ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SJUD 12592

" 'The doctor opened up the scissors, stuck a high-powered suction tube into the opening, and sucked the baby's brains out. Now the baby went completely limp... .

" 'He cut the umbilical cord and delivered the placenta. He threw the baby in a pan, along with the placenta and the instruments he had just used.' " Ibid.

Dr. Haskell's approach is not the only method of killing the fetus once its head lodges in the cervix, and "the process has evolved" since his presentation. *Planned Parenthood*, 320 F. Supp. 2d, at 965. Another doctor, for example, squeezes the skull after it has been pierced "so that enough brain tissue exudes to allow the head to pass through." App. in No. 05-380, at 41; see also *Carhart*, *supra*, at 866-867, 874. Still other physicians reach into the cervix with their forceps and crush the fetus' skull. *Carhart*, *supra*, at 858, 881. Others continue to pull the fetus out of the woman until it disarticulates at the neck, in effect decapitating it. These doctors then grasp the head with forceps, crush it, and remove it. *Id.*, at 864, 878; see also *Planned Parenthood*, *supra*, at 965.

Some doctors performing an intact D&E attempt to remove the fetus without collapsing the skull. See *Carhart*, *supra*, at 866, 869. Yet one doctor would not allow delivery of a live fetus younger than 24 weeks because "the objective of [his] procedure is to perform an abortion," not a birth. App. in No. 05-1382, at 408-409. The doctor thus answered in the affirmative when asked whether he would "hold the fetus' head on the internal side of the [cervix] in order to collapse the skull" and kill the fetus before it is born. *Id.*, at 409; see also *Carhart*, *supra*, at 862, 878. Another doctor testified he crushes a fetus' skull not only to reduce its size but also to ensure the fetus is dead before it is removed. For the staff to have to deal with a fetus that has "some viability to it, some movement of limbs," according to this doctor, "[is] always a difficult situation." App. in No. 05-380, at 94; see *Carhart*, *supra*, at 858.

I think the above description would make the Nazi's blush. May God have mercy on us for allowing it to happen. Please do whatever you can to make sure it doesn't happen in Alaska.

Sincerely,

Les Syren

Syren Law Offices

P.O. Box [illegible]

Anchorage, Alaska 99511

[illegible]

Internet Security Software - Click here.

From: '/_e
Sent: Monday, February 11, 2008 4:36 PM
To: Rep. Wes Keller
Subject: HB301

From:

Dear Representative Keller,

I am very pleased that House Bill 301 is being presented and would like to see it move forward. I am looking forward to an Alaskan State Law that bans partial birth abortion.

Sincerely,
Rachel Kincaid

- Rachel Kincaid
Zip Code: 99645

+--+
DO NOT REPLY TO THIS EMAIL if you want to correspond with this author.
If suspected Spam please forward to: support@housemajority.org
+--+

From: Lori Ortega

Sent: Wednesday, February 13, 2008 7:57 AM

To: Rep. Wes Keller

Subject: Partial Birth Abortion ban

To Whom it May Concern:

Please move House Bill 301 (HB 301) forward. We need to have a state law banning partial birth abortions. It is wrong to kill a child just as he or she is being born. That is murder and there needs to be stringent laws against such an awful (and completely unnecessary) procedure. Please vote for this bill. Thank you.

Lori Ortega

From: Rod and Temple Christiansen

Sent: Tuesday, February 12, 2008 11:08 PM

To: Rep. Wes Keller

Subject: HB 301

Dear Representative Wes Keller,

Please support House Bill 301. Nothing is more precious than life! Everyone knows that life begins at conception, although they may not admit it. Partial birth abortion is a barbaric procedure and should be against the law.

Thank you for your attention to this matter.

Temple Christiansen

Palmer, Alaska 99645

From:
Sent: Tuesday, February 12, 2008 7:54 PM
To: Wes_Keller@legis.state.ak.us
Subject: HB 301

Wes,

to let you know, I support creating a state law that bans Partial Birth Abortion.

I also applied to fill a vacancy on the Mental Health board as a public citizen. You contacted me last January about being willing to serve as a professional which I was and am willing to do but one of the requirements was that I be state licensed as a psychologist and I'm not.

Debra Lighthart Ph.D.
Wasilla Alaska 99654

www.alaskaspecialtieskompany.com

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http://www.iolo.com

From: Darlene Derbesy
Sent: Tuesday, February 12, 2008 6:43 PM
To: Rep. Wes Keller
Subject: HB301

I am writing to state my strong support of HB301 which bans partial birth abortion. This will save many lives and merits full support. Thank you for taking the lead in this very important matter.

Darlene Derbesy

From: joan honan
Sent: Tuesday, February 12, 2008 5:59 PM
To: Rep. Wes Keller
Subject: patialbirt abort

please ban partial birth abortion and all abortions. I had two in my life and it was the biggest mistake I've ever made. the emotioal stress and later the conviction of helping kill my own children has been very traumatic. I know many americans have suffered for this inhumane practice that we have legalized. please help to ban this horrible practice. thank you, for your time and concern, joan honan

---

Be a better friend, newshound, and know-it-all with Yahoo! Mobile. Try it now.

From: Eva Heller [illegible]
Sent: Tuesday, February 12, 2008 1:15 PM
To: Rep. Wes Keller
Subject: Partial Birth Abortions

Dear Wes - Please list me as a supporter of your bill to ban Partial Birth Abortions.
And say 'hi' to your wife!

Eva (Heller) LoForte

Helping your favorite cause is as easy as instant messaging. You IM, we give. Learn more.

Jim Pound

From: Jerry W. Tokar

Sent: Monday, February 18, 2008 2:54 PM

To: Wes_Keller@legis.state.ak.us

Subject: HB301

Representative Keller,
I am in support of HB301.
Thank you for your efforts.
G.J. Tokar

Jim Pound

From: Ronald Kichura
Sent: Monday, February 18, 2008 1:48 PM
To: Rep. Wes Keller
Subject: HB301

Rep Keller,
I support HB301 which bans partial birth abortion.
Ron Kichura

From: Susie Hooser
Sent: Sunday, February 17, 2008 9:20 AM
To: Rep. Wes Keller
Subject: Precious lives HB301

Dear Representitive Keller,
I am strongly in support of HB301. What can I do to help to get this long needed bill in action and passed to save these precious little lives?

Thank you,
Blessed mother of four and grandma of two,
Susie Hooser

Jim Pound

From: Larry Hamlin

Sent: Saturday, February 16, 2008 8:35 PM

To: Rep. Wes Keller

Subject: Please pass HB301

Dear Representative Keller,

I received an email from Alaska Right to Life and I want to thank you for your efforts to move HB301 forward and prayerfully we will all see it passed into law very soon. Your Fellow Alaskan,
Larry Hamlin, [redacted], Anchorage, AK 99502

From: Tammy Williamson
Sent: Saturday, February 16, 2008 8:22 PM
To: Rep. Wes Keller
Subject: I strongly support House Bill 301

Dear Representative Keller,
I am writing to express my strong support for this bill. The medical evidence shows there is no need for this gruesome procedure.

Thank you,
Tammy Williamson

Be a better friend, newshound, and know-it-all with Yahoo! Mobile. Try it now.

From:
Sent: Wednesday, February 13, 2008 11:43 AM
To: Rep. Wes Keller
Subject: Re: HB301

Greetings Rep. Keller,
I just would like to let you and all of the Representatives that I am completely in favor of HB301, which creates a State Law to ban Partial Birth Abortion. It's mind boggling that any civilized, moral person would be in favor of such a barbaric act. Of course any type of abortion is horrible and should not be lawful.
Thank you for your time and dedication to this cause.
Sincerely,
Joanne S. Alsup
Ketchikan, AK 99901
(907)

Jim Pound

From: Palmer Bailey [

Sent: Wednesday, February 13, 2008 2:31 PM

To: Rep. Wes Keller

Subject: Support of HB301

Dear Representative Keller,

We wish to make known our support for legislation that bans the partial birth abortion procedure. It is my understanding that the current HB 301 does that. On that basis, we wish to go on record in support of that bill.

Sincerely,
Palmer and Bonnie Bailey
Anchor Point, Alaska

Jim Pound

From: Vernon Byrd
Sent: Wednesday, February 13, 2008 4:54 PM
To: Rep. Wes Keller
Subject: HB301

Dear Representative Keller,
Please do all you can to move HB301 forward. Alaska needs to not allow partial birth abortions in this state. This procedure would never be allowed on an animal, but pro-abortion proponents are willing to do it to human babies. This has got to stop.

