ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House State Affairs Comm,
Committee Name
Committee on HB 170 Dated _____
Bill / Subject

"I am currently enrolled in the 20-year retirement system for employees grand-fathered into this system. Given the lack of a current 20-year retirement system and lower pay than federal employees, I see great difficulty in attracting the best qualified individuals to represent the state in fish and wildlife affairs. Most individuals grand-fathered into 20 year retirement have retired or will retire in the next 4 years, it is imperative that we provide incentives for new hires now.

SIGNED: Rod Boertje
Testifier

self
Representing

1290 Upland Ave, Fairbanks, AK 99709 / 907-479-8342
Address / Phone Number

KODIAK LIO FAX 486-5264

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001

The Honorable Representative John Coghill
Chairman of the Committee on House Affairs
Alaska State Legislature
Juneau, Alaska

Dear Representative Coghill;

I am writing you in order to express my support for House Bill 170, "An Act relating to retirement contributions and benefits under the public employees retirement system of certain employees of the Department of Fish and Game". As an ADF&G biologist employed for the last 12 years, I am concerned over a growing problem affecting the department's work force, which, in my view, has directly resulted from an inability to fill key management and research positions with qualified candidates. Because of the state's current 30-year retirement program for ADF&G biologists, many are reluctant to apply for upper level, high stress positions (recently vacated by 20 year retirees) with numerous years of service remaining and minimal added pay and benefit incentive. Other 30-year department staff are leaving the state work force for employment with the federal government, which offers greater pay and benefits and, oftentimes, less stress. I think that, even over increases in pay and other benefits, the most significant change the state government could make in order to maintain staffing continuity and to attract new recruits and qualified candidates to ADF&G would be offering a 20-year retirement package.

I appreciate your careful consideration over this matter.

Sincerely,

Donn Tracy
1310 Kouskov St.
Kodiak, Alaska
99615
tel. (907) 486-1879 (daytime)

Kodiak LIO FAX 486-5264

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

I would like to express my full support of HB 170.

The ADF&G has the highest on the job mortality rate of any state agency. Since 1959, 24 ADF&G employees have lost their lives in the line of duty and the number of "close calls" far exceeds the number of deaths.

With the elimination of the 20-year retirement system, it has become increasingly difficult to attract and retain fishery managers and researchers. Many 30-year employees are leaving state work to work for the Federal government where pay is often 25% greater and stress is considerably lower. Current employees with 10 years of experience are apprehensive about taking promotions. They realize that the increase in salary will not be commensurate with the increase in responsibility and subsequent stress level, and they still have an additional 20 years to go before retirement.

I began working seasonally for the department in 1986, at the age of 30, spending extended time in remote field camps away from my family. In 1996, I took an extended leave of absence to pursue a graduate degree in fisheries science and I am currently the Westward Regional Finfish Research Supervisor. I will be eligible to retire when I am 50 years old or after 30 years of employment (about 18 years from now). If 20-year retirement were reinstated, it would be a strong incentive for me to remain with the department for at least 8 more years (20 years) rather than 5 years from now when I turn 50.

I believe that reinstating a 20-year retirement package would significantly increase the probability of attracting and retaining well-qualified employees.

Signed: Patricia Nelson
Testifier

S.P.F.
Representing (Optional)

Box 3015 Kodiak
Address

487 2407
phone #

KODIAK LIO FAX 486-5264

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject . dated 4/19/2001 .

As an employee presently in the 20 year retirement system, I encourage you to support HB170. This would provide a means for Fish & Game to keep and recruit biologists and prevent burnout from employees that are forced to work 30 years.

Signed: James M McCullough Jim McCullough
Testifier

Self
Representing (Optional)

Box 1331 Kodiak AK 99615
Address 907 486-9480

Kodiak LIO FAX 486-5264

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

I support HB170. Based on recent difficulties the State has experienced with its job force, HB170 is a positive step in attracting and retaining quality employees to State service.

Signed: Michael J. Wilson
Testifier

self
Representing (Optional)

4210 Cravings St.
Address

Anchorage, AK 99502 907-333-1342

KODIAK LIO FAX 7510-5464

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

I support the re-institution of the 20 year retirement system for applicable positions within the Alaska Department of Fish ad Game. I am eligible to retire soon under the old 20-year system, and am very thankful that someone back in time realized how difficult demanding, and dangerous the job of a State biologist is. Regardless of retirement system, these conditions remain for those individuals hired under the 30-yr. system. The end result of the split 20-and-30 yr. retirement systems has helped us lose good people to better paying, lower stress positions with other non-State entities.

Signed: _____
Testifier

Leslie J. Watson LESLIE J. WATSON

~~Representing~~ (Optional)

PO BOX 2473
(907) 486-4832 KODIAK, AK 99615

~~Address~~

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB170 20-year retirement bill/subject dated 4-20-2001.

I am writing in support of HB170 (ADF&G 20 year retirement bill). First, ADF&G is currently having trouble attracting new biologist. HB170 is one thing that can be done to make ADF&G a more attractive employer to new biologists.

Second, HB170 gives biologist an option. One thing that I think would be a detriment to the State is to have a biologists that are burned out and just working to get to their 30 year retirement date. Fisheries management is a high stress job and it takes people that care about the resource. This would allow a biologist that is burned out an option to retire and not take up space in the system. Currently many of the biologists that are retiring have 22 to 25 years of service in with ADF&G.

Finally, this is one thing that may help keep biologists with 10 to 15 years in around longer. Many of us who are working for ADF&G don't want to work for anyone else. However, there are other much higher paying jobs out there. With the 20 year retirement it gives us another reason to stay with ADF&G and not move to higher paying jobs.

I believe that HB170 is in the best interest of the fish and wildlife resources of the State of Alaska.

Signed: Wesley W Jones
Testifier

Representing (Optional)

Box 1072
Address
Nome AK 99762 443-3502
phone

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HR 170, 20-year retirement bill/subject dated 4-19-2001.

I started working with the Alaska Department of Fish & Game in 1982. During my time at UAF in the 1980s the feeling among students was that Fish & Game was the organization to work for as opposed to the Feds.

In the late 1990s I began experiencing increasing difficulties in recruiting employees to work for Fish & Game. I began to see more and more potential employees go to work for federal agencies citing better compensation packages. It has become increasingly difficult to hire for rural Alaska employees at the Biologist level. In addition, I have watched Fish & Game employees leave for federal jobs.

I feel that to once again become competitive the 20-year retirement would be the most effective recruiting tool.

Signed: Jim Menard
Testifier

Representing (Optional)

P.O. BOX 296
Address

Nome, AK 99762 443-3502
phone

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject . dated 4/19/2001 .

I am writing to voice my support for HB 170. I have recently graduated from UAF with a masters in Fisheries Science and have been working as a Fisheries Biologist for ADF&G in Fairbanks for almost three years, and certainly enjoy what I do. However, having just started a career it is difficult to envision myself working for ADF&G for another 27 years when considering other employment opportunities and the hazards of the job. I actively watch for job announcements in my field with other agencies and private businesses and consider myself a strong candidate. Other agencies and business offer considerably better compensation for similar responsibilities. It is hard to believe how little wages have increased relative to the cost of living during the last decade. I also consider the hazards of my position. Without going into detail, I have already had several close calls in small aircraft doing survey work or in boats on hazardous river. Eventually, I could see myself thinking it is not worth the risk anymore. I feel that a 20 year retirement would provide a strong incentive for a biologist such as myself to remain with the Department with negligible cost to the state. Most of the cost would be incurred by my increased contributions into my retirement. Thank you, Klaus Wuttig

Signed: _____

Testifier

MYSELF

Representing (Optional)

2710 SAM HILL LANE

Address

FAIRBANKS, AK 99709

phone #

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

I am in support of this bill, not only because it means that I can retire sooner if I choose, but also because I think it will make ADF+G more desirable for prospective future biologists. With the current disparage in the salaries and benefit structures between the SOA and the Federal Government for similar positions, we can lose the experience that we have now to FWS, BLM, etc. in the future. Workforce Alaska is currently advertising for 12 Fishery Biologists and 4 Wildlife Biologists positions, with many of these recruitments being extended for lack of an acceptable applicant pool. I believe in the ADF+G Sport Fish Division Mission Statement and like my job very much, and this bill would be one giant incentive for me not to seek greener pastures with the Federal Government. Thank You —

P.S. Please include Habitat Biologists under this bill. Their fieldwork can be just as long and dangerous as ours.

Signed: Brendan Scanlon, Fishery Biologist
Testifier

Representing (Optional)

PO Box 84258 Fairbanks, AK 99708
Address

nhnna #

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

I have written this statement in support of Bill No. 170.

I have worked for the Alaska Department of Fish and Game for approximately 5 years total, beginning July 1995. I and am currently working as a Fishery Biologist II for Sportfish Division in Fairbanks. Over the years I have assisted and supervised numerous employees and have spent large amounts of time in field situations. Luckily, I have never had any "close-calls" and sincerely hope I never do. However through personal experience and the numerous stories of more senior biologists, I can attest to the hazards of fieldwork. One of my primary jobs over the past six field seasons has been to run counting towers on the Chena, Salcha and Chatanika rivers where chinook and chum salmon have been the main focus. Whenever high water has precluded acquisition of a good estimate, my technicians and I have resorted to electrofishing as a means to conduct a mark-recapture experiment, which can be very hazardous. I have also spent time in remote situations where the elements, equipment failures, bear activity, etc. was a concern. I have also assisted in locating radio-tagged fish via small aircraft. This summer I will be supervising a radiotelemetry project on coho salmon on the Unalakleet River and assisting in a similar study on the Copper River, both which will entail spending a large amounts of time in boats and small aircraft.

One concern I have heard from hiring managers, etc. is the current difficulty in hiring and keeping good employees. A college education has become so expensive. Most of the biologists with Sportfish Division in Fairbanks have both Bachelors and Master's degrees. Getting out of college and looking at payscales and benefits between state, federal and private sectors and knowing the risks involved with being a professional fishery biologist can make the state biologist jobs not look as enticing. I heard a story from one fellow biologist a few years ago who told me after a near-death experience in small aircraft, "If I am going to put my life at risk, I might as well have some better benefits to show for it." I believe that reinstating the 20-year retirement will be a good step in enticing and keeping biologists working for the State of Alaska. Plus, the costs to the state will be minimal.

Thank you for your time and consideration.

Signed: Lisa Stuby
Testifier

Alaska Department of Fish and Game
Representing (Optional)

1300 College Rd.
Address

Fairbanks, AK 99708 (907) 459-7202
phone #

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001

Dear Legislators

I am providing my testimony for you to consider. I am a Fish Biologist within the Sportfish Division of Department of Fish and Game. I reside in Fairbanks and have been a department employee for two years.

1) I believe the retention of myself with the department over the long term is much more likely with a 20-year retirement plan. The 20-year plan is very appealing.

2) The potential to encounter hazardous situations as a normal part of job duty is, well, a regular occurrence. As I understand it, we have identical or even greater accident rates than peace officers and fire fighters. I believe a 20-year retirement plan would be more in kind with the peace officers and firefighters, as our risks are.

Thank you for your consideration of bill and of my testimony

Sincerely

Andrew D. Gryska

Signed: _____
Testifier

self
Representing (Optional)

P.O. Box 61211, Fairbanks, AK 99706-1211
Address

907 451 9776
phone #

ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House State Affairs Comm.
Committee Name

Committee on HB 170 Dated 20 April 2001.
Bill / Subject

I support HB170, a 20-year retirement option for ADFG technicians and biologists. It would help recruit skilled job applicants to state positions, in light of increasing disparity in benefits compared to more lucrative federal employment. Technicians & biologists perform hazardous duty in the line of field work, which becomes more challenging with age.

SIGNED: Thomas F. Farag; Thomas F. Farag;
Testifier

self
Representing

Box 81288, Fairbanks 99708 456-8682.
Address / Phone Number

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

I strongly support HB 170.

Currently many Fish + Game employees face law enforcement and other hazardous situations similar to those encounted by Fish and Wildlife Protection (AST), but receive no benefits from doing so.

Signed: Mark Keech
Testifier

Representing (Optional)

393 Bryant Ridge Apt B.
Address

Anchorage AK 99504
phone # (907) 332-2085

ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House Rules Committee
Committee Name

Committee on HB 151
Bill / Subject

Dated 20 April 2001.

I oppose HB151, a bill to rename the Fairbanks airport after W.R. Wood. Dr. Wood had nothing to do with aviation in Alaska.

SIGNED: Thomas F. Parayi Thomas F. Parayi
Testifier

self
Representing

Box 81288 Fairbanks 456-8682
Address / Phone Number

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject . dated 4/19/2001

I am in favor of passage of HB 170 providing peace officer status and 20-year retirement to positions within Fish and Game. I believe the classification of positions into peace officer and non-peace officer status should take into account hazardous duties performed by individual positions rather than simply being done according to the particular job classification. There are positions within Fish and Game, which are not classified as biologists or technicians, but which are routinely expected to perform field work and other hazardous duties. Two examples are biometricians and programmers who are tasked with developing data collection/analysis techniques and applications for use in the field who must participate in the field activities for which they are developing those techniques or applications. Employees in such positions are no less exposed to the hazards of low-level flight in light aircraft or operation of small boats in rough water than are biologists performing the same work. Inasmuch as these hazards are a requirement of their positions, so too should the benefits, which are provided as compensation for those hazards to others, be provided to them.

Signed: Robert DeLong
Testifier

Representing (Optional)

1794 Perth Ct. North Pole AK 99705
Address

phone #

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject . dated 4/19/2001

I am a fishery biologist in Fairbanks, working for the Sport Fish Division. I have been working for the Department since 1992, and have approximately six years of service to the State. I am writing to comment on House Bill No. 170.

I believe it is it is becoming increasingly difficult for the State to recruit new wildlife and fisheries graduates into professional-level positions within Fish and Game, because our retirement package is not as attractive to applicants as those offered by other agencies or private business. As a hiring manager, I'm also aware that most professional-level positions now require applicants to hold a Master's degree in biology or related field, which was not the case when many Fish and Game employees were hired under the 20-year retirement plan, many years ago. On top of completing more higher education for the same job, applicants also typically work seasonally for a number of years before securing professional-level employment within the Dept. of Fish and Game. As a consequence, it may take 7 or 8, or more, years of seasonal employment to eventually become vested as a State employee (five years being the required duration of service). When a thirty-year retirement package is considered with the above, jobs with the Department of Fish and Game do not look as attractive to prospective employees, as they did 10 or more years ago. A twenty-year retirement package would certainly make our positions more worthwhile for consideration to new graduates and applicants.

Another comment I have concerns the hazardous duty many Fish and Game employees typically encounter during field work. I think our occupations as fishery biologist are just as dangerous as those of firefighters, police officers, and others that face risks and hazards of dangerous occupations. Although biologists usually have access to modern communications equipment in the field, to call for help during emergencies, often help is far away. I have training as a Wilderness First Responder, and I realize that if, in a remote location, an employee was seriously injured (from plane wreck, bear attack, or other hazard), there is little one can do but try to "stabilize" that person's condition and wait for help to arrive. It should be emphasized that the hazards in remote field locations are real. While a twenty year retirement plan does not remedy this situation, it certainly offers an incentive that makes our occupations as biologists more acceptable and enjoyable.

Thank you for your time.

James T. Fish
Fishery Biologist

Signed: James T. Fish

Testifier: Self

Representing (Optional)

3244 Monte Verde Rd.

Address

Fairbanks AK 99709 455-4630

phone #

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

I would like to express my support for HB 170. I feel this bill would help the department recruit and retain a higher quality employee (at virtually no cost to the state) as our present wage and benefit package is well below what the same employee could get working for the Federal Government, oil companies, mining companies, or private consulting firms. I also feel that if the State Troopers get a 20 year retirement plan as a benefit of dangerous working conditions, then ADF&G deserves the same since there have been far more ADF&G work related deaths than the State Troopers have had in the same time frame.

Signed: David Stubbs from Chairman Coghill's district
Testifier

Representing (Optional)

880 Hickerman
Address

North Pole, AK (907) 488-0585
phone #

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

House Bill 170 is very important for the following reasons:

- Attract and retain qualified biologists
- Cost to the state is minimal
- provide incentive for people to want to work for ADF&G
- ADF&G cannot fill vacancies due to competition with federal agencies and private groups.
- Fish + Wildlife resources will be better managed if the state can attract and retain good biologists.
- Fish + Game biologist's experience many hazards in their work duties.
- Moral within the Department would increase if House Bill 170 passes.

Signed: Peter M. Clancy
Testifier

Alaska Department of Fish & Game, Commercial Fisheries D.V.
Representing (Optional)

Address
P.O Box 81138 Fairbanks, Ak. 99708.
phone # — 457-2083

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

I support passage of HB170. I have been a Fishery Biologist with ADF&G Commercial Fish Division since 1995. I am constantly exposed to hazardous working conditions as part of my normal field work. In the field I am exposed to irate fisherpeople (both commercial and subsistence), conduct aerial surveys, traveling extensively in small skiffs (often in inclimate weather), and conduct stream surveys on foot often in close proximity to grizzly bears. I enjoy what I do but my compensation for these duties seems to be eroding over time. Our division constantly has a difficult time hiring and retaining qualified people. Passing HB170 will hopefully better compensate existing employees and allow us to hire and retain qualified people which can only benefit the state and the resources which belong to State residents.

Signed: Kevin Boeck
Testifier

Alaska Department of Fish + Game, CF Division
Representing (Optional)

P.O. Box 82732
Address

Fairbanks, AK 99708 459-7324
phone #

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name committee on HB 170 bill/subject, dated 4/19/2001.

A 20-YEAR RETIREMENT PLAN IS A GREAT WAY TO RETAIN NEW EMPLOYEES. ADF&G STILL HAS NO PROBLEMS ATTRACTING FRESH-OUT-OF-COLLEGE GRADUATES, BUT SHOPPING AROUND A LITTLE AFTER YOU HAVE SOME EXPERIENCE REVEALS THAT OTHER AGENCIES MAY HAVE BETTER RETIREMENT PLANS.

THIS, COUPLED WITH THE SAFETY FACTOR (A LOT OF TIME IN SMALL PLANES/BOATS) PLUS A HIGHER ACCIDENT RATE THAN THE TROOPERS BETS ME BELIEVE THAT A 20-YEAR RETIREMENT PLAN FOR ADF&G EMPLOYEES IS AN IMPORTANT ISSUE TO PURSUE.

Signed: [signature]
Testifier

Representing (Optional)

P.O. Box 750176 Fairbanks AK 99775
Address

Phone #

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

IN FAVOR

I SUPPORT HB 170. I WORK FOR FISH + GAME UNDER THE 30 YEAR RETIREMENT PLAN. THE DISCREPANCY BETWEEN 20 AND 30 YEAR RETIREMENT CO-WORKERS COUPLED WITH A HIGHER FATALITY RATE THAN THE AK STATE TROOPERS WARRANTS MY SUPPORT OF THIS BILL. I SPEND A FAIR AMOUNT OF TIME IN SMALL AIRCRAFT AND A LOT OF TIME ON LARGE AND DANGEROUS RIVERS TRYING TO ENSURE THE PUBLIC'S INTEREST (STAKE) IN FISHERIES AND CONTINUAL SOUND RESEARCH AND MANAGEMENT DECISIONS, ALL FOR THE PUBLIC TRUST (IN RESOURCES). THANKS FOR YOUR TIME.

