

**SB**

**284**

PASSES



26-LS1448P.19  
Bullard  
4/9/10

AMENDMENT # 1

OFFERED IN THE HOUSE  
TO: CSSB 284(FIN)

BY REPRESENTATIVE RAMRAS

- 1 Page 5, line 25, following ";":
- 2       Insert "or"
- 3
- 4 Page 5, line 28:
- 5       Delete "; or"
- 6       Insert "."
- 7
- 8 Page 5, line 29, through page 6, line 2:
- 9       Delete all material.

AMENDMENT # 2

OFFERED IN THE HOUSE  
TO: CSSB 284(FIN)

BY REPRESENTATIVE RAMRAS

- 1 Page 8, line 4, following "transmitted":
- 2       Insert "solely"
- 3
- 4 Page 8, lines 4 - 5:
- 5       Delete "and in the communication that includes an audio component"

PASSES

26-LS1448P.9  
Bullard  
4/5/10

AMENDMENT # 3

OFFERED IN THE HOUSE  
TO: CSSB 284(FIN)

Offered by: Rep. Ramras

- 1 Page 7, line 10:
- 2 Delete "five"
- 3 Insert "three"

Passes

26-LS1448\P.11  
Bullard  
4/6/10

AMENDMENT

# 4

offered by: Bob Lynn

OFFERED IN THE HOUSE  
TO: CSSB 284(FIN)

- 1 Page 8, following line 11:
- 2 Insert a new subsection to read:
- 3 "(e) The provisions of this subsection apply to a person who makes an
- 4 independent expenditure for a communication described in (a) of this section. If the
- 5 person paying for the communication is not a natural person, the provisions also apply
- 6 to the responsible officer or officers of the corporation, company, partnership, firm,
- 7 association, organization, labor organization, business trust, or society who approves
- 8 the independent expenditure for the communication. A person who makes a
- 9 communication under this subsection may not, with actual malice, include within or as
- 10 a part of the communication a false statement of material fact about a candidate for
- 11 election to public office that constitutes defamation of the candidate. For purposes of
- 12 this subsection, a statement constitutes defamation of the candidate if the statement
- 13 (1) exposes the candidate to strong disapproval, contempt, ridicule, or
- 14 reproach; or
- 15 (2) tends to deprive the candidate of the benefit of public confidence."

~~FAILED~~

26-LS1448\P.10  
Bullard  
4/5/10

#15

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"

Changes 24 to 48

# 6

AMENDMENT

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

## 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." 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

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

Representative Jay Ramras

April 10, 2010

Page 2

using a sliding scale.<sup>2</sup> 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

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

PASS

26-LS1448\P.21  
Bullard  
4/10/10

#7



AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE RAMRAS

TO: CSSB 284(FIN)

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 *TLAB*  
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

7/25

AMENDMENT

#8

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)."

PASSES

AMENDMENT # 9

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))."

# Alaska State Legislature

**Senator Hollis French, Chair**  
State Capitol, Room 417  
Juneau, Alaska 99801  
Phone: (907) 465-3892  
Fax: (907) 465-6595



**Committee Members:**  
Senator Bill Wielechowski  
Senator Dennis Egan  
Senator Lesil McGuire  
Senator John Coghill

## Senate Judiciary Committee

### Sponsor Statement: Senate Bill 284 Campaign Expenditures

In the wake of the recent U.S. Supreme Court ruling, *Citizens United v. Federal Election Commission*, the Senate Judiciary Committee has worked to determine the changes to Alaska's elections laws that will be needed. Corporations and labor unions have been banned from participating in Alaska's elections prior to this ruling. This means many of Alaska's laws regarding disclosure and disclaimers simply do not apply to corporations and labor unions making independent expenditures to support or oppose specific candidates in elections.

Testimony from Legislative Legal Services attorneys and from the Alaska Department of Law indicated that changes would be needed to Alaska's campaign laws, and this bill was subsequently drafted to address the concerns raised by the attorneys and by committee members.

Senate Bill 284 amends state election laws to clarify that corporations and labor unions are covered by all applicable reporting requirements. It expands communication identification requirements to ensure accurate reporting of top contributors, to require the approval of the content by the principal officer of the corporation or union, and to require statements in each communication that its content has not been authorized or approved by the candidate. It also speeds reporting requirements for communications expenditures in the last nine days of the election so that expenditures over \$250 must be reported within 24 hours.

Recent opinion surveys show broad disapproval by Americans across party lines for the decision reached by the U.S. Supreme Court. In order to retain Alaskans' trust in our system it is vital that legislation be passed this year to ensure that corporations and labor unions spending money to influence elections are at least required to disclose it in a timely fashion. I urge you to support Senate Bill 284.

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## MEMORANDUM

April 2, 2010

**SUBJECT:** Sectional summary of CSSB 284(FIN)  
(Work Order No. 26-LS1448\P)

**TO:** Senator Hollis French  
Chair of the Senate Judiciary Committee  
Attn: Cindy Smith

**FROM:** Alpheus Bullard *TLA*  
Legislative Counsel

You have requested a sectional summary of the above-described bill.<sup>1</sup>

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1.** Amends language relating to the applicability of AS 15.13 (state election campaigns) to clarify that the chapter applies to all contributions, expenditures, and communications made for the purpose of influencing the outcome of an election covered by the chapter.

**Section 2.** Amends language relating to the duties of the Alaska Public Offices Commission (APOC) to clarify that the commission will assist all persons to comply with the requirements of AS 15.13.

**Section 3.** Amends AS 15.13.040(d) to clarify that every person making an independent expenditure must make a full report of expenditures and contributions received to the commission unless the person is exempted from reporting by another provision of the chapter.

**Section 4.** Adds new requirements to the expenditure report required under AS 15.13.040(d) and specifies that the report must be filed in accordance with AS 15.13.110(g).

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<sup>1</sup> Please note that only sec. 10 of the bill is modified from the version of the bill passed out by the Senate Judiciary Committee.

**Section 5.** Amends language in AS 15.13.040(h) to clarify that the reporting requirements of AS 15.13.040(d) do not apply to an expenditure made by certain individuals acting independently of any other person.

**Section 6.** Amends AS 15.13.040(p) to clarify that a person who is required to disclose contributions received by that person in an expenditure report under AS 15.13.040(d) must report the true source of the contributions as the "contributor."

**Section 7.** Defines "director" and "officer" for the purposes of AS 15.13.040(e), as that subsection is amended by the bill.

**Section 8.** Requires each person other than an individual, candidate, or nongroup entity with an annual operating budget of \$250 or less, to establish an account from which all funds, used by the person to make independent expenditures, must be drawn. Requires the person to (1) make records relating to the account available to APOC and (2) preserve all records relating to the account for a period of six years.

**Section 9.** Amends AS 15.13.067 to clarify who may make an expenditure that is not an independent expenditure, in a state election for public office.

**Section 10.** Prohibits a foreign national from making a contribution or expenditure or an express or implied promise to make a contribution or expenditure in connection with a state election. Provides that the prohibition will be enforced only to the extent that federal law prohibits a foreign national from making a contribution or expenditure, and only to the extent permitted by federal law.

**Section 11.** Provides that no person, other than an individual exempt from reporting under AS 15.13.040(h), may make an expenditure unless the source of the expenditure has been disclosed.

**Section 12.** Amends language in AS 15.13.084 to clarify that a person may not make an expenditure anonymously unless it is made (1) for certain communications, (2) in connection with a ballot proposition as that term is defined by AS 15.13.065(c), and (3) by an individual acting independently of any other person.

**Section 13.** Expands the communication identification requirements of AS 15.13.090 to apply to communications made by all persons, and additionally requires a person other than a candidate, individual, or a political party to (1) identify the person's principal officer, (2) include a statement from that officer approving the communication, (3) provide the address of the person's principal place of business, and (4) identify the person's five largest contributors.

**Section 14.** Provides how the communication identification requirements of AS 15.13.090(a), as amended by the bill, must be met in print, video, and audio components of a communication.

**Section 15.** Requires expenditure reports filed under AS 15.13.040(e) to be filed within 10 days of the expenditure being made, except for an expenditure that exceeds \$250 and that is made within nine days of an election must be reported to APOC within 24 hours of the expenditure being made.

**Section 16.** Amends the language of AS 15.13.111(a) to require all persons who are required to report under AS 15.13 to preserve certain records for a period of six years.

**Section 17.** Removes language from AS 15.13.135 that permitted only individuals, groups, or nongroup entities to make independent expenditures in support or in opposition to a candidate for public office. Adds language requiring all persons making certain independent expenditures to comply with AS 15.13.090.

**Section 18.** Amends language in AS 15.56.014(a) to clarify that any person who knowingly prints, publishes, or leases a communication without the "paid for language" required by AS 15.13.090 has committed campaign misconduct in the second degree, a class B misdemeanor.

**Section 19.** Repeals AS 15.13.140(a), a provision that provided that AS 15.13 should not be interpreted to prohibit a person from making independent expenditures in support or in opposition to a ballot proposition or question. As the chapter now reads, there is no ambiguity as to whether the chapter prohibits persons from making independent expenditures relating to a ballot proposition or question.

**Section 20.** Gives the Act an immediate effective date.

TLAB:ljw  
10-235.ljw

# FISCAL NOTE

**STATE OF ALASKA**  
**2010 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: SB 284  
 (S) Publish Date: 3/2/10

Identifier (file name): SB284-OOG-DOE-2-26-10 Dept. Affected: OOG  
 Title "An Act relating to state election campaigns, the duties of the RDU Elections  
Alaska Public Offices Commission, the reporting...." Component Elections  
 Sponsor Senate Judiciary Committee  
 Requester Senate State Affairs Committee Component Number 21

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	Appropriation Required	Information					
	FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Personal Services							
Travel							
Contractual		0.0					
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>							
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<b>CHANGE IN REVENUES ( )</b>							
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF		0.0					
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2010) cost: \_\_\_\_\_

**POSITIONS**

Full-time							
Part-time							
Temporary							

**ANALYSIS:** (Attach a separate page if necessary)  
 This legislation has no fiscal impact on the division.

Prepared by: Gail Fenumiai, Director  
 Division Division of Elections  
 Approved by: Linda Perez, Director  
Division of Administrative Services

Phone 465-4611  
 Date/Time 2/26/10, 10:39am  
 Date 2/26/2010

# FISCAL NOTE

**STATE OF ALASKA**  
**2010 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
Bill Version: SB 284  
(S) Publish Date: 3/2/10

Identifier (file name) SB284-DOA-APOC-02-24-10 Dept. Affected: Administration  
Title "An Act relating to state election campaigns ..." RDU AK Public Offices Commission  
Component AK Public Offices Commission  
Sponsor (S) JUD  
Requester (S) STA Component Number 70

**Expenditures/Revenues** (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
<b>OPERATING EXPENDITURES</b>								
Personal Services	78.7		78.7	78.7	78.7	78.7	78.7	78.7
Travel								
Contractual	50.0							
Supplies								
Equipment	2.5							
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>131.2</b>	<b>0.0</b>	<b>78.7</b>	<b>78.7</b>	<b>78.7</b>	<b>78.7</b>	<b>78.7</b>	<b>78.7</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	131.2		78.7	78.7	78.7	78.7	78.7	78.7
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>	<b>131.2</b>	<b>0.0</b>	<b>78.7</b>	<b>78.7</b>	<b>78.7</b>	<b>78.7</b>	<b>78.7</b>	<b>78.7</b>

Estimate of any current year (FY2010) cost: \_\_\_\_\_

**POSITIONS**

Full-time	1		1	1	1	1	1
Part-time							
Temporary							

**ANALYSIS:** (Attach a separate page if necessary)

This bill would impact the Alaska Public Offices Commission (APOC) through changes to regulations and changes to the electronic filing program, currently in development. As the bill requires more reporting, it will require additional staff time in assisting the filers; preparing manuals, performing training; and tracking and auditing reports. Changes to regulations will require an amendment to an existing contract estimated at \$25.0 and \$25.0 is included to analyze programming changes and capital funds necessary or the electronic filing program to accommodate the new reports. This increment includes 1 FT employee (range 16, Paralegal II) with computer and furniture.

Prepared by: Holly Hill, Director  
Division: Alaska Public Office Commission  
Approved by: Rachael Petro, Deputy Commissioner  
Department of Administration

Phone (907) 334-1726  
Date/Time 02/24/10 12:00pm  
Date 2/24/2010

# LEGAL SERVICES

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## MEMORANDUM

April 7, 2010

**SUBJECT:** Differences between CSSB 284(FIN) and CSHB 409(STA)  
(Work Order Nos. 26-LS1448\P and 26-LS1495\S)

**TO:** [REDACTED]

**FROM:** Alpheus Bullard *TLB*  
Legislative Counsel

As a preliminary matter, please note that each bill is, itself, the best statement of its contents. This memorandum provides only an outline<sup>1</sup> of the substantive differences between CSSB 284(FIN) (26-LS1448\P) and CSHB 409(STA) (26-LS1495\S). This memorandum does not identify constitutional, legal, or drafting issues raised by the provisions of either bill.