Thanks for all you're doing.

Valerie Byrd
Homer, Alaska

Jim Pound

From: Joan Dickson
Sent: Wednesday, February 13, 2008 5:02 PM
To: Rep. Wes Keller
Subject: HB301

Rep. Keller,
I am 100% in favor of this bill to ban Partial Birth Abortion in our state. I know if I was the infant I sure wouldn't want to be in this state of development and then be bruitally murdered.

I don't think we have the right to give a murder sentence on an innocent child.

I appreciate your work to see that this becomes a law.
Thank you,
Respectfully,
Joan Dickson

From: Stephen Quirk
Sent: Wednesday, February 13, 2008 5:33 PM
To: Rep. Wes Keller
Subject: HB301

I and my wife are in favor of not allowing partial birth abortions.

Thank your,

Stephen Quirk
Karen Quirk
99508

Never miss a thing. Make Yahoo your homepage.

Jim Pound

From: Joy Davidson [illegible]
Sent: Wednesday, February 13, 2008 9:29 PM
To: Rep. Wes Keller
Subject: House Bill 301

Hi Wes Keller,

My name is Joy Davidson and I am strongly in support of passing House Bill 301 to ban partial birth abortions. Last year I actually read the Supreme Court Arguments and I was shocked that the Highest Court in one of most "civilized" countries on earth would be debating how and when one can crush a baby's scull. I was amazed that we could be so nonchalant and cavalier regarding such a heinous crime. Sufficed to say, I am thankful that partial birth abortions have been banned by the Supreme Court and I ask Alaska to follow suit and ban these horrendous acts.

Thank you for all your work in this matter,
Joy Davidson

Helping your favorite cause is as easy as instant messaging. You IM, we give. Learn more.

Jim Pound

From: Marc & Lucy Viens [@mtaonline.net]
Sent: Thursday, February 14, 2008 9:08 AM
To: Rep. Wes Keller
Subject: Ban on Partial Birth Abortion

Dear Representative Wes Keller,
As a member of the Alaskan Pro Life Community I strongly urge to to vote on any legislation that bans partial birth abortions. House Bill 301 from my understanding is just such legislation; so please be a voice for the unborn.
Sincerely,
Lucy Viens

Jim Pound

From: Claudia Hopper
Sent: Thursday, February 14, 2008 9:40 AM
To: Rep. Wes Keller
Subject: HB301

Hello Representative Keller:

I am writing a brief note to express my opposition to partial birth abortion. I am in favor of House Bill 301 which I understand is going before the House soon.
Please put me on a list or forward my email to whom it may concern.

Thank you for your time,

Claudia Hopper
Executive Assistant
Crossroads Community Church
Palmer, Alaska

From: john quirk [redacted]
Sent: Thursday, February 14, 2008 1:14 PM
To: wes_keller@legis.state.ak.us
Subject: HB301

We thank you for HB301! This certainly is a step in the right direction. Our prayers, John and Angela Quirk

Need to know the score, the latest news, or you need your Hotmail®-get your "fix". Check it out.

Jim Pound

From: Bill Crai[illegible]
Sent: Friday, February 15, 2008 9:34 PM
To: Rep. Wes Keller
Subject: HB301

I please ask of you to pass the Bill HB301.I know that they have been doing atrocious things for some time now.I ask you again to PLEASE pass HB301,we SO need it.

Sincerely,

Bill

Jim Pound

From: Adele Morgan
Sent: Saturday, February 16, 2008 10:21 AM
To: Rep. Wes Keller
Subject: Re: House Bill 301

thanks for writing back....hope you have success with this bill. Hope you are feeling well..give me an update on your health, family etc. We are praying for you.
Adele

----- Original Message -----
From: Rep. Wes Keller
To: Adele Morgan
Sent: Tuesday, February 12, 2008 8:31 AM
Subject: RE: House Bill 301

Hi Adele, Thanks for the encouragement and prayer.
I think we made a big move forward yesterday --- Senator Olson with Huggins and Green introduced a Senate version. That means the biggest hurdle is getting it through the House... We are very close to a gridlock (20-20) and just waiting for right day to get the 21 needed. I hope to get home this weekend which will be a breath of fresh air.

wes

From: Adele Morgan |
Sent: Tuesday, February 12, 2008 8:25 AM
To: Rep. Wes Keller
Subject: House Bill 301

To the State Legislature or whom it may concern,
Please move forward in creating a state law that bans Partial Birth Abortion. House Bill 301 (HB301)
Adele Morgan

HB
305

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FAX (907) 465-2029
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MEMORANDUM April 5, 2008

SUBJECT: Constitutional Issues in CSHB 305(RLS) am
(Work Order No. 25-LS1226\L.A)

TO: Senator Hollis French
Attn: Cindy Smith

FROM: Kathryn L. Kurtz KK
Assistant Revisor

You requested an opinion on the constitutionality of each provision in CSHB 305(RLS). Alpheus Bullard's analysis is forthcoming. To summarize his findings:

Section 1 of the bill amends AS 15.13.072(d). This section as it currently exists in statute is constitutionally suspect.[1] It restricts the freedom of speech and association, but is not narrowly tailored to avoiding corruption or the appearance of corruption. The changes in the bill may actually help alleviate this problem.

Sections 2 and 3 of the bill amend AS 24.60.031. To the extent they affect campaigns for federal office, both sections are probably preempted by federal law.[2]

KLK:lmb
08-173.lmb

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[1] *See State v. Alaska Civil Liberties Union*, 978 P.2d 597 (Alaska 1999), esp. p. 600, 630 - 31, and n. 194 at p. 630.

[2] 2 U.S.C. 453, *Teper v. Miller*, 82 F.3d 989 (11th Cir. 1996).

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

MEMORANDUM April 5, 2008

SUBJECT: Constitutionality of CSHB 305(RLS) am
(Work Order No. 25-LS1226\L.A)

TO: Senator Hollis French
Attn: Cindy Smith

FROM: Alpheus Bullard
Legislative Counsel

You have requested a legal opinion on the constitutionality of each provision of CSHB 305(RLS) am. It is my opinion that the committee substitute's only problematic constitutional issue is the federal preemption problem posed by the extension of the prohibition on campaign fundraising by a legislator and legislative employee to campaign for federal office. Each section of the bill (except for the effective date section) is discussed below.

Section 1. AS 15.13.072(d).
Section 1 of the bill repeals and reenacts AS 15.13.072(d). This subsection (as it exists at present in statute) restricts the solicitation and acceptance of contributions during a legislative session by candidates who seek election or reelection to the state legislature. The subsection, as it exists now, arguably interferes with the First Amendment right of association of a candidate who is not a legislator or legislative employee.

In State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), the Alaska Supreme Court invalidated two statutory provisions: a ban on non-election year contributions in AS 15.13.074(c)(1) and a bar on contributions to legislative candidates during the legislative session in AS 15.13.074(c)(2). Although the court did not address the limits on candidates in AS 15.13.072 (the Court's focus being on the rights of potential contributors and not candidates), the Court did find that prohibiting contributions to candidates during the legislative session interfered with a contributor's right of association with non-incumbent candidates without promoting the government's interest in preventing corruption or the appearance of corruption. The Court found that the state's interest in preventing corruption or its appearance could not be used as a justification for prohibiting non-incumbent candidates from accepting contributions during legislative sessions. Id. at 622. By that same logic, the current AS 15.13.072(d) would also be found by a court to be unconstitutional. While the Court did not expressly invalidate AS 15.13.072(d), APOC's own analysis has led the commission to the same

conclusion, and hence APOC has not enforced the statute against non-incumbent candidates for the legislature.

The committee substitute's repeal and reenactment of the subsection makes three changes: (1) the subsection now applies only to legislators and legislative employees; (2) the subsection provides that only contributions made towards the election campaign of the legislator or legislative employee (accepting or soliciting the contribution) may be accepted or solicited within the 90 days preceding that election; and (3) "place other than the capital city" has been amended to read "place other than the capital city or location in which the legislature is convened in special session if the location is other than the capital city."

It is my opinion that none of the changes to this subsection create constitutional questions. In fact, they may alleviate the existing First Amendment overbreadth concern. Under the overbreadth analysis, a court may strike down a law that prohibits a category of conduct if some actions within that category are constitutionally protected, even if another category is not protected (i.e. a law that applies to legislators, legislative employees, and candidates who are neither legislators nor legislative employees). As described above, a court would likely find the current AS 15.13.072(d) overly broad in its application to non-incumbent candidates.