Signed: James W. Hammond

Testifier

SELF

Representing (Optional)

112 W. TURNAROUND

Address

NORTH POLE, AK 99705 488-0967

phone #

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject . dated 4/19/2001 .

I. Bonnie Borba have worked for ADF&G from 1987 to present and have accrued only 10 years of service. In support of HB170 I would like you to recognize the following points;

1) that turn over is not a bad thing, new biologists and managers bring new ideas into the workplace,
2) The recent mass exit of employees was a function of the large number of employees hired 20 years ago and the opportunities recently made available by the Federal Government and were simply artifacts of timing. The new employees taking their places were hired over a longer period of time.
3) The state currently is not competitive in the job markets, with few incentives even for existing staff to remain. The state needs more incentives to attract and retain qualified staff. Vacant positions have been extremely slow to fill and existing staff is now over worked and the season is just beginning.
4) High risk, high stress - as one who conducts aerial surveys in remote parts of Alaska the appauling death rate weighs heavy. If that is not enough poor salmon returns to Western AK and recent disasters have led to approvals for bullet proof vests before going into communities
5) The cost to the State is small and will outweigh the continued erosion.

Please support 20yr retirement!

Signed: Bonnie M. Borba
Testifier

My Business with ADF&G CF
Representing (Optional)

1740 SUNSHOOK TRAIL
Address

FAIRBANKS AK 99709 (907)457-1016
phone #

Kodiak LIO FAX 486-5264

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

I Support HB 170, and ask that this committee Support this Bill. This Bill will Help Recruit and, especially, Retain fishery Biologists. I for one, have vested interest in seeing Light at the end of the tunnel!

Signed: Ken Bauwens
Testifier

self
Representing (Optional)

Box 1759, Kodiak AK 99615
Address

(907) 486-5337

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

I have been a permanent Alaska Dept. of Fish & Game employee for nearly 32 years and started before F&G employees were placed on 20 year retirement. The reason we were placed on 20 year retirement was our on job death rate exceeded all other State agencies. This has not changed.

Prior to 20 year retirement, the turnover of F&G employees was huge. The number of experienced employees was low. The pay was poor and many people couldn't keep 30 years without better compensation. After 20 year retirement and better pay, the number of experienced employees greatly increased.

Now things are going full circle. With pay becoming poorer and no 20 year retirement, the Alaska Dept of Fish & Game is again becoming a "foot in the door" for new employees until they can get a job with other employers. It's difficult to keep new employees and some jobs can't be filled.

If you do reinstate 20 year retirement, I hope that it will be set up so that employees can afford the cost. There was no cost to the employee for previous credit when I received 20 year retirement.

Thank you for your time.

Signed: Arnold R. Shaul
Testifier

Representing (Optional)

Address
P.O. Box 2081, Kodiak, AK. 99615

KODIAK LIO FAX 7860-52604

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

I would like to express my strong support for HB 170. It is imperative that measures be taken to ensure that the Alaska Department of Fish and Game is able to successfully recruit for its vacancies and to retain quality personnel. Currently, we are experiencing unprecedented difficulties with both. Let me be clear; until such time that ADF&G salaries and cost of living adjustments rival that offered by federal employment or some 24 other state agencies that deal with resource management in the lower 48, the department will continue to have recruiting and retention difficulties. This measure would, however, offer an immediate and significant incentive to rectify the problems at hand.

Additionally, much of the work conducted by biologist that work in the field is as dangerous to life and limb as law enforcement in the state. Our agency has the highest workplace mortality among state agencies.

Again, I think you will find strong support for this measure with ADF&G and I encourage you to see that it is passed favorably through finance.

Thank you for you time.

Signed: Mike Ruccio
Testifier

Representing (Optional)

214 E. Rezanof Apt B
Address

Kodiak AK 99615 mruccio@alaska.net
907-486-2

KODIAK LIO FAX 486-3264

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

I support HB 170. Fish and Game is a stressful occupation with burnout prevalent near that 20 year mark. The dangerous working conditions also merit a 20 year retirement program. It is not likely that wages will increase significantly enough to attract new employees but a reasonable retirement program will go along way towards getting good applicants, as well as retaining the good employees we currently have.

Signed: David R Jackson

Testifier David R Jackson

myself

Representing (Optional)

11218 Kalsin Dr.

Address

Kodiak, AK 99615 907.487.2365

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

I'm strongly in favor of this bill. It's about impossible to Recruit or retain upper level biologists with ADF&G UNDER THE CURRENT SYSTEM. Just look at the upper level defections to the federal government in the last years. Without changes, the current system could be in big trouble.

Signed: DAN URBAN
Testifier

Representing (Optional)

PO Box 859 Kodiak AK 99615
Address

907-486-1849

KODIAK LIO FAX 486-5264

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

I would like to voice my support of re-instatement of the 20-yr. retirement program for qualified ADF&G staff.

I am currently covered under the "old" 20-yr program and am eligible to retire this fall. The reasons I believe we should return to that system include:

- dangers associated with our profession
- Police Officer depreciation and responsibilities
- physical requirements of many of our assignments
- enhanced ability to attract qualified biologists into State service.

As an agency we have seen fewer people come on-board and many jumping ship to federal agencies. If this trend continues we will lose our ability to perform as the best natural resource agency there is

Signed: Larry Van Daele
Testifier

SELF
Representing (Optional)

3401 ANTONE WAY
Address

KODIAK, AK 99615 (486-8822)

Kodiak LIO fax 486-5264

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

I AM IN Support of HB170.

ALASKA is SITTING ON THE SINGLE MOST VALUABLE Renewable natural Resource left on this EARTH. Fish & Wildlife, Resources.

I believe it is very important to manage this with the highest quality employee. Supporting HB170 is a giant Step toward acheiving this goal.

Thanks

Signed: Matt Foster Matt Foster
Testifier

Representing (Optional)

P.O. Box 1188 KODIAK AK 99615
Address

907 481-2808
phone #

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

I support passage of HB 170.
The Department of Fish and Game is presently having great difficulties in recruiting new employees with adequate qualifications due to deteriorating salary and benefits relative to competitors. Additionally, virtually all the biologists that I supervise are required to serve hazardous duty at sea for extended periods annually and it is unreasonable to subject employees to such risks for more than 20 years.

My observations are based on my experience in supervising the ADF&G Westward Region Shellfish Research Program

Signed: Douglas Pengilly (Douglas Pengilly)
Testifier

Self
Representing (Optional)

P.O. Box 8347 Kodiak, AK 99615
Address

(907) 486-2431

Kodiak LIO FAX 486-5264

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

This bill, if passed, would help to address a recruiting crises that currently is occurring in the Department of Fish and Game managerial biologist ranks. I am an "older" employee who will not benefit from this bill personally, but we all will benefit from improved program effectiveness in Fish & Game management, by increasing the quality of the people we can attract to positions and reduce turnover of employees.

The number of biologists killed in the line of duty since statehood exceeds that of troopers. It seems ludicrous to me that 20 year retirement for Fish and Game personnel was abolished in the first place. I urge you all to support this bill.

Signed: Joe DiNnocenzo
Testifier

Representing (Optional)

PO Box 3045
Address

Kodiak AK 99615 (907) 486-1882

HOUSE STATE AFFAIRS COMMITTEE

STATE CAPITOL, ROOM 102
465-4963

COMMITTEE MEMBERS

Rep. John Coghill
Chairman
Room 102
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Rep. Peggy Wilson
Room 409
465-3824

Rep. Harry Crawford
Room 426
465-3438

Rep. Joe Hayes
Room 422
465-3466

MEMORANDUM

Date: April 20, 2001

To: Representatives Pete Kott, Eldon Mulder, Bill Williams, Jeannette James, Beverly Masek, and John Harris

From: Representative John Coghill, Chairman
House State Affairs Committee

Re: Recruitment and Retention of State Employees

In recent weeks there has been several pieces of legislation introduced and referred to House State Affairs with regard to retirement and benefits issues.

While we passed HB 242 on to House Finance, the influx of HB 170 and HB 202, as well as, the intent of Representative James to introduce legislation addressing social workers and Representative Williams to introduce legislation to address juvenile counselors is evidence that there is an overall problem to be address by the State Affairs Committee before any of this legislation can be passed.

During testimony on HB 170 April 19th, Kevin Brooks said his department is doing a salary survey on game biologists, but the survey will not be completed before adjournment.

I am interested in the State Affairs Committee reviewing the recruitment, retirement, and retention of our state workforce, as well as, salary issues for state employees in the broad context. I will be working with Sharon Barton in the Division of Personnel and Guy Bell with Retirement and Benefits to address these issues.

It's obvious that these bills will not be passed this year and the interim is an excellent time to work on the bigger picture. Sharon Barton and Guy Bell indicated to my staff just this morning that they share my concern about the piecemeal process of the series of bills now working their way through the legislature.

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB170, 20 Year Retirement bill/subject dated 4-19-2001.

I seek your support for House Bill 170.
In my case I started working for the Department of Fish and Game in 1968 and worked in a wide variety of positions until 1987. My job at the time was to oversee the Prince William Sound Hatchery program and when the decision was made to get rid of the State hatcheries they also got rid of me. I was placed on layoff status but received no job offers in three years and all my rights were terminated.

Eventually I obtained a job with the Department as a management biologist in 1998. After working for two years assuming I was grand-fathered into the 20 year retirement program I received a statement saying this was not the case. Attached was a statement of what benefits I will receive at retirement age under the thirty-year program. Quite frankly I would have to live on the streets.

As you know there is a very high vacancy rate in the Department. Most Fish and Game Jobs tend to be rather high stress and most qualified applicants, when taking into account the present wages and benefits, will not consider working for 30 to receive a retirement. The 20-year retirement program is a benefit that could help attract and retain the dedicated people we need to manage our fish and game resources.

Signed: Tom Kohler Tom Kohler
Testifier

Representing (Optional)

Box 898
Address

Nome, Alaska 99762 443-5167

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs
committee name

committee on: HB170 20 Year Retirement dated 4-20-2001.
bill/subject

I seek your support for House Bill 170. I worked for the University of Alaska in 1982 and I began work for Fish and Game in 1983 and worked off and on until 1986 when I was laid off.

I returned to work for Fish and Game in 1995 and I feel I was in the 20 year retirement program.

Under the 20 year program I would not have to work till I die

Signed: Paul Thompson Paul Thompson
Testifier

Representing (Optional)

P.O. Box 1173 Nome
Address

Alaska 99762 907 443 5167
phone

KODIAK LIO FAX 486-3244

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

I support HB170. I believe 20 year retirement would help retain and encourage recruitment into Fish and Game in which positions are increasingly harder to fill. Fish and Game has a highest death rate of all state departments, including the troopers. Jobs are often require field work which incorporates flying in small planes, working around bears and on research boats. and new employees are not compensated with hazard pay. The high stress level of upper level positions are not desirable for long time periods which would leave gaps in key management positions under 20 yr retirement. Please consider these points and thank you for your attention

Signed: Carrie Worton
Testifier

Self
Representing (Optional)

PO Box 1614
Address

Kodiak, AK 99615 486-1927
phone #

KODIAK LIO FAX 7486-5264

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

I have worked for the state of alaska as a fisheries biologist and peace officer since 1976. During this time I have worked with three staff individuals who have died in seperate incidents while performing their jobs (Hugh Dowel, Jack Grel, Shelly Clay). I have flown aerial surveys / supply runs with at least 6 pilots who have died in plane crashes (Hal Derek, Warren Zehe, Foster Air Pilot, Paul Burkes, Lee Eides, Leon Foster)

Living in the remote communities I have worked in (Nome, Kotzebue, Unalakleet, Saint Paul, Kodiak) is very hard on families. You often make decisions that effect the economy of the town + peoples livelyhood. As a result you are often subjected to critisism + are on call 7 days a week.

looking at working 30 years under these conditions is very discouraging. I am under the 20 year system - but I doubt if I would have stayed under a 30 yr system. I have had 2 FBI assistants quit + leave the state in the past 3 years.

Signed: Leon Schwarz
Testifier

myself
Representing (Optional)

BOX 533 KODIAK AK 99615
Address

phone #

KODIAK LIO FAX 486-5264

Alaska State Legislature

Please enter into the record my testimony to the House State Affairs committee name

committee on HB 170 bill/subject, dated 4/19/2001.

"The people of Alaska demand highly qualified professionals to manage the states resources. The state has been very fortunate in having a group of highly qualified professional staff to protect, manage, and enhance these Resources.

However, in the past several years pay and benefits have not kept pace with inflation or with other comparable agencies. One of the most damaging losses is the 20 year "peace officer" Retirement program. I believe the 20 year retirement is the single most important and cost effect program the State can implement to help recruit and retain professional biologists.

The recent encroachment of the Feds into our Fisheries has highlight the large disparity of salaries between the US goverment and Alaska State salaries for comparable Responsibilites. Someone better wake up before the lights go out.

Signed: Rodney D. Campbell
Testifier

Rodney D. Campbell

Representing (Optional)

P.O. Box 1091

Address Kodiak, AK 99615 (907)486-4013

HOUSE STATE AFFAIRS COMMITTEE

STATE CAPITOL, ROOM 102
465-4963

COMMITTEE MEMBERS

Rep. John Coghill
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Room 422
465-3466

MEMORANDUM

Date: April 20, 2001

To: Representatives Pete Kott, Eldon Mulder, Bill Williams, Jeannette James, and John Harris

From: Representative John Coghill, Chairman JBC
House State Affairs Committee

Re: Recruitment and Retention of State Employees

In recent weeks there has been several pieces of legislation introduced and referred to House State Affairs with regard to retirement and benefits issues.

While we passed HB 242 on to House Finance, the influx of HB 170 and HB 202, as well as, the intent of Representative James to introduce legislation addressing social workers and Representative Williams to introduce legislation to address juvenile counselors is evidence that there is an overall problem to be address by the State Affairs Committee before any of this legislation can be passed.

During testimony on HB 170 April 19th, Kevin Brooks said his department is doing a salary survey on game biologists, but the survey will not be completed before adjournment.

I am interested in the State Affairs Committee reviewing the recruitment, retirement, and retention of our state workforce, as well as, salary issues for state employees in the broad context. I will be working with Sharon Barton in the Division of Personnel and Guy Bell with Retirement and Benefits to address these issues.

It's obvious that these bills will not be passed this year and the interim is an excellent time to work on the bigger picture. Sharon Barton and Guy Bell indicated to my staff just this morning that they share my concern about the piecemeal process of the series of bills now working their way through the legislature.

HB 170
April 19, 2001

Good morning chairman and members of the committee. I would like to thank Beverly Masek for sponsoring this bill, and this committee for taking the time to consider this issue. My name is Nick Sagalkin, I live in Kodiak Alaska, and I am strongly in support of House Bill 170.

I have been working for the Alaska Department of Fish and Game for five years. In that short period of time, I have had a number of close calls where I have felt my life was in jeopardy. These include trips on small airplanes to remote ports, or skiffs in open water or planes to remote field camps when the weather suddenly changed for the worse. The easiest for me to remember is that the first crab boat I went to sea on for the department sank one month later due to some mechanical failure. My best friend in the department, who has about the same amount of time in as me, crashed last summer in a super cub nearly losing his life. The pilot in that crash, among other injuries, broke both of his legs and is just now able to walk. These risks are real. They are a part of our jobs, and they are experiences of my job that I no longer share with my family because it disturbs them.

A related problem the department faces is retaining and attracting qualified biologists. This is due to the department not keeping up with salaries and benefits. I routinely assist with hiring committees and the number of qualified applicants has diminished. Two examples in Kodiak include the management biologist position for Area M, one of the most controversial fisheries in the state, will be unfilled going into the beginning of commercial fishing season. Another is a research biologist position for the Bering Sea, funded by the federal government, has gone unfilled for months, and at the time of this testimony, is still vacant.

While I love my job, and I enjoy working with the people in the department I am at a point in my career where I question whether I can continue to work for the department for another 25 years, or whether it would be wise for me to look for another less stressful, higher paying, and less dangerous position.

Thank you again for considering this important issue.

Sincerely,

Nicholas Sagalkin
P.O. Box 3502
Kodiak, Alaska 99615

HOUSE STATE AFFAIRS COMMITTEE

STATE CAPITOL, ROOM 102
465-4963

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MEMORANDUM

Date: April 20, 2001

To: Representatives Pete Kott, Eldon Mulder, Bill Williams, Jeannette James, Beverly Masek, and John Harris

From: Representative John Coghill, Chairman
House State Affairs Committee

Re: Recruitment and Retention of State Employees

In recent weeks there has been several pieces of legislation introduced and referred to House State Affairs with regard to retirement and benefits issues.

While we passed HB 242 on to House Finance, the influx of HB 170 and HB 202, as well as, the intent of Representative James to introduce legislation addressing social workers and Representative Williams to introduce legislation to address juvenile counselors is evidence that there is an overall problem to be address by the State Affairs Committee before any of this legislation can be passed.

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It's obvious that these bills will not be passed this year and the interim is an excellent time to work on the bigger picture. Sharon Barton and Guy Bell indicated to my staff just this morning that they share my concern about the piecemeal process of the series of bills now working their way through the legislature.

Committees:

Resources
Co-Chair

Transportation
Vice Chair

Economic Development,
Trade & Tourism

Alaska State Legislature

Representative Beverly Masek

During Interim: (June-Dec.)
Mat-Su LIO
600 E. Railroad Avenue
Wasilla, AK 99654
(907) 376-2679
Fax: 373-4745

During Session: (Jan.-May)
State Capitol
Juneau, AK 99801-1182
(907) 465-2679
Fax: 465-4822
1-800-505-2678

MEMORANDUM

Dt: April 3, 2001

To: ~~Representative John Coghill~~ John,

Fr: ~~Representative Beverly Masek~~ Beverly

Re: **HB 170 - Granting certain Fish & Game Employees status as peace officers under the public employees retirement system.**

I would appreciate your consideration in scheduling HB 170 for a hearing. It has become abundantly clear that Alaska must act in the near future if we are to maintain our standards where management of our fish and wildlife resources are concerned. The continued loss of experienced staff due to our inability to compete in the market place will have a detrimental effect on the future of our fish and wildlife resources. HB 170 will provide the State one incentive for recruiting and retaining competent employees for the Department of Fish and Game.

HB

177

Alaska State Legislature

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

MEMORANDUM

TO: Representative John Coghill, Chair
House State Affairs Committee

FROM: Representative Pete Kott, Chair
House Rules Committee

RE: Request for Hearing

DATE: March 14, 2001

Please consider this request to schedule House Bill 177: An Act placing certain special interest organizations within the definition of "group" for purposes of Alaska's campaign finance statutes; providing a contingent amendment to take effect in case subjecting these organizations to all of the statutory requirements pertaining to groups is held by a court to be unconstitutional; requiring certain organizations to disclose contributions made to them and expenditures made by them; requiring disclosure of the true source of campaign contributions; and providing for an effective date, before the House State Affairs Committee at your earliest possible convenience.

Back up material will be delivered to your committee aide within the next few days.

Thank you for your consideration of my request.

[redacted]HOUSE COMMITTEE REPO[redacted]

(7)

Date Referred to Committee: March 12, 2001 **FURTHER REFERRALS: Judiciary**

Date of Committee Action: March 22, 2001

The STATE AFFAIRS Committee considered: **HB 177**

HOUSE BILL NO. 177 **CAMPAIGN FINANCE: CONTRIB/DISCLOS/GROUPS**

"An Act placing certain special interest organizations within the definition of 'group' for purposes of Alaska's campaign finance statutes; providing a contingent amendment to take effect in case subjecting these organizations to all of the statutory requirements pertaining to groups is held by a court to be unconstitutional; requiring certain organizations to disclose contributions made to them and expenditures made by them; requiring disclosure of the true source of campaign contributions; and providing for an effective date."