### **15.13.030**

The House bill requires the Alaska Public Offices Commission ("APOC") to make information contained in an independent expenditure report filed under AS 15.13.040(e) available to the public within 24 hours after the report has been filed with the commission. The Senate bill does not contain this requirement.

### **15.13.040(d)**

The Senate bill contains language clarifying that every person making an independent expenditure shall make a full report of expenditures made and contributions received. The House bill is without this language.

### **AS 15.13.040(e)**

The House bill requires an independent expenditure report filed by a person that is not an individual under AS 15.13.040(e) to be certified as correct by the treasurer or fiscal officer of the person. The House bill requires that the independent expenditure report include the nationality of each officer and director of the person (making the expenditure) and the nationality of each officer and director of a contributor (of over \$100 in the

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<sup>1</sup> The boldfaced heading for each of the differences described in this memorandum is the bill section in which an identified difference between the bills exists. If a heading section number or subsection letter appears in "quotes," the section or subsection is not an existing section or subsection amended by the bill, but a new section or subsection proposed to be added by the bill or bills.

████████████████████  
April 7, 2010

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aggregate in a year) to the person (making the expenditure). The Senate bill is without these requirements.

**15.13.040("q")**

The Senate bill contains definitions for "director" and "officer" for the purposes of AS 15.13.040(e). The House bill does not define these terms.

**"15.13.052"**

The Senate bill requires persons making independent expenditures in state elections to establish a political activities account, from which all funds used by the person to make independent expenditures must be drawn. No such requirement is present in the House bill.

**"15.13.068"**

The Senate bill contains a more complete definition of "foreign national" than that of the House bill. The Senate bill provides that the Act's provision prohibiting a foreign national from making a contribution or expenditure in connection with a state election operates only to the extent (1) that federal law prohibits a foreign national from making a contribution or expenditure in connection with a state election and (2) permitted by federal law. The House bill provides only that the provision applies to the extent permitted by federal law.

**AS 15.13.084**

The House bill prohibits all anonymous expenditures.

**AS 15.13.090 (and added subsections)**

Both the House and Senate bills amend AS 15.13.090 to require a larger quantity of information be disclaimed in communications. The requirements of each bill are different. The House bill requires a person other than a candidate, an individual, or a political party to (1) identify the person's principal officer and the officer's title, (2) include a statement from that officer approving the communication, (3) provide the person's principal place of business, and (4) identify the name and city and state of residence or principal place of business, as applicable, of each of the person's three largest contributors, if any, during the 12-month period before the date of the communication.

The Senate bill requires all persons to identify the person's place of business, if applicable, and requires a person other than an individual or candidate to (1) identify the person's principal officer and the officer's title, (2) include a statement from that officer approving the communication, and (3) identify the name and city and state of residence or principal place of business, as applicable, of each of the person's five largest contributors, if any, during the 12-month period before the date of the communication.

The House bill additionally provides that "[a] person other than a candidate, individual, or political party may not make a communication . . . unless the person's principal officer

[REDACTED]  
April 7, 2010

Page 3

has certified to the commission in writing that the officer has reviewed the communication, and, based on the officer's knowledge, the communication is not defamatory and does not contain any defamatory statements." This provision is absent from the Senate bill.

The Senate bill contains different requirements for communication transmitted through radio or other audio media or in the audio component of another communication than what the House bill permits. The Senate bill does not require that the audio component of a communication include the address or principal of business of the person paying for the communication or of the person's largest contributors. The House bill requires this information. However, the House bill permits a person, other than an individual, paying for a communication to be named in the audio component of the communication using the person's common name.

The House bill contains a requirement that communications from a person in which a foreign government holds more than a 10 percent ownership stake identify the foreign government as a partial owner of the person. The Senate bill does not contain such a requirement.

**AS 15.13.110("g")**

The House bill requires independent expenditure reports to be filed with APOC within 24 hours after the expenditure has been made. The Senate bill requires that independent expenditure reports be filed within 10 days, except independent expenditures that exceed \$250 and that are made within nine days of an election must be reported within 24 hours.

**15.56.014(a)**

The Senate bill amends AS 15.56.014 to provide that any person, not just a "candidate, group, or individual," who knowingly prints or publishes a communication intended to influence the outcome of an election without the words "paid for by" has committed campaign misconduct in the second degree (this change could be described as a conforming change). This section is not present in the House bill.

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

TLAB:ljw  
10-243.ljw

# LEGAL SERVICES

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## MEMORANDUM

March 17, 2010

**SUBJECT:** Committee questions of March 15, 2010 (CSSB 284(JUD))  
(Work order No. 26-LS1448\E)

**TO:** Senator Hollis French  
Chair of the Senate Judiciary Committee  
Attn: Cindy Smith

**FROM:** Alpheus Bullard *AB*  
Legislative Counsel

As part of a legislative response to the United States Supreme Court's ruling in Citizens United v. Federal Election Commission, No. 08-205, 558 U.S. \_\_\_ (January 21, 2010), you requested a legal opinion as to whether the state could prohibit independent expenditures made in connection with a state election, by (1) foreign nationals, (2) American subsidiaries of foreign nationals, (3) domestic corporations owned in part by foreign nationals, and (4) domestic corporations or entities not domiciled in Alaska.

Any statute prohibiting a person from making an independent expenditure in connection with a state election is likely to be challenged on First Amendment grounds. A state prohibition against independent expenditures made by foreign nationals, who are already prohibited from making contributions or expenditures in connection with federal, state, or local elections under federal law, raises federal preemption issues. Prohibiting independent expenditures by domestic subsidiaries of foreign corporations, domestic corporations owned in part by foreign nationals, and domestic corporations or entities not domiciled in Alaska raise additional constitutional issues.

### **First Amendment**

The First Amendment of the Constitution of the United States protects freedom of speech and freedom of association.<sup>1</sup> Independent expenditures made in connection with state elections are protected speech under the First Amendment. See Randall v. Sorrell, 548 U.S. 230 (2006), and Buckley v. Valeo, 424 U.S. 1 (1976).

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<sup>1</sup> Note that the freedom of speech provision in article I, section 5 of the Constitution of the State of Alaska is more protective of speech than the United States Constitution's First Amendment. Mickens v. City of Kodiak, 640 P.2d 818, 820 (Alaska 1982); Messerli v. State, 626 P.2d 81, 83 (Alaska 1980).

An attempt to prohibit independent expenditures by any class or category of persons is likely to encounter constitutional problems associated with First Amendment protections of the rights of association and expression.

The concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed "to secure the widest possible dissemination of information from diverse and antagonistic sources," and "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people."

Buckley, 424 U.S. at 48 - 49 (quoting New York Times Co. v. Sullivan, 376 U.S. 254, 266, 269 (1964) (citations omitted)). 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. 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 21, 2010).

Given that independent expenditures have not been found to present a risk of corruption or the appearance of corruption, a state effort to prohibit independent expenditures from any source may face significant First Amendment hurdles.

**The state's interest in prohibiting independent expenditures made by nonresidents or persons domiciled outside the state**

I am not aware of any applicable judicial decision holding that protecting state residents from nonresident domination or enhancing voter participation is a compelling state interest. See Alaska Civil Liberties Union, 978 P.2d at 615. Instructive, however, is VanNatta v. Keisling, 151 F.3d 1215 (9th Cir. 1998), in which the Ninth Circuit invalidated a geographically based restriction on political contributions enacted by initiative in Oregon. The court found:

Measure 6 bans all out-of-district donations, regardless of size or any other factor that would tend to indicate corruption. Appellants are unable to point to any evidence which demonstrates that all out-of-district contributions lead to the sort of corruption discussed in Buckley. . . . Measure 6 is not closely drawn to advance the goal of preventing corruption and under this analysis fails to pass muster under the First Amendment.

Id. at 1221. The proponents of the initiated law in VanNatta also offered an alternate justification for the measure, apart from the corruption rationale. They argued that the measure protected the state's interest in the integrity of republican government by, in the

court's words, "assuring that representatives are truly selected by their own constituents." Id. However, the court rejected this justification, observing that "[t]he right to a republican form of government has never been recognized as a sufficiently important state interest." Id., citing Whitmore v. Federal Election Comm'n, 68 F.3d 1212 (9th Cir.1995) (rejecting the same argument as a justification for a ban on out-of-state contributions in Alaska). A state law prohibiting independent expenditures made by persons who are citizens of, or who are domiciled in, other states would be similarly evaluated by a court, and absent some evidence showing the corrupting influence of non-resident expenditures, would be struck down by a court.

### **Privileges and immunities**

Prohibiting independent expenditures from non-residents would also be subject to challenge under the privileges and immunities clause. The federal privileges and immunities clause restricts the state's ability to interfere with the fundamental rights of non-residents. See Robison v. Francis, 713 P.2d 259, 263 (Alaska 1986). The Alaska Supreme Court has summarized the effect of the privileges and immunities clause as follows:

Article IV, section 2 prohibits discrimination against nonresidents "where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other states." No "substantial reason" will be found absent some showing that nonresidents are "a peculiar source of the evil" which the state's action is meant to remedy. In addition, the discrimination worked upon nonresidents must "bear a substantial relationship to the particular 'evil' they are said to present." Only if the challenged discriminatory action surmounts both of these hurdles will it survive privileges and immunities clause scrutiny.

Noll v. Alaska Bar Association, 649 P.2d 241, 244 (Alaska 1982) (quoting Toomer v. Witsell, 334 U.S. 385, 396 (1948), and Hicklin v. Orbeck, 437 L.Ed.2d 397, 404 (1978); citations omitted). So, in addition to having to provide a "compelling justification" for the measure to satisfy the First Amendment, you would also need to show a "substantial reason" why a prohibition against independent expenditures should apply only to non-residents in order to withstand a privileges and immunities clause challenge.

### **Equal protection**

If the state were to prohibit domestic subsidiaries of foreign corporations, domestic corporations owned in part by foreign nationals, or domestic corporations or other organizations not domiciled in the state from making independent expenditures in connection with a state election, the prohibition would likely also face an equal protection challenge. "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."<sup>2</sup> 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 using a sliding scale.<sup>3</sup> 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.

Because federal law prohibits foreign nations from making contributions or expenditures, directly or indirectly, in connection with a state election, it is not clear to me what state purpose any of these possible prohibitions would serve. Consequently, I do not know how a court would evaluate the state's interest in prohibiting domestic subsidiaries of foreign corporations, domestic corporations owned in part by foreign nationals, or domestic corporations or other organizations not domiciled in the state from exercising their First Amendment right recognized in Citizens United to make independent expenditures.

### **Preemption**

In Citizens United, the Supreme Court neither considered nor overruled the existing federal law that prohibits a "foreign national" from making a direct or indirect expenditure in connection with a federal, state, or local election. The Federal Election Campaign Act (FECA) prohibits any foreign national from contributing, donating, or spending funds in connection with any federal, state, or local election in the United States, either directly or indirectly.<sup>4</sup> Because 2 U.S.C. § 441e already clearly prohibits foreign nationals from making campaign contributions, expenditures, and independent expenditures in federal, state, and local elections, a state effort to legislate in this area may face a preemption challenge.

The Supremacy Clause, Art. VI, cl. 2 of the Constitution of the United States, provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

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<sup>2</sup> Anderson v. State, 78 P.3d 710, 718 (Alaska 2003).

<sup>3</sup> Matanuska-Susitna Borough School v. State, 931 P.2d 391, 396 (Alaska 1997).

<sup>4</sup> See 2 U.S.C. § 441e, 22 U.S.C. § 611(b), and 11 C.F.R. 110.4.

The Alaska Supreme Court has noted that "[u]nder the Supremacy Clause of the federal constitution, state laws that interfere with federal laws are invalid." Allen v. State, 203 P.3d 1155, 1161, n. 12 (Alaska 2009), quoting State v. Dupier, 118 P.3d 1039, 1049 (Alaska 2005). The court recently summarized federal preemption law as follows:

There is a presumption against federal preemption of state law, and preemption doctrine "enjoin[s] seeking out conflicts between state and federal regulation where none clearly exists." Additionally, "[w]here co-ordinate state and federal efforts exist within a complementary administrative framework, and in the pursuit of common purposes," . . . "the case for federal pre-emption becomes a less persuasive one." But where state law comes into conflict with federal law, the Supremacy Clause of the United States Constitution dictates that state law must always yield.

