

BEFORE THE ALASKA PUBLIC OFFICES COMMISSION

Yes on 2 for Better Elections,)
Complainant,)
vs.) Case No. 20-06-CD
Defend Alaska Elections – Vote No on 2)
Respondent.)

NOTICE OF LATE FILING

The Alaska Public Offices Commission (APOC) staff hereby gives notice of its late filing of the following staff report in this matter. Due to the level of calls on limited staff resources and personal health challenges, staff needed additional time to complete preparation of the Report.

APOC staff is unaware of any opposition to this late filing.

Dated: 2/23/2021

By: Thomas R. Lucas
Thomas R. Lucas
Campaign Disclosure Coordinator
Alaska Public Offices Commission



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Administration

ALASKA PUBLIC OFFICES COMMISSION

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TO: APOC Commissioners
DATE: February 23, 2021
FROM: Thomas R. Lucas, Campaign Disclosure Coordinator
SUBJECT: Staff Report, 20-06-CD,
Yes on 2 for Better Elections v. Defend Alaska Elections – Vote No on 2

PROCEDURAL POSTURE

On September 21, 2020, Yes on 2 for Better Elections (Yes on 2) filed a complaint against Defend Alaska Elections – Vote No on 2 (DAE).¹ The complaint alleges that DAE violated AS 15.13 for the following reasons:

1. Failure to identify the correct top three contributors to DAE's campaign in its radio, web, blog, print and Facebook communications;
2. Failure to fully report all campaign expenditures, debts and reimbursements; and
3. Failure to register with APOC before making expenditures.²

On October 1, 2020, Yes on 2 requested expedited consideration of its complaint.³ On October 2, 2020, a hearing on the request was scheduled for October 5, 2020.⁴

On October 6, 2020, the commission issued an order granting expedited consideration concerning identification of DAE's top three contributors, accepting the remaining issues for consideration on a regular basis. Further, the order set a hearing date of October 7, 2020, for the matters expedited.⁵

¹ Exhibit 1, Complaint.

² *Id.*

³ Exhibit 2, Request for Expedited Consideration.

⁴ Exhibit 3, Notice of Hearing.

⁵ Exhibit 4, Order Granting Expedited Consideration.

On October 8, 2020, the commission issued an emergency order finding that DAE’s radio ads violated AS 15.13.090(a)(2)(C) because they did not accurately identify its top three contributors at the time the ads were disseminated.⁶ The commission remanded to staff to fully investigate and consider on a regular basis whether, and how much, of a penalty should be assessed for the violation.⁷ The commission also remanded to staff for a full investigation whether DAE’s top three contributors were properly disclosed in its communications on two political blogs, Facebook, and website.⁸

ORDER OF THE COMMISSION

In its emergency order, the commission decided that the top three contributors for purposes of radio paid-for-by identifiers are those that contributed the most as reported on the communicator’s campaign disclosure reports during the 12-month period before the radio ads were first aired.⁹ After comparing DAE’s independent expenditure reports, the commission determined that the top contributors to DAE at the time the radio ads at issue were first aired were the Alaska Republican Party, the Republican State Leadership Committee, and either Northern Holdings or Americans for Prosperity.¹⁰

ANALYSIS

A. Radio Ads

DAE ran four distinct radio ads opposing Ballot Measure 2. The ads were identified as First 60, First 15, Outside Billionaires, and Preventable Disaster.¹¹ The top three contributors on the ads were named as John Sturgeon, Mark Begich, and Sean Parnell.¹² The ads began running on September 23, 2020.¹³ The ads continued to run with Sturgeon, Begich, and Parnell being identified as the top three contributors until October 9, 2020,

⁶ Exhibit 5, Emergency Order.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* At p.5.

¹⁰ *Id.* At p. 7.

¹¹ Exhibit 6, Answer to Complaint (Exhibit 2 thereto); Exhibit 7, Responses to Staff’s Additional Questions.

