612, citing the exception established in Massachusetts Citizens for Life, 479 U.S. 238 (1986) as described in Federal Election Commission v. Survival Education Fund, 65 F.3d 285, 291 (2d Cir. 1995)

Representative Pete Kott, Chair
House Rules Committee
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So, the court mandated that the statutes be read to permit non-group entities that meet these three criteria to contribute and make independent expenditures.

The Alaska legislature may have anticipated this result when it included the following applicability provision in the 1996 campaign finance reform act¹⁵:

If a court determines, that under the federal or state constitutions, *persons who are not individuals* must be allowed to contribute to candidates or groups, then the requirements, monetary limitations, and restrictions of AS 15.13. are applicable to those persons.

APOC has recognized the existence of this provision, but has interpreted its own regulations to permit certain nonprofit entities to report as individuals rather than groups, thus avoiding the source of funding disclosure requirement in AS 15.13.040(b).¹⁶ House Bill 177 clarifies this point by including non-group entities that meet the three criteria in the definition of group.

Treating "Non-Group Entities" Like Groups

Like Alaska's Supreme Court, state and federal courts across the country are just beginning to come to terms with the implications of Massachusetts Citizens for Life and other recent developments in the area of campaign finance relating to what the Alaska Supreme Court called "non-group entities". I do not see anything in Alaska case law or controlling federal precedent that would prevent treating qualified these entities like other groups under Alaska's campaign finance laws.

I must caution you, however, about a recent federal district court case which held that a nonprofit group engaging in express advocacy could be regulated, but not to the same extent as PACs and other groups whose primary purpose was influencing elections.¹⁷ That Alabama decision is not binding in Alaska, and it is only a United State District Court decision, so it may be appealed. It is the only decision I have found that directly addresses this point; I do not know whether other courts will follow its lead. If the Alaska court were to follow the Alabama court's reasoning, it might conclude that the change made by the enclosed bill was overbroad.

According to the Alabama court, nonprofit corporations can be required to disclose contributions and independent expenditures for express advocacy.¹⁸ Significantly, the

¹⁵ 1996 SLA ch. 48, sec. 30 (emphasis added).

¹⁶ APOC opinion no. AO99-04-CD (August 26, 1999).

¹⁷ Richev v. Tvson, 120 F.Supp.2d 1298, 1320 (S.D.Ala. 2000) (citing Federal Elections Commission v. Massachusetts Citizens for Life, 479 U.S. 238, 262 (1986) for the proposition that "a non-commercial, non-stock corporation whose major purpose is not to nominate or elect a candidate cannot be regulated as extensively as a political committee").

¹⁸ *Id.* at 1319.

Representative Pete Kott, Chair
House Rules Committee
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court found no problem with requiring disclosure of the identity of contributors, unless the nonprofit corporations could show "a reasonable probability that the compelled disclosure of a [group's] contributors' names will subject them to threats, harassment, or reprisals from either government officials or private parties."¹⁹

However, the court also found that the registration, organizational, and record-keeping requirements of the Alabama statute could not justifiably be extended to nonprofit corporations because they were not "narrowly tailored." In other words, they imposed more of a burden on the nonprofit corporations than could be justified by the state's interest in information and disclosure.²⁰ This raises a question about application of statutes including AS 15.13.050 (registration), AS 15.13.060 (treasurers), and AS 15.13.086 (authorized expenditure makers) to non-group entities. Still, the Alabama decision involved a group supporting a ballot measure, not a candidate, and there is some chance that the corruption rationale available in regulating candidate races might be raised in defense of broader application of the campaign finance statutes to nonprofits.

House Bill 177 incorporates non-group entities into the definition of group, but also includes a contingent amendment simply making them subject to the disclosure requirement in AS 15.13.040(b) in case the broader approach is found unconstitutional by a court with jurisdiction in Alaska. This bill does not make any provision to address potential constitutional problems in AS 15.13.050, 15.13.060, and 15.13.086.

Contributions through Conduits

Under current law, groups are required to disclose the name and occupation of the contributor for all contributions over \$100 that they receive. AS 15.13.040(b). Disclosure requirements of this nature have repeatedly been upheld at the federal level because they provide information to voters, deter corruption, and help detect violations of other campaign finance laws.²¹ Disclosure cannot always be demanded; "whenever identification and fear of reprisal would deter speech, the first amendment protects anonymity."²² However, to justify an exception to campaign disclosure requirements, a group must affirmatively show a "reasonable probability" that disclosures would subject [its] contributors to "threats, harassment, or reprisals."²³ Alaska case law reflects this same basic approach.²⁴

¹⁹ *Id.* at 1323, quoting Bucklev v. Valeo, 424 U.S. 1, 74(1976) (emphasis in original), following NAACP v. Alabama, 357 U.S. 449 (1958).