There are three major types of federal preemption of state law: "express," "field," and "conflict" preemption. Express preemption occurs when Congress explicitly declares an intent to preempt state law in a particular area. . . .

Field preemption is the term used when the federal law governing a particular area is so comprehensive and so complete that Congress is said to have completely occupied a field, leaving no room for state law. We "will not infer an intent to occupy the field where Congress has left some room for state involvement." . . .

Conflict preemption occurs when a state law and a federal law are in conflict, either because compliance with both state and federal law is impossible or because the state law "stands as an obstacle to accomplishment and execution of the full purposes and objectives of Congress." . . .

Allen v. State, 203 P.3d 1155, 1160 - 1161 (Alaska 2009) (citations and footnotes omitted).

The state clearly does not have authority to regulate contributions and expenditures in campaigns for federal office; that has been expressly preempted by federal law. 2 U.S.C. § 453 (specifying that the provisions of the federal election campaigns act "supersede and preempt any provision of state law with respect to election to federal office"); 11 C.F.R. 108.7(b)(3) (federal law "supersedes state law concerning the . . . [l]imitation on contributions and expenditures regarding Federal candidates and political committees.").

Whether the state may prohibit independent expenditures from foreign nationals in campaigns for state office is less clear. I am not aware of any federal statute or regulation which expressly preempts state regulation of foreign expenditures in campaigns for state

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office. However, field preemption may come into play here. To the extent a court found that the federal law governing contributions and expenditures by foreign nationals is so comprehensive and complete as to "occupy the field," it could invalidate state law attempting to cover the same ground. To the extent that the state and federal laws conflict, conflict preemption is also a possibility.

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

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# MEMORANDUM

# STATE OF ALASKA

DEPARTMENT OF LAW

**TO:** Mike Nizich  
Chief of Staff  
Office of the Governor

**DATE:** February 19, 2010

**FROM:** Daniel S. Sullivan  
Attorney General

**SUBJECT:** Analysis of *Citizens United v. Federal Election Commission* and its Impact on Alaska Campaign Finance Laws

The following is our response to your request for an analysis of the United States Supreme Court's decision in *Citizens United v. Federal Election Commission* 558 U.S. \_\_\_, --- S.Ct. ---- (2010) and how that decision impacts Alaska's campaign finance laws. The ruling affects the balance between a government's interest in ensuring transparent and fair elections and the First Amendment rights of organizations, such as corporations and labor unions, to engage in political speech. In this memorandum we will describe the holding of the case as well as its direct and indirect effects on Alaska law.

## I. Summary

Our analysis addresses two main points. First, under *Citizens United*, Alaska may not prohibit political speech by corporations and labor unions altogether.<sup>1</sup> As a result, our laws prohibiting independent expenditures by corporations and labor unions in a candidate election are likely unconstitutional.

Second, Alaska's laws regarding contributions to candidates, coordinated expenditures, disclaimers, and disclosures are not directly affected by *Citizens United*. Alaska's laws continue to regulate corporate and labor union political speech through disclaimer and disclosure requirements. However, some disclaimer and disclosure laws that provide specific standards for reporting and identification of expenditures do not currently apply to corporations and labor unions.

## II. *Citizens United v. Federal Election Commission*

On January 21, 2010, the United States Supreme Court issued its opinion in *Citizens United v. Federal Election Commission*.<sup>2</sup> The Court's main holding was that

<sup>1</sup> See 558 U.S. \_\_\_, at 2, --- S.Ct. ---- (2010).

<sup>2</sup> 558 U.S. \_\_\_, --- S.Ct. ---- (2010).

“the Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether.”<sup>3</sup> The particular federal law reviewed by the Court, part of the Bipartisan Campaign Reform Act of 2002,<sup>4</sup> prohibited corporations and unions from using their general treasury funds to make independent expenditures for speech that is an electioneering communication or for speech that expressly advocates the election or defeat of a candidate.<sup>5</sup> The Court held that this prohibition on corporate and labor union speech violated the First Amendment to the United States Constitution. Because the First Amendment applies to states as well as the federal government, the ruling not only strikes down the federal requirement, it also calls into question similar provisions enacted by the State of Alaska.<sup>6</sup>

The Court further ruled that the disclosure and disclaimer laws under the Bipartisan Campaign Reform Act are justified to provide the electorate with information about the sources of election-related spending and that disclosure assists citizens in making informed choices in the marketplace of political ideas.<sup>7</sup>

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<sup>3</sup> *Id.* at 1-2.

<sup>4</sup> 2 U.S.C. § 441b (2000).

<sup>5</sup> 2 U.S.C. § 441b(b)(2) prohibited corporations and labor unions from using general treasury funds to make expenditures on electioneering communications, which include broadcast, cable, or satellite communications that refer to a clearly identified candidate for federal office and are made within 30 days of a primary or 60 days of a general election. 2 U.S.C. § 434(f)(3)(A); 11 CFR § 100.29(a)(2)(2009).

<sup>6</sup> *See Gitlow v. New York*, 268 U.S. 652, 666, 45 S.Ct. 625, 630 (1925) (freedom of speech protected by the First Amendment from abridgment by Congress is among the fundamental personal rights protected by the due process clause of the Fourteenth Amendment from impairment by the States); *see also Near v. Minnesota*, 283 U.S. 697, 51 S.Ct. 625 (1931); *DeJonge v. Oregon*, 299 U.S. 353, 57 S.Ct. 255 (1937).

<sup>7</sup> 558 U.S. \_\_\_, at 51-2 (citing *Buckley v. Valeo*, 424 U.S. 1, 66, 96 S.Ct. 612, 657 (1976) (*per curiam*)). Under federal law, televised electioneering communications funded by anyone other than a candidate must include a disclaimer describing the entity responsible for the content of the ad. The required statement must be made in a clearly spoken manner and displayed on the screen in a clearly readable manner for at least four seconds. It must state that the communication is not authorized by any candidate or candidate’s committee and it must display the name and address of the person or group that funded the advertisement. *Id.* (citing 2 U.S.C. § 441d(a)(2)).

### III. The Direct and Indirect Impacts of *Citizens United* on Alaska Laws

#### A. Overview

Alaska campaign finance laws regulate a majority of state elections, the ballot proposition process, lobbying, and the judicial retention process.<sup>8</sup> These laws regulate the conduct of candidates, political parties, individuals, lobbyists, corporations, labor unions, groups, and other entities. Both state and federal campaign finance laws make several important distinctions with respect to the application of such laws. For instance, Alaska campaign finance laws distinguish “contributions” from “expenditures.” A contribution is basically a purchase, payment, or deposit rendered directly to a candidate or political party.<sup>9</sup> An expenditure is defined broadly to include several activities which are not direct contributions to candidates. Expenditures include direct payments for services but also include various communications.<sup>10</sup> An “independent expenditure” is a type of expenditure but is more limited in that it is made without any coordination with a candidate.<sup>11</sup>

Another important distinction is between disclosures and disclaimers. Certain campaign finance laws mandate public reporting of expenditures made. In campaign finance jurisprudence, these laws are referred to as disclosure laws. When a campaign finance law requires an identification to be placed on a communication, courts and campaign finance law commentators broadly refer to this as a disclaimer law. The Alaska Public Offices Commission enforces the legality of contributions and expenditures and also ensures that individuals and entities are properly disclosing and disclaiming their conduct as it relates to an election.<sup>12</sup>

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<sup>8</sup> See AS 15.13.010(a)(1)-(2)(describing scope of AS 15.13, entitled State Election Campaigns).

<sup>9</sup> See AS 15.13.400(4)(A).

<sup>10</sup> An expenditure is defined, in relevant part, as “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...influencing...[the outcome of an election].” Expenditures also include “express communications” and “electioneering communications.” AS 15.13.400(6).

<sup>11</sup> An 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.” AS 15.13.400(10).

<sup>12</sup> See generally AS 15.13.010(b); AS 15.13.400(1); AS 15.13.400(8), (11), (13)-(15); AS 15.13.030.

*Citizens United* directly implicates one key aspect of Alaska's campaign finance laws: Alaska's prohibition on independent expenditures by corporations or labor unions in candidate elections.<sup>13</sup> The decision does not directly call into question the constitutionality of any other contribution, expenditure, disclaimer or disclosure law. For example, Alaska's prohibition on direct contributions to candidates by corporations and labor unions is unaffected.<sup>14</sup> Candidates and their agents are still prohibited from accepting contributions from corporations and labor unions.<sup>15</sup> A corporation or labor union still may not directly or indirectly consult or cooperate with candidates or their agents when making an expenditure.<sup>16</sup> Individuals are still limited to contributing \$500 per year to a candidate, and \$5,000 per year to a political party,<sup>17</sup> and corporations and labor unions must continue to follow disclosure laws whenever applicable.<sup>18</sup> The current statutes and regulations that require that an independent expenditure in a candidate election be reported within 10 days will be applicable to a corporation or labor union that makes such an expenditure.<sup>19</sup> There must be some identification of corporations or labor

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<sup>13</sup> See AS 15.13.067; AS 15.13.135(a).

<sup>14</sup> See AS 15.13.065(a); AS 15.13.074(a).

<sup>15</sup> AS 15.13.072(a)(1).

<sup>16</sup> AS 15.13.400(10). 2 AAC 50.270 provides guidance as to what constitutes an independent expenditure. Where an expenditure is based on information provided by the candidate or an agent of a group or nongroup entity, it is not an independent expenditure. An expenditure is not an independent expenditure if it is made based on data from a candidate's, group's, or nongroup entity's pollster or campaign consultant or any other person who receives compensation or reimbursement from the campaign. Solicitations to a candidate, group, or nongroup entity, or an expenditure made to finance distribution of campaign material provided by the candidate or his agents are not independent expenditures.

<sup>17</sup> AS 15.13.070(b)(1)-(2).

<sup>18</sup> See AS 15.13.400(14); AS 01.10.060. Because the relevant statutes define "person" to include a corporation or labor union, statutes and regulations that cover a "person" apply to any corporation or union making an independent expenditure in a candidate election.

<sup>19</sup> AS 15.13.040(d) states that "every individual, person, nongroup entity, or group making an expenditure shall make a full report of expenditures, upon a form prescribed by the commission, unless exempt from reporting." AS 15.13.040(e) states that "the report required under (d) must 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 no later than 10 days after the expenditure is made." The reporting requirement of AS 15.13.040(d) and (e) applies to all "persons"

unions making an independent expenditure as they are subject to the requirement that such independent expenditures may not be made anonymously.<sup>20</sup>

**B. Alaska's Prohibition on Expenditures – AS 15.13.067 and AS 15.13.135(a)**

*Citizens United* likely invalidates AS 15.13.067 and AS 15.13.135(a) in their current form. Under AS 15.13.067, expenditures in candidate elections may only be made by candidates, individuals, groups, and nongroup entities. Under AS 15.13.135(a), “independent expenditures” in candidate elections may only be made by individuals, groups and nongroup entities. Because labor unions and corporations do not fall within the definitions of individual, group, or non-group entity,<sup>21</sup> AS 15.13.067 and AS 15.13.135(a) prohibit corporations and labor unions from making any expenditures in candidate elections. Alaska law defines expenditure broadly to include activities which are political speech.<sup>22</sup> After *Citizens United*, these specific prohibitions will not likely pass constitutional muster.

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who make an expenditure. A person is defined to include corporations and unions. AS 15.13.400(14); AS 01.10.060.

Alaska regulations likewise require reporting of all independent expenditures. 2 AAC 50.270(c) provides that “a person making an independent expenditure must disclose the following on an independent expenditure report under AS 15.13.040 (d) and (e): (1) the date of the expenditure; (2) the amount of the expenditure; (3) the check number, if the expenditure is paid by check; (4) the name and address of the payee; (5) a description of items or services purchased; (6) identification of the candidate or ballot proposition the expenditure was intended to influence; (7) a statement as to whether the expenditure was intended to support or oppose the candidate or ballot proposition.”

<sup>20</sup> AS 15.13.084 states that “a person may not make an expenditure anonymously,” unless the expenditure is made by an individual acting independently and the expenditure is made for a billboard or sign, or printed material other than an advertisement in a newspaper or other periodical.

<sup>21</sup> AS 15.13.400(8), (11), (13).

<sup>22</sup> Specifically, Alaska law prohibits corporations and labor unions from making express communications, electioneering communications, and any payment made to influence the outcome of a candidate election. AS 15.13.400(6)(A)(i);(C); *see also* AS 15.13.400(5), (7). Other parts of the expenditure definition do not implicate political speech. For example, expenditures include purchases made for the purpose of a political party or direct payment of personal services rendered to a candidate or political party. *See, e.g.*, AS 15.13.400(6)(A)(ii)-(iii).