The Supreme Court has held that the only rationale for restricting the time or place in which campaign contributions may be made is the threat of corruption or the appearance of corruption. See Buckley v. Valeo, 424 U.S. 1 (1976). The making of campaign contributions to legislators and legislative employees during legislative sessions does create the potential for actual or seeming corruption. But the making of campaign contributions to candidates who are not legislators, or legislative employees who may be contemplating a campaign, does not present the same concern. Because it removes these candidates from the reach of AS 15.13.074(c) the committee substitute is more narrowly tailored to the state's interest in preventing corruption and the court's decision in State v. Alaska Civil Liberties Union.

Tightening the exception to the prohibition on the acceptance or solicitation of campaign contributions to contributions to be used for a legislator or legislative employee's own campaign, in the 90 days immediately preceding the election in which the legislator or legislative employee is a candidate, is also better tailored to the prevention of corruption and the appearance of corruption. There would be greater potential for corruption and the appearance of corruption if the exception were utilized by a legislator or legislative employee to raise money for other candidates or a political party. I'm not sure what justification the 90-day exception has except to allow legislators and legislative employees who are, or may become, candidates the opportunity to raise money for their own campaigns.

Lastly, I don't believe the changes in the language relating to "a place other than the capital city" have any constitutional dimensions in this instance. Expanding the

prohibition on where campaign fundraising may not occur to another location where the legislature may be in special session is not likely to be interpreted by a court as problematic because the state may impose restraints on the exercise of First Amendment free speech rights in order to prevent corruption or the appearance of corruption. Id. at 622. The receipt of contributions by incumbents during any legislative session is relevant to the appearance of impropriety.

Section 2. AS 24.60.031(a).

Section 2 of the bill amends AS 24.60.031(a). The amended subsection would apply only to legislative employees, is expanded from "campaigns for the state legislature" to campaigns for "municipal, state or federal office," and again extends the prohibition on campaign fundraising activity in the "capital city" to "capital city or [] location in which the legislature is convened in special session if the location is other than the capital city."

In extending the prohibition to campaign activity for federal office, AS 24.60.031(a) is now drafted to apply to campaign activity related to a federal election, an area preempted by federal law. Under the Supremacy Clause of the federal constitution, state laws that interfere with federal laws are invalid. Federal laws can preempt state laws in the following three ways: (1) if Congress expressly declares that the state law is preempted; (2) if Congress demonstrates an intent to occupy a field exclusively; and (3) if there is an actual conflict between federal and state law. Preemption may be either express or implied. When considering preemption, courts start with the assumption that the historic police powers of states were not to be superseded by the federal Act unless that was the clear and manifest purpose of Congress[1]. In Teper v. Miller, 82 F.3d 989 (11th Cir. 1996), the United States Court of Appeals affirmed an injunction against the enforcement of a Georgia law[2] that prohibited Georgia General Assembly members from accepting contributions for federal election campaigns while the General Assembly was in session, holding that the statute was preempted by the Federal Election Campaign Act of 1971 (FECA) (as amended), 2 U.S.C. § 431 et seq.

FECA includes a specific preemption provision, 2 U.S.C. § 453, which reads: "*the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.*" (emphasis added) The House Committee that drafted the provision stated that the intention was "to make certain that the Federal law is construed to occupy the field with respect to elections to Federal Office and that the Federal law will be the sole authority under which such elections will

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[1] See State v. Dupier, 118 P.3d 1039, 1049 (Alaska 2005).

[2] The Georgia Ethics in Government Act, O.C.G.A. § 21-5-35(a), provided, "[n]o member of the General Assembly or that member's campaign committee or a public officer elected statewide or campaign committee of such public officer shall accept a contribution during a legislative session."

be regulated." See Teper, 82 F.3d 989, 994 (11th Cir. 1996), quoting from H.R. Rep. No. 1239, 93d Cong., 2d Sess. 10 (1974).

The Federal Election Commission (FEC), which is vested with "primary and substantial responsibility for administering and enforcing [FECA]" (Buckley v. Valeo, 424 U.S. 1, 109 (1976)), has also consistently expressed the opinion that FECA preempts state statutes limiting the time frame during which federal candidates may accept campaign contributions.[3]

The express language of FECA's preemption provision, the provision's legislative history, and the FEC's interpretation[4] make plain that a state law operating to regulate the period in which a category of citizens can accept contributions for a campaign for federal office is preempted.

Section 3. AS 24.60.031(c).
Section 3 amends AS 24.60.031 by adding a new subsection (c). This subsection applies only to legislators and is similar to AS 24.60.031(a) as amended in section 2. The only manner in which this subsection differs (other than its application to legislators rather than legislative employees) is that: (1) it specifically prohibits a legislator from accepting or soliciting a contribution to influence a ballot proposition or question or from accepting or soliciting a contribution for a political party; and (2) it prohibits the expenditure of money that was raised on a day when either house of the legislature was in a legislative session by or on behalf of a legislator under a declaration of candidacy or a general letter of intent to become a candidate for public office. This section, like section 2 of the committee substitute, also applies to campaigns for municipal, state, and federal office raising the same federal preemption issue detailed in the discussion of section 2 regarding federal preemption.

If I may be of further assistance, please advise.

TLAB:med
08-254.med

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[3] See Op. FEC 1994-2 (advising that FECA preempts a Minnesota statute barring lobbyists from contributing to a candidate during a regular session of the state legislature); Op. FEC 1993-25 (advising that FECA preempts a Wisconsin statute restricting the time period during which lobbyists can contribute to candidates); Op. FEC 1992-43 (advising that FECA preempts a Washington statute barring state officials from accepting campaign contributions during legislative sessions).

[4] See Orloski v. FEC, 254 U.S. App. D.C. 111, 795 F.2d 156, 164 (D.C. Cir. 1986) (FEC interpretation of FECA should be given deference because FEC's statutory responsibility to issue advisory opinions "implies that Congress intended the Commission to fill in gaps left in the statute and to resolve any ambiguities in the statutory language").

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE:	**January 28, 2008**
TO:	**Representative Meyer**
FROM:	**Mike Pawlowski**
RE:	**Changes to HB 305 in CS HB 305 (STA) [Version: 25-LS1226\K]**

The amendments adopted to HB 305 made the following changes to the original bill:

Changes:

Section 1: Deleted "candidate or individual" and inserted "legislator or legislative employee" to conform language to the existing practice of not enforcing the prohibition on fundraising during session to non-incumbents.

Section 2: [*New section 2*] Inserted new subsection (j) in AS 15.13.074 prohibiting a legislator from soliciting or accepting a contribution during a legislative session to influence the outcome of an election, extending the prohibition in (d) to ballot initiatives.

Section 3: Previous section 2 was amended to remove "legislator" from the amended subsections.

Section 4: Added a new section prohibiting a legislator from raising money for their campaign during a legislative session unless within 90 days of the election in which they are a candidate, for another candidate in an election for municipal, state, or federal office and to influence a ballot initiative.

Section 5: Added an immediate effective date

Conforming amendments were made to the title.

Email: Representative_Kevin_Meyer@legis.state.ak.us • **Toll Free:** (866) 465-4945
Session: State Capitol, Juneau, Alaska 99801-1182 • **Phone:** (907) 465-4945 **Fax:** (907) 465-3476
Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • **Phone:** (907) 269-0199 **Fax:** (907) 269-0197

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: **January 10, 2008**

TO: **Representative Kevin Meyer**

FROM: **Mike Pawlowski**

RE: **Sectional Analysis for HB 305**
(Version No. 25 – LS1226\E)

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

Section 1. Amends AS 15.13.072(d), State Election Campaigns, to prohibit fundraising in the capital city or a location where the legislature is convened unless it is within 90 days of an election for legislative or municipal office.

Section 2. Amends AS 24.60.031(a), Legislative Ethics Act, to prohibit a legislator or legislative employee from fundraising for statewide, municipal or federal office during a legislative session unless it is within 90 days of the applicable election.

Email: Representative_Kevin_Meyer@legis.state.ak.us • Toll Free: (866) 465-4945
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MEMORANDUM January 25, 2008

SUBJECT: Legislators who are candidates for federal office (HB 305)

TO: Representative Kevin Meyer
Attn: Mike Pawloski

FROM: Alpheus Bullard
Legislative Counsel

In a memorandum to your office dated December 13, 2007, I had advised that AS 15.13 could not be amended to include the regulation of the soli itation and acceptance of contributions for federal office, but that AS 24.60.031 could be so amended.