²⁰ *Id.* at 1316-1317.

²¹ Bucklev v. Valeo, 424 U.S. 1 (1976).

²² Goland v. United States, 903 F.2d 1247, 1259-60 (9th Cir. 1990) (citing Talley v. California, 362 U.S. 60 (1960), and NAACP v. Alabama, 357 U.S. 449 (1958)).

²³ *Id.* at 42.

²⁴ Veco International v. APOC, 753 P.2d 703 (Alaska 1988) (summarizing Messerli v. State, 626 P.2d 81 (Alaska 1981), which upheld the identification requirement for independent expenditures in support of ballot measures, and remanded the case for the lower court to determine whether Mr. Messerli had a special need for anonymity).

Sec. 15.13.040. Contributions, expenditures and supplying of services to be reported.

(a) Except as provided in (g) of this section, each candidate shall make a full report, upon a form prescribed by the commission, listing the date and amount of all expenditures made by the candidate, the total amount of all contributions, including all funds contributed by the candidate, and for all contributions in excess of \$100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor and the date and amount contributed by each contributor. The report shall be filed in accordance with AS 15.13.110 and shall be certified correct by the candidate or campaign treasurer.

(b) Each group shall make a full report upon a form prescribed by the commission, listing

(1) the name and address of each officer and director;

(2) the aggregate amount of all contributions made to it; and, for all contributions in excess of \$100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor; and

(3) the date and amount of all contributions made by it and all expenditures made, incurred or authorized by it.

(c) The report required under (b) of this section shall be filed in accordance with AS 15.13.110 and shall be certified as correct by the group's treasurer.

(d) Every individual, person, or group making a contribution or expenditure shall make a full report, upon a form prescribed by the commission, of

(1) contributions made to a candidate or group and expenditures made on behalf of a candidate or group

(A) as soon as the total contributions and expenditures to that candidate or group reaches \$500 in a year; and

(B) for all subsequent contributions and expenditures to that candidate or group in a year whenever the total contributions and expenditures to that candidate or group that have not been reported under this paragraph reaches \$500;

(2) unless exempted from reporting by (h) of this section, any expenditure whatsoever for advertising in newspapers or other periodicals, on radio, or on television; or, for the publication, distribution, or circulation of brochures, flyers, or other campaign material for any candidate or ballot proposition or question.

(e) The report required under (d) of this section shall contain the name, address, principal occupation and employer of the individual filing the report, and an itemized list of expenditures. The report shall be filed with the commission by the contributor no later than 10 days after the contribution or expenditure is made. A copy of the report shall be furnished to the candidate, campaign treasurer or deputy campaign treasurer at the time the contribution is made.

(f) During each year in which an election occurs, all businesses, persons, or groups that furnish any of the following services, facilities, or supplies to a candidate or group shall maintain a record of each transaction: newspapers, radio, television, advertising, advertising agency services, accounting, billboards, printing, secretarial, public opinion polls, or research and professional campaign consultation or management, media production or preparation, or computer services. Records of provision of services, facilities, or supplies shall be available for inspection by the commission.

(g) The provisions of (a) of this section do not apply if a candidate

(1) indicates, on a form prescribed by the commission, an intent not to raise and not to expend more than \$2,500 in seeking election to office, including both the primary and general elections;

(2) accepts contributions totaling not more than \$2,500 in seeking election to

office, including both the primary and general elections; and

(3) makes expenditures totaling not more than \$2,500 in seeking election to office, including both the primary and general elections.

(h) The provisions of (d)(2) of this section do not apply to one or more expenditures made by an individual acting independently of any group and independently of any other individual if the expenditures

(1) cumulatively do not exceed \$250 during a calendar year; and

(2) are made only for billboards, signs, or printed material concerning a ballot proposition as that term is defined by AS 15.13.065(c).

(i) The permission of the owner of real or personal property to post political signs, including bumper stickers, or to use space for an event or to store campaign-related materials is not considered to be a contribution to a candidate under this chapter unless the owner customarily charges a fee or receives payment for that activity. The fact that the owner customarily charges a fee or receives payment for posting signs that are not political signs is not determinative of whether the owner customarily does so for political signs.

Sec. 15.13.400. Definitions.