Accordingly, we recommend that these two statutes be amended to conform to the holding of *Citizens United* in order to clarify the extent to which corporations and labor unions may make independent expenditures.

**C. Disclosure of Expenditures – AS 15.13.040(d) and (e)**

The Supreme Court in *Citizens United* specifically upheld laws requiring the disclosure of independent expenditures. The Court found that the disclosure laws assisted the electorate in making informed choices in the marketplace of political ideas.<sup>23</sup> Accordingly, *Citizens United* does not suggest that Alaska's disclosure laws are in any way unconstitutional. Alaska Statute 15.13.040(d) and (e) is a disclosure law that broadly applies to corporations and labor unions making independent expenditures in a candidate election. It provides that any person making any expenditure must report the expenditure within 10 days. Because corporations and unions are deemed to be "persons" under Alaska law, this requirement applies to them as well.<sup>24</sup> Thus, the requirement to disclose is written broadly enough to require disclosure of expenditures made by corporations and labor unions.

**D. Disclaimers For Communications – AS 15.13.084; AS 15.13.090; and AS 15.13.135(b)(2)**

*Citizens United* upheld federal disclaimer laws.<sup>25</sup> Thus, the decision does not suggest that Alaska's disclaimer laws suffer from any constitutional infirmity. Alaska Statute 15.13.090 is a disclaimer law requiring certain communications to be identified by the words "paid for by" followed by the name of the candidate, group or nongroup entity paying for the communication. Alaska Statute 15.13.135(b)(2) is a disclaimer law which requires that certain independent expenditures contain a disclaimer that they are not authorized or paid for by a candidate. However, because corporations and labor unions were not permitted to make any expenditures in a candidate election, these specific statutes were not written to apply to them, and only refer to individuals, groups, and nongroup entities.

Corporations and labor unions are nevertheless subject to AS 15.13.084 which prohibits independent expenditures in a candidate election from being made

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<sup>23</sup> 558 U.S. at 51-2 (citing *Buckley*, 424 U.S. at 66, 96 S.Ct. at 657).

<sup>24</sup> See *supra* note 18. Cf 2 AAC 50.270(c) (reporting of independent expenditures applies to "persons," and thus to corporations and labor unions). Additionally, "persons," including corporations and labor unions, are required to preserve their expenditure records for up to 6 years after the expenditure is made. AS 15.13.111.

<sup>25</sup> 558 U.S. at 51-2 (citing *Buckley v. Valeo*, 424 U.S. at 66, 96 S.Ct. at 657).

anonymously; thus some identification is required.<sup>26</sup> This prohibition is very general and it is unclear how a corporation or labor union must identify itself when making the expenditure. This may create uncertainty among corporations and labor unions about how to proceed with speech protected under *Citizens United*. Therefore, consideration should be given to amending AS 15.13.084 to clarify how corporations or labor unions must identify themselves when exercising their right to make independent expenditures in an election. As discussed above, it would be constitutional to extend the requirements of AS 15.13.090 and AS 15.13.135(b)(2) to corporations and labor unions.

#### **E. Other Reporting and Disclosure Issues – AS 15.13.110 and AS 15.13.086(2)**

As stated above, *Citizens United* did not invalidate disclosure or disclaimer laws,<sup>27</sup> and Alaska statutes currently require all persons making independent expenditures to report those expenditures to The Alaska Public Offices Commission within 10 days.<sup>28</sup> However, policy makers should consider whether other forms of disclosure for corporations and labor unions making independent expenditures in candidate elections are appropriate. For example, under AS 15.13.110, groups, nongroup entities, and candidates must file reports for election-related activity 30 days before an election, seven days before an election, and at year's end. The reporting requirements under AS 15.13.110 do not apply to "persons" and thus corporations and labor unions, like individuals, are exempt. Because corporations and labor unions were not allowed to make independent expenditures when this statutory scheme was created, we do not believe the drafters had corporations and unions in mind when this requirement was imposed only on candidates, groups and nongroup entities.

In addition to reporting expenditures, AS 15.13.110 requires groups,<sup>29</sup> nongroup entities,<sup>30</sup> and candidates<sup>31</sup> to include information regarding the source of all contributions in these reports. Under current Alaska law, corporations and labor unions would be required to report only their expenditures.<sup>32</sup> But as there is currently no Alaska

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<sup>26</sup> AS 15.13.084, prohibits all "persons" from making anonymous expenditures and expenditures using a fictitious name or the name of another. As explained above, corporations and labor unions are persons under the law.

<sup>27</sup> 558 U.S. at 51-2.

<sup>28</sup> AS 15.13.040(d)-(e).

<sup>29</sup> AS 15.13.400(8).

<sup>30</sup> AS 15.13.400(13).

<sup>31</sup> AS 15.13.400(1).

<sup>32</sup> AS 15.13.040(d)-(e).

law that requires a corporation or labor union to report the source of funds used to make expenditures, corporations and labor unions could receive funds for the purpose of making an independent expenditure in a candidate election. This situation was not contemplated at the time these reporting statutes were enacted due to the prohibition on expenditures by corporations or labor unions in candidate elections.

Additionally, while candidate contributions exceeding \$250 made within nine days of the election must be reported to The Alaska Public Offices Commission within 24 hours of receipt by the candidate,<sup>33</sup> under current law, an independent expenditure made within 10 days of a candidate election does not have to be reported until after the election.<sup>34</sup> The latter timeline now likely applies to corporations and labor unions making independent expenditures in candidate elections after *Citizens United*.

#### **F. Independent Expenditures by Foreign Corporations**

Federal law currently prohibits expenditures made by foreign nationals and foreign corporations in state elections.<sup>35</sup> *Citizens United* did not invalidate this law, nor did it decide whether the federal government has a compelling interest in preventing foreign individuals or associations from influencing our nation's political process.<sup>36</sup> Alaska law does not have a corresponding prohibition on expenditures made by foreign nationals or foreign corporations in our elections.<sup>37</sup>

#### **IV. Conclusion**

*Citizens United* has had both direct and indirect impacts on Alaska campaign financing laws. We recommend that those laws directly impacted by the ruling, the prohibition on expenditures by corporations and labor unions, be amended to provide more clarity to Alaskans. We also identify, for your consideration, other areas of law regulating expenditures that were indirectly impacted by this decision.

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<sup>33</sup> AS 15.13.110(b).

<sup>34</sup> See AS 15.13.040(d)-(e).

<sup>35</sup> 2 U.S.C. § 441e prohibits any foreign national, including any foreign associations such as foreign corporations, from spending funds in connection with any state or local election in the United States.

<sup>36</sup> 558 U.S. \_\_\_\_, at 47 citing 2 U.S.C. § 441(e).

<sup>37</sup> Because Alaska law currently restricts all expenditures, Alaska statutes do not differentiate between foreign and domestic corporations. AS 15.13.400(14); AS 01.10.060.

# MEMORANDUM

## State of Alaska Department of Law

TO: Chris Ellingson, APOC

DATE: May 29, 2008

SUBJECT: *Wilkson's letter re  
raffle and lotteries.*

FROM: Thomas A. Dosik  
Assistant Attorney General

TEL. NO.: 269-5156

### ATTORNEY CLIENT PRIVILEGED INFORMATION

#### I. BACKGROUND

Mr. Jim Wilkson, an attorney representing an unnamed client,<sup>1</sup> wrote to the Brooke Miles, Executive Director of the Alaska Public Offices Commission, claiming that certain APOC regulations prevented his client from complying with Department of Revenue regulations regarding the use of raffles and lotteries to raise money for political candidates and causes. Mr. Wilkson's client wants to use a raffle or lottery to raise money for its affiliated political action committee. He claims that such a raffle or lottery is specifically allowed under the gaming laws, but prohibited by the campaign finance regulations.

As Mr. Wilkson sees it, the gaming laws allow organizations with gaming permits to dedicate the proceeds from raffles and lotteries to political candidates and causes. However, the campaign finance regulations bar those same organizations from transferring raffle and lottery proceeds to political candidates and causes. Mr. Wilkson cites APOC's interpretation of the word "contribute" in 2 AAC 50.250 as the problem here. Because, he claims, his client is prohibited by AS 15.13.074(f) from making a "contribution" to a political cause, the client is unable to hold a raffle as envisioned by the gaming statutes and regulations.

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<sup>1</sup> The head of the Department of Revenue's gaming unit suspects that the Alaska Cabaret, Hotel, Restaurant and Retailers Association is the unnamed client. He refused to grant a gaming permit to a PAC they formed, and issued one to CHARR instead.

## II. RELEVANT LEGAL AUTHORITIES.

### A. Statutes:

AS 05.15.100(a): The department may issue permit to a municipality or qualified organization....

AS 05.15.690(38): "Qualified organization" means a bona fide civic or service organization or a bona fide religious, charitable, fraternal, veterans, labor, political, or educational organization ... that operates without profits to its members and that has been in existence continually for a period of three years immediately before applying for the license or permit; the organization may be a firm, corporation, company association or partnership.

AS 05.15.690(36): "political organization" means an organization or club organized under or formally affiliated with a political party as defined in AS 15.60.010.

AS 05.15.150: (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 ... aiding candidates for public office or groups that support candidates for public office ... but does not include ...

(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,*

(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.

(emphasis added)

AS 05.15.130: The department may supplement the definitions of qualified organizations and activities by regulations adopted under this chapter adding to the definitions additional requirements that the department considers necessary for the best interests of the public or for the proper administration of this chapter.

AS 15.13.074(f): A corporation, company, partnership, firm, association, entity recognized as tax-exempt under 26 U.S.C. § 501(c)(3)(Internal Revenue Code), organization, business trust or surety, labor union, or publicly funded entity that does not satisfy the definition of group or nongroup entity in AS 15.13.400 may not make a contribution to a candidate, group or nongroup entity.

**AS 15.13.400(4):** "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 political party, candidate, or ballot proposition or question;....  
(emphasis added)

**B. Regulations:**

**2 AAC 50.250:** a) In AS 15.13 and this chapter, except as otherwise provided in this section, "contribution"

(1) has the meaning given in AS 15.13.400 ;

(2) includes a

(A) subscription, advance, *transfer*, forgiveness of all or part of a debt, relaxation of credit, or anything of value made or provided by a person, group, or nongroup entity for the purpose of influencing an election for state or municipal office or influencing the passage or defeat of a ballot proposition or question; ....  
(emphasis added)

**15 AAC 160.810(f):** "a permittee that dedicates or otherwise transfers net proceeds to another organization must take steps to ensure that the net proceeds are spent in accordance with AS 05.15.150.

**C. Prior Advisory Opinions and AG Opinions.**

**AO97-19-CD** (June 3, 1997): APOC determined that the Fairbanks Central Labor Council may not conduct a raffle on behalf of PAC or group, because campaign disclosure laws prohibit unions from making political contributions.

**December 2, 1982 Attorney General Opinion No.14 (1982 WL 43795):** This opinion addressed three issues: 1) Whether an organization can conduct a raffle on behalf of a political campaign, and transfer more than \$1000 to that campaign; 2) Whether there was a limit on the amount of raffle proceeds which could be donated to the campaigns of Libertarian Party candidates, considering the fact that the Libertarian Party was not considered a "political party" under then AS 15.60.010(20) until after the election; and 3) Can a raffle permit be issued to a political organization not in existence for at least five years before it applies for the permit.

The short answers to these questions were that a raffle permit could not be loaned, nor could raffle proceeds in excess of \$1000 be given to another campaign. Because the Libertarians were not a recognized political party under AS 15.60.010(2) as it read at the time, there was a limit of \$1000 that could be donated to the campaigns of the various Libertarian candidates.

The opinion noted that although there may be grounds for challenging the five year limit as an unconstitutional discrimination against new entrants into the political arena, the statute clearly precluded less than five year old organizations from receiving raffle permits.

**1997 Alaska Op. Atty. Gen. 77 (March 16, 1997) 1997 WL 556998:** The Department of Revenue had interpreted AS 05.15.150 to mean that political entities could receive permits to conduct any game allowed under AS 05.15 other than raffles or lotteries, but their use of the monies raised through activities other than raffles or lotteries was limited. For example a political entity could get a pull tab permit as long as the proceeds were donated to some other cause. APOC had come to the opposite conclusion, and read the statute to require a denial of a permit—other than for a raffle or lottery—to a political entity. The opinion concluded that the Department of Revenue's interpretation was not unreasonable. The opinion did not address the conflict between APOC and the Department of Revenue.

#### **D. Additional Information:**

According to Dan Branch, the AAG who represents the Department of Revenue in matters related to charitable gaming, the Department of Revenue will deny a gaming permit application submitted by a PACs, even if the PAC meets the longevity and number of members requirements. The Department takes the position that PACs are not political organizations for purposes of AS 05.15.690 because PACS are not organized under or affiliated with one of the recognized political parties.