Recommends it be replaced with CS HB 177 (STA) [ ] Same Title [ ] New Title

*For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR*_____

[ ] attach amendments

[ ] add new referral to _____ Committee

[ ] Letter of Intent _____Committee

List of Abbrev. For Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LAA
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *For Chief Clerk's Office Use Only				
FN# *	List by Dept(s):	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN #	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
George W. Wilson	Wilson	✓			
[redacted]	STEVENS	✓			
Harry T. Crawford Jr.	(CRAWFORD)			✓	
Jeannette James	JAMES	✓			
[redacted]	[redacted]			✓	
Hugh Fate	Fate	✓			
Chair: [redacted]	Coghill	✓			
Chair:					

22-LS0406\P
Kurtz
3/20/01

CS FOR HOUSE BILL NO. 177( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

SHORT TITLE. This Act may be known as the Full Disclosure of Campaign Finance Act.

*** Sec. 2.** AS 15.13.040(b) is amended to read:

(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.

* **Sec. 3.** AS 15.13.400(5) is amended to read:

(5) "group" means (A) every state and regional executive committee of a political party; [AND] (B) any combination of two or more individuals acting jointly who organize for the principal purpose of influencing the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election; **and (C) a special interest organization; for purposes of this subparagraph, a special interest organization is a person, other than an individual, that cannot participate in business activities, does not have shareholders who have a claim on corporate earnings, and is independent from the influence of business corporations;** 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;

HOUSE BILL NO. 177

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE

Introduced: 3/12/01
Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

"An Act placing certain special interest organizations within the definition of 'group' for purposes of Alaska's campaign finance statutes; providing a contingent amendment to take effect in case subjecting these organizations to all of the statutory requirements pertaining to groups is held by a court to be unconstitutional; requiring certain organizations to disclose contributions made to them and expenditures made by them; requiring disclosure of the true source of campaign contributions; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

SHORT TITLE. This Act may be known as the Full Disclosure of Campaign Finance Act.

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(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.

* **Sec. 3.** AS 15.13.040(b), as amended by sec. 2 of this Act, is amended to read:

(b) Each group **and qualified nongroup entity** 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.

* **Sec. 4.** AS 15.13.400(5) is amended to read:

(5) "group" means (A) every state and regional executive committee of a political party; [AND] (B) any combination of two or more individuals acting jointly who organize for the principal purpose of influencing the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election; **and (C) a special interest organization; for purposes of this subparagraph, a special interest organization is a person, other than an individual, that cannot participate in business activities, does not have shareholders who have a claim on corporate earnings, and is independent from the influence of business corporations;** 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;

* **Sec. 5.** AS 15.13.400(5), as amended by sec. 4 of this Act, is amended to read:

(5) "group" means (A) every state and regional executive committee of a political party; **and** (B) any combination of two or more individuals acting jointly who organize for the principal purpose of influencing the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election; [AND (C) A SPECIAL INTEREST ORGANIZATION; FOR PURPOSES OF THIS SUBPARAGRAPH, A SPECIAL INTEREST ORGANIZATION IS A PERSON, OTHER THAN AN INDIVIDUAL, THAT CANNOT PARTICIPATE IN BUSINESS ACTIVITIES, DOES NOT HAVE SHAREHOLDERS WHO HAVE A CLAIM ON CORPORATE EARNINGS, AND IS INDEPENDENT FROM THE INFLUENCE OF BUSINESS CORPORATIONS;] 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;

*** Sec. 6.** AS 15.13.400 is amended by adding a new paragraph to read:

(12) "qualified nongroup entity" means a person, other than an individual, 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.

*** Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. Sections 3, 5, and 6 of this Act take effect only if a court order is entered and becomes final declaring that nonprofit entities that meet the test outlined in State of Alaska v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), and must be permitted to make campaign contributions and independent expenditures, may not be regulated to the same extent as other groups under Alaska law.

*** Sec. 8.** If secs. 3, 5, and 6 of this Act take effect, they take effect on the day after the date of a court order described in sec. 7 of this Act becomes final.

Alaska State Legislature

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

SPONSOR STATEMENT
COMMITTEE SUBSTITUTE FOR HOUSE BILL 177 ( )
DRAFT 22-LS0406\P

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

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

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

Alaska State Legislature

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

SECTIONAL ANALYSIS
COMMITTEE SUBSTITUTE FOR HOUSE BILL 177 ( )
DRAFT 22-LS0406\P

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

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

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

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

LEGAL SERVICES

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

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

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

MEMORANDUM March 15, 2001

SUBJECT: True Source of Funds (HB177)

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

FROM: Kathryn L. Kurtz KK
Legislative Counsel

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

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

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

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

[2] *Id.* (emphasis in original)

In another recent federal case, corporate employees, friends, and family members were solicited to make campaign contributions to designated candidates, and those contributions were then reimbursed by the corporation.[3] The defendants responded to the indictment by arguing that the anti-conduit provision in 2 U.S.C. 441(f) was unconstitutional. The third circuit found this argument frivolous[4], noting that "[p]roscription of conduit contributions (with the concomitant requirement that the true source of contributions be disclosed) would seem to be at the very core" of the United States Supreme Court's analysis in Buckley v. Valeo, 424 U.S. 1 (1976), and concluded that the federal prohibition on conduit contributions served a compelling state interest.[5]

KLK:glc
01-242.glc

Enclosure

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

[4] *Id.* at 765.

[5] *Id.* at 775.

LEGAL SERVICES

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MEMORANDUM March 21, 2001

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

TO: Representative Pete Kott, Chair
House Rules Committee

FROM: Kathryn L. Kurtz KK
Legislative Counsel

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

Buckley v. Valeo: the Foundation of Campaign Finance Law

Buckley v. Valeo[1] is the source of modern campaign finance law. In that case, the Supreme Court upheld some parts of the federal election campaign act, and invalidated others. That decision established the validity of contribution limits, and disclosure requirements. Contribution limits can be justified to the extent they are narrowly tailored to prevent corruption or the appearance of corruption. Disclosure requirements can be justified by the state's interest in providing information about candidates and their funding sources to voters. Buckley v. Valeo rejected expenditure limits, including limits on independent expenditures expressly advocating the election or defeat of a candidate, limits on personal expenditures by candidates, and limits on total campaign expenditures.[2]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

So, the court mandated that the statutes be read to permit non-group entities that meet these three criteria to contribute and make independent expenditures.

The Alaska legislature may have anticipated this result when it included the following applicability provision in the 1996 campaign finance reform act[15]:

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

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

Treating "Non-Group Entities" Like Groups

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

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

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

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

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

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

[18] *Id.* at 1319.

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

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

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

Contributions through Conduits

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

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

[20] *Id.* at 1316-1317.

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

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

[23] *Id.* at 42.

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

as to the correctness of the conclusion. Proof by clear and convincing evidence requires a level of proof greater than a preponderance of the evidence or the substantial weight of the evidence, but less than beyond a reasonable doubt. *Ala.Code* § 6-11-20 (1993).

By its own language, section 6-11-20 does not define the standard to be applied by the court at the summary judgment stage. *See Ex parte Norwood Hodges Motor Co., Inc.*, 680 So.2d 246, 249 (Ala.1996). Instead, it "defines the standard of proof for determining whether the trier of fact has, or had, the authority to award punitive damages." *Id.*

[22] Because this is a diversity action, Alabama substantive law applies, but the standard for summary judgment is a procedural matter governed by federal law. In this case, MSC has presented evidence which tends to show that the Defendants knowingly misrepresented the quality of certain seed sold to MSC. This evidence, viewed in the light most favorable to MSC, is sufficient to avoid summary judgment on the issue of punitive damages, although the evidence may well prove to be insufficient to authorize such damages at trial. Accordingly, Defendants' Motion for Summary Judgment as to the availability of punitive damages on MSC's fraud claims is DENIED.

H. *Mental Anguish Damages*

[23] Defendants contend that a sole proprietorship has no claim for mental anguish damages. As discussed previously, there is no legal distinction between a sole proprietor and a sole proprietorship. Legally, MSC and Mrs. Francis G. Moorer are one and the same. MSC is entitled to claim mental anguish damages to the same extent they could be claimed in the name of Mrs. Moorer. Therefore, Defendants' Motion for Summary Judgment as to the availability of mental anguish damages is DENIED.[3]

3. The court, of course, expresses no opinion as to the propriety of awarding such damages

ORDER

For the foregoing reasons, it is ORDERED as follows:

1. Defendants' Motion for Summary Judgment is GRANTED as to Melvin M. Moorer, Jr., and judgment is entered in favor of the Defendants and against Melvin M. Moorer, Jr. The Motion is DENIED insofar as it claims MSC is an improper party to this action.

2. The Motion for Summary Judgment is GRANTED as to the implied warranty claims and as to all claims based on state and federal seed law.

3. The Motion for Summary Judgment is DENIED as to the misrepresentation claims, the fraudulent suppression claim, the effect of the limited liability provisions, the availability of punitive damages on the fraud counts, and the ability of MSC to claim mental anguish damages.

4. The case will proceed in the name of Moorer Seed Company on counts two, four, five, six, and seven.

David RICHEY, et al., Plaintiffs,

v.

John TYSON, Jr., etc., et al., Defendants.

No. CIV. A. 99-0824-RVS.

United States District Court, S.D. Alabama, Southern Division.

Nov. 13, 2000.

Non-profit corporation which desired to advocate passage or defeat of ballot measures challenged constitutionality of Alabama's Fair Campaign Practice Act (FCPA). On cross-motions for summary judgment, the District Court, Vollmer, J., held that: (1) corporation had standing; (2) allegedly burdened activity was "express advocacy," not "issue advocacy"; (3) corporation was not immune from regulation, even if its major purpose was not achievement of particular election results; (4) regulation was justified by compelling state interest in providing electorate with information; (5) FCPA's registration, organizational and recordkeeping requirements were not narrowly tailored; and (6) FCPA's disclosure requirements were narrowly tailored.

Motions granted in part and denied in part.

1. Federal Civil Procedure ⇐103.2

At least to extent that standing is jurisdictional matter, court is obligated to confirm its existence, regardless of any challenge by parties.

2. Federal Civil Procedure ⇐103.2, 103.3

Irreducible constitutional minimum of standing is three-fold: (1) plaintiff must have suffered injury in fact, i.e., invasion of legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical; (2) there must be causal connection between injury and conduct complained of, such that injury is fairly traceable to challenged action of defendant; and (3) it must be likely, as opposed to merely speculative, that injury will be redressed by favorable decision. U.S.C.A. Const. Art. 3, § 2, cl. 1.

3. Federal Civil Procedure ⇐103.2

Standing must exist at commencement of litigation, and plaintiff must demonstrate standing separately for each form of relief sought.

4. Constitutional Law ⇐42.2(1)

When plaintiff brings pre-enforcement First Amendment challenge to sanctioning statute, regulation or ordinance, standing exists at summary judgment stage when plaintiff has submitted evidence indicating intention to engage in course of conduct arguably affected with constitutional interest, but proscribed by statute, and there exists credible threat of prosecution. U.S.C.A. Const. Art. 3, § 2, cl. 1; Amend. 1.

5. Constitutional Law ⇐42.2(1)

Non-profit corporation which desired to advocate passage or defeat of ballot measures, but did not want to comply with requirements imposed on political committees by Alabama's Fair Campaign Practice Act (FCPA), had standing to assert pre-enforcement First Amendment challenge; corporation faced credible threat of prosecution, Act was source of alleged infringement on corporation's free speech rights, and declaration that Act was unconstitutional would redress alleged injury. U.S.C.A. Const. Art. 3, § 2, cl. 1; Amend. 1; Ala.Code 1975, § 17-22A-1 et seq.

6. Constitutional Law ⇐42(1)

Prudential concerns addressed by standing doctrine, in suit challenging constitutionality of statute, include whether plaintiff's complaint falls within zone of interests protected by constitutional provision at issue, whether it raises abstract questions more appropriately resolved by legislature, and whether plaintiff is asserting its own rights or those of non-party.

7. Constitutional Law ⇐46(1)

First Amendment challenge to statute that allegedly restrained non-profit corporation's advocacy of ballot measure was not mooted by occurrence of election; controversy was capable of repetition, yet evading review. U.S.C.A. Const.Amend. 1.

8. Constitutional Law ⇐90.1(1.2)

Non-profit corporation's desire to distribute voter guides to expressly advocate passage or defeat of ballot measures was essence of First Amendment expression which could be burdened only by statute

narrowly tailored to serve compelling state interest. U.S.C.A. Const.Amend. 1.

9. Constitutional Law ⇐90.1(1.2)

Fact that practical effect of Alabama's Fair Campaign Practice Act (FCPA), in imposing registration, organizational and recordkeeping requirements on political committees, might be to discourage protected speech was sufficient to characterize Act as infringement on First Amendment activities, and hence justifiable only if narrowly tailored to serve compelling state interest. U.S.C.A. Const.Amend. 1; Ala. Code 1975, § 17-22A-1 et seq.

10. Constitutional Law ⇐90.1(1.2)

"Issue advocacy," which lies completely beyond pale of constitutional governmental regulation, is shorthand expression for speech that stops short of explicitly advocating particular election result.

See publication Words and Phrases for other judicial constructions and definitions.

11. Constitutional Law ⇐90.1(1.2)
Elections ⇐309

Non-profit corporation's effort to expressly advocate passage or defeat of ballot measure was "express advocacy," not "issue advocacy," for purpose of determining whether it was subject to constitutionally permissible restriction. U.S.C.A. Const.Amend. 1.

12. Constitutional Law ⇐90.1(1.2)
Elections ⇐309

Non-profit corporation was not constitutionally immune from regulation of its express advocacy activities, even if its major purpose was not achievement of particular election results. U.S.C.A. Const. Amend. 1.

13. Constitutional Law ⇐90.1(1.2)
Elections ⇐311

State's asserted interest in avoiding appearance or actuality of corruption was not sufficiently compelling to justify disclosure requirements imposed by Alabama's Fair Campaign Practice Act (FCPA) on non-profit corporation which desired to advocate passage or defeat of ballot measures, absent evidence that reality or perception of corruption haunted Alabama ballot measures. U.S.C.A. Const.Amend. 1; Ala.Code 1975, § 17-22A-1 et seq.

14. Constitutional Law ⇐90.1(1.2)
Elections ⇐311

State's asserted interest in providing electorate with information concerning sources of money spent on ballot propositions and how that money is spent was sufficiently compelling to justify disclosure requirements imposed by Alabama's Fair Campaign Practice Act (FCPA) on non-profit corporation which desired to advocate passage or defeat of ballot measures. U.S.C.A. Const.Amend. 1; Ala.Code 1975, § 17-22A-1 et seq.

15. Constitutional Law ⇐82(3)

To be "narrowly tailored," means selected in statute otherwise restricting exercise of First Amendment rights must bear sufficiently close relation to governmental interest advanced and must not unnecessarily infringe on First Amendment rights. U.S.C.A. Const.Amend. 1.

See publication Words and Phrases for other judicial constructions and definitions.

16. Constitutional Law ⇐90.1(1.2)
Elections ⇐311

Registration, organizational and recordkeeping requirements imposed by Alabama's Fair Campaign Practice Act (FCPA) were not narrowly tailored, and thus violated First Amendment rights of non-profit corporation which desired to advocate passage or defeat of ballot measures, but whose major purpose was not to engage in election activity. U.S.C.A. Const.Amend. 1; Ala.Code 1975, §§ 17-22A-3, 17-22A-5, 17-22A-6.

17. Statutes ⇐61

State statute should not be deemed facially invalid unless it is not readily subject to narrowing construction by state courts.

18. Constitutional Law ⇐90.1(1.2)
Elections ⇐311

Contribution disclosure requirements imposed by Alabama's Fair Campaign Practice Act (FCPA) were narrowly tailored, and thus did not violate First Amendment rights of non-profit corporation which desired to advocate passage or defeat of ballot measures, even though corporation's major purpose was not to engage in election activity; Act required disclosure only of contributions made for purposes of express advocacy. U.S.C.A. Const.Amend. 1; Ala.Code 1975, § 17-22A-8.

19. Constitutional Law ⇐91
Elections ⇐311

Contribution disclosure requirements imposed by Alabama's Fair Campaign Practice Act (FCPA) did not violate free association rights of contributors to non-profit corporation which desired to advocate passage or defeat of ballot measures, absent showing of reasonable probability that contributors would be subjected to threats, harassment or reprisals if their identity became known. U.S.C.A. Const. Amend. 1; Ala.Code 1975, § 17-22A-8.

20. Constitutional Law ⇐90.1(1.2)
Elections ⇐311

Alabama's Fair Campaign Practice Act (FCPA) did not violate First Amendment rights of non-profit corporation which desired to advocate passage or defeat of ballot measures by labeling corporation as "political committee," absent showing of reasonable probability that appellation would generate adverse reactions from third parties. U.S.C.A. Const. Amend. 1; Ala.Code 1975, § 17-22A-1 et seq.

21. Injunction ⇐138.1

Plaintiff moving for preliminary injunction must show: (1) substantial likelihood of success on merits; (2) substantial threat of irreparable injury; (3) that threatened injury to plaintiff outweighs injury to nonmovant, and (4) that [illegible] would not disserve public interest.

22. Injunction ⇐138.75

Loss of First Amendment freedoms, for even minimal periods of time, constitutes irreparable injury warranting injunctive relief. U.S.C.A. Const.Amend. 1.

Vaughan Drinkard, Jr., Mark R. Ulmer, Ulmer, Hillman, Ballard and Nikolakis, Michael L. Cumpton, Drinkard, Newton, Cumpton & Lassiter, Charles H. Hillman, Mobile, James Bopp, Jr., Brandon Chad Bungard, Bopp, Coleson & Bostrom, Terre Haute, IN, for David A. Richey, Margie Richey, Christian Coalition of Alabama, plaintiffs.

Courtney W. Tarver, Alabama Department of Mental, Health and Mental Retardation, Montgomery, AL, John J. Park, Jr., Deputy, Attorney Gen., Bill Clifford, Office of the Attorney General, State of Alabama, Montgomery, AL, Raymond Lewis Jackson, Jr., Jackson & Armstrong, P.C., Auburn, AL, for John M. Tyson, Jr., District Attorney, in his official capacity as the District Attorney for the 13th Circuit in Mobile, Alabama, and as a representative of the class of District Attorneys in the State of Alabama, William Pryor, in his official capacity as Attorney General of the State of Alabama, defendants.

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

VOLLMER, District Judge.

This matter is before the Court on the parties' competing motions for summary judgment. (Docs.53, 57). The parties have submitted numerous briefs addressing their respective motions. (Docs.51, 58, 61-64, 66, 68, 75-76).[1] After careful consideration of the parties' arguments as set forth in these filings and at oral argument, as well as all other relevant materials in the file, the Court concludes that both

1. The plaintiffs' motions to exceed page limits, (Docs.55, 65), are granted.

motions are due to be granted in part and denied in part.

BACKGROUND

This case requires the Court to explore the complex and often subtle contours of the First Amendment as it pertains to restrictions on election financing.

