

Advisory Opinion 21-02-CD

Building Alaska PAC

Presented by:

Thomas Lucas
Campaign Disclosure Coordinator

ADVISORY OPINION REQUEST

Number: AO 21-02-CD
Requested By: Stacey Stone on behalf of Building Alaska, Inc.
Prepared By: Thomas Lucas, Campaign Disclosure Coordinator
Date Issued: April 26, 2021
Subject: Application of disclaimer provision enacted under Ballot Measure 2 (“BM2”)¹

Commission Decision:

I. BACKGROUND

In November 2020, BM2 appeared on the state’s general election ballot.² The measure, among other things, sought to prohibit the use of “dark money” in Alaska’s candidate elections.³ A majority of votes cast favored the adoption of BM2 and the election results were certified on November 30, 2020.⁴ Therefore, provisions of BM2 became effective on February 28, 2021.⁵

Among others, BM2 added several new terms to APOC statutes⁶, including the terms dark money and outside-funded entity and added a new disclaimer provision requiring an outside-funded entity to add the following language to its paid-for-by identifier: “A MAJORITY OF CONTRIBUTIONS TO (OUTSIDE-FUNDED ENTITY’S NAME) CAME FROM OUTSIDE THE STATE OF ALASKA.”⁷ In essence, the law’s new term of outside-funded entity means an entity that is making independent expenditures and during the previous 12-month period received more than 50 percent of its aggregate contributions from contributors outside the state of Alaska.⁸

Building Alaska, Inc. is an independent expenditure group that first registered with APOC on January 8, 2021.⁹ The group’s stated purpose is “to influence elections and promote candidates for office who will help to build and grow Alaska.”¹⁰

¹ Ex. 1, Request for Advisory Opinion.

² Ex. 2, Sample General Election Ballot.

³ *Id.* See also AS 15.13.400(5).

⁴ Ex. 3, Ballot Measure 2 Certificate.

⁵ AS 15.45.220.

⁶ *Infra* at IV; See also AS 15.13.400(5), (15).

⁷ AS 15.13.090(g).

⁸ “[O]utside-funded entity” means an entity that makes one or more independent expenditures in one or more candidate elections and that, during the previous 12-month period, received more than 50 percent of its aggregate contributions from true sources, or their equivalents, who, at the time of the contribution, resided or had their principal place of business outside Alaska.” AS 15.13.400(15).

⁹ Ex. 4, Group Registration.

¹⁰ *Id.*

II. QUESTION PRESENTED

Building Alaska, Inc. asks if an entity that has been in existence for less than 12 months is required to use the new law's disclaimer language in its paid-for-by identifier. Building Alaska, Inc. suggests that it is not required to do so until it has been existence for a full 12 months in order to allow for a 12 month lookback period.

III. SHORT ANSWER

Staff disagrees with Building Alaska, Inc.'s position and asserts that even if an entity has been in existence for less than 12 months, the law's provisions will still apply to its activities. More specifically, the law's "...during the previous 12-month period..." does not mean that a threshold period of 12 months is required to pass after an entity's creation before the law's identifier provision applies to the entity's activities. Instead, the law merely requires an entity to look back at the preceding 12 months to determine the source of its contributions, whether it's been existence for the full 12 months or not. As such, if the majority of the total contributions an entity has received are from outside contributors at the time it disseminates a communication, the entity is required to include in its communication a paid-for-by identifier. In other words, if the majority of an entity's total contributions come from outside contributors, the new law is triggered, and the additional disclaimer is required.

IV. LAW

BM 2 amended AS 15.13.090 to add a new subsection requiring an outside-funded entity to add an additional disclaimer to its paid-for-by identifier. The law provides:

To satisfy the requirements of (a)(1) of this section and, if applicable, (a)(2)(C) of this section, a communication paid for by an outside-funded entity as that term is defined in AS 15.13.400(19) that includes a print or video component must have the following statement placed in the communication so as to be easily discernible, and in broadcast, cable, satellite, internet or other digital communication the statement must remain on the screen throughout the entirety of the communication; the statement is not required if the outside entity paying for the communication has no contributors or is a political party: "A MAJORITY OF CONTRIBUTIONS TO (OUTSIDE-FUNDED ENTITY'S NAME) CAME FROM OUTSIDE THE STATE OF ALASKA."¹¹

¹¹ AS 15.13.090(g).

Additionally, BM2 was amended to define an outside-funded entity as one making at least one independent expenditure “in one or more candidate elections and that, during the previous 12-month period, received more than 50 percent of its aggregate contributions from true sources, or their equivalents, who, at the time of the contribution, resided or had their principal place of business outside Alaska.”¹²

This previous 12-month period, or lookback period, exists elsewhere in APOC statutes. Specifically, AS 15.13.090(a)(2)(c) provides that apart from a political party, a person who makes a communication is required to name its top three contributors (if any) “during the 12-month period before the date of the communication.”¹³ This has been interpreted to require a person to look back at the 12 months immediately preceding the communication, or the lookback period, to determine which contributors are to be identified. The “previous 12-month period” referred to in the definition of outside-funded entity should be interpreted the same.