### **III. ANALYSIS**

There does appear to be some tension between the gaming statutes and the campaign finance statutes with regard to the use of raffles and lotteries as fundraisers for political purposes. On the one hand, the gaming statutes allow raffles and lotteries as fundraisers for political candidates, parties and groups. On the other, the campaign finance statutes prohibit nearly every organization which could obtain a gaming permit from making a contribution to a political candidate, party or group. However, because there are certain organizations, namely political parties, that may obtain a gaming permit, and may also make contributions to political candidates and causes, the most plausible reading of the statutes is that raffle and lottery provision was meant only to apply to them. Mr. Wilkson's client simply is not in the limited pool of organizations that may hold a raffle and contribute the proceeds to a political cause, and his focus on the regulation is misplaced.

The Department of Revenue may grant a gaming permit to a "qualified organization." AS 05.15.100(a). The authority to conduct a game under AS 05.15 is contingent upon the dedication of the net proceeds to "political, educational, civic, public, charitable, patriotic or religious uses in the state." AS 05.15.150(a). These "political, educational, etc. uses" do not include the payment of any portion of the net proceeds of any charitable game, except a raffle or lottery<sup>2</sup> to a political candidate, party or group.<sup>3</sup> AS 05.15.150(a). The fact that the statute has a specific prohibition on gaming proceeds going to political purposes, and a specific exception for raffle and lottery proceeds from that prohibition, clearly indicates that the legislature did intend that raffles and lotteries could be used to raise funds for political purposes.

However, AS 15.13.074(f), prohibits a "corporation, company, partnership, firm, association, entity recognized as tax-exempt under 26 U.S.C. § 501(c)(3)(Internal Revenue Code), organization, business trust or surety, labor union, or publicly funded entity that does not satisfy the definition of group or nongroup entity" from making a contribution to any candidate, group or nongroup entity. This statute encompasses most of the entities who may be allowed to receive gaming permits under AS 05.15.100(a), including, presumably, Mr. Wilkson's client. Mr. Wilkson argues that it is APOC's definition of contribution in 2 AAC 50.250 to include a "transfer" that causes the conflict here, and that the regulations should be amended to allow a non-profit to dedicate raffle and lottery proceeds to its affiliated PAC.

Mr. Wilkson is incorrect. APOC's regulation is entirely valid, and moreover, the simple fact that his client is prohibited from making a contribution to a political cause, does not mean that there is a problem here. The most plausible reading of the statutes is that the legislature intended it to apply only to a small subset of organizations which may obtain a gaming permit, and which may also make contributions to political causes—namely political parties.

#### **A. APOC's Regulation is Valid.**

Mr. Wilkson cites APOC's interpretation of "contribution" in 2 AAC 50.250(a)(2) as the cause of the problem vexing his client. Specifically, he claims that the inclusion of the word "transfer" in the regulation, but not in the statute, makes the regulation too broad. He is incorrect. The statutory definition of "contribution", AS 15.13.400(4) is quite broad, and includes any "deposit or gift of money." It is difficult to imagine how a transfer of money would not also be a "deposit."

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<sup>2</sup> As opposed to bingo, pull-tab games, ice classics, race classics, rain classics, goose classics, mercury classics, deep freeze classics, canned salmon classics, salmon classics, king salmon classics, dog mushers' contests, snow machine classics, fish derbies, animal classics, crane classics, Calcutta pools and contests of skill. AS 05.15.100(a).

<sup>3</sup> AS 05.15.150(a) details the specific uses which are not prohibited for raffle and lottery proceeds. For ease of reference in this memorandum, the uses allowed under AS 05.15.150(a)(3)(A)-(C) will be referred to as "political purposes."

2 AAC 50.250 is perfectly valid and in accordance with the law. The Alaska Supreme Court has given the following guidelines for determining the validity of an agency regulation:

There is a three part analysis which courts apply to the validity of regulations: first whether the legislature delegated the rule making authority to the agency; second whether the regulation is consistent with and reasonably necessary to implement the authorizing statute and whether it is reasonable and not arbitrary, and third court considers whether the regulation conflicts with any other state statute or constitutional provisions.

*O'Callaghan v. Rue*, 966 P.2d 88 (Alaska 2000).<sup>4</sup> Under this standard, there is nothing improper about 2 AAC 50.250. Under AS 15.13.030(9) APOC has the express authority to adopt regulations necessary to implement the campaign finance statutes. The regulation is consistent with the authorizing statutes, it does not overturn or change the statutory definition of a contribution. The regulation only clarifies and refines the statutory definition, filling in gaps left unaddressed by the legislature.<sup>5</sup> Nor does the regulation appear, on its face, to be unreasonable or arbitrary (and there is no allegation here that is arbitrary).

Slightly more problematic is the third part of the test: Whether the regulation conflicts with any other state statute or constitutional provision. As Mr. Wilkson points out, most organizations that are allowed to obtain a charitable gaming permit are prohibited from making a "contribution" to a political cause. However, the tension between the gaming statutes and the campaign finance statutes is inherent in the statutes

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<sup>4</sup> This *O'Callaghan* analysis is based primarily on AS 44.62.030, which states:

If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, a regulation adopted is not valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

<sup>5</sup> One might quibble over the regulation's necessity, but the courts don't seem to take the "reasonably necessary" part of the test all that seriously:

If we find the proper nexus between the challenged regulation and the statutory purpose (i.e., the regulation is consistent with the statutory purpose), we do not generally require a separate showing of reasonable *necessity*. Strictly applied, inquiry into whether a regulation is *necessary* as a means to a legislative end would mire this court in questions of public policy and the advisability of possible alternatives. Such a searching inquiry is beyond our authority and expertise. It is a rare case where a regulation, although not inconsistent with the purpose of the statute, is wholly superfluous to the achievement of that purpose.

*State, Department of Revenue, Permanent Fund Dividend Division v. Cosio*, 858 P.2d 621, 624 n. 1 (Alaska 1993)

themselves, it is not the result of APOC's definition of contribution. Mr. Wilkson claims the addition of the word "transfer" in the administrative definition impermissibly contradicts the gaming statutes. Mr. Wilkson also suggests that APOC "exempt from its administrative definition of 'contribution' moneys generated by a raffle or lottery, deposited into a non-profit corporation permittee's gaming account, and then dedicated to the non-profit corporation's affiliated political action committee."

However, it is not the regulation that prevents a non-profit from dedicating raffle and lottery proceeds to its affiliated PAC, it is the statutory definition of "contribution" itself. AS 15.13.400(4) gives a broad meaning to "contribution," and defines a contribution to include a "a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money...." It is difficult to comprehend how the transfer of funds from a non-profit to a political action committee would not be either a payment, deposit, or gift of money from one entity to another. The inclusion of the word "transfer" by APOC does not materially broaden the definition of contribution in this case.

#### **B. The Statutes are not in Conflict.**

As stated above, the potential conflict is inherent in the gaming and campaign finance statutes, not in APOC's definition of contribution. When confronted with two such potentially conflicting statutes the courts will interpret them "with a view toward reconciling conflict and producing a harmonious whole." *Allen v. Oil and Gas Conservation Commission*, 143 P.3d 664 (Alaska 2006) quoting *Progressive Insurance Co. v. Simmons*, 953 P.2d 510, 516 (Alaska 1998). And, generally, "if two statutes conflict, then the later in time controls over the earlier, and the specific controls over the general." *Id.* At every step, however; the legislative intent is the key. *Id.* The Alaska Supreme Court has also stated that:

When construing statutory provisions for the presence or absence of conflict, we do not mechanically adhere to their literal meaning in disregard of legislative intent. Instead of the "plain meaning" rule, Alaska follows a sliding scale approach best summed up as, "the plainer the meaning of the language of the statute, the more convincing any contrary legislative history must be." This approach calls for application of the rules of statutory construction and inquiry into legislative history, even when statutory language appears clear in the abstract.

*Progressive Insurance Co. v. Simmons*, 953 P.2d 510, 516 (Alaska 1998)(internal citations omitted).

Unfortunately the legislative history of the gaming statutes and campaign finance statutes is not particularly helpful in clarifying this situation. Nothing in the legislative history shines any light on the legislative intent behind the particular provisions at issue here. The rule that statute later in time controls the earlier is similarly unenlightening. The amendment to AS 05.15.150(a) that provided for raffles and lotteries was part of the

same bill ( § 11 ch 48 SLA 1996) that enacted 15.13.074(f) which prohibited contributions from corporations, non-profits, unions and other organizations. And, the maxim that the specific controls over the general does not provide any guidance, as both statutes seem quite specific in their dictates.

However, just because Mr. Wilkson's client is unable to dedicate raffle or lottery proceeds to political causes, this does not mean that the statutes are necessarily in conflict. The most plausible reading of the statutes is that legislature intended that only political parties and their formal affiliates could hold a raffle or lottery and use the proceeds as described in 05.15.150(a)(3)(A)-(C). A political party is the only type of organization that meets the requirements for a "qualified organization" under the gaming statutes, and also retains the ability to make contributions to political causes under the campaign finance statutes.

AS 05.15.690(38) defines a "qualified organization" to include a "political organization." AS 05.15.690(36) defines a political organization as "an organization or club organized under or formally affiliated with a political party as defined in AS 15.60.010."<sup>6</sup> So, under the gaming statutes, a political party and its affiliates may obtain a permit to run a raffle or lottery. Turning to the campaign finance statutes, a political party is **not** one of the organizations prohibited from making a contribution to a candidate, group or nongroup entity under AS 15.13.074(f). Moreover, the campaign statutes specifically allow political parties to make contributions in certain amounts to candidates for state and local offices. AS 15.13.070.

This reading of the statutes also makes the most sense when viewed in the light of the general purposes behind the campaign finance laws. Mr. Wilkson's suggestion that the regulations be amended to allow a non-profit to contribute raffle and lottery proceeds to an affiliated PAC would create a massive loophole in the campaign finance laws. There would be nothing to prevent an organization from holding a raffle to benefit a particular candidate, with tickets priced at \$10,000 and two dollar stuffed toy as the prize. However, the amount a political party may contribute to a campaign is limited under AS 15.13.070. A raffle or lottery may give a political party a new and different fundraising

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<sup>6</sup> AS 15.60.010 defines a political party as:

[A]n organized group of voters that represents a political program and

- (A) that nominated a candidate for governor who received at least three percent of the total votes cast for governor at the preceding general election or has registered voters in the state equal in number to at least three percent of the total votes cast for governor at the preceding general election;
- (B) if the office of governor was not on the ballot at the preceding general election but the office of United States senator was on that ballot, that nominated a candidate for United States senator who received at least three percent of the total votes cast for United States senator at that general election or has registered voters in the state equal in number to at least three percent of the total votes cast for United States senator at that general election; or
- (C) if neither the office of governor nor the office of United States senator was on the ballot at the preceding general election, that nominated a candidate for United States representative who received at least three percent of the total votes cast for United States representative at that general election or has registered voters in the state equal in number to at least three percent of the total votes cast for United States representative at that general election.

tool, but it will not affect the total amount that may be contributed to various political causes.

Therefore, I recommend that the APOC maintain its current position, as expressed in the June 3, 1997 advisory opinion.

Number: AO97-19-CD

Requested by: John S. Brown, President

On Behalf of: Fairbanks Central Labor Council

Prepared by: Jenifer Kohout, Assistant Director

Date issued: June 3, 1997

Subject: Use of Gaming Permits

On November 6, 1997, the Alaska Public Offices Commission approved the following advisory opinion by a vote of 5-0.

This is in response to your August 22, 1997 letter requesting an advisory opinion regarding whether the Fairbanks Central Labor Council ("the Council") may allow a political action group to use the Council's gaming permit to conduct a raffle.

#### Summary

The Council may not conduct a raffle on behalf of a group formed for the purpose of political action. The campaign disclosure law prohibits unions from making political contributions.

#### The Law

AS 15.13.074(f) A corporation, company, partnership, firm, association, organization, business trust or surety, labor union, or publicly funded entity that does not satisfy the definition of group in AS 15.13.4000 may not make a contribution to a candidate or group.

2 AAC 50.313. Definition of a "Contribution." (a) In 2 AAC 50.310 - 2 AAC 50.405, except as otherwise provided in this section, "contribution" includes a payment, gift, subscription, loan, advance, transfer deposit of money, services, or anything of value made by a person or group for the purpose of influencing an election for state or municipal office or influencing the passage or defeat of a ballot proposition or question; and includes a personal contribution as described in 2 AAC 50.316.

In this section "anything of value" includes facilities, equipment, polling information, supplies, advertising services, membership lists, mailing lists, any item of real or personal property, and personal services of any kind, the cost or consideration for which is paid by a person other than the candidate or group for whom the services are rendered.