When I drafted the bill (that became HB 305), it was my understanding that while a state law that sought to directly regulate candidates running for federal office would be preempted, that the state had a sufficient interest in shielding its legislative processes from corruption and the appearance of corruption to allow the state to regulate the conduct of its legislators and legislative employees who might be also incidentally running for federal office. My understanding was in error.

In Tepper v. Miller, 82 F.3d 989 (1996), the United States Court of Appeals for the Eleventh Circuit affirmed an injunction against the enforcement of a Georgia law[1] that prohibited Georgia General Assembly members from accepting contributions for federal election campaigns while the General Assembly was in session, holding that the statute was preempted by the Federal Election Campaign Act of 1971 (FECA) (as amended), 2 U.S.C. § 431 et seq.

FECA includes a specific preemption provision, 2 U.S.C. § 453, which reads: "*the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.*" (emphasis added) The House Committee that drafted the provision stated that the intention was "to make certain that the Federal law is construed to occupy the field with respect to elections to Federal Office and that the Federal law will be the sole authority under which such elections will

[1] The Georgia Ethics in Government Act, O.C.G.A. § 21-5-35(a), provided "[n]o member of the General Assembly or that member's campaign committee or a public officer elected statewide or campaign committee of such public officer shall accept a contribution during a legislative session."

be regulated." See Tepper, 82 F.3d 989, 994 (1996), quoting from H.R. Rep. No. 1239, 93d Cong., 2d Sess. 10 (1974).

The Federal Election Commission (FEC), which is vested with "primary and substantial responsibility for administering and enforcing [FECA]" (Buckley v. Valeo, 424 U.S. 1, 109 (1976)), has also consistently expressed the opinion that FECA preempts state statutes limiting the time frame during which federal candidates may accept campaign contributions.[2]

The express language of FECA's preemption provision, the provision's legislative history, and the FEC's interpretation[3] make plain that a state law operating to regulate the period in which a category of citizens can accept contributions for a campaign for federal office is preempted.

TLAB::med
08-046.med

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[2] See Op. FEC 1994-2 (advising that FECA preempts a Minnesota statute barring lobbyists from contributing to a candidate during a regular session of the state legislature); Op. FEC 1993-25 (advising that FECA preempts a Wisconsin statute restricting the time period during which lobbyists can contribute to candidates); Op. FEC 1992-43 (advising that FECA preempts a Washington statute barring state officials from accepting campaign contributions during legislative sessions).

[3] See Orloski v. FEC, 254 U.S. App. D.C. 111, 795 F.2d 156, 164 (D.C. Cir. 1986) (FEC interpretation of FECA should be given deference because FEC's statutory responsibility to issue advisory opinions "implies that Congress intended the Commission to fill in gaps left in the statute and to resolve any ambiguities in the statutory language").

LEGISLATIVE RESEARCH REPORT

JANUARY 23, 2008

REPORT NUMBER 08.114

STATE LAWS ON CAMPAIGN FUNDRAISING DURING A LEGISLATIVE SESSION

PREPARED FOR REPRESENTATIVE KEVIN MEYER

BY PATRICIA YOUNG, MANAGER

You asked for information on campaign fundraising during legislative sessions. Specifically, you wished to know how other states address campaign fundraising by sitting legislators running either for reelection to the legislature or for other offices.

As you know, states vary remarkably in their approaches to nearly everything. Fundraising during sessions is no exception. Some states prohibit fundraising generally; others direct the prohibitions at lobbyists and political committees; a number of states are silent upon the issue. Nevertheless, **many states in some fashion restrict fundraising activities during legislative sessions.**[1] The following table provides details on eight of the states that prohibit campaign fundraising during and around legislative sessions. Briefly, we found as follows:

- Laws in **Missouri**, **New Mexico**, and **Virginia** appear to ban fundraising by any legislator for any statewide elected office—which would include federal office. New Mexico and Virginia also appear to prohibit a sitting legislator from fundraising for a local office.

- The statutory language in **Georgia** and **Nevada** would have banned any member of the legislature from fundraising for any purpose; however, the Georgia law, as it applies to candidates for federal office, was held to be preempted by federal election law. An opinion from the Nevada Attorney General arrived at a similar conclusion in regard to the Nevada law.

- The ban in **Iowa** does not apply to sitting legislators seeking election to a federal office.

- The ban in **Tennessee** does not apply to sitting legislators seeking election to a local office.

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[1] Peggy Kerns, director, Center for Ethics in Government, National Conference of State Legislatures. Ms. Kerns can be reached at 303 856 1447.

- **Connecticut** law restricts the fundraising activity of lobbyists and their political committees on behalf of candidates, and bars candidates and political committees from accepting such contributions. The law does not apply to campaigns by legislators running for local or federal offices.

We hope this information is helpful. Please contact us if you have questions or need additional information.

Sample of State Prohibitions on Campaign Fundraising during Legislative Sessions

State	Citation	Provision	Notes
Connecticut	CGS § 9-610(e)	[During session], (1) no lobbyist or political committee established by or on behalf of a lobbyist shall make or offer to make a contribution to or on behalf of, and no lobbyist shall solicit a contribution on behalf of, (A) a candidate or exploratory committee established by a candidate for nomination or election to the General Assembly or a state office or (B) a political committee (i) established for an assembly or senatorial district, (ii) established by a member of the General Assembly or a state officer or such member or officer's agent, or in consultation with, or at the request or suggestion of, any such member, officer or agent, or (iii) controlled by such member, officer or agent, to aid or promote the nomination or election of any candidate or candidates to the General Assembly or a state office, and (2) no such candidate or political committee shall accept such a contribution	For purposes of this subsection . . . the term "state office" means the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State; and the term "state officer" means the Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State. The prohibition does not apply to lobbyists making campaign contributions during sessions to state legislators who are running for local or federal office
Georgia	OCGA § 21-5-35	No member of the General Assembly or that member's campaign committee or public officer elected state wide or campaign committee of such public officer shall seek or accept a contribution or a pledge of a contribution to the member, the member's campaign committee, or public officer elected state wide, or campaign committee of such public officer during a legislative session.	This provision, as it applies to candidates for federal office, is preempted by the Federal Election Campaign Act. *Teper v. Miller*, 82 F.3d 989 (11th Cir. 1996).
Iowa	IC § 68A.504	A lobbyist or political committee, other than a state statutory political committee, county statutory political committee, or a national political party, shall not contribute to, act as an agent or intermediary for contributions to, or arrange for the making of monetary or in-kind contributions to the campaign of an elected state official, member of the general assembly, or candidate for state office on any day during the regular legislative session and, in the case of the governor or a gubernatorial candidate, during the thirty days following the adjournment of a regular legislative session allowed for the signing of bills...an elected state official, member of the general assembly, or candidate for state office shall not accept a contribution as prohibited in this subsection. [However, the prohibition does not apply] to receipt of contributions by an elected state official, member of the general assembly, or candidate for state office who has taken affirmative action to seek nomination or election to a federal elective office so long as the contribution is placed in a federal campaign account.	The ban does not apply to elected state officials, members of the general assembly, or candidates for state office seeking nomination or election to a federal office as long as certain conditions are met.
Missouri	RSM § 130.032	Any candidate for the office of state representative, the office of state senator, or a statewide elected office shall not accept any contributions [during a legislative session]. Only candidates for special election to the house of representatives, senate, or statewide elected office may, during such time, accept contributions from the date of the candidate's nomination by his or her respective political party until thirty days after the date of the election.	This ban appears to extend to sitting legislators running for federal office (a "statewide elected office") but not for local office.
Nevada	NRSA § 294A.300	It is unlawful for a member of the Legislature, the Lieutenant Governor, the Lieutenant Governor-Elect, the Governor or the Governor-Elect to solicit or accept any monetary contribution, or solicit or accept a commitment to make such a contribution for any political purpose [from 30 days before to 30 days after a regular session and from 15 days before to 15 days after a special session].	Federal election law preempts state election law, therefore, state officials delineated in subsection (1) are not prohibited from soliciting or accepting monetary contributions for a campaign for federal office before, during, or after a regular or special session of the legislature. AGO 01-04 (3-12-2001).
New Mexico	NMSA § 1-19-34.1	It is unlawful [during a regular or special session] for a state legislator or candidate for state legislator, and for the governor, or any agent on behalf of any such individuals, to knowingly solicit a contribution for a political purpose.	This provision appears to extend to sitting legislators running for any local or federal office.
Tennessee	TCA § 2-10-310	[During regular or special sessions] no member of the general assembly or a member's campaign committee or the governor or the governor's campaign committee shall conduct a fundraiser or solicit or accept contributions for the benefit of the caucus, any caucus member or member or candidate of the general assembly or governor. [Except that] a member of the general assembly who is a candidate for a local public office shall be permitted to conduct fundraising events and solicit or accept contributions for such campaign for local public office under certain conditions. [However,] it shall be unlawful for any lobbyist or employer of a lobbyist to make any contribution to such member's campaign committee during such period for any purpose.	A state legislator can legally raise money for a federal race while the state legislature is in session; the prohibition on legislative fundraising does not apply to campaigns for federal office. OAG 00-186 (12/13/00). Nonlegislators [are] not barred from fund raising. OAG 97-158 (12/01/97).
Virginia	Va.Code Ann. § 24.2-954	No member of the General Assembly or statewide official and no campaign committee of a member of the General Assembly or statewide official shall solicit or accept a contribution for the campaign committee of any member of the General Assembly or statewide official, or for any political committee, from any person or political committee [during a regular session]. No person or political committee shall make or promise to make a contribution to a member of the General Assembly or statewide official or his campaign committee [during a regular session].	This provision appears to extend to sitting legislators running for any local or federal office.