V. ANALYSIS

Building Alaska, Inc. asks the Commission to conclude that an entity does not meet the law’s definition of an outside-funded entity until it has been in existence for at least 12 months. This interpretation would invite evasion of, and would effectively nullify, the law’s new disclaimer requirement. The proper interpretation is that an entity is an outside-funded entity if during the last 12 months the majority of its aggregate contributions were received from contributors outside the state of Alaska. This is consistent with the Commission’s recent determination in *Yes on 2 for Better Elections v. Defend Alaska Elections – Vote No on 2*, concerning the 12-month look back period for determining top 3 contributors.¹⁴

In the simplest of terms, any combination of two or more individuals acting jointly for the principal purpose of influencing elections, and who take action to do so, is a group.¹⁵ Anyone, at any time can form a group, including an independent expenditure group. Once a group is formed it may disband at any time by disbursing its campaign account.¹⁶ One of the ways a group may disburse its campaign account is by contributing to another group – even a group that was just formed.¹⁷¹⁸

Following Building Alaska, Inc.’s interpretation, a savvy political operator could easily evade the identification requirement provided for in AS 15.13.090(g) by simply forming a group at the beginning of a campaign, collecting its funding from contributors

¹² AS 15.13.400(15).

¹³ AS 15.13.090(a)(2)(C).

¹⁴ 20-06-CD

¹⁵ AS 15.13.400(9).

¹⁶ 2 AAC 50.384(b).

¹⁷ 2 AAC 50.384(b)(2)(A)

¹⁸ The group may also donate its funds to a 501(c)(3) charity, repay its contributors, or pay for a thank you or victory party. 2 AAC 50.384(b)(2)(B)-(D).

outside of Alaska, disbanding the group at the end of the campaign, and forming a new group using the same outside-Alaska funders for the next campaign without any recourse.

Moreover, Building Alaska, Inc.’s assertion that an entity is incapable of satisfying the definition of an outside-funded entity until it has existed for 12 months would nullify the law’s requirement and effectively eliminate its new outside-funding disclaimer requirement. Furthermore, it would be contrary to the findings and intent of the law, which provides that

[t]he people of Alaska have the right to know in a timely manner the source, quantity, timing and nature of resources used to influence candidate elections in Alaska. This right requires the prompt, accessible, comprehensible, and public disclosure of the true and original sources of funds used to influence these elections, and is essential to the rights of free speech, assembly, and petition guaranteed by the First Amendment to the United States Constitution and shall be construed broadly.¹⁹

Finally, Building Alaska, Inc.’s interpretation is contrary to precedent. In *Yes on 2 for Better Elections v. Defend Alaska Elections – Vote No on 2*, Defend Alaska Elections (DAE) was a group formed on August 27, 2020.²⁰ One of the issues in the case was how to determine the group’s top three contributors for its paid-for-by identifier in radio ads beginning on September 23, 2020.²¹ AS 15.13.090 requires that a person’s top three contributors during the 12-month period before the date of a communication be identified in a paid-for-by disclaimer by name, city, and state.²²

Like Building Alaska, Inc., DAE had been in existence for less than 12 months. Despite the group’s young age, the Commission determined that DAE had violated AS 15.13.090(a)(2)(C) by failing to name its top three contributors as those who were top three as of the date of its most recent independent expenditure report filed before the communication was disseminated.²³

The lookback period provided for in the definition of outside-funded entity closely mirrors the identification language requirement in AS 15.13.090, which sets a maximum period of time a person, or entity, is required to evaluate for reporting purposes. Instead of requiring a person to look back to all the months or years it has been in existence, the law only requires an evaluation of the previous 12-month period.

¹⁹ Ballot Measure 2, Sec.1 Findings and Intent at (3).

²⁰ Exhibit 5, Group Registration.

²¹ Exhibit 6, Commission Emergency Order.

²² AS 15.13.090(a)(2)(C).

²³ Ex. 6.

Indeed, this 12-month lookback requirement puts newly created entities at an advantage over older entities. For example, a 3-month old entity would only have 3 months of records to evaluate, whereas a 2-year old entity would necessarily have to evaluate 12 months of records. Contrary to Building Alaska, Inc.'s position, there is no logical reason, or precedent, that would indicate that the "previous 12-month period" in the law's definition of outside-funded entity should be interpreted differently.

VII. CONCLUSION

Despite being in existence for less than 12 months, if the majority of Building Alaska, Inc.'s aggregate contributions are from contributors outside the state of Alaska as of the date of its most recent independent expenditure report preceding dissemination of a communication, Building Alaska, Inc. must include the disclaimer provided for in AS 15.13.090(g) in its paid-for-by identifier.

VIII. COMMISSION DECISION

Only the Commission has the authority to approve an advisory opinion.²⁴ The Commission will rule on staff's proposed advice at its next regular meeting on June 9, 2021. The Commission may approve, disapprove, or modify the proposed advice. An advisory opinion must be approved by an affirmative vote of at least four members or it will be considered disapproved. Both staff's proposed advice and the Commission's final advisory opinion apply only to the specific facts and activity for which advice was requested.

If you rely on staff's proposed advisory opinion in good faith and the Commission subsequently rejects the proposed advice, staff will take no enforcement action on your activities up to that point if you acted under the specific facts described. If you have any additional questions or would like to discuss this proposed advice, please contact me at (907) 276-4176.

I hereby certify that on this date, I caused a true and correct copy of the foregoing to be delivered to:	
Stacey Stone Holmes Weddle & Barcott, P.C. 701 W. 8 th Avenue Suite 700 Anchorage, AK 99501 sstone@hwb-law.com	<input checked="" type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> Email

 04/26/2021
Law Office Assistant Date

9171-9690-0935-0251-9516-08

²⁴ AS 15.13.374.

APPLICABLE LAW

ALASKA STATUTES

AS 15.13.090. Identification of communication.