#### Facts

You indicate that the Council has possessed a State of Alaska Gaming Permit for some years. A group formed for the purpose of political action has recently requested the use of the Council's gaming permit to conduct a raffle. The proceeds of the raffle would be donated to political candidates.

When we spoke on the phone, you indicated that the Council's gaming permit allows the Council to run raffles for other nonprofit organizations. In the past, the Council has allowed other organizations to use the Council's permit. The organization using the permit orders the raffle tickets, picks them up and distributes them. As the permit holder, the Council handles the money for the actual raffle. After raffle costs are paid, you send a check for the remaining raffle proceeds to the organization using the permit. You state that as the "member in charge" you personally do the accounting. You also add that your services to the Council are volunteer.

The Manager of the Gaming Unit in the Department of Revenue, further clarified to staff that gaming permit holders may not transfer use of their gaming permits to another organization. Instead, an organization who holds a permit may conduct a raffle on behalf of a nonprofit organization. The permit holder accounts for all proceeds and then donates the money to the nonprofit organization.

#### **Analysis**

Under the campaign disclosure law, unions are now prohibited from making political contributions. This prohibition applies to the donation of money derived from the use of a union's gaming permit.

According to the head of the Gaming Unit in the Division of Income and Excise of the Department of Revenue, an organization who holds a gaming permit may not transfer its permit to another organization. Instead, a permit holder may conduct a raffle in the name of another organization and then donate the proceeds to that organization.

This arrangement is consistent with the mechanics you had described. Although the political action group you reference would buy and distribute the raffle tickets, the Council would collect all the money, pay the raffle costs, then issue a check to the political action committee for the raffle proceeds. This arrangement results in a contribution from the Council to the political action group. As a result, it is prohibited.

#### **Conclusion**

The Council may not use its gaming permit to conduct a raffle on behalf of a group formed for the purpose of political action.

**Sec. 15.13.010. Applicability.**

(a) This chapter applies

(1) in every election for governor, lieutenant governor, a member of the state legislature, a delegate to a constitutional convention, or judge seeking judicial retention;

(2) to every candidate for election to a municipal office in a municipality with a population of more than 1,000 inhabitants according to the latest United States census figures or estimates of population certified as correct for administrative purposes by the Department of Commerce, Community, and Economic Development unless the municipality has exempted itself from the provisions of this chapter; a municipality may exempt its elected municipal officers from the requirements of this chapter if a majority of the voters voting on the question at a regular election, as defined by AS 29.71.800 (20), or a special municipality-wide election called for that purpose, votes to exempt its elected municipal officers from the requirements of this chapter; the question of exemption from the requirements of this chapter may be submitted by the governing body by ordinance or by initiative election.

(b) Except as otherwise provided, this chapter applies to contributions, expenditures and communications made by a candidate, group, nongroup entity, municipality or individual for the purpose of influencing the outcome of a ballot proposition or question as well as those made to influence the nomination or election of a candidate.

(c) This chapter does not prohibit a municipality from regulating by ordinance election campaign contributions and expenditures in municipal elections, or from regulating those campaign contributions and expenditures more strictly than provided in this chapter.

(d) This chapter does not limit the authority of a person to make contributions to influence the outcome of a voter proposition submitted to the public for a vote at a municipal election. In this subsection, in addition to its meaning under AS 15.13.065 (c), "proposition" means a municipal reclassification, proposal to adopt or amend a home rule charter, a unification proposal, a boundary change proposal, or the approval of an ordinance when approval by public vote is a requirement for the ordinance.

**Sec. 15.13.030. Duties of the commission.**

The commission shall

(1) develop and provide all forms for the reports and statements required to be made under this chapter, AS 24.45, and AS 39.50;

(2) prepare and publish a manual setting out uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this chapter and otherwise assist candidates, groups, and individuals in complying with the requirements of this chapter;

(3) receive and hold open for public inspection reports and statements required to be made under this chapter and, upon request, furnish copies at cost to interested persons;

(4) compile and maintain a current list of all filed reports and statements;

(5) prepare a summary of each report filed under AS 15.13.110 and make copies of this summary available to interested persons at their actual cost;

(6) notify, by registered or certified mail, all persons who are delinquent in filing reports and statements required to be made under this chapter;

(7) examine, investigate, and compare all reports, statements, and actions required by this chapter, AS 24.45, and AS 39.50;

(8) prepare and publish a biennial report concerning the activities of the commission, the effectiveness of this chapter, its enforcement by the attorney general's office, and recommendations and proposals for change; the commission shall notify the legislature that the report is available;

(9) adopt regulations necessary to implement and clarify the provisions of AS 24.45, AS 39.50, and this chapter, subject to the provisions of AS 44.62 (Administrative Procedure Act); and

(10) consider a written request for an advisory opinion concerning the application of this chapter, AS 24.45, AS 24.60.200 - 24.60.260, or AS 39.50.

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

(a) Except as provided in (g) and (l) of this section, each candidate shall make a full report, upon a form prescribed by the commission,

(1) listing

(A) the date and amount of all expenditures made by the candidate;

(B) the total amount of all contributions, including all funds contributed by the candidate;

(C) the name, address, date, and amount contributed by each contributor; and

(D) for contributions in excess of \$50 in the aggregate during a calendar year, the principal occupation and employer of the contributor; and

(2) filed in accordance with AS 15.13.110 and 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; for purposes of this paragraph, "contributor" means the true source of the funds, property, or services being contributed; 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, nongroup entity, or group making an expenditure shall make a full report of expenditures, upon a form prescribed by the commission, unless exempt from reporting.

(e) The report required under (d) of this section must 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 no later than 10 days after the expenditure 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) and (l) of this section do not apply to a delegate to a constitutional convention, a judge seeking judicial retention, or a candidate for election to a municipal office under AS 15.13.010, if that delegate, judge, or candidate

(1) indicates, on a form prescribed by the commission, an intent not to raise and not to expend more than \$5,000 in seeking election to office, including both the primary and general elections;

(2) accepts contributions totaling not more than \$5,000 in seeking election to office, including both the primary and general elections; and

(3) makes expenditures totaling not more than \$5,000 in seeking election to office, including both the primary and general elections.

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

(1) cumulatively do not exceed \$500 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.

(j) Except as provided in (l) of this section, each nongroup entity shall make a full report in accordance with AS 15.13.110 upon a form prescribed by the commission and certified by the nongroup entity's treasurer, listing

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

(2) the aggregate amount of all contributions made to the nongroup entity for the purpose of influencing the outcome of an election;

(3) for all contributions described in (2) of this subsection, the name, address, date, and amount contributed by each contributor and, for all contributions described in (2) of this subsection in excess of \$250 in the aggregate during a calendar year, the principal occupation and employer of the contributor; and

(4) the date and amount of all contributions made by the nongroup entity, and, except as provided for certain independent expenditures in AS 15.13.135 (a), all expenditures made, incurred, or authorized by the nongroup entity, for the purpose of influencing the outcome of an election; a nongroup entity shall report contributions made to a different nongroup entity for the purpose of influencing the outcome of an election and expenditures made on behalf of a different nongroup entity for the purpose of influencing the outcome of an election as soon as the total contributions and expenditures to that nongroup entity for the purpose of influencing the outcome of an election reach \$500 in a year and for all subsequent contributions and expenditures to that nongroup entity in a year whenever the total contributions and expenditures to that nongroup entity for the purpose of influencing the outcome of an election that have not been reported under this paragraph reach \$500.

(k) Every individual, person, nongroup entity, or group contributing a total of \$500 or more to a group organized for the principal purpose of influencing the outcome of a proposition shall report the contribution or contributions on a form prescribed by the commission not later than 30 days after the contribution that requires the contributor to report under this subsection is made. The report must include the name, address, principal occupation, and employer of the individual filing the report and the amount of the contribution, as well as the total amount of contributions made to that group by that individual, person, nongroup entity, or group during the calendar year.

(l) Notwithstanding (a), (b), and (j) of this section, for any fund-raising activity in which contributions are in amounts or values that do not exceed \$50 a person, the candidate, group, or nongroup entity shall report contributions and expenditures and supplying of services under this subsection as follows:

(1) a report under this subsection must

(A) describe the fund-raising activity;

(B) include the number of persons making contributions and the total proceeds from the activity;

(C) report all contributions made for the fund-raising activity that do not exceed \$50 a person in amount or value; if a contribution for the fund-raising activity exceeds \$50, the contribution shall be reported under (a), (b), and (j) of this section;

(2) for purposes of this subsection,

(A) "contribution" means a cash donation, a purchase such as the purchase of a ticket, the purchase of goods or services offered for sale at a fund-raising activity, or a donation of goods or services for the fund-raising activity;

(B) "fund-raising activity" means an activity, event, or sale of goods undertaken by a candidate, group, or nongroup entity in which contributions are \$50 a person or less in amount or value.

(m) Information required under this chapter shall be submitted to the commission electronically, except that the following information may be submitted in clear and legible black typeface or hand-printed in dark ink on paper in a format approved by the commission or on forms provided by the commission:

(1) information submitted by

(A) a candidate for election to a borough or city office of mayor, membership on a borough assembly, city council, or school board, or any state office, who meets the requirements of (g)(1) - (3) of this section; or

(B) a candidate for municipal office for a municipality with a population of less than 15,000; in this subparagraph, "municipal office" means the office of an elected borough or city

(i) mayor; or

(ii) assembly, council, or school board member;

(2) any information if the commission determines that circumstances warrant an exception to the electronic submission requirement.

(n) The commission shall print the forms to be provided under this chapter so that the front and back of each page have the same orientation when the page is rotated on the vertical axis of the page.

(o) Information required by this chapter that is submitted to the commission on paper and not electronically shall be electronically scanned and published on the Internet by the commission, in a format accessible to the general public, within two working days after the commission receives the information.

(p) For purposes of (b) and (j) of this section, "contributor" means the true source of the funds, property, or services being contributed.

**Sec. 15.13.067. Who may make expenditures.**

Only the following may make an expenditure in an election for candidates for elective office:

(1) the candidate;

(2) an individual;

(3) a group that has registered under AS 15.13.050; and

(4) a nongroup entity that has registered under AS 15.13.050.

**Sec. 15.13.082. Limitations on expenditures.**

(a) A candidate or group may not make an expenditure in cash that exceeds \$100 unless the candidate, or the campaign treasurer or deputy campaign treasurer, obtains a written receipt from the person to whom the expenditure is made.

(b) A candidate, group, or nongroup entity may not make an expenditure unless the source of the expenditure has been disclosed as required by this chapter.

(c) If a candidate receives a contribution in the form of cash, check, money order, or other negotiable instrument and is subject to being reported to the commission under this chapter, the candidate may neither expend the contribution nor, in the case of a negotiable instrument, convert it to cash unless the candidate, campaign treasurer, or deputy campaign treasurer first records the following information for disclosure to the commission:

- (1) the name, address, principal occupation, and employer of the contributor; and
- (2) the date and amount of the contribution.

**Sec. 15.13.084. Prohibited expenditures.**

A person may not make an expenditure

- (1) anonymously, unless the expenditure is

(A) paid for by an individual acting independently of any group or nongroup entity and independently of any other individual;

(B) made to influence the outcome of a ballot proposition as that term is defined by AS 15.13.065 (c); and

- (C) made for

- (i) a billboard or sign; or

- (ii) printed material, other than an advertisement made in a newspaper or other periodical;

- (2) using a fictitious name or using the name of another.

**Sec. 15.13.086. Authorized makers of expenditures.**

An expenditure

(1) authorized by or in behalf of a candidate may be made only by

(A) the candidate; or

(B) the candidate's campaign treasurer or a deputy campaign treasurer;

(2) authorized by AS 15.13.067 (3) by or in behalf of a group may be made only by the group's campaign treasurer.

**Sec. 15.13.090. Identification of communication.**

(a) All communications shall be clearly identified by the words "paid for by" followed by the name and address of the candidate, group, nongroup entity, or individual paying for the communication. In addition, candidates and groups may identify the name of their campaign chairperson.

(b) The provisions of (a) of this section do not apply when the communication

(1) is paid for by an individual acting independently of any group or nongroup entity and independently of any other individual;

(2) is made to influence the outcome of a ballot proposition as that term is defined by AS 15.13.065 (c); and

(3) is made for

(A) a billboard or sign; or

(B) printed material other than an advertisement made in a newspaper or other periodical.