Suit was brought by David and Margie Richey (collectively, the "Richeys") and the Christian Coalition of Alabama, Inc. ("CCA"). CCA is a non-profit, tax-exempt Alabama corporation whose purpose is to educate, inform and mobilize Christians to become active in the public arena in support of causes reflecting Christian values and to uphold, propagate and disseminate Christian principles and values by all lawful means. (Doc. 70 at 3). The Richeys apparently are not members of CCA but have received CCA communications in the past. (Doc. 1 at 6).

CCA has in the past spent over $1,000 a year to produce and distribute communications concerning public issues and candidates' positions on them. CCA has never expressly advocated the election or defeat of a candidate for public office, and any such communication would exceed its mission. (Doc. 70 at 4).

CCA has not historically expended funds to expressly advocate the passage or defeat of any constitutional amendment or other ballot measure. However, in 1999 the Alabama Legislature submitted to popular vote a proposed constitutional amendment to allow a state lottery. *See generally* Ala. Const. Art. IV, § 65 (forbidding the legislature to authorize lotteries); *id.* amend. 24 (establishing a procedure for adopting constitutional amendments). CCA formed the intention to distribute, at a cost exceeding $1,000, voter guides explicitly urging voters to reject the proposed constitutional amendment. However, CCA elected not to do so because it understood that taking such action would subject it to the provisions of Alabama's Fair Campaign Practices Act ("FCPA"), Ala.Code §§ 17-22A-1 to -23, which carries consequences and imposes obligations that CCA was unwilling to accept. (Doc. 70 at 4).

On September 8, 1999, approximately five weeks before the scheduled vote on the proposed constitutional amendment, the plaintiffs filed this action. (Doc. 1).[2] At the same time, they filed motions for a temporary restraining order and for a preliminary injunction to enjoin enforcement of the FCPA. (Docs.2, 3). Following extensive briefing, the Court heard oral argument of the plaintiffs' motions on September 16, 1999 and, by order dated September 20, 1999, the Court denied both motions. On October 12, 1999, the proposed constitutional amendment was defeated.

PLAINTIFFS' CONTENTIONS

The FCPA, enacted in 1988, imposes requirements on candidates, principal campaign committees and political committees. A "political committee" is defined to include "[a]ny ... association ... or other group of one or more persons which receives or anticipates receiving contributions or makes or anticipates making expenditures to or on behalf of any ... proposition ...." *Id.* § 17-22A-2(a)(10). A "proposition" includes any proposal submitted to popular vote. *Id.* § 17-22A-2(12). A "contribution" or an "expenditure" includes, with certain exceptions, "anything of value ... made for the purpose of influencing the result of an election." *Id.* § 17-22A-2(a)(2)a, -2(a)(4)a. An "election" includes "any election at which a constitutional amendment or other proposition is submitted to the popular vote." *Id.* § 17-22A-2(a)(3).

As noted, political committee status arises upon the anticipated or actual receipt of contributions or making of expenditures on behalf of any proposition. A political committee is thereafter required to comply with certain registration, organizational, recordkeeping and reporting requirements. In brief, a political committee must file a statement of organization, Ala. Code § 17-22A-5; open a bank account and appoint a treasurer to keep an account of contributions, expenditures, contributors and recipients, *id.* §§ 17-22A-3, -6; and file periodic reports, open for public inspection, that disclose the identity of each person making contributions or receiving expenditures of over $100 within the calendar year. *Id.* §§ 17-22A-8, -10(a), -11(2).

The plaintiffs allege that these provisions of the FCPA violate the First Amendment in the following ways:

- they purport to apply to groups, such as CCA, that engage exclusively in issue advocacy;
- they purport to apply to groups, such as CCA, whose major purpose is not to expressly advocate an election result;
- they purport to apply to groups, such as CCA, that expressly advocate the passage or defeat of a ballot measure, without any compelling state interest in such regulation;
- they purport to apply to groups, such as CCA, that expressly advocate the passage or defeat of a ballot measure without employing narrowly tailored means;
- they abridge the Richeys' right to receive speech from CCA.

The plaintiffs seek a declaration that the challenged portions of the FCPA are unconstitutional on their face and as applied and an injunction permanently barring their enforcement against CCA. (Doc. 1 at 14-19).

DETERMINATIONS OF UNCONTROVERTED FACT[3]

CCA is a non-profit, non-stock corporation incorporated in the State of Alabama. It is exempt from federal income tax under 26 U.S.C. § 501(c)(4). It is not associated with any political candidate, political party or campaign committee. Its purposes are to educate, inform and mobilize Christians to become active in the public arena in support of causes which reflect Christian values, and to uphold, propagate and disseminate by all lawful means Christian principles and values. CCA's total budget for the two-year election cycle 1998-1999 is approximately $230,000. (Doc. 70 at 3).

To further its purposes, CCA has in the past spent more than $1,000 in a single calendar year to produce and distribute communications about important public issues and candidates' positions on them, without in explicit words or by express terms advocating the election or defeat of a clearly identified candidate. CCA has not in the past expressly advocated the nomination or election or defeat of any clearly identified candidate. It has no intention of doing so in the future, and any such communication would exceed CCA's mission. (Doc. 70 at 3-4).

A ballot measure regarding gambling was voted on by the people of Alabama on October 12, 1999. CCA desired to receive contributions regarding the gambling ballot measure in excess of $1,000 and to expend over $1,000 during 1999 to prepare and distribute voter guides expressly urging voters to reject the gambling proposal. CCA decided not to publish the voter guides because it did not want to comply with all of the political committee requirements in the FCPA and did not want to suffer what it believes to be the adverse consequences of complying with the Act. (Doc. 70 at 4).

3. The complaint named as defendants John Tyson, Jr. in his official capacity as District Attorney and William Pryor in his official capacity as Attorney General. Governor Don Siegelman moved to intervene as a defendant, which motion was granted. (Docs.11, 14).

3. The following determinations of uncontroverted fact have been taken, where possible, from those facts agreed to by the parties in the joint pretrial document, (Doc. 70), and/or in their responses to their opponents' proposed uncontroverted facts. (Docs.61, 63).

The November 7, 2000 ballot includes a ballot measure concerning use of certain state trust funds. CCA desires to spend over $1,000 to produce and distribute voter guides expressly advocating passage or defeat of this measure, but will not do so for the same reasons it did not expressly advocate defeat of the November 1999 gambling proposal. (Doc. 76, Exhibit 1). CCA anticipates that future ballot measures will be submitted to the voters and that CCA will desire to spend over $1,000 in a calendar year to expressly advocate passage or defeat of such measures. (Doc. 61 at 3).

Spending money to urge voters to vote for or against a ballot measure, or otherwise engaging in express advocacy, is not, and will not become, the major purpose for which CCA exists. (Doc. 61 at 2; Doc. 70 at 3–4).

The primary method of distribution for CCA's voter guides has been, and remains, as inserts to church bulletins, which are handed out to various congregations during church services. This is the primary method of distribution CCA plans to use for its voter guides urging the passage or defeat of any future ballot measure. (Doc. 70 at 9). Some churches that have previously distributed CCA voter guides would refuse to do so if CCA is deemed a political committee out of fear that their legal status would be negatively affected, as by losing tax-exempt status under 26 U.S.C. § 501(c)(3). (Doc. 54, Exhibits I–M).

CCA has about 2,500 contributors per calendar year. Some individuals give over $1,000 in a calendar year, and some give less than $1,000 but more than $100. (Doc. 70 at 9). Some contributors will stop contributing to CCA if it is required to disclose the identity of those contributing over $100 in a calendar year. (Doc. 54, Exhibits O-T). Some husband and wife contributors that have previously contributed over $1,000 in a calendar year will stop contributing to CCA if it is deemed a political committee for fear they will also be deemed a political committee. (*Id.*, Exhibits S-T). If CCA is deemed a political committee, some of its contributors will no longer contribute because they do not give to political committees as a matter of personal choice. (*Id.*, Exhibit A at 4).

The Richeys have in the past benefitted from receiving CCA's communications. They would like to continue to receive these communications, including those regarding important ballot measures, and including materials concerning the 1999 lottery proposal. (Doc. 70 at 9).

CONCLUSIONS OF LAW

The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

Summary judgment should be granted only if "there is no issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Federal Rule of Civil Procedure 56(c). The party seeking summary judgment bears "the initial burden to show the district court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial." *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir.1991). Once the moving party has satisfied his responsibility, the burden shifts to the nonmoving party to show the existence of a genuine issue of material fact. *Id.* "If the nonmoving party fails to make 'a sufficient showing on an essential element of her case with respect to which she has the burden of proof,' the moving party is entitled to summary judgment." *Id.* (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)) (footnote omitted). "In reviewing whether the nonmoving party has met its burden, the court must stop short of weighing the evidence and making credibility determinations of the truth of the matter. Instead, the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Tipton v. Bergrohr GMBH-Siegen*, 965 F.2d 994, 999 (11th Cir.1992) (internal citations and quotations omitted).

I. Threshold Issues.

Before reaching the merits of the plaintiffs' claims, the Court must first determine the existence of a justiciable case or controversy.

A. Standing.

[1] The doctrine of standing encompasses both jurisdictional and prudential concerns. *E.g., Bischoff v. Osceola County*, 222 F.3d 874, 883 (11th Cir.2000). At least to the extent that standing is a jurisdictional matter, the Court is obligated to confirm its existence, regardless of any challenge by the parties. *United States v. Hays*, 515 U.S. 737, 742, 115 S.Ct. 2431, 132 L.Ed.2d 635 (1995).

[2, 3] The "irreducible constitutional minimum of standing" is three-fold: (1) "the plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized, ... and (b) 'actual or imminent, not "conjectural" or "hypothetical" '"; (2) "there must be a causal connection between the injury and the conduct complained of", such that "the injury [is] 'fairly ... trace[able] to the challenged action of the defendant' "; and (3) "it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.' " *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)(quoting earlier Supreme Court decisions). Standing "must exist at the commencement of the litigation," *Arizonans for Official English v. Arizona*, 520 U.S. 43, 68 n. 22, 117 S.Ct. 1055, 137 L.Ed.2d 170 (1997)(quoting *United States Parole Commission v. Geraghty*, 445 U.S. 388, 397, 100 S.Ct. 1202, 63 L.Ed.2d 479 (1980)), and "a plaintiff must demonstrate standing separately for each form of relief sought." *Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167, 120 S.Ct. 693, 706, 145 L.Ed.2d 610 (2000).

[4] Special rules exist for gauging injury in fact in the First Amendment context. "In the First Amendment realm, plaintiffs do not have to expose themselves to enforcement in order to challenge a law," but may show they have foregone expression to avoid enforcement. *Wilson v. State Bar*, 132 F.3d 1422, 1428 (11th Cir.1998). "When a plaintiff brings a pre-enforcement challenge to a sanctioning statute, regulation or ordinance, standing exists at the summary judgment stage when the plaintiff has submitted evidence indicating 'an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution.' " *Id.* (quoting *Babbitt v. United Farm Workers National Union*, 442 U.S. 289, 298, 99 S.Ct. 2301, 60 L.Ed.2d 895 (1979))(emphasis omitted). To be credible, the threat of prosecution must be "genuine," *White's Place, Inc. v. Glover*, 222 F.3d 1327, 1329 (11th Cir.2000), and the plaintiff's fear of prosecution " 'objectively reasonable.' " *Wilson v. State Bar*, 132 F.3d at 1428 (quoting *New Hampshire Right to Life Political Action Committee v. Gardner*, 99 F.3d 8, 14 (1st Cir.1996)). This three-part test is satisfied.

[5] CCA has expressed its intention to spend over $1,000 engaged in expressly advocating the passage or defeat of ballot measures, activity that constitutes "core political speech." *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 347, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995). However, CCA desires to do so without complying with the registration, organizational, recordkeeping and reporting requirements applicable to political committees. A credible threat of resulting prosecution exists. By its terms, the FCPA makes the violation of any of its provisions, including its registration, organizational, recordkeeping and reporting requirements, a misdemeanor subject to fine and imprisonment. Ala.Code § 17–22A-22(a), (b). The attorney general is

authorized to prosecute violations of the FCPA. *Id.* § 17-22A-22(c). The defendants insist that the CCA's proposed conduct would violate the FCPA, (Doc. 18, Exhibit A at 2), and they have presented no evidence that CCA would not be prosecuted for pursuing such a course of conduct.[4] *See, e.g., Babbitt v. United Farm Workers*, 442 U.S. at 302, 99 S.Ct. 2301 (where the plaintiffs' proposed conduct facially violated a sanctioning statute and "the State has not disavowed any intention of invoking the criminal penalty provision," a credible threat of prosecution existed).

The second and third constitutional requirements for standing are clearly present as well. CCA's alleged injury—the infringement on its First Amendment rights—is directly attributable to the Alabama statute regulating groups engaged in political speech, and a ruling declaring that the challenged portions of the FCPA are unconstitutional and enjoining their enforcement against CCA would necessarily redress its injury. *See, e.g., New Hampshire Right to Life v. Gardner*, 99 F.3d at 13.

[6] The prudential concerns addressed by the standing doctrine include whether the plaintiff's complaint falls within the zone of interests protected by the constitutional provision at issue, whether it raises abstract questions more appropriately resolved by the legislature, and whether the plaintiff is asserting its own rights or those of a non-party. *Bischoff v. Osceola County*, 222 F.3d at 883. None of these concerns is at issue in this lawsuit.

The plaintiffs do not question only the obligations imposed on political committees by the FCPA. In addition, they challenge the FCPA's use of the term "political committee" to describe those engaged in certain election activity, because the adverse reaction to the label by contributors to, and distributors of, CCA's message will prompt CCA to restrict its speech to avoid the label from attaching. Although the FCPA's definitional provision carries no accompanying sanction, CCA nevertheless has standing to assert its challenge to the "political committee" terminology.

In *Meese v. Keene*, 481 U.S. 465, 107 S.Ct. 1862, 95 L.Ed.2d 415 (1987), the Court held that the plaintiff state legislator had standing to raise a First Amendment challenge to a federal statute labeling certain foreign films as "political propaganda," based on his showing that he was deterred from exhibiting the films because the "political propaganda" label would harm both his reputation and his chances for re-election. *Id.* at 473-77, 107 S.Ct. 1862. CCA similarly has standing to challenge the "political committee" label.

In summary, CCA has standing to challenge the alleged violations of its own constitutional rights.[5]

B. Mootness.

[7] Because the vote on whether to amend the Alabama Constitution to allow a state lottery is now past, the defendants argue that the parties' controversy is moot. (Doc. 75 at 3).

In *First National Bank v. Bellotti*, 435 U.S. 765, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978), the Supreme Court held that the First Amendment challenge mounted by several corporations and banking associations to a state law that forbade them from making contributions or expenditures to influence the vote on any ballot measure concerning individual income taxation was not mooted by the occurrence of the election because the controversy was "'capable of repetition, yet evading review.'" *Id.* at 774, 98 S.Ct. 1407 (quoting *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U.S. 498, 515, 31 S.Ct. 279, 55 L.Ed. 310 (1911)); *see also, e.g., Teper v. Miller*, 82 F.3d 989, 992 & n. 1 (11th Cir.1996)(applying *Bellotti* to a challenge to a state law prohibiting legislators from accepting campaign contributions during any legislative session); *American Civil Liberties Union v. Florida Bar*, 999 F.2d 1486, 1488, 1496 (11th Cir.1993)(applying *Bellotti* to a challenge to a state canon of judicial conduct governing campaign speech).

The two elements of this exception to the mootness doctrine are: "'(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subjected to the same action again.'" *First National Bank v. Bellotti*, 435 U.S. at 774, 98 S.Ct. 1407 (quoting *Weinstein v. Bradford*, 423 U.S. 147, 149, 96 S.Ct. 347, 46 L.Ed.2d 350 (1975)).

The defendant does not challenge the plaintiffs' assertions that the ballot measure concerning a state lottery was placed on the ballot April 14, 1999 and that the six-month time frame from placement to vote is typical of Alabama ballot measures. (Doc. 76 at 6 n. 1).[6] Nor do they disagree that six months is "too short a period of time for [plaintiffs] to obtain complete judicial review." *First National Bank v. Bellotti*, 435 U.S. at 774, 98 S.Ct. 1407. Thus, the first element is satisfied.

There appear to be three facets of the "reasonable expectation" element: (1) whether there exists a reasonable expectation that future ballot measures will arise; (2) whether there exists a reasonable expectation that CCA will desire to expend over $1,000 to expressly advocate passage or defeat of such ballot measures; and (3) whether there exists a reasonable expectation that the state will seek to enforce the FCPA against CCA. *See First National Bank v. Bellotti*, 435 U.S. at 775, 98 S.Ct. 1407 (addressing each facet). The threshold of a "reasonable expectation" is lower than that of a "demonstrated probability." *Honig v. Doe*, 484 U.S. 305, 319 n. 6, 108 S.Ct. 592, 98 L.Ed.2d 686 (1988).

The Court concludes that the reasonable expectation element is satisfied. First, there is no question that future ballot measures will arise. *Cf. First National Bank v. Bellotti*, 435 U.S. at 775, 98 S.Ct. 1407 ("Appellee's suggestion that the legislature may abandon its quest for a constitutional amendment is purely speculative."). Second, CCA's president has declared that CCA would spend over $1,000 to expressly advocate passage or defeat of future ballot measures, including a measure on the November 7, 2000 ballot, but for the FCPA. (Doc. 20, Attachment 1 at 2; Doc. 64, Exhibit A at 1-2; Doc. 76, Exhibit 1). *See First National Bank v. Bellotti*, 435 U.S. at 776, 98 S.Ct. 1407 ("Appellants insist that they will continue to oppose the constitutional amendment ...."). Finally, and as noted, the defendants do not deny that the state would seek to enforce the FCPA against CCA should it spend over $1,000 to expressly advocate passage or defeat of a ballot measure. *See id.* ("[T]here is no reason to believe that the Attorney General will refrain from prosecuting violations of § 8.").

The defendants, rather than challenging any of the foregoing, insist that the plaintiffs' "claim[s] that they want to make triggering expenditures in future referenda do not give rise to standing" for want of an actual or imminent, concrete and particularized, invasion of a legally protected interest. (Doc. 76 at 4 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. at 560, 112 S.Ct. 2130)). The defendants have thereby confused the related but distinct doctrines of standing and mootness. *See, e.g.,*

4. The submitted affidavit of an assistant attorney general states only that she is aware of no criminal action taken against any organization that did *not* expressly advocate voting for or against a ballot question. (Doc. 18, Exhibit A at 3).

5. Because CCA has standing to raise all the claims asserted in this lawsuit, it is unnecessary to address separately the Richeys' standing.

6. Constitutional amendments, other than those applicable to only one county, may be voted on "not less than three months after the final adjournment of the session of the legislature at which the amendments were proposed." Ala. Const. amend. 24.

Friends of the Earth v. Laidlaw Environmental Services, 120 S.Ct. at 709 (distinguishing standing from mootness and noting that a court may retain jurisdiction over a controversy capable of repetition yet evading review even though the requirements of standing, present when the action was commenced, are no longer satisfied).

In summary, the parties' controversy is not moot because it is capable of repetition, yet evading review.

II. Merits.

First Amendment challenges to election finance restrictions arise in a wide variety of settings, which affect proper application of the Supreme Court's analysis. Three of the most important variables in gauging the constitutionality of such restrictions are: (1) the type of election to which the restriction applies; (2) the kind of restriction imposed; and (3) the nature of the individual or entity against which the restriction is imposed.

Election finance restrictions may be imposed either with respect to the election (or nomination) of candidates for public office or with respect to constitutional amendments and other ballot measures. CCA desires to engage in express advocacy only with respect to ballot measures, but certain of the plaintiffs' challenges implicate express advocacy with respect to elections to public office as well.