(a) All communications shall be clearly identified by the words “paid for by” followed by the name and address of the person paying for the communication. In addition, except as provided by (d) of this section, a person shall clearly

(1) provide the person's address or the person's principal place of business;

(2) for a person other than an individual or candidate, include

(A) the name and title of the person's principal officer;

(B) a statement from the principal officer approving the communication; and

(C) unless the person is a political party, identification of the name and city and state of residence or principal place of business, as applicable, of each of the person's three largest contributors under AS 15.13.040(e)(5), if any, during the 12-month period before the date of the communication.

...

(g) To satisfy the requirements of (a)(1) of this section and, if applicable, (a)(2)(C) of this section, a communication paid for by an outside-funded entity as that term is defined in AS 15.13.400(15) that includes a print or video component must have the following statement placed in the communication so as to be easily discernible, and, in a broadcast, cable, satellite, Internet or other digital communication, the statement must remain onscreen throughout the entirety of the communication; the statement is not required if the outside entity paying for the communication has no contributors or is a political party: “A MAJORITY OF CONTRIBUTIONS TO (OUTSIDE-FUNDED ENTITY'S NAME) CAME FROM OUTSIDE THE STATE OF ALASKA.”

AS 15.13.374. Advisory opinion.

(a) Any person may request an advisory opinion from the commission concerning this chapter, AS 24.45, AS 24.60.200 — 24.60.260, or AS 39.50.

(b) A request for an advisory opinion

(1) must be in writing or contained in a message submitted by electronic mail;

(2) must describe a specific transaction or activity that the requesting person is presently engaged in or intends to undertake in the future;

(3) must include a description of all relevant facts, including the identity of the person requesting the advisory opinion; and

(4) may not concern a hypothetical situation or the activity of a third party.

(c) Within seven days after receiving a request satisfying the requirements of (b) of this section, the executive director of the commission shall recommend a draft advisory opinion for the commission to consider at its next meeting.

(d) The approval of a draft advisory opinion requires the affirmative vote of four members of the commission. A draft advisory opinion failing to receive four affirmative votes of the members of the commission is disapproved.

(e) A complaint under AS 15.13.380 may not be considered about a person involved in a transaction or activity that

(1) was described in an advisory opinion approved under (d) of this section;

(2) is indistinguishable from the description of an activity that was approved in an advisory opinion approved under (d) of this section; or

(3) was undertaken after the executive director of the commission recommended a draft advisory opinion under (c) of this section and before the commission acted on the draft advisory opinion under (d) of this section, if

(A) the draft advisory opinion would have approved the transaction or activity described; and

(B) the commission disapproved the draft advisory opinion.

(f) Advisory opinion requests and advisory opinions are public records subject to inspection and copying under AS 40.25.100 — 40.25.295, except that, if a person requesting an advisory opinion requests that the person's name be kept confidential, the person's name shall be kept confidential and the commission shall redact the name of the requester from the request and from the advisory opinion before making the request and opinion public.

AS 15.13.400. Definitions.

(5) "dark money" means a contribution whose source or sources, whether from wages, investment income, inheritance, or revenue generated from selling goods or services, is not disclosed to the public. Notwithstanding the foregoing, to the extent a membership organization receives dues or contributions of less than \$2,000 per person per year, the organization itself shall be considered the true source.

...

(9) "group" means

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

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

(C) any combination of two or more individuals acting jointly who organize for the principal purpose of filing an initiative proposal application under AS 15.45.020 or who file an initiative proposal application under AS 15.45.020;

...

(15) "outside-funded entity" means an entity that makes one or more independent expenditures in one or more candidate elections and that, during the previous 12-month period, received more

than 50 percent of its aggregate contributions from true sources, or their equivalents, who, at the time of the contribution, resided or had their principal place of business outside Alaska.

AS 15.45.220. Adoption and effective date of proposed law.

If a majority of the votes cast on the initiative proposition favor its adoption, the proposed law is enacted, and the lieutenant governor shall so certify. The act becomes effective 90 days after certification.

ALASKA ADMINISTRATIVE CODE

2 AAC 50.384. Winding up campaign affairs.

(b) After an election, a group or nongroup entity may

(1) leave its money in a campaign account until the following election if the group plans to remain active; a group remaining active must re-register annually in compliance with 2 AAC 50.290(a), and must file a year-end report by February 15 as provided in AS 15.13.110(a)(4); or

(2) disburse the campaign account money by

(A) contributing to another candidate or group subject to the contribution limitations and other requirements of AS 15.13;

(B) donating the money to a qualified charitable organization under 26 U.S.C. 501(c)(3);

(C) repaying its contributors; or

(D) paying for a victory or thank you party.

...

2 AAC 50.840. Advisory opinion

(a) The commission staff shall review any request for an advisory opinion submitted under AS 15.13.374. If the staff determines that a request for an advisory opinion does not satisfy the requirements of AS 15.13.374(b), the staff shall reject the request and notify the person making the request of any deficiency. A rejected request may be corrected and refiled.

(b) If the staff determines that a request for an advisory opinion satisfies the requirements of AS 15.13.374(b), the executive director or the executive director's designee shall prepare a recommended advisory opinion for the commission's consideration as provided in AS 15.13.374(c). The commission will consider the recommended opinion as provided in 2 AAC 50.826.

(c) A commission member who voted with the majority approving an advisory opinion may, no later than 15 days after the vote, move for reconsideration of the opinion based on a showing of substantial procedural error, fraud, misrepresentation, material mistake of fact or law, or new evidence relevant to the advisory opinion. If at least four members vote to reconsider an advisory opinion, the opinion is vacated.