**Sec. 15.13.110. Filing of reports.**

(a) Each candidate, group, and nongroup entity shall make a full report in accordance with AS 15.13.040 for the period ending three days before the due date of the report and beginning on the last day covered by the most recent previous report. If the report is a first report, it must cover the period from the beginning of the campaign to the date three days before the due date of the report. If the report is a report due February 15, it must cover the period beginning on the last day covered by the most recent previous report or on the day that the campaign started, whichever is later, and ending on February 1 of that year. The report shall be filed

(1) 30 days before the election; however, this report is not required if the deadline for filing a nominating petition or declaration of candidacy is within 30 days of the election;

(2) one week before the election;

(3) 105 days after a special election; and

(4) February 15 for expenditures made and contributions received that were not reported previously, including, if applicable, all amounts expended from a public office expense term account established under AS 15.13.116(a)(8) and all amounts expended from a municipal office account under AS 15.13.116 (a)(9), or when expenditures were not made or contributions were not received during the previous year.

(b) Each contribution that exceeds \$250 and that is made within nine days of the election shall be reported to the commission by date, amount, and contributor within 24 hours of receipt by the candidate, group, campaign treasurer, or deputy campaign treasurer. Each contribution to a nongroup entity for the purpose of influencing the outcome of an election that exceeds \$250 and that is made within nine days of the election shall be reported to the commission by date, amount, and contributor within 24 hours of receipt by the nongroup entity.

(c) All reports required by this chapter shall be filed with the commission's central office and shall be kept open to public inspection. Within 30 days after each election, the commission shall prepare a summary of each report which shall be made available to the public at cost upon request. Each summary shall use uniform categories of reporting.

(d) *[Repealed, Sec. 35 ch 126 SLA 1994].*

(e) A group formed to sponsor an initiative, a referendum or a recall shall report 30 days after its first filing with the lieutenant governor. Thereafter each group shall report within 10 days after the end of each calendar quarter on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) of this section.

(f) During the year in which the election is scheduled, each of the following shall file the campaign disclosure reports in the manner and at the times required by this section:

(1) a person who, under the regulations adopted by the commission to implement AS 15.13.100, indicates an intention to become a candidate for elective state executive or legislative office;

(2) a person who has filed a nominating petition under AS 15.25.140 - 15.25.200 to become a candidate at the general election for elective state executive or legislative office;

(3) a person who campaigns as a write-in candidate for elective state executive or legislative office at the general election; and

(4) a group or nongroup entity that receives contributions or makes expenditures on behalf of or in opposition to a person described in (1) - (3) of this subsection, except as provided for certain independent expenditures by nongroup entities in AS 15.13.135 (a).

#### **Sec. 15.13.111. Preservation of records.**

(a) Each candidate, group, nongroup entity, or person required to report under this chapter shall preserve all records necessary to substantiate information required to be reported under this chapter for a period of six years from the date of the election for which the information was required to be reported, unless the records have been submitted to the commission under (c) of this section.

(b) Information preserved under (a) of this section must be made available for inspection by the commission.

(c) A candidate for state elected office who was not elected or a person who has left state elected office may submit the records required to be preserved under (a) of this section to the commission electronically. Records submitted under this subsection shall be preserved by the commission for a period of six years from the date of the election for which the information was required to be reported.

**Sec. 15.13.135. Independent expenditures for or against candidates.**

(a) Only an individual, group, or nongroup entity may make an independent expenditure supporting or opposing a candidate for election to public office. An independent expenditure supporting or opposing a candidate for election to public office, except an independent expenditure made by a nongroup entity with an annual operating budget of \$250 or less, shall be reported in accordance with AS 15.13.040 and 15.13.100 - 15.13.110 and other requirements of this chapter.

(b) An individual, group, or nongroup entity who makes independent expenditures for a mass mailing, for distribution of campaign literature of any sort, for a television, radio, newspaper, or magazine advertisement, or any other communication that supports or opposes a candidate for election to public office

(1) shall comply with AS 15.13.090; and

(2) shall place the following statement in the mailing, literature, advertisement, or other communication so that it is readily and easily discernible:

This NOTICE TO VOTERS is required by Alaska law. (I/we) certify that this (mailing/literature/advertisement) is not authorized, paid for, or approved by the candidate.

**Sec. 15.13.140. Independent expenditures for or against ballot proposition or question.**

(a) This chapter does not prohibit a person from making independent expenditures in support of or in opposition to a ballot proposition or question.

(b) An independent expenditure for or against a ballot proposition or question

(1) shall be reported in accordance with AS 15.13.040 and 15.13.100 - 15.13.110 and other requirements of this chapter; and

(2) may not be made if the expenditure is prohibited by AS 15.13.145.

### 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) "communication" means an announcement or advertisement disseminated through print or broadcast media, including radio, television, cable, and satellite, the Internet, or through a mass mailing, excluding those placed by an individual or nongroup entity and costing \$500 or less and those that do not directly or indirectly identify a candidate or proposition, as that term is defined in AS 15.13.065(c);

(4) "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 political party, candidate, or ballot proposition or question;

(ii) ordinary hospitality in a home;

(iii) two or fewer mass mailings before each election by each political party describing the party's slate of candidates for election, which may include photographs, biographies, and information about the party's candidates;

(iv) the results of a poll limited to issues and not mentioning any candidate, unless the poll was requested by or designed primarily to benefit the candidate;

(v) any communication in the form of a newsletter from a legislator to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee; or

(vi) a fundraising list provided without compensation by one candidate or political party to a candidate or political party;

(5) "electioneering communication" means a communication that

(A) directly or indirectly identifies a candidate;

(B) addresses an issue of national, state, or local political importance and attributes a position on that issue to the candidate identified; and

(C) occurs within the 30 days preceding a general or municipal election;

(6) "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;

(C) includes an express communication and an electioneering communication, but does not include an issues communication;

(7) "express communication" means a communication that, when read as a whole and with limited reference to outside events, is susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate;

(8) "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;

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

(10) "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;

(11) "individual" means a natural person;

(12) "issues communication" means a communication that

(A) directly or indirectly identifies a candidate; and

(B) addresses an issue of national, state, or local political importance and does not support or oppose a candidate for election to public office.

(13) "nongroup entity" means a person, other than an individual, that takes action the major purpose of which is to influence the outcome of an election, and that

(A) cannot participate in business activities;

(B) does not have shareholders who have a claim on corporate earnings; and

(C) is independent from the influence of business corporations.

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

(15) "political party" means any group that is a political party under AS 15.60.010 and any subordinate unit of that group if, consistent with the rules or bylaws of the political party, the unit conducts or supports campaign operations in a municipality, neighborhood, house district, or precinct;

(16) "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.

**Chapter 15.15. ELECTIONS AND BALLOTS**



April 9, 2010

Dear Chairman Ramras and Members of the House Judiciary Committee,

I am writing to share concerns my organization, the Center for Competitive Politics (CCP), has regarding Senate Bill 284, a bill that seriously restricts Alaskans' right to free speech.

CCP is a nonpartisan, nonprofit organization focused on promoting and protecting the First Amendment political rights of speech, assembly, and petition. It was founded in 2005 by Bradley A. Smith, a former member and chairman of the Federal Election Commission.

This bill restricts the right to free speech by requiring extensive disclaimer statements on political advertisements. Such requirements infringe on the amount of time a candidate or political committee can spend conveying their message, effectively establishing limits on the amount of speech that can take place.

The Supreme Court held in *Buckley v. Valeo* that independent expenditures are a protected form of speech and have significant protections from burdensome government regulation.<sup>1</sup> Passage of this bill would likely set the stage for an unsuccessful and costly legal battle for the state of Alaska.

In *Buckley*, the Supreme Court struck down limits on independent expenditures. The Court issued a per curium decision, stating:

While the independent expenditure ceiling thus fails to serve any substantial governmental interest in stemming [424 U.S. 1, 48] the reality or appearance of corruption in the electoral process, it heavily burdens core First Amendment expression. For the First Amendment right to ““speak one's mind . . . on all public institutions”” includes the right to engage in ““vigorous advocacy' no less than `abstract discussion.””<sup>2</sup>

The Court recently reaffirmed in *Citizens United v. Federal Election Commission* that raising barriers to speech constitutes a violation of the First Amendment, and mandating the content of a speaker's advertisement in the way proposed in the bill would certainly impose such a burden.<sup>3</sup>

<sup>1</sup> *Buckley v. Valeo*, 424 U.S. 1 (1976).

<sup>2</sup> *Buckley v. Valeo*, 424 U.S. 1 (1976) quoting *New York Times Co. v. Sullivan*, 376 U.S., at 269, quoting *Bridges v. California*, 314 U.S. 252, 270 (1941), and *NAACP v. Button*, 371 U.S., at 429.

<sup>3</sup> *Citizens United v. Federal Election Commission*, 558 U.S. 50 (2010).

Moreover, the nonpartisan Congressional Research Service published a recent report that warned disclaimers could be proposed that would be too onerous to survive legal challenge:

If a disclaimer requirement was so burdensome that it impeded the ability of a corporation to speak—for example, a requirement that a disclaimer compromise an unreasonable amount of time—a court might conclude that it is a violation of a corporation’s free speech rights under *Citizens United*.<sup>4</sup>

SB 284 also conflicts with the Supreme Court’s jurisprudence on disclosure. While disclosure requirements were upheld in the recent *Citizens United* decision, the measures proposed here go further than what was addressed by requiring a disclaimer to include the names of the top five donors to a group running political ads. The top five donors, however, did not necessarily aid in furthering that ad, and for that reason there is no reason to disclose their identities.

To punish members of a group by compelling their disclosure is to offend the rights of association and speech engendered in the First Amendment. In *NAACP v. Alabama*, the Court recognized that compelled disclosure laws that effectively make these rights mutually exclusive are constitutionally invalid.

The Supreme Court ruled in *Buckley* that the regulation of political speech and association is justifiable only when its purpose is to “provide the electorate with information...to aid the voters in evaluating those who seek federal office” and to “deter actual corruption and [its] appearance...by exposing large contributions and expenditures to the light of publicity.”<sup>5</sup>

SB 284 fails to satisfy any of these interests by requiring superfluous information in disclaimers that serve no useful purpose and will ultimately diminish the amount of political speech rather than enlighten the average citizen. I hope you find this information valuable as you consider SB 284. Should you have any further questions regarding this bill or other campaign finance proposals, please do not hesitate to contact me at (703) 894-6822 or by email at [lrenz@campaignfreedom.org](mailto:lrenz@campaignfreedom.org).

Sincerely,



Laura Renz  
Research and Government Relations Director

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<sup>4</sup> Congressional Research Service, “Legislative Options After *Citizens United v. FEC*: Constitutional and Legal issues.” March 2010.

<sup>5</sup> *Buckley v. Valeo*, 424 U.S. 1 (1976).



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April 7, 2010

The Honorable Jay Ramras, Chair  
House Judiciary Committee  
Alaska Capitol, Room 118  
Juneau, AK 99801-1182

RE: SB 284 (Senate Judiciary Committee)--Support

Dear Chair Ramras:

On behalf of the members of AARP in Alaska, we encourage you and your colleagues on the House Judiciary Committee to support SB 284, sponsored by the Senate Judiciary Committee.

AARP believes transparency is critical to government integrity and civic engagement. Openness is a fundamental feature of democracies and governmental operations, including elections, should operate in public view.

The ability of government to respond to the concerns of citizens, promote the public interest, and retain public confidence in its fairness, competence, and relevance is dependent in large measure on adhering to policies that promote and sustain integrity.

Unfortunately, trust in government is extremely low. Whether true or not, government officials and processes are often viewed as more responsive to the concerns of moneyed special interests than those of the general public.

SB 284 will not solve the entire credibility problem. However, SB 284 will get us closer to restoring confidence in government and transparency in elections and campaigns.

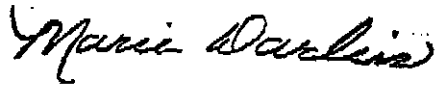
SB 284 will help ensure clarity and honesty in election advertising, including requiring meaningful descriptions of who has paid for an ad.

AARP requests an "AYE" vote on SB 284.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,



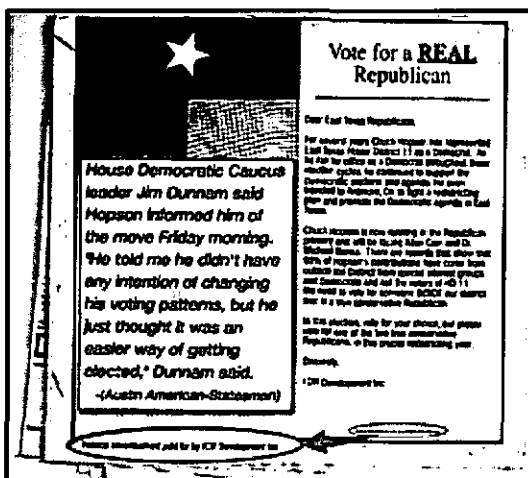
Marie Darlin, Coordinator  
AARP Capital City Task Force  
415 Willoughby Avenue, Apt. 506  
Juneau, AK 99801  
586-3637 (voice)  
463-3580 (fax)

CC: Vice-Chair Nancy Dahlstrom  
Representative Bob Herron  
Representative Carl Gatto  
Representative Bob Lynn  
Representative Max Gruenberg  
Representative Lindsey Holmes  
Senator Hollis French

# THE TEXAS TRIBUNE

## The First Corporate Ad

by Ross Ramsey  
March 22, 2010



The KDR Development Inc. advertisement that ran in the Panola Watchman

The first political ads bought by a corporation in Texas appeared in East Texas newspapers just weeks after the U.S. Supreme Court effectively ended the state's ban on that kind of spending.