Election finance restrictions may take varied forms, but most often consist of restrictions on expenditures, restrictions on contributions, and disclosure requirements. The plaintiffs here challenge the disclosure requirements of the FCPA, as well as its registration, organizational and recordkeeping requirements.[7]

Election finance restrictions may be imposed against, inter alia, individuals, groups whose major purpose is to engage in election activity, groups whose major purpose lies elsewhere, candidates and office holders, political parties, and official campaign committees. CCA is an organization whose major purpose is not to engage in election activity.

[8] "To determine whether [an election finance restriction] may constitutionally be applied ..., we must ascertain whether it burdens the exercise of political speech and, if it does, whether it is narrowly tailored to serve a compelling state interest." *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 657, 110 S.Ct. 1391, 108 L.Ed.2d 652 (1990). CCA desires to distribute voter guides to expressly advocate the passage or defeat of ballot measures. Such activity "is the essence of First Amendment expression," and "[n]o form of speech is entitled to greater constitutional protection." *McIntyre v. Ohio Elections Commission*, 514 U.S. at 347, 115 S.Ct. 1511. Thus, CCA's desired course of conduct constitutes "core political speech" which may not be unconstitutionally burdened. *Id.*

[9] The obligations imposed on political committees by the FCPA burden CCA's exercise of its free speech rights by making it more costly to engage in such speech and creating a disincentive to speak. "The fact that the statute's practical effect [in imposing registration, organizational and recordkeeping requirements] may be to discourage protected speech is sufficient to characterize [it] as an infringement on First Amendment activities." *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 255, 107 S.Ct. 616, 93 L.Ed.2d 539 (1986)(plurality); *accord id.* at 266–66, 107 S.Ct. 616 (O'Connor, J., concurring in part and concurring in the judgment); *McIntyre v. Ohio Elections Commission*, 514 U.S. at 355, 115 S.Ct. 1511 ("[M]andatory reporting [of contributions and expenditures] undeniably impedes protected First Amendment activity ....").

Accordingly, the Court's focus must turn to an assessment of the state's interest and of the means utilized to advance that interest. The plaintiffs, however, argue that no such analysis is required because the FCPA purports to regulate CCA and like organizations in ways that are unconstitutional regardless of the governmental interest or the means employed.

A. Issue Advocacy.

The plaintiffs argue that all political advocacy must be characterized as either "express advocacy" or "issue advocacy"; that the latter may never, under any circumstances, be infringed by election finance laws; and that communications explicitly advocating the passage or defeat of a ballot measure—including those that CCA desires to disseminate—necessarily and exclusively constitute issue advocacy and are thus beyond the reach of any governmental restriction. They conclude that the FCPA is facially overbroad because it purports to regulate groups that expressly advocate the passage or defeat of ballot measures but which do not expressly advocate the election or defeat of candidates. (Doc. 51 at 15–23).[8]

In *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976), the Supreme Court considered wide-ranging challenges to the Federal Election Campaigns Act ("FECA"). The Court described "[d]iscussion of public issues and ... qualifications of candidates [as] integral to the operation of the system of government established by our Constitution [, to which] [t]he First Amendment affords the broadest protection." *Id.* at 14, 96 S.Ct. 612. The Court then recognized a "distinction between discussion of issues and candidates and advocacy of election or defeat of candidates." *Id.* at 42, 96 S.Ct. 612. To avoid problems of vagueness and overbreadth that would otherwise be presented by certain of FECA's provisions, the Court construed them to reach only communications "that *expressly* advocate the election or defeat of a clearly defined candidate." *Id.* at 80, 96 S.Ct. 612 (emphasis added); *see also id.* at 43–44, 96 S.Ct. 612. The Court restricted express advocacy, in turn, to communications utilizing imperative terms such as "vote for [or against]," "support," "defeat" or "reject." *Id.* at 44 n. 52, 96 S.Ct. 612.

[10] In light of *Buckley*, it may not be doubted that a distinction exists between "issue advocacy"[9] and "express advocacy." It may further be assumed for purposes of discussion that issue advocacy automatically lies completely beyond the pale of constitutional governmental regulation. *But see, e.g., Clifton v. Federal Election Commission*, 114 F.3d 1309, 1312 (1st Cir.1997)(noting that Supreme Court cases hint at permissible election finance restrictions adversely affecting issue advocacy),

7. The plaintiffs also challenge application of the label, "political committee," a contention addressed separately in Part II.E.

8. The plaintiffs make no argument that the FCPA purports to regulate groups that do not expressly advocate either the election or defeat of a candidate or the passage or defeat of a proposition. (Doc. 54 at 14–15). *See* Ala. Code § 17-22A-2(10)(a political committee is a group anticipating or actually receiving contributions or making expenditures "to or on behalf of" an elected official, proposition, candidate, etc.)

9. The *Buckley* Court did not utilize the phrase "issue advocacy," and this Court has identified only one Supreme Court opinion attempting to define it. *See Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 120 S.Ct. 897, 914, 145 L.Ed.2d 886 (2000) (Kennedy, J., dissenting) (describing "advertisements that promote or attack a candidate's positions without specifically urging his or her election or defeat" as "so-called issue advocacy"). Certain appellate courts, however, have begun to utilize the phrase as a shorthand expression for speech that stops short of explicitly advocating a particular election result. *See, e.g., Vermont Right to Life Committee v. Sorrell*, 221 F.3d 376, 386 (2d Cir.2000); *Mariani v. United States*, 212 F.3d 761, 767 (3rd Cir.2000); *North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 708 (4th Cir.1999), *cert. denied*, — U.S. —, 120 S.Ct. 1156, 145 L.Ed.2d 1069 (2000).

cert. denied, 522 U.S. 1108, 118 S.Ct. 1036, 140 L.Ed.2d 103 (1998).

[11] The plaintiffs' error lies not in detecting a difference between issue advocacy and express advocacy but in extrapolating that "an effort to expressly advocate the passage or defeat of a ballot measure or referendum is pure 'issue advocacy' [that] cannot be regulated" because it is "constitutionally sacrosanct." (Doc. 54 at 18, 22). In short, the plaintiffs argue that a request or direction to vote for or against a candidate is express advocacy and therefore regulable while a request or direction to vote for or against a ballot measure is issue advocacy that cannot be regulated.

The plaintiffs' position is contradicted by the only case they cite as support. In *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995), the plaintiff's decedent circulated anonymous handbills opposing a local tax levy. The handbills explicitly requested, "PLEASE VOTE NO ISSUE 19." *Id.* at 337-38 & n. 2, 115 S.Ct. 1511. The Supreme Court, however, neither classified the handbills as pure issue advocacy nor treated them as automatically beyond the reach of governmental regulation. Instead, the Court announced that "[t]he principles enunciated in *Buckley* extend equally to issue-based elections" and applied the same "exacting scrutiny" of means and ends that it utilizes when express advocacy of a candidate is at issue. *Id.* at 347, 115 S.Ct. 1511.

10. The plaintiffs argue that an organization can have only one major purpose and that it must be measured by its official statements of purpose and/or by where the majority of its spending occurs. (Doc. 54 at 30). Thus, under the plaintiffs' scenario, a large tobacco planter may be able to spend a million dollars to defeat a proposed cigarette tax submitted to popular vote, constitutionally immune from any regulation, while a grass roots organization with a budget of under $2,000 may constitutionally be regulated if it spends $1,001 advocating passage of the same measure.

The plaintiffs' confusion appears to derive from *Buckley v. Valeo*, as they repeatedly quote that portion of *Buckley* that restricted the scope of certain FECA provisions to communications "that in express terms advocate the election or defeat *of a clearly identified candidate* for federal office." 424 U.S. at 44, 96 S.Ct. 612 (emphasis added); *accord id.* at 80, 96 S.Ct. 612. *Buckley*, however, was interpreting FECA, a federal statute that by its terms applies only to election to public office; *Buckley*'s reference to candidates reflects only the scope of the statutory language at issue, not the scope of constitutionally permissible regulation.

In summary, the speech in which CCA desires to engage constitutes "express advocacy" that is subject to constitutionally permissible restriction.

B. Major Purpose.

[12] The plaintiffs argue that "[t]he major purpose test is a constitutionally required restriction on the regulation of political speech" such that "an organization cannot be required to shoulder the burdens of a committee if it is not its major purpose to expressly advocate the support or passage of a ballot measure." (Doc. 54 at 24). They conclude that the FCPA is facially overbroad because it purports to regulate organizations whose major purpose is not to advocate a particular election result. (*Id.* at 23-44).[10] For this proposition they rely primarily on *Buckley v. Valeo*.[11]

11. As a threshold matter, the plaintiffs inaccurately describe the activity to which the major purpose inquiry relates. The plaintiffs describe the relevant major purpose as one to "expressly advocate" a particular election result, (Doc. 54 at 24), while the Supreme Court has described the relevant major purpose (under FECA) as "the nomination or election of a candidate," *Buckley v. Valeo*, 424 U.S. at 79, 96 S.Ct. 612, or simply "campaign activity," *Federal Election Commission v. Massachusetts Citizens for Life*, 479 U.S. at 262, terms that comfortably reach beyond explicit directions to vote a particular way.

Among its many provisions, FECA imposed certain disclosure requirements on political committees and other persons. 424 U.S. at 155-60, 96 S.Ct. 612.[12] Required disclosures included the filing of periodic reports reflecting, inter alia, contributions received and expenditures made to any person in an aggregate amount exceeding $100 in a calendar year. *Id.* at 157-58, 96 S.Ct. 612. The disclosure requirements applied to any "political committee," defined as "any ... group ... which receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding $1,000." *Id.* at 145, 96 S.Ct. 612. The disclosure requirements similarly applied to persons (other than candidates or political committees) making contributions or expenditures (other than to candidates or political committees) exceeding $100 a year. *Id.* at 160, 96 S.Ct. 612.

The Supreme Court detected and resolved problems of vagueness and overbreadth in these disclosure requirements. With respect to disclosure of expenditures, defined by statute as something given "for the purpose of ... influencing" an election, 424 U.S. at 147, 96 S.Ct. 612, the Court considered political committees and other persons separately. The Court construed the term "political committee" as limited to groups whose "major purpose" is the nomination or election of a candidate, because expenditures by groups whose major purpose is the election of a candidate can safely be assumed to be "for the purpose of ... influencing" an election. 424 U.S. at 79, 96 S.Ct. 612. With respect to persons other than political committees, however, who by definition do not have as their major purpose the election of a candidate, the Court resolved the vagueness and overbreadth issues by restricting the scope of the term "expenditure" so as "to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." 424 U.S. at 80, 96 S.Ct. 612.

The Supreme Court thereby salvaged from FECA two classes of entities, distinguished by their major purpose and, consequently, by the scope of disclosures to which they may constitutionally be subject. For organizations whose major purpose is election activity, the legislature may require disclosure of substantially all expenditures, regardless of whether they were made for express advocacy; for organizations whose major purpose lies elsewhere, the legislature may require disclosure only of those expenditures used for express advocacy. Thus, the major purpose distinction influences the degree to which an organization may be subject to election finance regulation; it does not determine whether an organization is constitutionally immune from such regulation.

The plaintiffs offer no direct response to this textual reading of *Buckley*. Instead, they cite seven cases for the proposition that "every case since *Buckley* that has considered the 'major purpose' test has found it to be constitutionally mandated." (Doc. 54 at 25). The only Supreme Court case cited by the plaintiffs for this proposition is *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 107 S.Ct. 616, 93 L.Ed.2d 539 (1986). *Massachusetts Citizens*, however, simply held that FECA's prohibition on a corporation's expenditures from its general treasury was unconstitutional as applied to a non-profit, non-stock corporation funded by voluntary donations, because any compelling state interest in preventing corporate wealth amassed through commercial activity from being subverted to political ends did not apply to such an entity. 479 U.S. at 256-63, 107 S.Ct. 616. The *Massachusetts Citizens* Court did not hold or suggest that the "major purpose" test is a constitutionally required prerequisite to any regulation of political speech. On the

12. Certain relevant amendments to FECA were enacted following *Buckley*. Accordingly, references to the statute as construed by the *Buckley* Court are to the opinion itself, which includes the text of the Act in an appendix.

contrary, the Court, after expressly recognizing that the plaintiff's major purpose was *not* the nomination or election of a candidate, *id.* at 252 n. 6, 253, 107 S.Ct. 616, stated that the plaintiff was nevertheless subject to disclosure of contributions and expenditures pursuant to Section 434(c) of FECA. *Id.* at 262, 107 S.Ct. 616.

In light of *Massachusetts Citizens'* clear rejection of the very proposition for which the plaintiffs argue, extended discussion of the other, lower court cases they cite is unnecessary. Suffice it to say that none holds, and few even remotely suggest, that an organization whose major purpose is not the achievement of particular election results is constitutionally immune from regulation.

In summary, an organization may be subjected to constitutionally permissible election finance restrictions even though its major purpose is not to engage in campaign activity.

C. Compelling State Interest.

The plaintiffs argue that, even if CCA's proposed speech constitutes express advocacy, and even if such speech may be regulated even though CCA's major purpose is not the passage or defeat of ballot measures, the defendants have established no compelling state interest undergirding the challenged restrictions. (Doc. 54 at 14-15).

What constitutes a compelling interest depends in part on the type of restriction at issue and the kind of election to which it applies. Thus, for example, the Supreme Court found the government's interest in "stemming the reality or appearance of corruption in the electoral process" insufficiently compelling to support FECA's ceilings on independent expenditures, while finding the same interest "constitutionally sufficient" to justify FECA's caps on contributions to candidates and their official committees. *Buckley v. Valeo*, 424 U.S. at 26, 47-48, 96 S.Ct. 612; *see also Federal Election Commission v. Massachusetts Citizens for Life*, 479 U.S. at 259-60, 107 S.Ct. 616 ("We have consistently held that restrictions on contributions require less compelling justification than restrictions on independent spending."). Similarly, the Court found the interest in avoiding the reality or appearance of corruption sufficient to justify caps on contributions to or for candidates for public office but insufficient to justify caps on contributions concerning ballot measures. *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290, 297-98, 102 S.Ct. 434, 70 L.Ed.2d 492 (1981).

1. Disclosure requirements.

[13, 14] The defendants articulate two governmental interests in imposing disclosure requirements concerning ballot measures: (1) deterring corruption and the appearance of corruption; and (2) providing the electorate with information concerning the sources of money spent on ballot propositions and how that money is spent, which "enhances public awareness of the allegiances and interests of groups supporting or opposing ballot propositions." (Doc. 58 at 11).

As noted, "[t]he risk of corruption perceived in cases involving candidate elections . . . simply is not present in a popular vote on a public issue." *First National Bank v. Bellotti*, 435 U.S. 765, 790, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978). Thus, courts have rejected avoidance of the appearance or actuality of corruption as a state interest sufficiently compelling to justify prohibitions or caps on contributions in support of or in opposition to a ballot measure. *Id.* at 790-92, 98 S.Ct. 1407; *Citizens Against Rent Control v. Berkeley*, 454 U.S. at 296-98, 102 S.Ct. 434; *Let's Help Florida v. McCrary*, 621 F.2d 195, 199-200 (5th Cir.1980), *judgment aff'd*, 454 U.S. 1130, 102 S.Ct. 985, 71 L.Ed.2d 284, *cert. denied*, 454 U.S. 1142, 102 S.Ct. 999, 71 L.Ed.2d 293 (1982).

The defendants suggest that, while concerns over corruption in the ballot measure context may be insufficient to justify restrictions on contributions, they may nevertheless be sufficiently compelling to justify the lesser intrusion of a disclosure requirement. They continue that there is indeed a danger of corruption in connection with ballot measures because an elected official may, or may appear to, provide favors to those who financially support or oppose ballot measures important to the official. (Doc. 58 at 14-15).

Even if the cases cited above do not rule out the possibility that combating such corruption could constitute a compelling governmental interest sufficient to justify a disclosure requirement, the defendants have offered no empirical evidence that the reality or perception of corruption haunts Alabama ballot measures.[13] As the Supreme Court recently noted, "[t]he quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised." *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 120 S.Ct. 897, 906, 146 L.Ed.2d 886 (2000). Especially in light of the cases cited above questioning its existence, the fact or perception of corruption in connection with ballot measures is neither so settled nor so inescapable as to obviate its proof. *Cf. id.* at 907 ("We have never accepted mere conjecture as adequate to carry a First Amendment burden . . . "). The defendants' second articulated justification for the FCPA's disclosure requirement, however, is sufficiently compelling.[14] In *Let's Help Florida v. McCrary*, the Fifth Circuit stated that "promoting disclosure of campaign contributions [concerning a ballot measure] is an important state interest" and that "Florida can and does effectively promote the disclosure of large contributors through" its statutory registration and reporting requirements. 621 F.2d at 200-01. While this portion of *Let's Help Florida* is dictum (because the Court held that Florida's cap on ballot measure contributions was not narrowly tailored to advance the government's interest in disclosure), it is nonetheless persuasive.

Nor does *Let's Help Florida* stand alone. The Supreme Court in *Citizens Against Rent Control v. Berkeley* recognized that, "when individuals or corporations speak through committees, they often adopt seductive names that may tend to conceal the true identity of the source." 454 U.S. at 298, 102 S.Ct. 434. The Supreme Court found this state interest in "identifying the sources of support for and opposition to ballot measures" insufficient to justify a cap on contributions to local referenda, not because such an interest is inherently incapable of supporting any First Amendment restriction, but because the interest was already satisfactorily advanced by the ordinance's requirement that lists of contributors of over $50 be published in local newspapers before the election. *Id.* at 291 n. 4 & 298-99, 102 S.Ct. 434. "The integrity of the political system will be adequately protected if contributors are identified in a public filing revealing the amounts contributed . . . ." *Id.* at 299-300, 102 S.Ct. 434. While this portion of *Citizens Against Rent Control* is

13. The defendants rely only on the testimony of the Secretary of State that knowing the identity of ballot measure supporters could cause a voter to wonder whether they would be rewarded by grateful public officials. (Bennett Deposition at 25-26). The Secretary of State conceded that corruption and the appearance of corruption are merely "possible." (Doc. 16, Exhibit A at 3).

14. The plaintiffs' assertion that "[t]he only legitimate and compelling governmental interest that the Supreme Court has recognized that would justify restrictions on fundamental First Amendment rights is the 'prevent[ion] of corruption or the appearance of corruption.'" (Doc. 54 at 15), misstates the Supreme Court opinion it quotes. What the Court actually stated in *Federal Election Commission v. National Conservative Political Action Committee*, 470 U.S. 480, 105 S.Ct. 1459, 84 L.Ed.2d 455 (1985), is that no other compelling state interests have been identified "for restricting campaign finances." *Id.* at 496-97, 105 S.Ct. 1459. This case, of course, implicates no restriction on contributions or expenditures.

dictum, the plaintiffs have suggested no reason why the Supreme Court would hold one election finance restriction to be unconstitutional by relying on another election finance restriction it believed to be unconstitutional as well.[16]

Finally, the Court in *Buckley v. Valeo* identified the government's interest in providing information to voters concerning where political money comes from and how it is spent as a sufficiently important governmental interest to justify the disclosure requirements of FECA, because the information allows voters to "place each candidate in the political spectrum more precisely" and "alert[s] the voter to the interests to which a candidate is most likely to be responsive and thus facilitate[s] predictions of future performance in office." 424 U.S. at 66-67, 96 S.Ct. 612. Providing such information "curb[s] the evil[] of campaign ignorance." *Id.* at 68, 96 S.Ct. 612. Indeed, the Court viewed this "informational function" as "equally important" an interest as that of preventing corruption. *Id.* at 68 n. 82, 96 S.Ct. 612.[16]

The informational interests served by disclosure requirements in the context of ballot measures are not identical, but they are of equivalent value. In the ballot measure context, disclosure fights "campaign ignorance" by allowing voters to peer beyond "seductive names" and assess the credibility of the message by considering the identity of the true messengers.[17]

The plaintiffs nevertheless assert that the defendants are precluded from establishing a compelling interest in the context of disclosure requirements by *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995). The plaintiffs read *McIntyre* for the proposition that a speaker's right to anonymity automatically trumps any governmental interest in disclosure. (Doc. 62 at 7-8). *McIntyre*, however, will not carry the weight the plaintiffs place upon it.