(d) A person that requested an advisory opinion may act in reliance on the advisory opinion unless that person receives notice that the commission has reconsidered the advisory opinion. A person's good faith reliance on an advisory opinion is a complete defense to any enforcement action based on the conduct that is the subject of the advisory opinion.

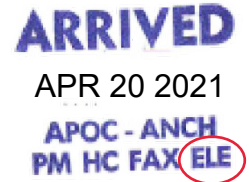
(e) Nothing in this section precludes the commission from revising a previous advisory opinion for good cause.

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STACEY C. STONE
sstone@hwb-law.com

April 19, 2021

VIA EMAIL

Alaska Public Offices Commission
2221 E. Northern Lights Blvd., Room 128
Anchorage, Alaska 99508

Attn: Heather Hebdon, Executive Director
Heather.hebdon@alaska.gov

Re: Request for Formal Advisory Opinion
Building Alaska, Inc.
Our File No. 7722-32696

Dear Ms. Hebdon:

Our office represents Building Alaska, Inc. The purpose of this letter is to request a formal advisory opinion pursuant to AS 15.13.374 and 2 AAC 50.840. Specifically, Building Alaska, Inc. seeks an opinion from the Alaska Public Offices Commission as to when the disclaimer requires added in AS 15.13.090(g) under the recently passed Ballot Measure 2 are triggered.

Pursuant to Ballot Measure 2, AS 15.13.090 was amended to add a new subsection (g) that included as follows:

A communication paid for by an outside-funded entity as that term is defined in AS 15.13.400(1) that includes a print or video component must have the following statement... "A MAJORITY OF CONTRIBUTIONS TO (OUTSIDE-FUNDED ENTITY'S NAME) CAME FROM OUTSIDE THE STATE OF ALASKA."

In conjunction with the same, Ballot Measure to amended AS 15.13.400, by adding a new paragraph to read as follows:

(19) "outside-funded entity" means an entity that makes one or more independent expenditures in one or more candidate elections and that, during the previous 12-month period, received more than 50 percent of its aggregate contributions from true sources, or their equivalents, who, at the time of contribution, resided or had their principal place of business outside Alaska.

Ballot Measure 2 took effect on February 28, 2021. As such, the foregoing became applicable at such time. However, recent guidance from APOC staff seems to impart that the

“previous 12-month period” has no application in law even though the new law specifically references the same.

Therefore, until an entity who is required to report has been in existence for at least 12 months, there is no lookback period to determine if the entity is or is not “outside-funded”. On the face of the law, it sets forth that each time a communication is created, the entity must lookback to the prior 12 months to discern if it meets with the definition of “outside-funded entity”. However, until such time as an entity exists for at least 12 months, there is no such lookback period.

Therefore, as set forth, the purpose of this opinion is to determine whether an entity can be considered an “outside-funded entity” prior to its existence. More specifically, when is the lookback period triggered, and if an entity has not been in existence for a period of at least 12 months, how does the Commission deal with this disclaimer requirement.

Sincerely,

HOLMES WEDDLE & BARCOTT, P.C.

A handwritten signature in black ink, appearing to read "Stacey C. Stone". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Stacey C. Stone

SAMPLE BALLOT



State of Alaska Official Ballot
General Election
November 3, 2020

House District 18
Judicial 3

422

Instructions: To vote, completely fill in the oval next to your choice, like this: Use a blue or black ink pen to mark your ballot. NO RED INK. If you make a mistake, ask for a new ballot.