In this chapter,

(1) "candidate"

(A) means an individual who files for election to the state legislature, for governor, for lieutenant governor, for municipal office, for retention in judicial office, or for constitutional convention delegate, or who campaigns as a write-in candidate for any of these offices; and

(B) when used in a provision of this chapter that limits or prohibits the donation, solicitation, or acceptance of campaign contributions, or limits or prohibits an expenditure, includes

(i) a candidate's campaign treasurer and a deputy campaign treasurer;

(ii) a member of the candidate's immediate family;

(iii) a person acting as agent for the candidate;

(iv) the candidate's campaign committee; and

(v) a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of the candidate;

(2) "commission" means the Alaska Public Offices Commission;

(3) "contribution"

(A) means a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made and that is made for the purpose of influencing the nomination or election of a candidate, and in AS 15.13.010(b) for the purpose of influencing a ballot proposition or question, including the payment by a person other than a candidate or political party, or compensation for the personal services of another person, that are rendered to the candidate or political party;

(B) does not include

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or ballot proposition or question, but it does include professional services volunteered by individuals for which they ordinarily would be paid a fee or wage;

(ii) services provided by an accountant or other person to prepare reports and statements required by this chapter; or

(iii) ordinary hospitality in a home;

(4) "expenditure"

(A) means a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of

(i) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes a candidate;

(ii) use by a political party;

(iii) the payment by a person other than a candidate or political party of compensation for the personal services of another person that are rendered to a candidate or political party; or

(iv) influencing the outcome of a ballot proposition or question;

(B) does not include a candidate's filing fee or the cost of preparing reports

and statements required by this chapter;

(5) "group" means

(A) every state and regional executive committee of a political party; and

(B) any combination of two or more individuals acting jointly who organize for the principal purpose of influencing the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one individual, or intends to expend more than 50 percent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with the candidate's knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group the candidate files with the commission, on a form provided by the commission, an affidavit that the group is operating without the candidate's control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate; however, a group that contributes more than 50 percent of its money to or on behalf of one candidate shall be considered to support only one candidate for purposes of AS 15.13.070, whether or not control of the group has been disclaimed by the candidate;

(6) "immediate family" means the spouse, parents, children, including a stepchild and an adoptive child, and siblings of an individual;

(7) "independent expenditure" means an expenditure that is made without the direct or indirect consultation or cooperation with, or at the suggestion or the request of, or with the prior consent of, a candidate, a candidate's campaign treasurer or deputy campaign treasurer, or another person acting as a principal or agent of the candidate;

(8) "individual" means a natural person;

(9) "person" has the meaning given in AS 01.10.060, and includes a labor union and a group;

(10) "political party" means

(A) an organized group of voters that represents a political program and that nominated a candidate for governor who received at least three percent of the total votes cast at any one of the last five preceding general elections for governor; and

(B) a subordinate unit of the organized group of voters qualifying as a political party under (A) of this paragraph if, consistent with the rules or bylaws of the political party, the unit conducts or supports campaign operations in a municipality, neighborhood, election district, or precinct;

(11) "publicly funded entity" means a person, other than an individual, that receives half or more of the money on which it operates during a calendar year from government, including a public corporation.

Sec. 15.13.070. Limitations on amount of political contributions.

(a) An individual or group may make contributions, subject only to the limitations of this chapter and AS 24.45, including the limitations on the maximum amounts set out in this section.

(b) An individual may contribute not more than

(1) \$500 per year to a candidate, to an individual who conducts a write-in campaign as a candidate, or to a group that is not a political party;

(2) \$5,000 per year to a political party.

(c) A group that is not a political party may contribute not more than \$1,000 per year

(1) to a candidate, or to an individual who conducts a write-in campaign as a candidate; or

(2) to another group or to a political party.

(d) A political party may contribute to a candidate, or to an individual who conducts a write-in campaign, for the following offices an amount not to exceed

(1) \$100,000 per year, if the election is for governor or lieutenant governor;

(2) \$15,000 per year, if the election is for the state senate;

(3) \$10,000 per year, if the election is for the state house of representatives; and

(4) \$5,000 per year, if the election is for

(A) delegate to a constitutional convention;

(B) judge seeking retention; or

(C) municipal office.

(e) This section does not prohibit a candidate from using up to a total of \$1,000 from campaign contributions in a year to pay the cost of

(1) attendance by a candidate or guests of the candidate at an event or other function sponsored by a political party or by a subordinate unit of a political party;

(2) membership in a political party, subordinate unit of a political party, or other entity within a political party, or subscription to a publication from a political party; or

(3) co-sponsorship of an event or other function sponsored by a political party or by a subordinate unit of a political party.