The plaintiff's decedent in *McIntyre* distributed anonymous handbills concerning a ballot measure in violation of a state law prohibiting the distribution of anonymous written political communications. 514 U.S. at 337-38 & nn. 2-3, 115 S.Ct. 1511. In holding the law to be unconstitutional, the Court expressly distinguished *Buckley* in that "mandatory reporting is a far cry from compelled self-identification on all election-related writings" because it is much less intrusive, revealing and provocative than the identification of the individual author of a specific handbill on the handbill itself. 514 U.S. at 355, 115 S.Ct. 1511.[18]

15. The plaintiffs argue that *Let's Help Florida* and *Citizens Against Rent Control* stand only for the proposition that an organization voluntarily electing to register as a political committee may thereafter be saddled with disclosure requirements against its will. (Doc. 54 at 22). They offer no authority or explanation for the remarkable proposition that an organization waives its First Amendment rights by electing to engage in speech that triggers statutory election finance restrictions.

16. The plaintiffs argue that *Buckley* expressly restricted the range of constitutionally permissible disclosure requirements to campaigns for public office. (Doc. 54 at 39-40). As noted, however, *Buckley* addressed a federal statute which by its terms was limited to such campaigns, and its references to candidates does not reflect the bounds of constitutionally permissible regulation but only of the statute under consideration.

17. As a hypothetical but revealing example, the import of an express advocacy campaign against an Alabama state lottery would depend greatly on whether voters were aware only that it was paid for by CCA or were also aware that CCA's primary contributors towards the campaign were Mississippi gambling interests. The plaintiffs' apparently straight-faced assertion that this information is immaterial to voters' assessment of the message, (Doc. 62 at 9), requires no response.

18. *Cf. Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 198-99, 119 S.Ct. 636, 142 L.Ed.2d 599 (1999)(striking down a state law requiring petition circulators to wear a name badge, which "compels personal name identification at the precise moment when the circulator's interest in anonymity is greatest," while leaving intact a requirement that the circulator later sign an affidavit attached to the collected election signatures).

While the *McIntyre* Court also remarked that the state's interest in regulating ballot measures is "less powerful" than its interest in regulating candidate elections, *id.* at 366, 115 S.Ct. 1511, it did not state that this interest is insufficient to support disclosure requirements in the context of ballot measures.

The Court is aware of no record evidence demonstrating that Alabama voters in fact suffer from "campaign ignorance" concerning the sources and uses of money employed in connection with ballot measures. However, "the quantum of empirical evidence needed to [show the existence of the evil sought to be remedied] will vary up or down with the novelty and plausibility of the justification raised." *Nixon v. Shrink Missouri*, 120 S.Ct. at 906. The *Buckley* Court found the existence of campaign ignorance sufficiently self-evident that it required no empirical evidence showing voters' ignorance of the sources and uses of campaign money. *See* 424 U.S. at 66-67, 96 S.Ct. 612. This Court similarly concludes that the existence of voter ignorance, far from being a novel and implausible state of affairs, is a universally recognized feature of the political landscape. While "a more extensive evidentiary documentation [might be required] if [the plaintiffs] had made any showing on their own to cast doubt on" the existence of voter ignorance concerning the sources and uses of funds engaged in ballot measure advocacy, *Nixon v. Shrink Missouri*, 120 S.Ct. at 908, the plaintiffs have not questioned the existence of such ignorance but only its legal sufficiency to justify the challenged portions of the FCPA.

In summary, the Court concludes that the state's informational interest in combating voter ignorance is sufficiently compelling to support ballot measure disclosure requirements.

2. Registration, organizational and recordkeeping requirements.

In contrast to their focus on the FCPA's disclosure requirements, the defendants have devoted no attention to identifying or establishing a governmental interest sufficiently compelling to justify the FCPA's challenged registration, organizational and recordkeeping requirements. While an interest in detecting violations of contribution restrictions may constitute a compelling reason for such requirements, *Buckley v. Valeo*, 424 U.S. at 67-68, 96 S.Ct. 612, the FCPA imposes no restrictions on contributions, and the defendants concede that this interest has no application to the present case. (Doc. 58 at 10). Similarly, while an interest in "eliminating from the political process the corrosive effect of political 'war chests' amassed with the aid of the legal advantages given to corporations" may be a compelling reason for such requirements, *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 658, 666, 110 S.Ct. 1391, 108 L.Ed.2d 652 (1990), the defendants have advanced no such justification in this case. Nor, for the reasons stated above, is the state's alleged interest in combating corruption a compelling interest in this context.

It is unnecessary to determine whether the defendants' sole remaining articulated interest—the informational one of curbing voter ignorance—can even theoretically be a compelling one for purposes of justifying registration, organizational and recordkeeping requirements because, as discussed below, the means selected by the Alabama Legislature are not narrowly tailored to advance this interest.

D. Narrowly Tailored Means.

[15] To be narrowly tailored, the means selected must bear a sufficiently close relation to the governmental interest advanced and must not unnecessarily infringe on First Amendment rights. *See, e.g., Federal Election Commission v. Massachusetts Citizens for Life*, 479 U.S. at 265 ("Where at all possible, government must curtail speech only to the degree necessary to meet the particular problem at hand, and must avoid infringing on

speech that does not pose the danger that has prompted regulation."); *Austin v. Michigan Chamber of Commerce*, 494 U.S. at 660, 110 S.Ct. 1391 (an election finance restriction applicable to corporations was narrowly tailored where "precisely targeted" to advance the governmental interest "while also allowing corporations to express their political views"); *Buckley v. Valeo*, 424 U.S. at 68, 81, 96 S.Ct. 612 (upholding a disclosure requirement "narrowly limited to those situations where the information sought has a substantial connection with the governmental interests sought to be advanced" and represented "the least restrictive means of curbing the evils ... Congress found to exist").

1. Registration, organizational and recordkeeping requirements.

[16] FECA prohibits corporations from using treasury funds to engage in express advocacy but allows a corporation to establish a separate, segregated fund with which to engage in express advocacy. 2 U.S.C. § 441b(a), (b)(2). Such a fund constitutes a political committee, *id.* § 431(4)(B), and is therefore subject to all the election finance restrictions applicable to political committees, including registration, organizational and recordkeeping requirements. Such a fund also is prohibited from soliciting contributions from anyone other than, with limited exceptions, shareholders or members of the establishing corporation. *Id.* § 441b(b)(4).

In *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 107 S.Ct. 616, 93 L.Ed.2d 539 (1986), the Supreme Court ruled these restrictions unconstitutional as applied to a non-commercial, non-stock corporation because such entities do not raise the concerns of corporate corruption and involuntary diversion of shareholder wealth on which the government relied to justify the restrictions. *Id.* at 263-64, 107 S.Ct. 616. Because the plaintiff's major purpose was not to nominate or elect a candidate, the restrictions could not be justified on the alternate ground that the plaintiff was in fact a political committee. *Id.* at 252 & n. 6, 107 S.Ct. 616.

Finally, the restrictions could not be justified as necessary to prevent "massive undisclosed political spending by similar entities, and ... their use as conduits for undisclosed spending by business corporations and unions," because FECA requires certain disclosures by organizations that are neither political committees nor corporations. Thus, "[t]he state interest in disclosure can be made in a manner less restrictive than imposing the full panoply of regulations that accompany status as a political committee under the Act." 479 U.S. at 262, 107 S.Ct. 616.

Massachusetts Citizens thus appears to establish that registration, organizational and recordkeeping requirements, as applied to organizations whose major purpose is not election activity, are not narrowly tailored to meet the government's informational interest because the "less restrictive" means of a disclosure requirement will satisfactorily advance that interest. *See also* 479 U.S. at 266, 107 S.Ct. 616 (O'Connor, J., concurring in part and concurring in the judgment)(FECA's organizational requirements "do not further the government's informational interest in campaign disclosure"). As discussed in the accompanying notes, the FCPA's registration,[19] organizational[20] and recordkeeping[21] requirements are at least as onerous as those of FECA and therefore are no more narrowly tailored.

The defendants do not question any of the foregoing. Instead, they argue that CCA may avoid these unconstitutionally burdensome requirements by the simple expedient of establishing a separate political committee. Because this tactic would obviate CCA itself receiving contributions or making expenditures for express advocacy, CCA would not engage in activity triggering the FCPA's registration, organizational and recordkeeping requirements. (Doc. 58 at 16-17).

The defendants offer no authority for the proposition that the state may enforce unconstitutional restrictions on speech against an organization simply because the organization could have avoided them by ceasing to speak altogether and allowing another entity to speak instead. Certainly an organization is free to establish a political committee and to speak indirectly rather than on its own, but the defendants have not shown that it can be forced to do so in order to escape unconstitutional restrictions on its own speech.[22]

At any rate, requiring an organization to create a separate political committee to avoid the burdens of registration, organizational changes and recordkeeping requirements itself burdens speech. The organization cannot contribute at will to the political committee for express advocacy purposes, because once it contributes over $1,000 in a year, it again becomes a political committee and subject to all of the Act's requirements. *Cf. Federal Election Commission v. Massachusetts Citizens for Life*, 479 U.S. at 252, 107 S.Ct. 616 (requiring a corporation to engage in express advocacy only through a separate segregated fund, and prohibiting the corporation from using its own general funds, "[w]hile not an absolute restriction on speech, ... is a substantial one"). Because the defendants' proposed solution itself burdens speech, they must demonstrate that it is narrowly tailored to further the state's compelling informational interest. This they cannot do, because their solution continues to impose burdensome requirements on an organization desiring to expend over $1,000 a year on express advocacy.[23]

19. Both statutes require political committees to promptly file a statement of organization, with the FCPA requiring considerably more information than FECA. Both statutes require prompt reporting of material changes in the information provided, and both preclude a registered political committee from dissolving without filing a statement reflecting that it will no longer meet the definition of a political committee. *Compare* 2 U.S.C. § 433 *with* Ala.Code § 17-22A-5.

20. Both statutes require political committees to have a treasurer, to maintain a bank account into which all contributions must be deposited and from which all expenditures must be drawn (other than petty cash disbursements no greater than $100), and to avoid commingling committee funds with those of individuals. FECA additionally requires the forwarding of contributions to the treasurer within ten to thirty days of receipt. *Compare* 2 U.S.C. § 432(a), (b), (h) *with* Ala.Code §§ 17-22A-3(a)(b), 6.

21. Both statutes require the treasurer to keep an account of all contributions made to or for the committee and the identification of every person to whom an expenditure is made, along with the date and amount, with no threshold dollar amount as to either contributions or expenditures. Both statutes require the treasurer to maintain a receipt or other written evidence of every expenditure of over $100 (FCPA) or $200 (FECA), and both require the treasurer to preserve all required records for two years (FCPA) or three years (FECA). *Compare* 2 U.S.C. § 432(c)(1), (5), (d) *with* Ala.Code § 17-22A-3(c), (d). The FCPA also requires the treasurer to keep receipts or similar evidence of each expenditure to any person, regardless how small, if the aggregate amount paid the person exceeds $100 in a calendar year. Ala.Code § 17-22A-3(d), a requirement that would appear to necessitate keeping evidence of every single expenditure for at least a calendar year.

22. In *Austin v. Michigan Chamber of Commerce*, the Court upheld a state statute modeled after Section 441b of FECA, requiring corporations to establish a "segregated fund" in order to make independent expenditures in connection with any state candidate election. 494 U.S. at 655,56, 668 n9, 110 S.Ct. 1391. While subject to the obligations applicable to political committees, the segregated fund does not appear to have been a separate entity. *See also Federal Election Commission v. Massachusetts Citizens for Life*, 479 U.S. at 255 n. 8 (distinguishing the segregated fund of Section 441b from a political committee).

23. The defendants appear to assume that, once having established a political committee, the organization will never again expend over $1,000 a year for express advocacy. However, even if all contributions for express advocacy previously made to the organization thereafter went directly to the political committee, the organization could continue to

In summary, the Court concludes that the FCPA's registration, organizational and recordkeeping requirements are unconstitutional as applied to organizations whose major purpose is not to engage in election activity.

2. Disclosure requirements.

The plaintiffs identify four reasons why the FCPA's disclosure requirements are not narrowly tailored to serve the government's compelling informational interest: (1) the FCPA requires disclosure of all contributions to and expenditures by a reporting organization, not only those made for the purpose of express advocacy; (2) even if limited to express advocacy, the disclosure requirements are vague and overbroad with respect to disclosure of contributions because reporting organizations cannot distinguish contributions made for the purpose of express advocacy from those made for other purposes; (3) the disclosure requirements do not satisfy *Massachusetts Citizens;* and (4) forced disclosure of contributors violates the free association rights of CCA and of its contributors.

a. Disclosure of contributions and expenditures made for issue advocacy.

To avoid problems of vagueness and overbreadth, the Supreme Court in *Buckley v. Valeo* construed FECA to require disclosure, by persons other than political committees and candidates, only of expenditures "used for communications that expressly advocate" a particular election result. 424 U.S. at 79-80, 96 S.Ct. 612. A statute that requires broader disclosure from one whose major purpose is not the achievement of an election result may therefore run afoul of *Buckley.*

The FCPA does not explicitly restrict the scope of required disclosures to those contributions received, and expenditures made, for express advocacy purposes. Instead, it requires the reporting organization to state the total amount of contributions received and expenditures made and to identify persons making contributions or receiving expenditures over a threshold amount. Ala.Code § 17-22A-8. The FCPA therefore ties the scope of required disclosures to the scope of contributions and expenditures, words defined by the Act as something received or made "for the purpose of influencing an election." *Id.* § 17-22A-2(a)(2)a,—2(a)(4)a. The parties have identified, and the Court has unearthed, no Alabama judicial decision refining these definitions or the scope of the required disclosures.

[17, 18] "[A] state statute should not be deemed facially invalid unless it is not readily subject to a narrowing construction by the state courts ...." *Erznoznik v. City of Jacksonville,* 422 U.S. 205, 216, 95 S.Ct. 2268, 45 L.Ed.2d 125 (1975). The Court concludes that the FCPA's definition of contributions and expenditures is readily subject to such a narrowing construction. FECA, like the FCPA, defines contributions and expenditures in terms of things given or received "for the purpose of ... influencing" an election. 424 U.S. at 145, 147, 96 S.Ct. 612. The Supreme Court in *Buckley* detected vagueness and overbreadth problems with this language, as it was capable of "encompassing both issue discussion and advocacy of a political result." 424 U.S. at 77-80, 96 S.Ct. 612. The *Buckley* Court resolved these potential constitutional implications with respect to expenditures by restricting the phrase to express advocacy. *Id.* at 79-80, 96 S.Ct. 612; *see also Federal Election Commission v. Massachusetts Citizens for Life,* 479 U.S. at 249, 107 S.Ct. 616 (extending this construction to expenditures under another section of FECA).

As noted, the FCPA's "for the purpose of influencing" language is identical to that contained in FECA. A comparison of the two statutes makes plain that this is not just coincidence but that the Alabama Legislature borrowed heavily from FECA in crafting the FCPA. Also as noted, the Supreme Court in *Buckley,* recognizing its duty to "avoid the shoals of vagueness" and to ensure that FECA's disclosure provisions were "not impermissibly broad," construed "for the purpose of influencing" as restricted to express advocacy. 424 U.S. at 78, 79-80, 96 S.Ct. 612. The identical language in the FCPA is as readily susceptible to this construction as it was in *Buckley,* especially given that the Alabama courts "'will not invalidate a statute on constitutional grounds if by reasonable construction it can be given a field of operation within constitutionally imposed limitations.'" *City of Birmingham v. City of Vestavia Hills,* 651 So.2d 632, 635 (Ala.1995)(quoting *Ex parte Huguley Water System,* 282 Ala. 633, 213 So.2d 799, 805 (1968)).

Other courts have held similarly. For example, in *Virginia Society for Human Life, Inc. v. Caldwell,* 256 Va. 151, 500 S.E.2d 814 (1998), the Court held that, in light of the legislature's presumed awareness of *Buckley* when enacting Virginia's election law and of a state attorney general's opinion when amending it, the phrase "for the purpose of influencing the outcome of an election" extends only to express advocacy. *Id.* at 814; *accord Brownsburg Area Patrons Affecting Change v. Baldwin,* 714 N.E.2d 135, 140 (Ind.1999); *Bang v. Chase,* 412 F.Supp. 758, 769 (D.Minn.1977)(relying on a state ethical practices board's construction in light of *Buckley*), *judgment aff'd,* 436 U.S. 941, 98 S.Ct. 2840, 56 L.Ed.2d 782 (1978); *see also Osterberg v. Peca,* 12 S.W.3d 31, 61 (Tex.), *cert. denied,* — U.S. —, 120 S.Ct. 2690, 147 L.Ed.2d 962 (2000)(in light of *Buckley,* "in connection with a campaign for elective office" construed as limited to express advocacy); *State v. Proto,* 203 Conn. 682, 526 A.2d 1297, 1306 (1987)(legislature intended to incorporate into its definitions of contributions and expenditures the distinctions enunciated in *Buckley*); *Parcell v. Kansas,* 468 F.Supp. 1274, 1280 (D.Kan.1979)(contributions and expenditures, undefined by state statute, would be restricted to express advocacy in light of *Buckley*), *aff'd,* 639 F.2d 628 (10th Cir.1980).

In Alabama as in Virginia and elsewhere, the legislature is presumed to be aware of the language of relevant federal statutes and of the United States Supreme Court's analysis of relevant issues. *Siegelman v. Chase Manhattan Bank,* 576 So.2d 1041, 1050 (Ala.1991). More precisely, "[t]he rule is that the borrowed [federal] statute is presumed to come with its authoritative interpretation." *State ex rel. Wadsworth v. Southern Surety Co.,* 221 Ala. 113, 127 So. 805, 810 (1930).

In summary, because the FCPA readily supports—indeed, virtually compels—a construction by the Alabama courts that confines the scope of its disclosure requirements to contributions and expenditures for the purpose of express advocacy, it is not facially invalid.

b. Identifying contributions made for the purpose of express advocacy.

The plaintiffs next argue that, even if the disclosure obligations imposed by the FCPA are limited to express advocacy, as a practical matter the law is still vague and overbroad with respect to the disclosure of contributions, because a reporting organization cannot be sure which contributions it receives were made by the contributor for the purpose of financing express advocacy campaigns, effectively requiring the organization to disclose all contributions or risk violating the disclosure requirement. (Doc. 54 at 36-39).[24]

The plaintiffs provide examples of assertedly ambiguous contributions, such as those made in response to a solicitation letter referencing both issue advocacy and

fund express advocacy out of its own coffers; there is no legal or logical requirement that an organization expend no more on express advocacy than it receives in contributions for that purpose.