¹² *Id.*

¹³ Ex. 6 (Exhibit 3 thereto).

when the top three contributors were changed to Alaska Republican Party, State Republican Leadership Fund and AFP-Action.¹⁴ These ads ran through November 3, 2020.¹⁵ Based on the commission's emergency order, DAE violated AS 15.13.090 from September 23, 2020, through October 9, 2020, when it changed its top three contributors to those listed on its independent expenditure report immediately preceding dissemination of the ads.¹⁶

B. Political Blogs

1. The Alaska Landmine

DAE ran an ad opposing Ballot Measure 2 in the political blog, The Alaska Landmine.¹⁷ The ad was set to run between September 15, 2020, and November 3, 2020.¹⁸ The ad listed the top three contributors as John Sturgeon, Mark Begich, and Sean Parnell.¹⁹ DAE never changed the top three contributors for this ad.²⁰ Again, based on the commission's emergency order, DAE violated AS 15.13.090 from September 15, 2020, through November 3, 2020, for failing to change its top three contributors to those listed on its independent expenditure report immediately preceding dissemination of the ad.²¹

2. Must Read Alaska

DAE ran an ad opposing ballot measure 2 in the political blog, Must Read Alaska.²² The ad was set to run between September 15, 2020, and November 3, 2020.²³ The ad listed the top three contributors as John Sturgeon, Mark Begich, and Sean Parnell.²⁴ DAE never changed the top three contributors for this ad.²⁵ Based on the commission's emergency

¹⁴ Exhibit 8, Statement of Brett Huber.

¹⁵ Ex. 6, (Exhibit 3 thereto).

¹⁶ Ex. 5.

¹⁷ Exhibit 9, Landmine ad.

¹⁸ Exhibit 10, Landmine Invoice.

¹⁹ Exhibit 11, DAE Second Response to Questions.

²⁰ *Id.*

²¹ Ex. 5.

²² Exhibit 12, Must Read Alaska ad.

²³ Exhibit 13, Must Read Alaska Invoice, Ex. 11.

²⁴ Ex. 11.

²⁵ *Id.*

order, DAE violated AS 15.13.090 from September 23, 2020, through November 3, 2020, for failing to change its top three contributors to those listed on its independent expenditure report immediately preceding dissemination of the ad.²⁶

C. Facebook Page

DAE created its Facebook page, Defend Alaska Elections, on August 27, 2020.²⁷ The page listed the top three contributors as John Sturgeon, Mark Begich, and Sean Parnell.²⁸ On September 21, 2020, DAE changed the top three contributors on the page to Alaska Republican Party, State Republican Leadership Committee, and Club for Growth.²⁹ But, Club for Growth was not yet a top three contributor until October 17, 2020, when DAE filed an independent expenditure report showing an additional \$15,000 contribution from Club for Growth. With this additional contribution, Club for Growth’s contributions totaled \$45,000, just like the \$45,000 contributed by Northern Holdings and Americans for Prosperity.³⁰ As such, DAE violated AS 15.13.090 between August 27, 2020, and October 17, 2020, when it changed its top three contributors to those listed on its independent expenditure report immediately preceding dissemination of the Facebook page.³¹

D. Facebook Ads

DAE ran 80 separate Facebook ads beginning on September 10, 2020.³² Some were graphic only and others contained an audio component.³³ None of the audio ads contained an audio paid-for-by identifier.³⁴ All of the ads provided a link to DAE’s Facebook page in the “sponsored” section of the ad.³⁵ Indeed, a person may satisfy the requirements of AS

²⁶ Ex. 5.

²⁷ Exhibit 14, Facebook Transparency Page.

²⁸ Ex. 11.

²⁹ *Id.*

³⁰ Compare <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=4598&ViewType=IE> with <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=4733&ViewType=IE>

³¹ Ex. 5.