<p>United States President Vice President (vote for one)</p>	<p>Third Judicial District Superior Court</p>
<p><input type="radio"/> Janos, James G."Jesse Ventura" McKinney, Cynthia Green Nominee</p> <p><input type="radio"/> Jorgensen, Jo Cohen, Jeremy "Spike" Libertarian Nominee</p> <p><input type="radio"/> Pierce, Brock Ballard, Karla Petition Nominee</p> <p><input type="radio"/> Trump, Donald J. Pence, Michael R. Republican Nominee</p> <p><input type="radio"/> Biden, Joseph R. Jr. Harris, Kamala D. Democratic Nominee</p> <p><input type="radio"/> Blankenship, Don Mohr, William Constitution Nominee</p> <p><input type="radio"/> De La Fuente, Rocque "Rocky" Richardson, Darcy G. Alliance Nominee</p> <p><input type="radio"/> _____ <small>Write-in</small></p>	<p>Judge Crosby</p> <p>Shall Danya R. "Dani" Crosby be retained as judge of the superior court for six years?</p> <p><input type="radio"/> YES <input type="radio"/> NO</p> <hr/> <p>Judge Guidi</p> <p>Shall Andrew Guidi be retained as judge of the superior court for six years?</p> <p><input type="radio"/> YES <input type="radio"/> NO</p> <hr/> <p>Judge Henderson</p> <p>Shall Jennifer S. Henderson be retained as judge of the superior court for six years?</p> <p><input type="radio"/> YES <input type="radio"/> NO</p> <hr/> <p>Judge Lamoureux</p> <p>Shall Yvonne Lamoureux be retained as judge of the superior court for six years?</p> <p><input type="radio"/> YES <input type="radio"/> NO</p> <hr/> <p>Judge Miller</p> <p>Shall Gregory A. Miller be retained as judge of the superior court for six years?</p> <p><input type="radio"/> YES <input type="radio"/> NO</p>
<p>United States Senator (vote for one)</p> <p><input type="radio"/> Sullivan, Dan Republican Nominee</p> <p><input type="radio"/> Gross, Al Democratic Nominee</p> <p><input type="radio"/> Howe, John Wayne AK Indep. Nominee</p> <p><input type="radio"/> _____ <small>Write-in</small></p>	<p>Judge Reigh</p> <p>Shall Christina L. Reigh be retained as judge of the superior court for six years?</p> <p><input type="radio"/> YES <input type="radio"/> NO</p>
<p>United States Representative (vote for one)</p> <p><input type="radio"/> Young, Don Republican Nominee</p> <p><input type="radio"/> Galvin, Alyse S. Democratic Nominee</p> <p><input type="radio"/> _____ <small>Write-in</small></p>	<p>Judge Wells</p> <p>Shall Jennifer K. Wells be retained as judge of the superior court for six years?</p> <p><input type="radio"/> YES <input type="radio"/> NO</p>
<p>State Representative District 18 (vote for one)</p> <p><input type="radio"/> Drummond, Harriet A. Democratic Nominee</p> <p><input type="radio"/> _____ <small>Write-in</small></p>	<p>Third Judicial District District Court</p>
<p>Supreme Court</p> <p style="text-align: center;">Justice Carney</p> <p>Shall Susan M. "Sue" Carney be retained as justice of the supreme court for ten years?</p> <p><input type="radio"/> YES <input type="radio"/> NO</p>	<p>Judge Dickson</p> <p>Shall Leslie Dickson be retained as judge of the district court for four years?</p> <p><input type="radio"/> YES <input type="radio"/> NO</p>
<p>Court of Appeals</p> <p style="text-align: center;">Judge Wollenberg</p> <p>Shall Tracey Wollenberg be retained as judge of the court of appeals for eight years?</p> <p><input type="radio"/> YES <input type="radio"/> NO</p>	<p>Judge Franciosi</p> <p>Shall Michael J. Franciosi be retained as judge of the district court for four years?</p> <p><input type="radio"/> YES <input type="radio"/> NO</p>
<p style="text-align: center;">Judge Wollenberg</p> <p>Shall Tracey Wollenberg be retained as judge of the court of appeals for eight years?</p> <p><input type="radio"/> YES <input type="radio"/> NO</p>	<p>Judge Hanley</p> <p>Shall J. Patrick Hanley be retained as judge of the district court for four years?</p> <p><input type="radio"/> YES <input type="radio"/> NO</p>
<p style="text-align: center;">Judge Wollenberg</p> <p>Shall Tracey Wollenberg be retained as judge of the court of appeals for eight years?</p> <p><input type="radio"/> YES <input type="radio"/> NO</p>	<p>Judge Logue</p> <p>Shall Michael B. Logue be retained as judge of the district court for four years?</p> <p><input type="radio"/> YES <input type="radio"/> NO</p>

Continue Voting on Next Side

SAMPLE BALLOT

+

<p>Third Judicial District District Court</p> <p style="text-align: center;">Judge McCrea</p> <p>Shall Kari L. McCrea be retained as judge of the district court for four years?</p> <p style="text-align: center;"><input type="radio"/> YES <input type="radio"/> NO</p> <p style="text-align: center;">Judge Wallace</p> <p>Shall David R. Wallace be retained as judge of the district court for four years?</p> <p style="text-align: center;"><input type="radio"/> YES <input type="radio"/> NO</p> <p style="text-align: center;">Judge Washington</p> <p>Shall Pamela S. Washington be retained as judge of the district court for four years?</p> <p style="text-align: center;"><input type="radio"/> YES <input type="radio"/> NO</p>	<p style="text-align: center;">Ballot Measure No. 2 - 19AKBE An Act Replacing the Political Party Primary with an Open Primary System and Ranked-Choice General Election, and Requiring Additional Campaign Finance Disclosures</p> <p>This act would get rid of the party primary system, and political parties would no longer select their candidates to appear on the general election ballot. Instead, this act would create an open nonpartisan primary where all candidates would appear on one ballot. Candidates could choose to have a political party preference listed next to their name or be listed as “undeclared” or “nonpartisan.” The four candidates with the most votes in the primary election would have their names placed on the general election ballot.</p> <p>This act would establish ranked-choice voting for the general election. Voters would have the option to “rank” candidates in order of choice. Voters would rank their first choice candidate as “1”, second choice candidate as “2”, and so on. Voters’ “1” choice would be counted first. If no candidate received a majority after counting the first-ranked votes, then the candidate with the least amount of “1” votes would be removed from counting. Those ballots that ranked the removed candidate as “1” would then be counted for the voters’ “2” ranked candidate. This process would repeat until one candidate received a majority of the remaining votes. If voters still want to choose only one candidate, they can.</p> <p>This act would also require additional disclosures for contributions to independent expenditure groups and relating to the sources of contributions. It would also require a disclaimer on paid election communications by independent expenditure groups funded by a majority of out of state money.</p> <p>Should this initiative become law?</p> <p style="text-align: center;"><input type="radio"/> YES <input type="radio"/> NO</p>
<p style="text-align: center;">Ballot Measure No. 1 - 19OGTX An Act changing the oil and gas production tax for certain fields, units, and nonunitized reservoirs on the North Slope</p> <p>This act would change the oil and gas production tax for areas of the North Slope where a company produced more than 40,000 barrels of oil per day in the prior year and more than 400 million barrels total. The new areas would be divided up based on “fields, units, and nonunitized reservoirs” that meet the production threshold. The act does not define these terms. For any areas that meet the production threshold, the tax would be the greater of one of two new taxes.</p> <p>(1) One tax would be a tax on the gross value at the point of production of the oil at a rate of 10% when oil is less than \$50 per-barrel. This tax would increase to a maximum of 15% when oil is \$70 per-barrel or higher. No deductions could take the tax below the 10% to 15% floor.</p> <p>(2) The other tax, termed an “additional tax,” would be based on a calculation of a production tax value for the oil that would allow lease expenditure and transportation cost deductions. This tax on production tax value would be calculated based on the difference between the production tax value of the oil and \$50. The difference between the two would be multiplied by the volume of oil, and then that amount would be multiplied by 15%. The existing per-taxable-barrel credit would not apply. The act uses the term “additional tax” but it does not specify what the new tax is in addition to.</p> <p>The tax would be calculated for each field, unit, or nonunitized reservoir on a monthly basis. Taxes are currently calculated on an annual basis, with monthly estimated payments. Since these new taxes would only apply to certain areas, a taxpayer would still have to submit annual taxes for the areas where the new taxes do not apply. The act would also make all filings and supporting information relating to the calculation and payment of the new taxes “a matter of public record.” The act does not specify the process for disclosure of public records.</p> <p>Should this initiative become law?</p> <p style="text-align: center;"><input type="radio"/> YES <input type="radio"/> NO</p>	