NOTES: For the purposes of this table, we have truncated descriptions of the time period around a legislative session, which vary considerably

SOURCES: The LEXIS on-line database of state statutes

Alaska State Legislature

Select Committee on
Legislative Ethics

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Mailing Address:
P.O. Box 101468
Anchorage, AK
99510

January 24, 1994

ADVISO[illegible] OPINION 94-04

Subject: Campaigning During Session

RE: May a legislator who is a candidate for a statewide elective office engage in fund raising activities for that office during the legislative session?

You are a legislator, covered by the Legislative Code of Ethics. You have filed a general letter of intent and you have announced that you are running for Lieutenant Governor in the next election. You ask whether you may engage in fund raising activities concerning that campaign during the legislative session.

Discussion

To begin with, the committee notes that campaign contributions that you report as required by law are excluded from the provisions concerning gifts by AS 24.60.080(e). [1]

Under AS 24.60.031, a legislator's fund raising activities are restricted during the legislative session. The section states:

> Sec. 24.60.031. RESTRICTIONS ON FUND RAISING. (a) A legislator or legislative employee may not
> (1) while the legislature is in regular or special session, solicit or accept a contribution or a promise or pledge to make a contribution for a state legislative campaign;

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[1] AS 24.60.080(e) states:

> (e) A political contribution that is reported under AS 15.13.040 is not a gift under this section.

(2) accept money from an event held during a legislative session if a substantial purpose of the event is either to raise money on behalf of the member or legislative employee for campaign purposes or to raise money for state legislative political purposes; or

(3) expend money in a state legislative campaign that was raised by or on behalf of a legislator during a legislative session under a general letter of intent to become a candidate for public office.

(b) In this section, "contribution" has the meaning given in AS 15.13.130.

Under paragraph (1) of subsection (a), legislators are prohibited from soliciting or accepting contributions during the legislative session for state legislative campaigns. Under paragraph (3), legislators may not spend money in a state legislative campaign that was raised during the session. The scope of paragraph (2) is not clearly limited to "state legislative campaigns." That paragraph prohibits legislators from accepting money raised at events held during the session if the event was to raise money on behalf of the legislator for campaign purposes or for state legislative political purposes. Unlike the other two paragraphs, this paragraph does not, on its face, limit the prohibition related to "campaign purposes" to "state legislative campaigns."

The committee believes that the language of the statute should be interpreted as it is written. Accordingly, a legislator running for statewide office may solicit and accept contributions for that office during the legislative session (as permitted by paragraph (1) of 24.60.031(a)) and a legislator who has filed a general letter of intent to become a candidate for public office may spend money raised during the session on a campaign for statewide office (as permitted by paragraph (3)). However, under paragraph (2), a legislator may not accept money from an event held during the legislative session if the purpose of the event was to raise money for the legislator's campaign for any elective office. The committee recognizes that this result appears inconsistent, but the committee believes that any change from this result should be made by amendment to the statute, not by interpretation of it.

Conclusion

For the reasons discussed above, the committee finds that the prohibition contained in AS 24.60.031(a)(2), concerning accepting money from an event held during the legislative session, applies to statewide campaigns, including your campaign for lieutenant governor. Therefore, you may not accept money raised during the session at fundraising events.

Adopted by the Select Committee on Legislative Ethics on January 24, 1994. Members present and concurring in this opinion were:

Joseph P. Donahue, Chair
Ed Granger, Vice-Chair
Senator Drue Pearce

Margie MacNeille
Representative Brian Porter
Shirley A. McCoy
Senator Jay Kerttula

Members absent were:

Edith Vorderstrasse
Representative Jerry Mackie

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LEGAL SERVICES

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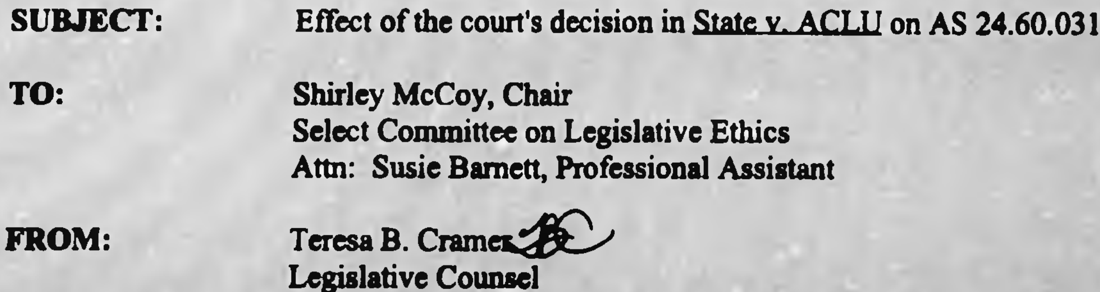
MEMORANDUM April 23, 1999



SUBJECT: Effect of the court's decision in State v. ACLU on AS 24.60.031

TO: Shirley McCoy, Chair
Select Committee on Legislative Ethics
Attn: Susie Barnett, Professional Assistant

FROM: Teresa B. Cramer
Legislative Counsel

You have asked for an opinion from this office regarding the interplay of the state supreme court's recent decision in State v. ACLU, -- P.2d -- (Alaska) (Alaska Supreme Court Opinion No. April 16, 1999) and the ethics law regarding the prohibition on fund raising during session (AS 24.60.031(a)).

Short answer: The answer to your question is not clear. Having said that, it seems to me somewhat more likely than not that the ban on accepting contributions during session contained in the ethics code would survive a challenge under the reasoning in the ACLU case.

1. AS 24.60.031.

In 1992, the legislature substantially revised the legislative ethics code. The ban on accepting contributions during the legislative session was part of that legislation. As enacted, AS 24.60.031(a) read:

> **Sec. 24.60.031** RESTRICTIONS ON FUND RAISING. (a) A legislator or legislative employee may not
>
> (1) while the legislature is in regular or special session, solicit or accept a contribution or a promise or pledge to make a contribution for a state legislative campaign;
>
> (2) accept money from an event held during a legislative session if a substantial purpose of the event is either to raise money on behalf of the member or legislative employee for campaign purposes or to raise money for state legislative political purposes; or
>
> (3) expend money in a state legislative campaign that was raised by or on behalf of a legislator during a legislative session under a general letter of intent to become a candidate for public office.

(b) In this section, "contribution" has the meaning given in AS 15.13.130.

AS 24.60.031 was amended in 1996 by the campaign reform legislation that formed the basis for the ACLU case, but only to conform the citation to the definition of "contribution" in subsection (b) to the new statute number in AS 15.13. (Sec. 27, chapter 48, SLA 1996.)