The ads appear to mark the first instance of a corporation directly playing in a Texas election since the nation's highest court lifted a century-old ban on political spending by corporations and labor unions. That January ruling — in *Citizens United v. Federal Election Commission* — doesn't affect contributions to candidates, which remain restricted. But it does mean corporations and unions can spend money as they wish on politics and run all the ads they want, so long as they don't coordinate their efforts, messages and plans with the campaigns they're promoting or with other third-party groups that have similar political interests.

The ads in the *Jacksonville Daily Progress*, the *Tyler Morning Telegram* and the *Panola Watchman* took issue with the Republican bona fides of state Rep. Chuck Hopson of Jacksonville, a Democratic incumbent who jumped to the GOP in November and ran in a three-way race in the Republican primary this month. He got 61 percent of the vote, easily besting Michael Banks and Allan Cain.

The newspaper ads ran in Jacksonville and Tyler on the Sunday before the election and a week earlier in Panola, and they urged voters to choose anyone but Hopson. They were paid for by KDR Development Inc., a real estate company whose president, Republican Larry Durrett, lost to Hopson in 2006, when Hopson was still a Democrat. Durrett is also the president of Southern Multifoods, a Jacksonville-based company with dozens of franchised Taco Bell, KFC, Pizza Hut, A&W and Long John Silvers restaurants. The two companies are closely related, sharing addresses, officers and directors.

"I think we're on solid legal ground," Durrett said in an interview. "We checked it out every way from Sunday."

At least one paper — the *Longview News-Journal* — had reservations. "The disclaimer wasn't complete, and then we saw that it was a corporate ad," said Alan Todd, the paper's advertising director. "When we questioned it, [the buyer] pulled the ad."

Durrett wanted to run ads against Hopson and had been reading and hearing about the Supreme Court ruling on corporate politicking. He checked with a lawyer in Tyler, who sent him to a specialist in Austin, did "a significant amount of discussion about this," and then went to the papers with the ads. "My businesses do better under conservative people and not under people who aren't," he said. "There are an awful lot of folks on the Republican side of the House who aren't all that conservative, and that's an irritant." He felt the other two candidates were more conservative than Hopson.

He used corporate money for a simple reason. "You take the money out of the pocket that's got some money in there," he said.

Durrett doesn't consider Hopson's win a complete loss for his side: "If you continue to point out that people aren't as conservative as you are, it moves them to the right."

The ad has a quote on one side, and the copy on the other is standard fare for a House race, written in the form of a letter.

The quote, from the *Austin American-Statesman*: "House Democratic Caucus leader Jim Dunnam said Hopson informed him of the move Friday morning. 'He told me he didn't have any intention of changing his voting patterns, but he just thought it was an easier way of getting elected,' Dunnam said."

The letter:

Dear East Texas Republicans,

For several years Chuck Hopson has represented East Texas House District 11 as a Democrat. As he ran for office as a Democrat throughout these election cycles, he continued to support the Democratic platform and agenda. He even traveled to Ardmore, OK to fight a redistricting plan and promote the Democratic agenda in East Texas.

Chuck Hopson is now running in the Republican primary and will be facing Allan Cain and Dr. Michael Banks. There are records that show that 90% of Hopson's contributions have come from outside the District from special interest groups and Democrats and not the voters of HD 11. We need to vote for someone INSIDE our district that is a true conservative Republican.

In this election, vote for your choice, but please vote for one of the two true conservative Republicans, in this crucial redistricting year.

Sincerely,

KDR Development Inc

Before the Supreme Court ruling, that would have been an illegal ad in Texas, purely based on the corporate funding. So long as KDR didn't work with the campaigns or with anyone else on the copy, it now appears to be the sort of direct corporate expenditure the Supremes are protecting.

"It raised some issues with us, and I asked some people in the organization to look at it," said Amy Miller, publisher of the *Daily Progress*. In the end, the paper decided to accept the ad: "It's a pre-paid political ad, and I didn't see anything wrong with it."

The ad does bear some similarities to printed mailers sent by others. Cain, for instance, used that same quote from Dunnam in a mailer that also carried the "Hopson is not conservative" theme. Former state Sen. Drew Nixon, R-Carthage, paid for ads in the race, too, using that Dunnam quote again and a chart very similar to that used in Cain's flyer. Signed by three of the four GOP county chairs in the district, it was more direct in its hit on the party-switcher: "Make no mistake, Chuck Hopson is a Democrat."

But as long as the corporation wasn't in league with anyone else, they appear to be the first example of what might be possible under the court's ruling. The Texas Ethics Commission, which regulates these things, is still working on a full opinion of this new world of campaign finance. The agency posted its first impression online right after the court issued its ruling:

"... We believe the Texas Legislature intended laws under our jurisdiction to prohibit political expenditures by corporations to the full extent allowed by the Constitution, as interpreted by the United States Supreme Court. In light of the recently issued United States Supreme Court ruling in *Citizens United v. Federal Election Commission*, it is our position that corporations are allowed to make all types of direct campaign expenditures ... It is also our position that corporations are still prohibited from making political contributions unless specifically allowed..."

TEC now has a draft opinion in circulation — not yet voted out by its board — that goes further: "For the reasons stated in *Citizens United*, we cannot ... prohibit a corporation or labor organization from making a direct campaign expenditure or ... prohibit an individual or other association from making a direct campaign expenditure."

They can still block corporations and labor organizations from making contributions to candidates, but they can't do anything if those outfits want to spend money for or against the candidates without the candidates' knowledge.

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**Conservative Patriots Group, Inc.**

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Date: April 1, 2010

To: All Alaska State Senators

From: Frank Bettine, In-House Counsel

I urge you to vote against SB284 unless it is modified substantially. SB284 needs to be completely rewritten. The Supreme Court in Citizens United v. FEC made it clear that it did not want corporations subject to the same reporting requirements as a PAC otherwise it would have simply held that corporations could speak through a PAC. Yet, the legislation as written imposed more reporting requirements on a corporation than it does a PAC. A PAC is a creature of the APOC. A corporation is not. It comes into existence without any approval of the APOC.

**Sec. 4. AS 15.13.040(e):**

Paragraphs (3) – delete in its entirety. A corporation should not be required to submit this information. Who or what the corporation opposes or supports will be evident in its advocacy ads.

Paragraphs (4) – delete in its entirety. This information is available online at State of Alaska, Corporations division.

Paragraphs (5) – This paragraph is an insult to every Alaskan. Alaskan should not be required to give up their right to privacy for making a small donation to support a candidate or ballot initiative. The right of an individual to participate in the political process is a fundamental right. We zealously guard our right to cast a ballot in secret for the candidate or ballot initiative of our choice. Alaska Constitution provides a heightened right to privacy. Why should an individual be required to give up that right for contributing a mere \$100, which is less than the cost of filling up your favorite pickup truck with gas. This number must be much greater than \$100, something more like a \$1000.

Also this paragraph must be modified to allow an individual to contribute to multiple candidates or initiatives without invoking the reporting requirements. For example, if a corporation is running ads to support two candidates an individual should be able to contribute up to \$1000 per candidate before triggering reporting requirements. Otherwise a corporation would be treated differently than a PAC. For example if a PAC existed for each candidate, an individual could contribute to both PACs up to the amount that triggered reporting requirements, without having to report the contributions.

Also this limit must be per race. For example if I contribute \$1000 to candidate X in the primary election, I should be allowed to contribute another \$1000 to candidate X in the general election without triggering reporting requirements.

Sec. 13. AS 15.13.090 - *working on an amendment*

Paragraph (2)(a)&(b) - delete in its entirety. This paragraph imposes more requirements on a corporation than on a PAC. PACs are not required to report this information and in fact are not even required to report the name of the campaign person.

Paragraph (2)(c) - delete any requirement that this information be provided on ads and instead require that the corporations, PAC, etc. maintain a website that provides this information and only require that the website address be given. The same for any other sections of the legislation that require this information to be included. Otherwise just the mandatory disclosure/disclosure requirement on an ad placed on the radio by CPG might look like this:

AD . . .

This advertisement is paid for by Conservative Patriots Group, Inc. (address), (city) and approved by its President (name); Contributors Mr. M (address) (city), Mr. N (address) (city), Mr. O (address) (city), Mr. P (address) (city), Mr. Q (address) (city). This NOTICE TO VOTERS is required by Alaska law. I certify that this advertisement is not authorized, paid for, or approved by the candidate.

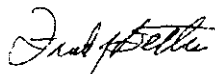
This is a bit much for a disclosure/disclosure statement, considering most radio/tv ads run 30 to 60 seconds.

I suggest the disclaimer be reduced to the following:

AD . . .

This advertisement is paid for by Conservative Patriots Group, Inc. (address), (city). This advertisement is not authorized, paid for, or approved by the candidate. Visit [www.conservativepatriotsgroup.org](http://www.conservativepatriotsgroup.org) for additional mandatory disclosure information.

Sincerely,



Frank Bettine

The examples below are for illustration purposes only and should NOT be construed as any type of instruction or approval of activity for any entity. *These are for discussion purposes only with respect to Section 14, page 8, lines 7-11.*

Section 14, page 8 (d) of the bill requires the following elements be read when using audio media for independent expenditures:

This communication was paid for by (person's name). I am (name and, if applicable, title of the principal officer of the person) and I approve this message. The top contributors of (person's name) are (the name of the largest contributors to the person under AS 15.13.090(a)(2)(C)).

Scenario 1: **Oil Company A** makes an independent expenditure for a ballot initiative from its political activities account that comes from its general treasury. The company's disclaimer for this would be: This communication was paid for by **Oil Company A**. I am **John Doe, President of Oil Company A** and I approve this message. The top contributors of **Oil Company A** are: *this would not be necessary since the expenditure comes from the general treasury and is not a result of a specific solicitation or contribution for the ballot initiative.*

Scenario 2: **Alumni Association B** makes independent expenditures in support of a ballot initiative from its political activities account that comes from its general treasury, which is comprised of general contributions from its membership. The Association's disclaimer for this would be: This communication was paid for by **Alumni Association B**. I am **Mary Smith, President of Alumni Association B** and I approve this message. The top contributors of **Alumni Association B** are: *this would not be necessary since the expenditure comes from the general treasury and is not a result of a specific solicitation or contribution for the ballot initiative.*

Scenario 3: **Alumni Association B** makes independent expenditures in support of a ballot initiative from its political activities account with funds it has solicited via a mass mailing to its members asking for contributions to support the initiative. Funds for the expenditures are also generated from a place on the Association's web site asking for contributions to support the initiative. The Association's disclaimer for any expenditure paid for by these contributions would be: This communication was paid for by **Alumni Association B**. I am **Mary Smith, President of Alumni Association B** and I approve this message. The top contributors of **Alumni Association B** are Shirley Smith, Carey Doe, Daniel Makey, Karen Larson, Tom Jones.

Scenario 4: **Labor Union Y** makes independent expenditures opposing a candidate in an election from its political activities account with funds from its general treasury, which is comprised of general contributions from its membership. The labor union's disclaimer for these independent campaign expenditures paid for by general member contributions would be: This communication was paid for by **Labor Union Y**. I am **Carl Jones, President of Labor Union Y** and I approve this message. The top contributors of Labor Union Y are: *this would not be necessary since the expenditure comes from the general treasury and is not a result of a specific solicitation or contribution for the ballot initiative.*

Scenario 5: **Cruise Ship Company Z** makes independent expenditures supporting a candidate in an election from its political activities account with funds it has solicited via a request for contributions seeking to support the candidate in a speech made at an industry meeting. The company also receives contributions for this independent expenditure from a number of donors who make it clear both on their checks and in an accompanying letter that the money is being donated for use in ads supporting the candidate. The Cruise ship's disclaimer for any expenditure paid for by these contributions would be: This communication was paid for by **Cruise Ship Company Z**. I am **John Smith, CEO of Cruise Ship Company Z** and I approve this message. The top contributors of **Cruise Ship Company Z** are Shirley Smith, Carey Doe, Daniel Makey, Karen Larson, Tom Jones.