Continue Voting on Next Side



STATE OF ALASKA
OFFICE OF THE LIEUTENANT GOVERNOR
ANCHORAGE

CERTIFICATE

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, do hereby certify that in accordance with the provisions of AS 15.15.450, a General Election was held on the 3rd day of November, 2020, in the State of Alaska pursuant to AS 15.25.020 and the following are the certified results for

Ballot Measure No. 2:

BALLOT MEASURE

BALLOT MEASURE NO. 2 – 19AKBE

VOTES CAST

Yes	No
174,032	170,251

An Act Replacing the Political Party Primary with an Open Primary System and Ranked-Choice General Election, and Requiring Additional Campaign Finance Disclosures

In Testimony Whereof, I have hereunto set my hand and affixed hereto the Seal of the State of Alaska, at Anchorage, this 30th day of November, A.D. 2020.



Kevin Meyer
Kevin Meyer, Lieutenant Governor
State of Alaska

GROUP REGISTRATION FORM

AMENDED

COMPLETED

Submission Date: **01/08/2021**
 Filer First Name: **Anatoly**
 Filer Middle Name (Optional): **Iliya**
 Filer Last Name: **Zyatitsky**
 Filer's Title with Group: **Chair**

GROUP INFORMATION

Previously Registered: **No**
 Election Year: **2021**
 Group Name: **Building Alaska**
 Abbreviation:
 Purpose: **To influence elections and promote candidates for office who will help to build and grow Alaska.**
 Group Type: **Independent Expenditure**
 Group Mailing Address: **PO Box 230196**
 City, State Zip: **Anchorage, Alaska 99523-0196**
 Additional Email Addresses to Notify: **sstone@hwb-law.com;zyat@msn.com**

CHAIR

Name: **Anatoly Zyatitsky**
 Address: **PO Box 230196**
 City, State Zip: **Anchorage, Alaska 99523**
 Phone: **907-301-9964**
 E-mail: **zyat@msn.com**
 Fax (Optional): **Did Not Report**

TREASURER

Name: **Anatoly Zyatitsky**
 Address: **PO Box 230196**
 City, State Zip: **Anchorage, Alaska 99523**
 Phone: **907-301-9964**
 E-mail: **zyat@msn.com**
 Fax (Optional): **Did Not Report**

DEPUTY TREASURERS / CO-CHAIRS

Name	Address	Title
Mike Baker	PO Box 230196 Anchorage, Alaska 99523	Deputy Treasurer
Nagaraj Kunda	PO Box 230196 Anchorage, Alaska 99523	Deputy Treasurer

TYPE OF GROUP

INDEPENDENT EXPENDITURE GROUP

CAMPAIGN PLANS

Election Type	Election	Municipality
Anchorage Municipal	2021 - Anchorage Municipal Election	Anchorage, City and Borough

BANK ACCOUNT / CAMPAIGN DEPOSITORY

Name of Bank: **KeyBank**

Bank Address: **101 W. Benson Blvd.**

City, State Zip: **Anchorage, Alaska 99503**

GROUP REGISTRATION FORM

AMENDED

COMPLETED

Submission Date: **08/27/2020**
 Filer First Name: **KELLY**
 Filer Middle Name (Optional):
 Filer Last Name: **GOODE**
 Filer's Title with Group: **Treasurer**

GROUP INFORMATION

Previously Registered: **No**
 Election Year: **2020**
 Group Name: **Defend Alaska Elections**
 Abbreviation:
 Purpose: **Defend Alaska's proven and fair election process. Oppose Ballot Measure 2**
 Group Type: **Ballot Proposition**
 Group Mailing Address: **PO Box 91518**
 City, State Zip: **Anchorage, Alaska 99509**
 Additional Email Addresses to Notify: **kcgoode35@gmail.com**

CHAIR

Name: **John Sturgeon**
 Address: **4450 Shoshoni Avenue**
 City, State Zip: **Anchorage, Alaska 99516**
 Phone: **9073452299**
 E-mail: **frontiertradellc@aol.com**
 Fax (Optional): **Did Not Report**

TREASURER

Name: **Kelly Goode**
 Address: **PO Box 91518**
 City, State Zip: **Anchorage, Alaska 99509**
 Phone: **9072440002**
 E-mail: **kcgoode35@gmail.com**
 Fax (Optional): **Did Not Report**

DEPUTY TREASURERS / CO-CHAIRS

Name	Address	Title
No Deputy Treasurers / Co-chairs / Nothing to Report		

TYPE OF GROUP

BALLOT PROPOSITION GROUP

Single Issue Group: **Yes**
 Position: **Oppose**
 Title: **Ballot Measure 2**
 Subject: **Alaska Election Laws**