In the last legislative session, AS 24.60.031(a) was amended to allow fund raising during the 90 days before elections, except in Juneau. The statute now reads:

> **Sec. 24.60.031. Restrictions on fund raising.** (a) A legislator or legislative employee may not
>
> (1) on a day when either house of the legislature is in regular or special session, solicit or accept a contribution or a promise or pledge to make a contribution for a campaign for the state legislature; however, a legislator or legislative employee may, except in the capital city, solicit or accept a contribution, promise, or pledge for a campaign for the state legislature that occurs during the 90 days immediately preceding an election;
>
> (2) accept money from an event held on a day when either house of the legislature is in regular or special session if a substantial purpose of the event is to raise money on behalf of the member or legislative employee for state legislative political purposes; however, this paragraph does not prohibit a legislator or legislative employee from accepting money from an event held in a place other than the capital city during the 90 days immediately preceding an election; or
>
> (3) in a campaign for the state legislature, expend money that was raised on a day when either house of the legislature was in a legislative session by or on behalf of a legislator under a declaration of candidacy or a general letter of intent to become a candidate for public office; however, this paragraph does not apply to money raised in a place other than the capital city during the 90 days immediately preceding an election.
>
> (b) In this section, "contribution" has the meaning given in AS 15.13.400.

The legislative ethics code applies to legislators and legislative employees. (AS 24.60.020) It does not apply to candidates for the legislature unless they are incumbent legislators running for reelection or for election to a different legislative office. (AS 24.60.020(a)(2)) Therefore, when the ban on accepting campaign contributions during session in AS 24.60.031 was first enacted in 1992, the prohibition did not apply to challengers who were not themselves legislators. This circumstance is important given the supreme court's reasoning in ACLU.

2. The ACLU decision on fund raising during sessions.

The 1996 amendment to election campaign laws enacted AS 15.13.074(c), which limits the time when persons and groups may make contributions to candidates. (Section 11, Ch. 48, SLA 1996.) Under AS 15.13.074(c)(2) as it read when the ACLU suit was filed, contributions to legislative candidates, both incumbents and challengers, may not be made during a regular legislative session. (In footnote 194 of the ACLU opinion, the court notes that AS 15.13.074(c)(2) and AS 15.13.072(d) were both amended in 1998 to permit candidates for the legislature to solicit and accept contributions during the 90 days immediately preceding the election in which they are competing, except in Juneau. The court does not discuss this loosening of the restrictions on campaign fund raising.)

The court acknowledges that the state may impose restraints on the exercise of First Amendment free speech rights in order to prevent corruption or the appearance of corruption. Id. at 82. The court also notes that the receipt of contributions by incumbents is relevant to the appearance of impropriety. Id. at 82. The court distinguishes this factual situation from the receipt of contributions by challengers, and finds that there is not a comparable justification for prohibiting challengers from accepting contributions during legislative sessions. Because of this finding, the prohibition against accepting contributions during sessions is not narrowly tailored to the State's compelling interest: it is invalid as to non-incumbents. Id. at 83. The court finds that invalidating the ban only as to challengers (and leaving the ban in place as to incumbent legislators) "would fundamentally unbalance a restriction which the legislature clearly intended to apply to incumbents and challengers alike, and would defeat the legislature's clear intention as to this prohibition." Id. at 83. The court therefore invalidates the ban on accepting contributions during sessions both as to challengers and as to legislators. Id. at 83.

3. Application of the ACLU holding to AS 24.60.031.

The reasons for the court's holding in the ACLU case do not apply to the Ethics Code prohibition against accepting contributions for legislative races during the session. As discussed in the first part of this opinion, AS 24.60.031, the Ethics Code prohibition against legislators' accepting contributions during sessions, was enacted without a comparable prohibition imposed on non-incumbent challengers. Therefore, there is no basis for saying that the legislature's intent with respect to AS 24.60.031 requires that the ban be applied equally to challengers and incumbents. The court in ACLU acknowledged that preventing corruption or the appearance of corruption is a compelling state interest and that prohibiting incumbent candidates from accepting contributions during a session is relevant to that interest. Therefore, the court is not likely to find that the ban against legislators accepting contributions during session fails as an infringement of legislators' First Amendment Rights. It appears to me that the court, under the reasoning expressed in ACLU, would uphold the provisions of AS 24.60.031at least as the ban applies to legislators.

There is another basis on which the legislature's placing of a prohibition on its members might be upheld. Under art. 2, sec. 12, each house of the legislature is the judge of the

qualifications of its members. AS 24.60.031 can be viewed as an exercise of that power and, if so, a court might decline to intervene in a matter that was within the unique jurisdiction of the legislative branch of government.

The ethics code prohibition against campaign fund raising during sessions applies to both legislators and legislative employees. The court in the ACLU case was not asked to examine the role of employees in the legislative process. The evidence cited by the court in support of the need for campaign fund-raising restrictions with respect to legislators describes the public response, expectations of lobbyists, and perceptions of elected officials with respect to legislators only. Id. at 6 - 7, 40 - 41, 53 - 56, and 74 - 76. The ACLU decision cannot, therefore, be directly applied to legislative employees.

The courts generally have permitted restraints on the right of public employees to participate actively in political campaigns because of the government's interest in enforcing the law and executing programs without bias or favoritism for or against political parties, in avoiding the appearance of political favoritism, and in using or appearing to use a government workforce as a political machine. United States Civil Service Commission v. National Association of Letter Carriers, 413 U.S. 548, at 565, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973). The case arose in the context of Executive Branch employees, but at least the last argument applies equally to Legislative Branch employees. In any case, it indicates that the court has recognized the importance of separating the political campaigning process from governmental functions. The interest of the government in prohibiting fund raising by employees as well as by legislators during session furthers this goal. It seems to me likely that the court would uphold the prohibition as it applies to employees.

TC:pl
99-054.plm

Memorandum

State of Alaska

Department of Law

TO:	Karen Boorman Executive Director Alaska Public Offices Comm'n	DATE:	June 22, 1999
		FILE NO:	661-99-0513
		TEL. NO:	269-5135
FROM:	Jan Hart DeYoung Assistant Attorney General	SUBJECT:	Questions following *State v. Alaska Civil Liberties Union*

You have asked a number of questions about the decision of the Alaska Supreme Court in *State v. Alaska Civil Liberties Union (ACLU)*, No. 5108, 1999 WL 219443 (Alaska April 16, 1999). In that decision the Court upheld most of the campaign finance law reforms adopted in 1996. However, the Court did invalidate as unconstitutional two provisions: the bans on nonelection year contributions in AS 15.13.074(c)(1) and on contributions to legislative candidates during the legislative session in AS 15.13.074(c)(2). You have several questions about how the Court's decision affects other sections of the law that the Court did not address.

Summary: our opinion is that the deadline for making contributions in AS 15.13.074(c) is 45 days after the date of the election; candidates for the legislature may raise funds during the legislative session unless barred by the legislative ethics law in AS 24.60.~~130~~; and candidates for statewide office may not solicit or accept contributions in Juneau during the legislative session under AS 15.13.072(g). Your questions and our analysis follow.

1. **What effect does invalidating the ban on nonelection year contributions in AS 15.13.074(c)(1) have on AS 15.13.074(c)(4) and (5), which address post election contributions and contributions to statewide candidates in Juneau during the legislative session?**

   The answer depends on whether the provision is compatible with the delayed repeal and reenactment of AS 15.13.074(c).

When the legislature adopted the 1996 campaign finance reforms, it set time limits on fund raising. AS 15.13.074(c), as it was enacted in 1996, prohibited persons or groups from making contributions except during an allowed period, generally, from January 1 of the year of the election to 45 days following the election. The legislature also adopted a contingent provision that would take effect only if the Court found "the dates before which campaign contributions may not be accepted" unconstitutional. Sec. 12, ch. 48, SLA 1996 (contingent provision); sec. 33(b), ch. 48, SLA 1996 (setting out contingency that causes contingent provision in section 12 to become effective). This contingent provision ("section 12") would allow campaign contributions to be made earlier -- 18 months before the election.

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In *State v. ACLU*, the Court did find "the dates before which campaign contributions may not be accepted" unconstitutional. The Court held that prohibiting contributions in nonelection years significantly interfered with the constitutional right of association because the time period for contributions was relatively short without appearing to address the State's interests of preventing corruption or its appearance. 1999 WL 219443, at *28, slip op. at 78-79. The Court expressly invalidated AS 15.13.074(c)(1), (2), and (3) and noted that its action caused the contingency in section 12 to take effect. 1999 WL 219443, at *28 & n. 192, slip op. at 79 & n. 192.