24. The plaintiffs make no similar argument with respect to expenditures, which CCA, as the expending organization, obviously can correctly categorize.

express advocacy by the reporting organization. They do not, however, provide any authority for the proposition that a disclosure requirement is unconstitutionally vague or overbroad unless it includes minute guidelines on how to distinguish contributions made for the purpose of express advocacy from those made for other purposes.

FECA, as amended, requires a person other than a candidate or political committee to file disclosure statements if, in a calendar year, it makes over $250 in independent expenditures, defined as express advocacy not coordinated with any candidate or representative. 2 U.S.C. §§ 431(17), 434(c). The reporting organization must disclose its independent expenditures over a threshold amount and must also disclose "each person who made a contribution in excess of $200 ... for the purpose of furthering an independent expenditure," that is, for express advocacy. *Id.* § 434(c)(2)(C). In holding that a noncommercial, non-stock corporation whose major purpose is not to nominate or elect a candidate cannot be regulated as extensively as a political committee, the Supreme Court in *Massachusetts Citizens* noted that such an entity could appropriately be subjected to the lesser requirements of Section 434(c); the Court apparently was untroubled by any possibility that persons subject to Section 434(c) might have difficulty in determining whether particular contributions were or were not made for the purpose of furthering express advocacy. 479 U.S. at 262, 107 S.Ct. 616.

The Supreme Court's lack of concern with any residual ambiguity is consonant with its teachings concerning the scope of the vagueness and overbreadth doctrines. In *Broadrick v. Oklahoma*, 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973), the Court upheld an Oklahoma statute that regulated the political speech and conduct of government employees on pain of criminal sanction, against both vagueness and overbreadth challenges. With respect to vagueness, the Court observed:

> Words inevitably contain germs of uncertainty and, as with the Hatch Act, there may be disputes over the meaning of such terms in § 818 as "partisan," or "take part in," or "affairs of" political parties. But what was said in Letters Carriers ... is applicable here: "there are limitations in the English language with respect to being both specific and manageably brief, and it seems to us that although the prohibitions may not satisfy those intent on finding fault at any cost, they are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest."

413 U.S. at 608, 93 S.Ct. 2908 (quoting *United States Civil Service Commission v. National Association of Letter Carriers, AFL-CIO*, 413 U.S. 548, 578-79, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973)). Any lingering uncertainty in assessing whether a particular contribution was given the reporting organization for the purpose of funding express advocacy is a consequence of the inherent imprecision of manageably brief language and does not rise to constitutional proportions. With respect to overbreadth, the *Broadrick* Court noted that substantial, and not merely technical, overbreadth is required before a statute restricting free expression may be voided:

> It may be that such restrictions [on displaying political buttons and bumper stickers] are impermissible and that § 818 may be susceptible of some other improper applications. But, as presently construed, we do not believe that § 818 must be discarded in toto because some persons' arguably protected conduct may or may not be caught or chilled by the statute. Section 818 is not substantially overbroad and is not, therefore, unconstitutional on its face.

413 U.S. at 618, 93 S.Ct. 2908. The limited grey area identified by the plaintiffs does not reflect a substantial overbreadth problem. Even if it did, the plaintiffs have not, and cannot plausibly, argue that the disclosure requirement is not readily susceptible of limiting construction in the state courts.[25]

c. *Massachusetts Citizens.*

The plaintiffs argue that *Massachusetts Citizens* dooms the FCPA's disclosure requirements as they apply to organizations whose major purpose is not campaign activity just as surely as it does the Act's registration, organizational and record-keeping requirements. The balancing of interest and burden, however, is far different in the former context, sufficiently so that the FCPA's disclosure requirements survive scrutiny under *Massachusetts Citizens*.

At the outset, only four justices in *Massachusetts Citizens* viewed the disclosure requirements applicable to political committees as contributing to the burden on the plaintiff's exercise of free speech rights. 479 U.S. at 254-55, 107 S.Ct. 616. Justice O'Connor authored a brief concurrence to clarify that these disclosure requirements—even as applied to organizations whose major purpose is not campaign activity—do not burden free speech and are in any event narrowly tailored to serve a compelling state informational interest. *Id.* at 265-66, 107 S.Ct. 616 (O'Connor, J., concurring in part and concurring in the judgment); *see also Austin v. Michigan Chamber of Commerce*, 494 U.S. at 657, 110 S.Ct. 1391 (recognizing that the holding in *Massachusetts Citizens* is restricted to "certain organizational and financial hurdles" erected by FECA).

Moreover, even the four justices who believed that "[d]etailed ... disclosure obligations" played a role in discouraging free speech (along with Justice O'Connor, who joined this portion of the opinion) recognized that the government could appropriately uphold its informational interest through the more limited disclosures required of organizations other than political committees by Section 434(c). 479 U.S. at 254, 262, 107 S.Ct. 616. "These reporting obligations [of Section 434(c)] provide precisely the information necessary to monitor [the plaintiff's] independent spending activities and its receipt of contributions," so that "[t]he state interest in disclosure therefore can be made in a manner less restrictive than imposing the full panoply of regulations that accompany status as a political committee under the Act." *Id.* at 262, 107 S.Ct. 616.[26]

The FCPA's disclosure requirements, which are substantially less extensive than those applicable to political committees under FECA,[27] compare favorably with those applicable to organizations other than political committees under Section 434(c) and approved by the *Massachusetts Citizens* Court. FECA requires such organizations

25. While it does not affect the analysis or result, the Court doubts that the uncertainty is truly as great as the plaintiffs maintain. Contributions earmarked for express advocacy, submitted in response to a solicitation campaign directed to express advocacy, or patently intended for such usage (such as the hypothetical contributions from Mississippi gambling interests in footnote 16) presumably are subject to disclosure, while annual contributions and others not indicating a desire for use in express advocacy presumably are not.

26. Indeed, in discussing *Massachusetts Citizens*, the plaintiffs themselves concede that "an independent expenditure report [under Section 434(c)] would be directly related to the state's 'disclosure' interest" and that "even groups who are not committees can be validly required to report their independent express advocacy expenditures [under Section 434(c)]." (Doc. 54 at 42 n. 8).

27. FECA requires reporting considerably more frequently than the FCPA. *Compare* 2 U.S.C. § 434(a)(4), (8), (9) *with* Ala.Code § 17-22A-8(a), (b). FECA also requires more detailed information concerning contributors and recipients, especially individuals, than does the FCPA. *Compare* 2 U.S.C. § 431(13) *with* Ala.Code § 17-22A-8(c)(2), (7), (8). While the FCPA requires a statement of total contributions and total expenditures, FECA requires a statement of total contributions and total expenditures in each of several categories. *Compare* 2 U.S.C. § 434(b)(2), (4) *with* Ala.Code § 17-22A-8(c)(3), (5), (6), (9).

to file reports identifying those persons making contributions aggregating in excess of $200 in a calendar year, along with the date and amount of each contribution by each such individual and similarly identifying those persons receiving expenditures aggregating in excess of $200 in a calendar year, along with the date, amount and purpose of each expenditure to each such person and the election to which it applies. The FCPA requires similar disclosures, but carries a $100 annual threshold. As set out in the accompanying note, FECA requires more detailed information concerning each identified contributor and recipient and requires more frequent reports. Moreover, the FCPA requires disclosures only from groups that expend over $1,000 on express advocacy in a calendar year, while FECA requires such disclosures from groups expending over $250 in a year. *Compare* 2 U.S.C. § 434(c) *with* Ala.Code § 17-22A-8(c).

The only information required by the FCPA that is not required by Section 434(c) appears to be a statement of cash on hand, total contributions and total expenditures, and information concerning outstanding and extinguished obligations. Information concerning beginning cash, total contributions and total expenditures for express advocacy directly further the state's informational interests, and the plaintiffs do not suggest that this information is burdensome to provide. Information concerning outstanding and extinguished obligations concerning express advocacy bears a less obvious relation to the government's informational interest, but again the plaintiffs identify no burden imposed by this requirement.

While the FCPA's disclosure threshold is $100 as opposed to FECA's $200, the distinction is not constitutionally significant. The Supreme Court in *Buckley* v. *Valeo* upheld the disclosure requirements in the predecessor to Section 434(c) even though the threshold was then $100. 424 U.S. at 157, 160, 96 S.Ct. 612. Although *Buckley* was decided in 1976, it did not "set a minimum constitutional threshold for contribution limits," whether "with or without adjustment for inflation." *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 120 S.Ct. 897, 901, 909, 145 L.Ed.2d 886 (2000); *see also Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 33 (1st Cir. 1993)(state law requiring political committees to disclose every contribution and its contributor, regardless of amount, bears a substantial relation to a compelling governmental interest).

The Supreme Court in *Buckley* recognized "that disclosure requirements—certainly in most applications—appear to be the least restrictive means of curbing the evil[] of campaign ignorance" and found the disclosure requirements of the predecessor to Section 434(c) to be "a reasonable and minimally restrictive method of furthering First Amendment values by exposing the basic processes of our federal election system to public view." 424 U.S. at 68, 82, 96 S.Ct. 612. The same may appropriately be said of the FCPA's disclosure requirements, even as applied to organizations whose major purpose is not to achieve a particular election result. As in *Buckley*, those provisions withstand the plaintiffs' First Amendment challenge.

d. Compelled disclosure and free association.

[19] Relying principally on *NAACP* v. *Alabama*, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958), the plaintiffs next argue that the FCPA's disclosure requirements cannot constitutionally be applied to CCA because of its interference with the associational rights of CCA and its contributors. (Doc. 54 at 44-49).[28]

28. CCA has personal standing to assert this claim because whether it must disclose its contributors depends on whether it elects to engage in express advocacy, forcing CCA to choose between its free speech rights and the associational rights of itself and its contributors. Were such disclosures required of CCA without regard to its exercise of free speech rights, it still would have standing to assert the associational rights of its contributors.

The Supreme Court in *NAACP v. Alabama* recognized that "compelled disclosures of affiliation with groups engaged in advocacy may constitute [an] effective ... restraint on freedom of association .... Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *Id.* at 462, 78 S.Ct. 1163. The Court then staked out a field within which compelled disclosure may run afoul of the First Amendment.

The NAACP made an "uncontroverted showing" that previous disclosures of membership lists "had exposed those members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility." 357 U.S. at 462, 78 S.Ct. 1163. This history made it likely that the compelled disclosure of membership lists sought by the state would induce existing members to withdraw and potential members to refrain from joining due to "fear of exposure of their beliefs shown through their associations and of the consequences of this exposure." *Id.* at 463, 78 S.Ct. 1163. This effect on membership, in turn, would likely adversely affect the organization's group effort to advocate its causes. *Id.* at 462-63, 78 S.Ct. 1163. Finally, the Court found that, because the means of compelled disclosure did not have a "substantial bearing" on the state's articulated need, the state had "fallen short of showing a controlling justification" for compelling disclosure. *Id.* at 463-66, 78 S.Ct. 1163.

The reach of *NAACP v. Alabama* extends to election finance laws. Among the arguments addressed by the Court in *Buckley v. Valeo* was that FECA's disclosure and reporting requirements could not be constitutionally applied to minor parties and independents. The Court recognized that "[t]here could well be a case, similar to those before the Court in *[NAACP v.] Alabama* and *Bates* [*v. City of Little Rock*, 361 U.S. 516, 80 S.Ct. 412, 4 L.Ed.2d 480 (1960)], when the threat to the exercise of First Amendment rights is so serious and the state interest furthered by disclosure so insubstantial that the Act's requirements cannot be constitutionally applied." 424 U.S. at 71, 96 S.Ct. 612.

To satisfy *NAACP v. Alabama*, "[t]he evidence offered must show only a *reasonable probability* that the compelled disclosure of a party's contributors' names will subject them to *threats, harassment, or reprisals* from either government officials or private parties." *Buckley v. Valeo*, 424 U.S. at 74, 96 S.Ct. 612 (emphasis added). This showing may come from such sources as specific evidence of past or present harassment of members or of the organization, a pattern of threats, specific manifestations of public hostility, or conduct visited on organizations holding similar views. *Id.*; *accord Brown v. Socialist Workers '74 Campaign Committee*, 459 U.S. 87, 93-94, 103 S.Ct. 416, 74 L.Ed.2d 250 (1982).

The plaintiffs have not demonstrated a "reasonable probability," or any probability at all, that CCA contributors will be subjected to "threats, harassment or reprisals" should their identity become known. While the plaintiffs have offered the declarations of nine contributors, these declarations say nothing more than that, if CCA is deemed a political committee, the declarants "would no longer make contributions to [CCA] because of the requirement ... that political committees must disclose the names and cities of residence of those contributors who make contributions of more than $100." (Doc. 61, Exhibits O-T).[29] No declarant states or suggests that his decision to stop making contributions is based on a fear that he will be subjected to "threats, harassment, or reprisals" if his identity becomes known. Nor have the plaintiffs shown a "reasonable probability"

See NAACP v. Alabama, 357 U.S. at 459-60, 78 S.Ct. 1163.

29. One contributor says only that he would "consider" no longer making contributions. (Plaintiffs' Exhibit N).

that such a subjective fear would be realized.

Instead, the plaintiffs insist that neither a fear of reprisal nor a reasonable probability of its occurrence is necessary, but only "a chilling effect and a severe negative impact on CCA's rights of free speech and association." (Doc. 64 at 46). The Supreme Court, however, has already recognized that "public disclosure of contributions ... will deter some individuals who otherwise might contribute," *Buckley v. Valeo*, 424 U.S. at 68, 96 S.Ct. 612, but has determined that "this is a burden that is justified by substantial Government interests." *Federal Election Commission v. Massachusetts Citizens*, 479 U.S. at 254 n. 7. The unadorned fact that some persons will be discouraged from making contributions is simply insufficient to outweigh the governmental interest in disclosure. *See, e.g., Buckley v. Valeo*, 424 U.S. at 71–72 & 72 n. 88, 96 S.Ct. 612 (testimony that several potential contributors demurred "because of the possibility of disclosure," without "stronger evidence of threats or harassment," held insufficient to satisfy *NAACP v. Alabama*).

The plaintiffs mistakenly rely on *Local 1814, International Longshoremen's Association, AFL–CIO v. Waterfront Commission*, 667 F.2d 267 (2nd Cir.1981), for the proposition that no reasonable probability of reprisals need be shown to satisfy *NAACP v. Alabama*. In *Local 1814*, the defendant sought to enforce a subpoena requiring disclosure of longshoremen who had recently authorized payroll deductions to the local's political action and education fund. *Id.* at 269. Consistent with *Buckley*, the Court found that the lack of historical harassment of contributors was not fatal to the plaintiffs' case, because the defendant exerted "control over the professional destiny of" the contributors, including the power to remove them from the longshoremen's register, thus raising the specter of retaliation. *Id.* at 272. *Local 1814* thus plainly required a reasonable

sals as a predicate to barring compelled disclosure.

In summary, the government's interest in disclosure may be overridden when there exists a reasonable probability the organization's contributors will be subject to threats, harassment or reprisals and will sever or restrict relations with the organization out of fear this reasonable probability will be realized. However, the governmental interest in disclosure is not overridden when, as here, the organization asserts merely that contributions will drop off if disclosure is required.

E. Status as a Political Committee.

[20] As noted, the FCPA deems one anticipating or actually receiving contributions or making expenditures for express advocacy to be a political committee. Ala. Code § 17-22A-2(10). The Court has concluded above that the registration, organizational and recordkeeping requirements imposed by the FCPA on political committees cannot constitutionally be applied to CCA, but that the Act's disclosure requirements may. The plaintiffs argue that, independent of any affirmative obligations thrust upon CCA by becoming a political committee, CCA is discouraged from engaging in speech that would trigger political committee status, owing to the adverse response that certain groups would have to CCA should it be deemed a political committee. They identify three such groups: (1) churches that have previously distributed CCA voter guides to parishioners; (2) husband and wife contributors who have previously contributed jointly over $1,000 to CCA; and (3) contributors who do not contribute to political committees as a matter of personal choice. (Doc. 51 at 47–49).

In *Meese v. Keene*, 481 U.S. 465, 107 S.Ct. 1862, 95 L.Ed.2d 415 (1987), the plaintiff state legislator alleged that he desired to exhibit certain Canadian films on issues such as acid rain but that he refrained from doing so because a federal statute deemed the films "political propa-

chances for re-election and harm his reputation in the community. *Id.* at 473–74, 107 S.Ct. 1862. The Court concluded that the term "political propaganda," while capable of construction in the popular mind as a dismissive, derogatory phrase connoting slanted, misleading speech, also carries a broader, neutral meaning both in popular usage and in the statute. *Id.* at 477–78, 107 S.Ct. 1862. Because the Court's "duty [is] to construe legislation as it is written, not as it might be read by a layman, or as it might be understood by someone who has not even read it," the Court utilized the neutral meaning, causing "the constitutional concerns voiced by the District Court [to] completely disappear." *Id.* at 485, 107 S.Ct. 1862. Given this neutral meaning, the "political propaganda" label "places no burden on protected expression." *Id.* at 480, 107 S.Ct. 1862. The absence of such a burden obviated discussion of whether the government had selected means narrowly tailored to further a compelling government interest. *See id.* at 490–94, 107 S.Ct. 1862 (Blackmun, J., dissenting).

In light of *Meese v. Keene*, the label that the legislature attaches to speech or a speaker does not burden speech for purposes of First Amendment analysis unless, at a minimum, it is used as a "pejorative." 481 U.S. at 478, 107 S.Ct. 1862. That individuals or groups may respond negatively to a neutral label, and that a speaker may therefore avoid engaging in speech that will cause the label to attach, does not constitute a burden on speech, at least not one properly attributable to the government as opposed to the preferences of the audience or others.

The plaintiffs here do not contend that the term "political committee" is pejorative, and it plainly is not, either in common usage or in the FCPA.[30] Similarly, they do not contend that others will distance themselves from CCA out of revulsion, but rather from more prosaic concerns: churches will decline to distribute voter guides of a political committee for fear of losing their tax-exempt status; significant spousal contributors will not contribute to a political committee for fear of becoming a political committee themselves; and other contributors will not contribute to a political committee "as a matter of personal choice." (Doc. 64, Exhibit A at 3–5).

Even assuming that, despite *Meese v. Keene*, third party responses to a neutral term can burden speech, such responses must, in accordance with *NAACP v. Alabama* and *Buckley v. Valeo*, be based on a reasonable probability that the feared result will eventuate. The concerns expressed by the ecclesiastical and contributor declarants are not grounded in such a reasonable probability.

Five pastors have declared that their churches have previously distributed CCA voter guides but "would refuse to distribute the voter guides published by CCA if CCA was deemed a 'political committee,' out of fear that [their] church[es'] own legal status would be negatively affected, such as the threat of losing [their] 501(c)(3) tax exempt status." (Doc. 64, Exhibits I–M). The plaintiffs trace the declarants' concern to *Branch Ministries v. Rossotti*, 40 F.Supp.2d 15 (D.D.C.1999), *aff'd*, 211 F.3d 137 (D.C.Cir.2000). In *Branch Ministries*, a church's tax exemption was revoked because the church funded a full-page advertisement in the Washington Times and USA Today advocating the defeat of a presidential candidate, *id.* at 17, conduct clearly violating the Internal Revenue Code's requirements for tax-exempt status, namely, that the tax-exempt organization not "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to)

30. *Cf. Meese v. Keene*, 481 U.S. at 484 n. 19, 107 S.Ct. 1862 (although the term "lobbying," a term used in federal statutes, carries nega-

not aware of any suggestion that these negative connotations violate the First Amendment")

any candidate for public office." 26 U.S.C. § 501(c)(3). At issue in this case, however, is not advocacy concerning candidates for public office but advocacy concerning ballot measures. A church may be denied tax-exempt status only if a "substantial part" of its activities include "carrying on propaganda, or otherwise attempting, to influence legislation," *id.*, and CCA admits that its desired distribution of voter guides on ballot measures is episodic and infrequent. (Doc. 54, Exhibit A at 2; Doc. 76).