CAMPAIGN PLANS

Election Type	Election	Municipality
State General	2020 - State General Election	

BANK ACCOUNT / CAMPAIGN DEPOSITORY

Name of Bank: **NorthRim Bank**
Bank Address: **3111 C Street**
City, State Zip: **Anchorage, Alaska 99503**

BEFORE THE ALASKA PUBLIC OFFICES COMMISSION

YES ON 2 FOR BETTER ELECTIONS,)
)
 Complainant,)
)
 v.) APOC Case No. **20-06-CD**
)
 DEFEND ALASKA ELECTIONS – VOTE)
 NO ON 2,)
)
 Respondent.)
 _____)

EMERGENCY ORDER

Yes on 2 for Better Elections filed a complaint against Defend Alaska Elections – Vote No on 2 (DAE), alleging in part that DAE has not accurately identified its top three contributors on various advertisements. DAE is campaigning to defeat Ballot Measure 2, the Better Elections Initiative, in the statewide general election on November 3. The Commission granted expedited consideration of the top contributor issue at Yes on 2’s request.¹ After an expedited hearing, the Commission concludes that DAE’s radio ads identifying John Sturgeon, Mark Begich, and Sean Parnell as DAE’s top three contributors violate AS 15.13.090(a)(2)(C) because these individuals were no longer the top three contributors when the radio ads first aired. The Commission orders DAE to correct the top contributor disclosure on the ads as soon as possible and in no event later than three business days after the issuance of this order, so that the disclosures accurately

¹ Order Granting Expedited Consideration (Oct. 6, 2020).

identify the top contributors as of DAE's September 17 independent expenditure report.² Alternatively, DAE may stop airing the ad with the inaccurate top contributor disclosure.

Alaska Statute 15.13.090(a)(2)(C) requires DAE to identify on its communications its "three largest contributors under AS 15.13.040(e)(5), if any, during the 12-month period before the date of the communication." A "communication" is statutorily defined, in relevant part, as "an announcement or advertisement *disseminated* through print or broadcast media, including radio, television, cable, and satellite, the Internet, or through a mass mailing."³ To disseminate means "to spread (something, especially information) widely."⁴

The parties dispute when the "date of the communication" occurs for radio advertisements.⁵ DAE argues that it must identify its top three contributors as disclosed in campaign reports before the date the radio ads were produced and placed, and that it does not need to change already produced ads if they continue to air after a contribution in a later filed report results in displacing one or more of the previous top three contributors.

² Defend Alaska Elections – No on 2's Independent Expenditure Report, <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=4598&ViewType=IE> (filed Sept. 17, 2020). The Commission takes judicial notice of this report.

³ AS 15.13.400(3) (emphasis added).

⁴ Disseminate, Lexico.com, <https://www.lexico.com/en/definition/disseminate> (last visited Oct. 7, 2020). See AS 01.10.040 (construing statutory words "according to their common and approved usage," if they have not acquired a technical meaning through statutory definition or otherwise).

⁵ For the purposes of this order, the Commission focuses solely on the testimony and evidence addressing radio advertisements because, as explained later, the Commission concludes that expedited consideration of the other types of ads at issue in this complaint is not warranted.

Yes on 2 views the phrase “date of communication” as requiring DAE to expeditiously change the top three contributor disclosure on radio ads still airing whenever a newly filed disclosure report shows that one or more of the top three contributors has changed.

The Commission held an expedited hearing on October 7 to consider this issue. Attorney Sam Gottstein represented Yes on 2, and attorneys Matt Singer and Lee Baxter represented DAE. Three witnesses—both groups’ campaign managers and a Commission staff member—testified. Yes on 2’s campaign manager, Shea Siegert, testified that he changes the top-three identifier in radio ads that are already airing if Yes on 2’s top contributors change. He explained that changing the identification on radio ads could easily happen overnight and be done cheaply: he could splice a new disclosure on a pre-existing radio ad using an application on his computer or phone and send the revised ad to radio stations in no more than thirty minutes.

DAE’s campaign manager, Brett Huber, testified that DAE had not adjusted the contributor disclosure on its radio ads because the disclosure was accurate based on the date the ads were produced and placed. He testified that DAE correctly disclosed in its radio ads that Sturgeon, Begich, and Parnell were its top three contributors consistent with its September 7 report (as amended).⁶ Mr. Huber explained that, although the Alaska Republican Party, the Republican State Leadership Committee, and Americans For

⁶ Defend Alaska Elections – No on 2’s Independent Expenditure Report, <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=4663&ViewType=IE> (filed Sept. 7, 2020, as amended Oct. 3, 2020). The Commission takes judicial notice of this report.

Prosperity became DAE's top contributors, their contributions were not reported until after the radio ads were both produced and placed.⁷ Mr. Huber testified that he sent proposed radio copy and agreed to have Art Hackney of Hackney & Hackney produce the ads on September 14.⁸ Three days later—on September 17—production of the ads was complete, according to Mr. Huber, and Mr. Hackney billed DAE \$3,228 that same day.⁹ Mr. Huber testified that his agreement with a media buyer, Hellenthal and Associates, was final on September 17. An invoice reflects that DAE owed \$254,381 to Hellenthal and Associates for statewide radio ads that would run from September 23 to election day (November 3).¹⁰ Mr. Huber testified that after September 17, the agreements had not been modified, he did nothing further, and he expected the media buyer to handle the ad placement. Mr. Huber testified that DAE's September 17 independent expenditure report (as amended) was accurate; the report stated that DAE paid Hackney & Hackney on September 17 and incurred the debt for Hellenthal and Associates that same day.¹¹

Tom Lucas, the campaign disclosure coordinator for the Commission, testified that he discussed the contributor disclosure with Mr. Huber. He testified that the crucial event

⁷ Defend Alaska Elections – No on 2's Independent Expenditure Report, <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=4598&ViewType=IE> (filed Sept. 17, 2020).