³² <https://www.facebook.com/ads/library/report/?source=archive-landing-page&country=US>

³³ *Id.*

³⁴ *Id.*

³⁵

https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&view_all_page_id=710770742377054

15.13.090 by providing an electronic link to the required information.³⁶ However, until September 21, 2020, DAE’s Facebook page listed the top three contributors as John Sturgeon, Mark Begich, and Sean Parnell.³⁷

Between September 21, 2020, the November 3, 2020, general election, DAE’s Facebook page listed the top three contributors as Alaska Republican Party, State Republican Leadership Committee, and Club for Growth.³⁸ Yet, until October 17, 2020, DAE’s top three contributors were listed as Alaska Republican Party, State Republican Leadership Fund and either Americans for Prosperity or Northern Holdings, Inc. Club for Growth was not identified.³⁹ It was not until October 17, 2020, when DAE filed an independent expenditure report showing an additional \$15,000 contribution from Club for Growth. With this additional contribution, Club for Growth’s contributions totaled \$45,000, the same amount as the \$45,000 contributed by Northern Holdings and Americans for Prosperity.⁴⁰ Thus, DAE violated AS 15.13.090 between September 10, 2020, and October 17, 2020, when its top three contributors became consistent with those listed on its independent expenditure report immediately preceding dissemination of the Facebook ads.⁴¹

Under AS 15.13.090, all communications containing an audio component must contain an audio paid-for-by identifier.⁴² Here, DAE’s audio ads that ran until October 17, 2020, did not contain this required identifier and thus staff recommends civil penalties for those violations. Moreover, while the audio ads DAE ran after October 16, 2020, indeed included an electronic link to a correct written identifier, they too were in violation of AS 15.13.090(d) for failing to contain audio paid-for-by identifier.

³⁶ 2 AAC 50.306(d).

³⁷ Ex. 11.

³⁸ *Id.*

³⁹ Ex. 5, FN 17.

⁴⁰ Compare <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=4598&ViewType=IE> with <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=4733&ViewType=IE>

⁴¹ Ex. 5.

⁴² AS 15.13.090(d).

E. DAE’s Website

Brett Huber purchased DAE’s web domain for \$12.50 on August 25, 2020.⁴³ Material was not placed on the website until August 28, 2020.⁴⁴ Until September 21, 2020, DAE’s website listed the top three contributors as John Sturgeon, Mark Begich, and Sean Parnell.⁴⁵ Between September 21, 2020, the November 3, 2020, general election, DAE’s website listed the top three contributors as Alaska Republican Party, State Republican Leadership Committee and Club for Growth.⁴⁶ But until October 17, 2020, DAE’s top three contributors were the Alaska Republican Party, State Republican Leadership Fund and either Americans for Prosperity or Northern Holdings, Inc., and did not include Club for Growth.⁴⁷ It was not until October 17, 2020, when DAE filed an independent expenditure report showing an additional \$15,000 contribution from Club for Growth. With this additional contribution, Club for Growth reached total contributions of \$45,000 putting it on equal footing with the \$45,000 contributed by Northern Holdings and Americans for Prosperity.⁴⁸ As such, DAE violated AS 15.13.090 between August 27, 2020, and October 17, 2020, when it changed its top three contributors to those listed on its independent expenditure report immediately preceding dissemination of website communications.⁴⁹

F. Expenditures Before Registration

DAE registered with APOC as a ballot proposition group on August 27, 2020.⁵⁰ However, DAE’s manager and deputy treasurer states that his credit card invoice shows the purchase being made for \$12.50 on August 25, 2020 – 2 days before DAE’s registration.⁵¹

⁴³ Ex. 8.

⁴⁴ *Id.*

⁴⁵ Ex. 11.

⁴⁶ *Id.*

⁴⁷ Ex. 5, FN 17.

⁴⁸ Compare <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=4598&ViewType=IE> with <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=4733&ViewType=IE>

⁴⁹ Ex. 5.

⁵⁰ Exhibit 15, Group Registration.

⁵¹ Ex. 8

All groups are required to register with APOC before making any expenditures.⁵² Here, Mr. Huber made an expenditure on behalf of DAE three days before DAE registered with APOC. Accordingly, DAE violated AS 15.13.050(a) by making an expenditure prior to registering with APOC.