Two married couples have declared that they have previously contributed over $1,000 jointly to CCA in a calendar year, but would not do so if CCA became a political committee because the FCPA requires "two or more individuals who make contributions jointly to a political committee, in excess of $1,000 in a single calendar year, ... to register and report as a political committee." (Doc. 54, Exhibits S-T). For a husband and wife to constitute a political committee, they must constitute an "association" or "other group." Ala. Code § 17-22A-2(10). The FCPA does not define "association," but the Supreme Court has described it as "'a body of persons united without a charter, but upon the methods and forms used by incorporated bodies for the prosecution of some common enterprise.'" *Hecht v. Malley*, 265 U.S. 144, 157, 44 S.Ct. 462, 68 L.Ed. 949 (1924) (quoting legal dictionaries); *accord Penrod Drilling Co. v. Johnson*, 414 F.2d 1217, 1222 (5th Cir.1969), *cert. denied*, 396 U.S. 1003, 90 S.Ct. 552, 24 L.Ed.2d 495 (1970). While the term "group" is less susceptible of a precise definition, its reach is restricted by the modifier "other" and "the rule of ejusdem generis, 'which ordinarily limits the meaning of general words and things to the class or enumeration employed.'" *Bly v. Auto Owners Insurance Co.*, 437 So.2d 495, 497 (Ala.1983)(quoting *Merchants' National Bank v. Hubbard*, 220 Ala. 372, 125 So. 335, 336 (1929)). The common thread uniting the specific artificial entities capable of political committee status is that they were formed to foster their goals publicly, while the marital relationship is substantially a private one. Without analysis or citation to authority, the bald assertion that a husband and wife become a political committee by making a joint contribution does not demonstrate a reasonable probability of that result.

In summary, the FCPA's use of the neutral term "political committee," and CCA's election not to engage in express advocacy of ballot measures so as to avoid the adverse reactions of third parties to CCA becoming a political committee, does not unconstitutionally infringe on CCA's First Amendment freedoms.

F. The Richey Plaintiffs.

The plaintiffs correctly note that there is "a First Amendment right to 'receive information and ideas,' and that freedom of speech "'necessarily protects the right to receive.'" *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 757, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976)(quoting prior Supreme Court cases). The right to receive, however, is "derivative" of the right to speak, *Denver Area Educational Telecommunications Consortium, Inc. v. Federal Communications Commission*, 518 U.S. 727, 817, 116 S.Ct. 2374, 135 L.Ed.2d 888 (1996)(Kennedy, J., concurring in part and dissenting in part)(citing *Virginia Board of Pharmacy*), and the plaintiffs do not suggest that the Richeys can be entitled to relief unavailable to CCA.

III. Remedy.

[21] "A plaintiff moving for a preliminary injunction must show: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury; (3) that the threatened injury to the plaintiff outweighs the injury to the nonmovant; and (4) that the injunction would not disserve the public interest." *Statewide Detective Agency v. Miller*, 115 F.3d 901, 905 (11th Cir.1997). The standard for a permanent injunction is identical except that

the plaintiff must show "actual success" on the merits *Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 546 n. 12, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987).

[22] The foregoing discussion demonstrates that there is no genuine issue of material fact and that the plaintiffs are entitled to judgment as a matter of law with respect to their claim that the FCPA's registration, organizational and recordkeeping requirements are unconstitutional as applied to CCA and other persons whose major purpose is not to engage in election activity. To this extent, the plaintiffs have prevailed on the merits. The "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976). The harm to the plaintiffs from failing to enjoin those aspects of the FCPA found to be unconstitutional as applied clearly outweighs any harm to the defendants from doing so, and "[t]he public interest always is served when constitutional rights, especially free speech, are vindicated." *University Books & Videos, Inc. v. Metropolitan Dade County*, 33 F.Supp.2d 1364, 1374 (S.D.Fla. 1999). Accordingly, the plaintiffs are entitled to permanent injunctive relief. They are also entitled to a declaration that these portions of the FCPA are unconstitutional as applied.

CONCLUSION

The plaintiffs' motion for summary judgment is granted to the extent it argues that the registration, organizational and recordkeeping requirements of Sections 17-22A-3, 17-22A-5 and 17-22A-6 of the Alabama Code are unconstitutional as applied to CCA and other persons whose major purpose is not to engage in election activity. In all other respects, the plaintiffs' motion for summary judgment is denied. The defendants' motion for summary judgment with respect to the plaintiffs' claim that the FCPA's registration, organizational and recordkeeping requirements are unconstitutional as applied to CCA and other persons whose major purpose is not to engage in election activity is denied. In all other respects, the defendants' motion for summary judgment is granted. Final judgment shall be entered accordingly by separate order.

FINAL JUDGMENT

In accordance with the separate Order entered this date, it is ORDERED, ADJUDGED and DECREED that the provisions of the Code of Alabama, Sections 17-22A-3, 17-22A-5 and 17-22A-6 are hereby declared unconstitutional as applied to any person whose major purpose is not to engage in election activity. The defendants are hereby enjoined from enforcing these provisions against the plaintiff Christian Coalition of Alabama, Inc. as long as its major purpose is not to engage in election activity. All other claims asserted by the plaintiffs are dismissed with prejudice.

Brandy J. WILLIAMSON, Plaintiff,

v.

Steven A. ROTH, individually, Armando L. Rojas, individually, d/b/a Genesis Women's Center, P.A., Genesis Women's Center, Inc., and Citrus Memorial Health Foundation, Defendants.

No. 5:98-CIV-299-OC-10.

United States District Court, M.D. Florida, Ocala Division.

Aug. 11, 2000.

Indigent patient who delivered stillborn child after hospital evaluated her for pain and discharged her sued hospital and

LEXSEE 978 p.2d 597

STATE OF ALASKA, Appellant, v. ALASKA CIVIL LIBERTIES UNION, Appellee.

Supreme Court No. S-8778, No. 5108

SUPREME COURT OF ALASKA

978 P.2d 597; 1999 Alas. LEXIS 52

April 16, 1999, Decided

SUBSEQUENT HISTORY:
[**1] Certiorari Denied February 22, 2000, Reported at: *2000 U.S. LEXIS 1015.*

PRIOR HISTORY:
Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Michael L. Wolverton, Judge. Superior Court No. 3AN-97-5289 CI.

COUNSEL:
David T. Jones and Ian Hart DeYoung, Assistant Attorneys General, Anchorage, and Bruce M. Botelho, Attorney General, Juneau, for Appellant.

Jonathan B. Rubini, Foster, Pepper, Rubini & Reeves, L.L.C., Anchorage, and Suzanne S. La Pierre, Anchorage, for Appellee.

Kyle W. Parker, Patton, Boggs, L.L.P., Anchorage, and Benjamin L. Ginsberg, John C. Martin, and Donald F. McGahn II, Patton, Boggs, L.L.P., Washington, D.C., for Amicus Curiae Alaska State Chamber of Commerce.

JUDGES:
Before: Matthews, Chief Justice, Compton, Eastaugh, Fabe, and Bryner, Justices.

OPINIONBY:
EASTAUGH

OPINION:

[*600] OPINION

EASTAUGH, Justice.

I. INTRODUCTION

The Alaska legislature reformed Alaska's campaign financing statutes in 1996 by enacting Chapter [**2] 48 SLA 1996 (the Act), also known as Senate Bill (SB) 191. n1 The Alaska Civil Liberties Union (AkCLU) sued the State of Alaska, seeking a judgment declaring that parts of the Act violated rights of free speech and association by restricting campaign contributions and expenditures for state and local elections. Accepting AkCLU's arguments, the superior court held that SB 191 was unconstitutional. Because we hold that the State had a legitimate interest in preventing corruption or the appearance of corruption in state election campaigns and that most of the challenged provisions were narrowly tailored to achieve that interest, we hold that the challenged provisions, with limited exceptions discussed below, do not offend rights of speech and association. Reading the bans on non-group entities' expenditures and contributions narrowly, we reverse generally the judgment declaring the Act unconstitutional. But we affirm as to the invalidity of the pre-election year and legislative session contribution bans.

n1 Although the bill enacted into law is generally referred to as SB 191, the version of the bill the legislature actually enacted was HCS CSSB 191 (FIN) am H.

[**3]

II. FACTS AND PROCEEDINGS

The legislature's concern about the effect of undue influence on the work of government -- first [*601] expressed in a 1913 statute requiring lobbyists to register n2 -- has reached comprehensive scope in the last

quarter-century. In 1974 the Alaska legislature enacted statutes regulating state election campaigns. Individuals were prohibited from contributing more than $ 1,000 annually to a candidate other than themselves. n3 No cash contribution exceeding $ 100 could be made to a candidate, n4 and no expenditure promoting a candidate exceeding $ 100 could be made unless a written receipt was filed with the state's election commission. n5 Candidates' total expenditures in campaigns for various offices were limited by formulas relating to the office sought and the population of the constituency area, and, for house and senate seats, the number of seats in the district, although the legislature later repealed this provision. n6 In 1975 the legislature expanded the $ 1,000 annual candidate contribution limit to cover groups, political committees, businesses, corporations, and labor unions. n7

n2 See ch. 43 § 1, SLA 1913. [**4]

n3 See ch. 76 § 1, SLA 1974 (current version at AS 15.13.070(a)).

n4 See ch. 76 § 1, SLA 1974 (current version at AS 15.13.070(b)).

n5 See ch. 76 § 1, SLA 1974 (current version at AS 15.13.070(c)). The 1974 enactment did not distinguish between coordinated and independent "expenditures."

n6 See former AS 15.13.070(f), repealed by ch. 85 § 45, SLA 1986.

n7 See ch. 189 § 20, SLA 1975 (current version at AS 15.13.070(a)).

In 1996 the Alaska legislature comprehensively reformed Alaska's campaign financing laws by enacting SB 191. It passed the bill not long before voters were to vote on an initiative to reform campaign finance. The State asserts here, as it did below, that SB 191 was a response to the initiative and to public concerns about actual and apparent corruption in Alaska politics. The Act recited these legislative findings:

(3) organized special interests are responsible for raising a significant portion of all election campaign funds and may thereby gain an undue influence over election campaigns and elected officials, particularly [**5] incumbents ...

....

(5) because, under existing laws, candidates are completely free to convert campaign funds to personal income, there is great potential for bribery and political corruption. n8

n8 Ch. 48 § 1, SLA 1996.

The Act also expressed the following purpose: "It is the purpose of this Act to substantially revise Alaska's election campaign finance laws in order to restore the public's trust in the electoral process and to foster good government." n9

n9 Id.

Senate Bill 191, while less restrictive in some areas, was more comprehensive in scope than the initiative it sought to supplant. Unlike the initiative, SB 191 included not only contribution limits and prohibitions, and expenditure prohibitions, but time restrictions, restrictions on the use of campaign assets, restrictions on the use of gaming proceeds, exemptions [**6] from reporting requirements, campaign lending restrictions, and standards of criminal conduct. n10

n10 See ch. 48 § § 2, 5-7, 11-12, 19, 25, SLA 1996.

Senate Bill 191 became effective January 1, 1997. n11

n11 See ch. 48 § 35, SLA 1996.

AkCLU sued the State in July 1997. It complained that the Act violated both the First Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, and article I, section 5 of the Alaska Constitution. It sought declaratory and injunctive relief specifically challenging the validity of the Act's provisions containing (1) limits on campaign contributions; (2) bans on certain types of campaign contributions; (3) restrictions on the timing of contributions; (4) restrictions, which AkCLU characterized as expenditure limitations, on campaign funds carry-forwards [**7] and inter-candidate contributions; and [*602] (5) bans on independent expenditures by certain organizations.

AkCLU moved for complete summary judgment, relying heavily on the United States Supreme Court's

opinion in Buckley v. Valeo, which requires a threat of corruption or the appearance of corruption to justify regulation of campaign speech. n12 AkCLU submitted no factual evidence. The State opposed AkCLU's motion, cross-moved for summary judgment, and submitted more than 1800 pages of documents. The documents included: independent studies; a study commissioned by the state senate; fifteen affidavits, including affidavits from former Governors Steve Cowper, Jay Hammond, and Walter Hickel, and former house member David Finkelstein; news clippings; Alaska Public Offices Commission (APOC) reports; and campaign disclosure records. AkCLU's reply attached the affidavit of an advertising firm account manager. AkCLU later submitted two additional affidavits in support of its motion for preliminary injunction.

n12 See *Buckley v. Valeo, 424 U.S. 1, 26, 46 L. Ed. 2d 659, 96 S. Ct. 612 (1976).*

[**8]

The State's evidence discussed the proposed campaign finance initiative and the drive to place it on the ballot in 1996. The initiative contained a finding, as noted above, that "organized special interests are responsible for raising a significant portion of all campaign funds, and may thereby gain an undue influence over campaigns and elected officials, particularly incumbents."

Michael Frank, chair of Campaign Finance Reform Now!, the ballot measure organizers, affied that over 30,000 people signed the petition for the ballot initiative. Frank said he heard frequent comments from citizens who said that "after candidates got elected they 'went bad' or 'became corrupt' or 'got crooked' or 'went on the take' and began accepting contributions and favors from the interests they were supposed to regulate." Frank stated his personal view that the existing system "reeked of corruption."

Michele Keck, who also collected signatures for the initiative, affied that she got involved because "the decisions of elected officials appear too often to be linked to campaign contributors [rather] than to the merits of the issues." She said she collected approximately 5,000 signatures for the initiative, [**9] and her impression was that others who signed the petition felt the same way she did.

David Finkelstein, a former state house member, affied that he personally had gathered over a thousand signatures for the campaign reform initiative. "The constant refrain I heard from citizens," he said, "was that the Legislature was owned by special interests. This perception existed even among people who would not sign the initiative, who would often state that nothing was going to change the corruption caused by big money."

The State also introduced a report commissioned by the Alaska State Senate and produced by the Josephson Institute in 1990. The report discussed the opinions of lobbyists, legislators, and state public officials on legislative ethics in Alaska. The researchers found that: "the level of trust and confidence in the integrity of the legislature is disturbingly low"; the low level of trust is attributable at least in part to "calculated evasions of the purpose and spirit of campaign laws"; and calculated evasions of the campaign laws were, according to fifty percent of legislators and sixty-eight percent of public officials, a serious problem calling for greater regulation. [**10]

Following oral argument, the superior court granted summary judgment to AkCLU. The court primarily relied upon Buckley, and gave several reasons for its result: the State had not introduced evidence of "real harm"; SB 191's contribution limits are impermissibly "different in kind" from the Buckley limits; and "leveling the playing field" is an inadequate justification for restricting campaign contributions. Concluding that the valid and invalid provisions were "so inextricably intertwined" that the valid provisions could not be severed and preserved, the court invalidated the entire Act, including those provisions AkCLU did not explicitly challenge, as unconstitutional under the First Amendment.

The State appeals.

[*603] III. DISCUSSION

A. Standard of Review

We review grants of summary judgment de novo. n13 To obtain summary judgment, the moving party must prove the absence of genuine factual disputes and its entitlement to judgment. n14

If the movant makes a prima facie showing that he or she is entitled to judgment on the established facts as a matter of law, the opposing party must demonstrate that a genuine issue of fact exists to be litigated by showing [**11] that it can produce admissible evidence reasonably tending to dispute the movant's evidence. n15

n13 See *Nielson v. Benton, 903 P.2d 1049, 1052 (Alaska 1995).*

n14 See *Alaska Travel Specialists, Inc. v. First Nat'l Bank of Anchorage, 919 P.2d 759, 762 (Alaska 1996).*

n15 *French v. Jadon, Inc., 911 P.2d 20, 23 (Alaska 1996).*

When a court grants summary judgment without stating its reasons, we presume that the court ruled in the movant's favor on all the grounds stated. n16 All reasonable inferences of fact must be drawn against the moving party and in favor of the nonmoving party. n17

n16 See *State v. Appleton & Cox of Cal., Inc., 703 P.2d 413, 414 (Alaska 1985).*

n17 See *Ross v. City of Sand Point, 952 P.2d 274, 276 (Alaska 1998).*

This case raises constitutional issues. Issues of constitutional interpretation [**12] are questions of law which we review de novo. n18

n18 See *Revelle v. Marston, 898 P.2d 917, 925 n.13 (Alaska 1995).*

B. History of Campaign Finance Litigation

1. Buckley v. Valeo

Buckley v. Valeo is the wellspring of modern campaign finance jurisprudence. The Supreme Court there reviewed contribution and expenditure limits contained in the 1974 amendments to the Federal Election Campaign Act of 1971. n19 It concluded that all campaign finance restrictions impinge on public debate and therefore implicate the First Amendment. n20 "Contribution and expenditure limitations impose direct quantity restrictions on political communication and association by persons, groups, candidates, and political parties ...." n21

n19 See *Buckley, 424 U.S. at 6.*

n20 See *id. at 18.*

n21 Id.

Accordingly, the Court [**13] held that campaign finance reform measures limiting expenditures must satisfy "the exacting scrutiny applicable to limitations on core First Amendment rights of political expression." n22 Concerning contribution limits, the Court explained that "even a 'significant interference with protected rights ...' may be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms." n23 The Court later explained that to be constitutional, a provision burdening the exercise of political speech must be "narrowly tailored to serve a compelling state interest." n24

n22 *Id. at 44-45.*

n23 *Id. at 25* (quoting *Cousins v. Wigoda, 419 U.S. 477, 488, 42 L. Ed. 2d 595, 95 S. Ct. 541 (1975)* (internal quotation omitted)).

n24 *Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 657, 108 L. Ed. 2d 652, 110 S. Ct. 1391 (1990).*

Buckley addressed limits on contributions and expenditures in election races for federal office. n25 In doing so, the Court upheld the contribution limits [**14] but struck down the expenditure limits, drawing a distinction that the Court has continued to observe. n26

n25 See *Buckley, 424 U.S. at 12-59.*

n26 See, e.g., *Colorado Republican Fed. Campaign Comm. v. Fed. Election Comm'n, 518 U.S. 604, 618-19, 135 L. Ed. 2d 795, 116 S. Ct. 2309 (1996)* (striking down limit on independent expenditures by political parties); *Federal Election Comm'r v. Massachusetts Citizens for Life (MCFL), 479 U.S. 238, 263-64, 93 L. Ed. 2d 539, 107 S. Ct. 616 (1986)* (striking down expenditure limit); *Federal Election Comm'n v. National Conservative Political Action Comm., 470 U.S. 480, 500-501, 84 L. Ed. 2d 455, 105 S. Ct. 1459 (1985)* (striking down limit on political committee expenditures); *California Med. Ass'n v. Federal Election Comm'n, 453 U.S. 182, 198-201, 69 L. Ed. 2d 567, 101 S. Ct. 2712 (1981)* (allowing limits on contributions to political committees).

[*604] The challenged expenditure limits, the Court reasoned, were invalid because they directly and substantially limited the quantity of political speech. n27 The 1974 amendments limited individual and group expenditures to $ 1,000 per election for [**15] clearly