However, in 1998 (after the ACLU filed its lawsuit but before the Court's decision), the legislature amended AS 15.13.074. Sec. 5, ch. 74, SLA 1998. First, it amended AS 15.13.074(c)(4) to expand the period for contributions from 45 days to 60 days following the election or to December 31, whichever came first. Second, it added AS 15.13.074(c)(5) to prohibit contributions to statewide candidates in Juneau during the legislative session. Sec. 5, ch. 74, SLA 1998. When adopting the amendments, the legislature apparently overlooked the contingent provision; the legislature did not amend section 12 of the 1996 reforms to conform to the changes it made to AS 15.13.074.

Section 12 purports to repeal all of AS 15.13.074(c).[1] Because section 12 was not amended to increase the time for postelection contributions or to ban contributing in Juneau

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[1] The complete text of section 12 follows:

"Sec. 12. AS 15.13.074(c) is repealed and reenacted to read:
(c) A person or group may not make a contribution
(1) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 when the office is to be filled at a general election before the date that is 18 months before the general election;
(2) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 for an office that is to be filled at a special election or municipal election before the date that is 18 months before the date of the regular municipal election or that is before the date of the proclamation of the special election at which the candidate or individual seeks election to public office; or
(3) to any candidate later than the 45th day
(A) after the date of a primary election if the candidate
(i) has been nominated at the primary election or in running as a write-in candidate; and
(ii) is not opposed at the general election;

during the legislative session, applying section 12 literally would repeal the 1998 amendments and reinstate parts of the earlier version of AS 15.13.074(c). The result would be to return the postelection deadline to 45 days and to extinguish the restrictions on contributing in Juneau.

However, a rule of statutory construction allows intervening amendments to survive repeal when a delayed enactment takes effect. The rule appears in the principal treatise on statutory construction, Norman J. Singer, *Sutherland Statutory Construction* § 23.29 (5th ed. 1993):

> The reenactment of a statute is a continuation of the law as it existed prior to the reenactment as far as the original provisions are repeated without change in the reenactment. Consequently, an intermediate statute which has been superimposed upon the original enactment as a modification of its provisions is likewise not repealed by the reenactment of the original statute, but is construed to be in force to modify the reenacted statute as it modified the original enactment. However, this immunity from repeal is extended only to those provisions of intermediate acts which are consistent with the reenactment; any provisions in the intermediate act which are inconsistent with the reenactment are repealed.

This rule is applied in Alaska. It was applied in Alaska before statehood, *U.S. Smelting Refining & Mining Co., v. Lowe*, 11 Alaska 429, 74 F. Supp. 917, 921, 922 (D. Alaska Terr. 1947),[2] and the Legislative Affairs Agency has incorporated the rule into the state's legislative drafting manual:

> If a statutory amendment is to be delayed, the following question may arise: Do intervening amendments to the same AS section survive once the delayed amendment takes effect. The general rule is that intervening amendments will survive unless incompatible with the delayed

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(B) after the date of a primary election if the candidate was not nominated at the primary election; or

(C) after the date of the general election, or after the date of a municipal or municipal runoff election.

[2] *U.S. Smelting Refining & Mining Co., v. Lowe*, 11 Alaska 429, 74 F. Supp. 917, 921, 922 (D. Alaska Terr. 1947), *aff'd Lowe v. United States Smelting Refining & Mining*, 175 F.2d 486, 489 (9th Cir.1949) ("Enough to say that repeals by implication are regarded with disfavor; but where the latest legislative word on a subject is so incompatible with a previous enactment that the two can not exist together the courts have not hesitated to hold the earlier enactment repealed insofar as it is in conflict with the later"), *and vacated on other grounds*, 338 U.S. 954, 70 S.Ct. 493 (1950).

> amendment. See *U.S. Smelting, Refining & Mining Co. v. Lowe*, 12 Alaska 423 (9th Cir. 1949) and the discussion in the same case at 11 Alaska 429 (D. Alaska 1947). If intervening amendments are to be allowed, it is best to draft the delayed amendment as an amendment rather than a repeal and reenactment. If intervening amendments are to be wiped out once the delayed amendment takes effect, it is best to draft the delayed amendment as a repeal and reenactment and include an intent section stating that intervening amendments are not to be carried forward once the repeal and reenactment takes effect. [Legislative Affairs Agency, Manual of Legislative Drafting 21 (1999).]

The preferred practice is for the legislature to state when it enacts legislation with a delayed effective date whether it intends intervening amendments to survive the reenactment. According to the manual, delayed legislation that does not extinguish intervening amendments should be in the form of an amendment. On the other hand, delayed legislation that repeals intervening amendments should be in the form of a repeal and reenactment with a statement of intent that intervening amendments are not carried forward. In adopting section 12 in 1996, the legislature did not follow this practice. It used the form of the delayed repeal and reenactment but did not state any intention about the survival of intervening amendments. Because the legislature did not declare its intention, we apply the rule of construction, which carries intervening amendments forward unless they are incompatible with the delayed enactment, and because the intervening amendments are incompatible, conclude that the amendments do not carry forward.

a. Because postelection fund raising deadlines of 60 days and 45 days following the election are in direct conflict, the longer deadline in the intervening amendment is not carried forward and does not survive reenactment.

The 1996 campaign finance law reforms established a deadline for post election fund raising of 45 days following an election. AS 15.13.074(c)(4), sec. 11, ch. 48, SLA 1996. This 45-day deadline also appears in the contingent provision, section 12. AS 15.13.074(c)(3), sec. 12, ch. 48, SLA 1996. In 1998 the legislature amended AS 15.13.074(c)(4), expanding the deadline to 60 days following the election or December 31, whichever came first. Sec. 5, ch. 74, SLA 1998. The deadlines in the intervening amendment and the reenacted AS 15.13.074(c) are in direct conflict and cannot be reconciled. Because the intervening amendment is inconsistent with the reenactment of AS 15.13.074(c), under the rule of construction, the 1998 amendment to AS 15.13.074(c)(4) may not carry forward and is repealed. Thus, the postelection deadline for contributing returns to 45 days following the election.[3]

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[3] During the 1999 legislative session following the issuance of *ACLU v. State*, the legislature considered a bill that would have expanded the post election deadline for making contributions to the earlier of 60 days following the election or December 31 of the year of the

b. Because prohibiting contributions to candidates for statewide office in Juneau during the legislative session is incompatible with section 12, it does not survive reenactment.

In 1998 the legislature added a new provision, AS 15.13.074(c)(5), which prohibits contributions in Juneau to statewide candidates during a legislative session, thereby expanding the circumstances in AS 15.13.074(c) in which "a person or group may not make a contribution." Sec. 5, ch. 74, SLA 1998. Whether banning some contributing in Juneau is compatible with the delayed enactment of section 12 provides a more difficult question than the expanded postelection deadline in AS 15.13.074(c)(4), discussed in the previous section.

Other legislative session contribution limits preceded the Juneau ban in AS 15.13.074(c)(5). AS 15.13.074(c)(2) banned contributions during the session to all candidates for legislative office.[4] In addition, during the legislative session, legislators and legislative staff may not raise campaign funds regardless of the political office they are seeking under AS 24.60.031. This prohibition in the legislative ethics law handicaps those legislators seeking elective office against an opponent not subject to the prohibition. By adopting the Juneau ban in AS 15.13.074(c)(5), the legislature narrowed the opportunities for candidates not otherwise restricted by the legislative ethics law to raise campaign funds during the legislative session. It thereby helped level the playing field for legislators and legislative staff running for statewide office.

Applying the rule of construction, we must examine the compatibility of the Juneau ban in AS 15.13.074(c)(5) with section 12. Section 12 was intended to expand the time period for *pre*election contributions if the Alaska Supreme Court found the time period in AS 15.13.074(c)(1) too restrictive. The legislature stated, "if a court order is entered and becomes final declaring that the dates set out in AS 15.13.074(c), as enacted by sec. 11 of this Act, as the dates before which campaign contributions may not be accepted, are unconstitutional," then section 12 takes effect. Sec. 33(b), ch. 48, SLA 1996. The legislature obviously intended section 12 to fill the void created if a court invalidated the short preelection contributions period and to cure any constitutional deficiency by expanding the time for contributing. On the other hand, the Juneau ban narrows, rather than expands, opportunities for fund raising. Retaining the Juneau ban in AS 15.13.074(c)(5) also seems inconsistent with the repeal of AS 15.13.074(c)(2). The legislative session ban in AS 15.13.074(c)(2) banned contributions to all candidates for the

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election. House Bill 225, §1, 21st Legislature, First Session (1999). The bill was not enacted during the first session. 1999 House Journal 1635, 1672 (5/18-19/99) (unfinished business).