G. Failure to Fully Report Expenditures

Yes on 2 alleges that DAE failed to properly report expenditures on its campaign disclosure reports because it failed to provide complete information required by law.⁵³ Specifically, Yes on 2 points to DAE’s September 7, 2020, independent expenditure report, which lists an expenditure of \$941 paid to Brett Huber for “reimbursement for campaign set-up costs.”⁵⁴ However, details of what set-up costs were incurred and with whom were not provided.

Yes on 2 also points to DAE’s September 17, 2020, independent expenditure report which lists expenditures of \$3,228 to Hackney and Hackney and \$254,381 as a debt to Hellenthal and Associates. Details of both provided merely that the expenditures were for “radio.”⁵⁵ The report provided no indication of exactly what Hackney and Hackney and Hellenthal and Associates did in connection with radio nor were any radio station subcontractors identified. Both Hellenthal and Associates; and Hackney and Hackney are well known political consultants in Alaska.

Every person making an independent expenditure is required to make a full report of expenditures made and contributions received.⁵⁶ The report must contain “*an itemized list* of all expenditures made, incurred or authorized by the person.”⁵⁷ In addition, if the expenditure is made to an advertising agency or to an individual or business that provides campaign consultation or management services, “...the report must disclose in detail all

⁵² AS 15.13.050(a).

⁵³ Ex. 1.

⁵⁴ Exhibit 16, September 7, 2020 independent expenditure report.

⁵⁵ Exhibit 17, September 17, 2020 independent expenditure report.

⁵⁶ AS 15.13.040(d).

⁵⁷ AS 15.13.040(e)(2) (emphasis added).

services rendered, including the name of each business from which campaign goods or services were purchased or subcontracted or media advertising placed...”⁵⁸

Here, DAE’s September 7, 2020, independent expenditure reporting violated AS 15.13.040(d) for failing to provide an itemized list of exactly what “set up costs” Mr. Huber was being reimbursed for. Moreover, DAE’s September 17, 2020, independent expenditure reporting violated AAC 50.321(d) for failing to disclose in detail all services rendered by Hackney and Hackney and Hellenthal and Associates.

CONCLUSION

DAE violated AS 15.13.090(a)(2)(C) in its radio and Facebook ads, on its Facebook page, on its website, and in The Alaska Landmine and Must Read Alaska for failing to correctly identify the top three contributors. Further, DAE violated AS 15.13.090(d) by failing to provide an audio paid-for-by identifier on its Facebook ads containing an audio component. Moreover, DAE violated AS 15.13.050(a) by making expenditures before registering with APOC. Finally, DAE violated AS 15.13.040(e)(2) and 2 AAC 50.321(d) by failing to provide itemized descriptions of expenditures and services of consultants, management services, and advertising agencies.

MAXIMUM CIVIL PENALTIES

The maximum civil penalty for DAE’s paid-for-by, registration, and reporting violations is \$50 per day for each day the violation continued.⁵⁹ In most circumstances the running of the penalty is tolled as of the date the complaint was filed, which in this case was September 21, 2020. However, there are two mitigating factors to consider.

First, the radio ads and many of the Facebook ads did not begin until after the complaint was filed. Second, in its emergency order, the commission provided clear guidance as to how the top three contributors should be determined. However, DAE never came into compliance in The Alaska Landmine, Must Read Alaska, Facebook ads. Under these

⁵⁸ 2AAC 50.321(d).

⁵⁹ AS 15.13.390(a).

circumstances, with one exception, tolling of the applicable penalties should not occur until DAE either came into compliance by the time the commission's emergency order was issued or the date of the November 3rd general election, whichever occurred first.

The one exception concerns the improper reporting allegations. In those cases, the reports were filed before the complaint was filed, and therefore, staff recommends tolling as of September 21, 2020 the date the complaint was filed.