[4] In addition, all candidates for *legislative office* at the time the Juneau ban in AS 15.13.074(c)(5) was adopted were prohibited from soliciting or accepting contributions during the legislative session under AS 15.13.072(d).

legislature during the legislative session. The Court found the legislative session ban unconstitutional in *State v. ACLU,* 1999 WL 219443, at *28-29, slip op. at 81-83, due to its impact on the right of association through making contributions to nonincumbent candidates. The legislative session ban was then repealed through the repeal and reenactment of AS 15.13.074(c) in section 12 when the Court found the date contributions could begin unconstitutional. Sec. 33(b), ch. 48, SLA 1996. Because the legislature intended the repeal of the legislative session ban in AS 15.13.074(c)(2) when AS 15.13.074(c) was repealed and reenacted, it probably would not intend to carry forward even a partial legislative session ban. Thus, we conclude that carrying forward the Juneau legislative session ban is inconsistent with section 12. Moreover, we have reservations about the constitutionality of AS 15.13.074(c)(5) after *State v. ACLU.*[5] Because carrying forward AS 15.13.074(c)(5) is inconsistent and incompatible with the goals of expanding opportunities for fund raising and responding to a Court's decision that the time period was unconstitutionally restrictive, it does not meet the test of the rule of construction. We therefore conclude that the ban on contributions to candidates for statewide office in the capital city during the legislative session should not carry forward.

2. What effect does invalidating the ban on contributing during the legislative session in AS 15.13.074(c)(2) have on AS 15.13.072(d), which prohibits candidates from soliciting or accepting contributions while the legislature is in session?

The effect is to invalidate AS 15.13.072(d). Making a contribution is not a meaningful expression of association if the candidate may not accept the contribution.

Alaska's campaign finance laws set contribution limits in two ways: they impose limits on the makers of contributions in AS 15.13.074 and they limit the candidates' ability to solicit and accept contributions in AS 15.13.072. In *State v. ACLU,* the Court found certain

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[5] The constitutionality of the Juneau ban in AS 15.13.074(c)(5) after *State v. ACLU* provides a close question. The Court did not address AS 15.13.074(c)(5) in the decision. But a rule prohibiting contributing in Juneau during the legislative session (AS 15.13.074(c)(5)), resembles a rule prohibiting contributions to legislative candidates during the session (AS 15.13.074(c)(2)), which the Court found unconstitutional. Like the legislative session ban in AS 15.13.074(c)(2), the Juneau ban in AS 15.13.074(c)(5) limits the opportunities for expressing support for candidates and thereby encroaches on the right of association of contributors. The key is whether the Juneau ban succeeds in combating corruption and its appearance where the legislative session ban in AS 15.13.074(c)(2) did not. Because the prohibition in AS 15.13.074(c)(5) is much narrower -- it only applies to candidates for statewide office and in the capital city -- it can be distinguished from the legislative session ban found unconstitutional. Thus, while *State v. ACLU* raises a question about the constitutionality of AS 15.13.074(c)(5), it does not compel the answer. See Court's discussion of the legislative session ban, 1999 WL 219443, at *28-29, slip op. at 81-83.

limits unconstitutional but in doing so addressed only the limits in AS 15.13.074 on persons or groups making the contribution. It did not address the closely related limits on the candidates in AS 15.13.072. This omission is not surprising because the Court's focus was the constitutional rights of the contributors. Nevertheless, the omission is confusing and raises the question whether requiring a candidate to refuse a contribution infringes on the contributors' constitutional right to associate with the candidate by making a contribution. The Court found that prohibiting contributions to candidates during the legislative session interfered with a contributor's right of association with nonincumbent candidates without promoting the government's interest in preventing corruption or its appearance. The contribution and act of association, however, would be pointless if the candidate could not accept the contribution. Based on the Court's decision in *State v. ACLU*, we believe the Court would conclude that prohibiting the solicitation and acceptance of contributions interferes with the constitutional right of association without promoting a governmental interest. Although the Court did not expressly invalidate the prohibition in AS 15.13.072(d), we believe it would find the prohibition on legislative candidates' soliciting or accepting contributions during the legislative session to be unconstitutional and unenforceable.

Please note that this opinion and the Court's decision in *State v. ACLU* should not affect the validity of the ban on fund raising during the legislative session in the legislative ethics law, AS 24.60.030. That section applies only to legislators and legislative staff. It was not at issue in *State v. ACLU* and remains effective. See opinion of the legislative counsel, Mem. from T. Cramer, Legislative Counsel, to Select Comm. Legislative Ethics (4/23/99).

3. Does *State v. ACLU* invalidate AS 15.13.072(g), which prohibits candidates for statewide office from soliciting or accepting contributions in the capital city while the legislature is in session?
No. AS 15.13.072(g) remains valid.

Earlier in this memorandum we determined that *State v. ACLU* and the consequent repeal of AS 15.13.074(c) by section 12 repealed the prohibition in AS 15.13.074(c)(5) against contributions to candidates for statewide office in Juneau during the legislative session. Your question is whether the parallel prohibition in AS 15.13.072(g) against candidates soliciting or accepting such contributions is now also invalid.

Our earlier determination that AS 15.13.074(c)(5) had been repealed followed the application of the rule of construction for delayed enactments. The 1996 legislation, however, did not contain a section comparable to section 12 that would repeal parts of AS 15.13.072, which limits candidates' solicitation or acceptance of contributions. The rule of construction for intervening amendments therefore does not apply. Moreover, we cannot say that prohibiting contributions in Juneau during the legislative session is unconstitutional. Although we have reservations about the constitutionality of legislative session limits on contributions to *nonlegislative* candidates following *State v. ACLU*, we believe the limits in AS 15.13.072(g) are distinguishable from the limits that the Court found unconstitutional. See discussion in note 5.

While we have doubts about the constitutionality of AS 15.13.072(g), we cannot conclude that it is unconstitutional. Despite these doubts, because the rule of construction does not apply to make AS 15.13.072(g) ineffective, the limits in AS 15.13.072(g) on soliciting or accepting such contributions in the capital city remain valid.

I hope this discussion is helpful. If the foregoing discussion failed to answer your questions, please do not hesitate to contact me for clarification.

JHD:jv

State v. Alaska Civil Liberties Union, 978 P.2d 597, 631 (Alaska 1999):

The court case did overrule the prohibition against making contributions during the legislative session. Here is the text from the opinion if you are interested:

b. Ban on contributions during the legislative session; AS 15.13.074(c)

[24] Alaska Statute 15.13.074(c)(2) prohibits making contributions to legislative candidates, including both challengers and incumbents, during a regular legislative session. (FN194)

AkCLU argues that this ban severely constrains effective campaign advocacy by legislative candidates. "Given the length of the Alaska legislative session, fundraising [under the ban] is limited to a two-month period before a primary election and [to] two and one-half [additional] months before a general election." (FN195) Moreover, AkCLU claims the associational rights of potential contributors are severely restricted during the legislative session.

The State argues that this ban "addresses the perception that contributions are made to influence the conduct of elected officials during the session." It also contends that "the prohibition frees sitting legislators from the fund-raising treadmill and allows them to focus on the public's business during the legislative session." The State claims that this interest is compelling enough to support the ban. The Josephson Report survey, in which about sixty percent of legislators stated they believed fundraising during the legislative session needed to be regulated, supports this contention to a limited extent.

Considered in isolation, the "legislator-freeing" rationale is not sufficiently compelling to justify this restriction. In Rosenstiel v. Rodriguez, the Eighth Circuit held that freeing legislators to deal with issues was only relevant as a by-product of corruption-fighting measures. (FN196) In other cases cited by the State, the interest was found sufficient
——— 978 P.2d 631 ———
only to promote a speech-enhancing measure. (FN197)

Preventing corruption or its appearance is a compelling interest justifying narrowly-tailored restraints on First Amendment rights. But the very circumstance most relevant to the appearance of corruption--receipt of contributions by incumbent candidates during the session--does not imply that in-session contributions to challengers also give the appearance of corruption. The ban is therefore not narrowly tailored to the State's compelling interest, and is invalid as to non-incumbents. But invalidating the ban only as to challengers would fundamentally unbalance a restriction which

the legislature clearly intended to apply to incumbents and challengers alike, and would defeat the legislature's clear intention as to this prohibition. We therefore decline to invalidate only part of this ban while upholding it with respect to incumbent candidates.

Accordingly, we affirm the decision holding these provisions invalid.