1. Radio Ads

DAE's radio ads containing inaccurate top three contributor information ran for a period of 15 days from September 23, 2020 until October 8, 2020. Thus, the maximum civil penalty for the radio ads is \$750.

2. The Alaska Landmine and Must Read Alaska

DAE's Alaska Landmine and Must Read Alaska ads containing inaccurate top three contributor information both each ran for a period of 49 days, or a total of 98, from September 15, 2020, until November 3, 2020. Thus, the maximum civil penalty for those ads is \$4,900.

3. Facebook page

DAE's Facebook page contained inaccurate top three contributor information for a period of 49 days from August 28, 2020 until October 16, 2020. Thus, the maximum civil penalty for DAE's Facebook page is \$2,450.

4. Website

DAE's website contained inaccurate top three contributor information for a period of 49 days from August 28, 2020 until October 16, 2020. Thus, the maximum civil penalty for DAE's Web site is \$2,450.

5. Facebook ads

DAE's 80 separate Facebook ads ran for various periods between September 10, 2020, and November 3, 2020.⁶⁰ The ads did not provide an electronic link to correct top three contributor information until October 17, 2020, when Club for Growth became a top three contributor. As shown on Exhibit 19, the ad-days for DAE's Facebook ads from September 10, 2020, until October 16, 2020, total 596 for a maximum civil penalty of \$29,800.

However, Facebook ads containing an audio component were also violative of AS 15.13.090(d) because they did not contain an audio identifier naming top three contributors. This violation, unlike the top three contributor violation was not cured by Club for Growth being identified as one of DAE's top three contributors. As shown on Exhibit 19, DAE's various Facebook ads containing an audio component ran for 157 ad-days after October 16, 2020, for a maximum civil penalty of \$7,850.

6. Untimely Registration

DAE failed to timely register prior to making its first expenditure. DAE registered on August 27, 2020, but made an expenditure on August 25, 2020. Thus, DAE's violated AS 15.13.050(a) for a period of two days amounting to a maximum civil penalty of \$100.

7. Reporting

DAE failed to properly report expenditures on its September 7, 2020, and September 17, 2020, independent expenditure reports by failing to provide itemized descriptions of expenditures and services of Hellenthal and Associates; and Hackney and Hackney. Thus, DAE violated AS 15.13.040(e)(2) in its September 7, 2020, independent expenditure report for 14 days before the complaint was filed and violated 2 AAC 50.321(d) in its September 17, 2020, independent expenditure report for a period of four days before the complaint was filed for a total of 18 days amounting to a maximum civil penalty of \$900.

⁶⁰ Exhibit 18, Facebook Ads Chart;

https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&view_all_page_id=710770742377054


8. Total Maximum Civil Penalty

The total maximum civil penalty in this case is \$49,200.

MITIGATION AND RECOMMENDATION

DAE was a newly formed group engaged in its first election cycle. Under this circumstance the civil penalties may be, but are not required to be, reduced by up to 50%.⁶¹ No other standard mitigating factors apply.⁶² Here, staff does not recommend a full 50% reduction because DAE continued to run ads and other communications that were out of compliance through the November 3, 2020, general election with the commission’s top three contributor guidance clearly set forth in its October 8, 2020, emergency order. Instead, staff recommends a reduction of 25% to \$36,937.50. Staff does not believe that this penalty is inappropriately large in a campaign that generated \$578,251.18 in income and \$571,132.20 in expenditures made, which were primarily for DAE’s communications.⁶³

I hereby certify that on this date, I caused a true and correct copy of the foregoing to be delivered as indicated to the following:	
Samuel Gottstein Holmes Weddle and Barcott 701 W. 8 th Avenue, Suite 700 Anchorage, Alaska 99501 sgottstein@hwb-law.com	<input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> Certified Mail
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 02/23/2021
Signature Date

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9171-9690-0935-0248-7092-81

⁶¹ 2 AAC 50.865(a)(1)(B).
⁶² See, generally, 2 AAC 50.865.
⁶³ Exhibit 19.