⁸ See also Exhibit 1 (emails).

⁹ Exhibit 2 (emails).

¹⁰ Exhibit 3 (invoice).

¹¹ Defend Alaska Elections – No on 2's Independent Expenditure Report, <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=4634&ViewType=IE> (filed Sept. 17, 2020, as amended Sept. 27, 2020). The Commission takes judicial notice of this report.

was dissemination in his view: at the time of creation and dissemination, the group should look back over twelve months to determine who the top contributors were. He also explained that in the context of bulk ad buys, he had advised that the dissemination occurs on the date the ads were placed as long as the ads are on a set schedule, and there are no later changes to the schedule or to the substantive components of the ad itself.

The Commission decides that the top three contributors are those who contributed the most as reported on campaign disclosure reports during the 12-month period before the radio ads first aired. Alaska Statute 15.13.090(a)(2)(C) requires identification of the three largest contributors “under AS 15.3.040(e)(5), if any, during the 12-month period before the date of communication.” Because AS 15.30.040(e)(5) specifies what a *report* must contain to fully identify the source of a contribution, the Commission decides that the date a contribution was timely reported, rather than the date the contribution was received, controls for the purposes of determining when the 12-month look-back period ends. The applicable report that ends the 12-month period for a particular communication is the report timely filed closest to the “date of communication.”¹² And the “date of the communication” for a radio ad is the date that the ad will first air because, by statutory definition, a communication occurs when “disseminated.”¹³ The first date of airing a radio ad is when the information is first spread widely.¹⁴

¹² AS 15.13.090(a)(2)(C).

¹³ AS 15.13.400(3).

¹⁴ Disseminate, Lexico.com, <https://www.lexico.com/en/definition/disseminate> (last visited Oct. 7, 2020). See AS 01.10.040 (construing statutory words “according to their

This interpretation best conforms to the statutory language while not overly burdening or restraining the communications of campaigns. A group does not need to update its top three contributor disclosure on an already running radio ad every time the group receives a contribution that displaces a top contributor, but the group must ensure the disclosure is accurate on the date the ad first airs by looking at the contributions reported on its most recent timely filed report and reports filed in the previous 12 months. If a radio ad has been recorded or produced, but not yet disseminated, and the identification of the top three contributors in the ad is no longer accurate, the group must update the ad accordingly.

This interpretation also provides more accurate information to voters than DAE's or Mr. Lucas's suggestion. A top three disclosure may become inaccurate over time if the same ads continue to run for a long time, but the Commission's interpretation at least prevents campaigns from spreading inaccurate information to voters by using a top three disclosure that is already inaccurate—perhaps wildly, as was the case here—by the time the voters first hear the radio ads.

The Commission finds that DAE's most recent timely filed report before the radio ads first aired is the September 17 report. The radio ads could not have aired before September 17. Mr. Huber testified that he did not finalize the agreement with the media

common and approved usage," if they have not acquired a technical meaning through statutory definition or otherwise).

buyer to place the ads until September 17.¹⁵ Mr. Huber indicated that it was advisable for campaigns to lock in radio ad buys and placements early in a campaign to get the best rates and placements for ads that will actually air closer to election day. But in this case, the invoice reflects that the intended first air date was not until September 23—six days after the disclosure report was filed, thus making the ad incorrect at the time of even its *initial* airing.¹⁶

The Commission finds that DAE’s radio ads violate AS 15.13.090(a)(2)(C) because they do not accurately identify the top three contributors on DAE’s September 17 report. The contributions disclosed in this report displaced Sturgeon, Begich, and Parnell as the top three contributors; the new top three contributors were the Alaska Republican Party, the Republican State Leadership Committee, and either Americans For Prosperity or Northern Holding, Inc.¹⁷

¹⁵ See also Defend Alaska Elections – No on 2’s Independent Expenditure Report, <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=4598&ViewType=IE> (Sept. 17, 2020) (reporting that debt to media buyer was incurred on Sept. 17).

¹⁶ Exhibit 3.

¹⁷ Compare Defend Alaska Elections – No on 2’s Independent Expenditure Report, <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=4663&ViewType=IE> (filed Sept. 7, 2020, as amended Oct. 3, 2020) with Defend Alaska Elections – No on 2’s Independent Expenditure Report, <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=4598&ViewType=IE> (Sept. 17, 2020). The Sept. 17 report discloses that Americans For Prosperity and Northern Holdings, Inc., both contributed \$45,000 and so were tied. DAE is not required to identify more than the top three contributors and could choose which of these two contributors to identify under AS 15.13.090(e).

The Commission concludes that this violation must be remedied before the election because the violation could materially affect the outcome of the election,¹⁸ particularly because DAE intends to run the ads until election day, and absentee ballots have already been mailed. The Commission finds credible Mr. Siegert's estimate of how quickly and easily the top-contributor identifier on radio ads may be altered. In addition, Mr. Huber testified that the ads in their entirety took only three days to produce once he provided the radio copy to Mr. Hackney, and only the last few seconds of the ad must be replaced. Under AS 15.13.380(d), the Commission consequently orders DAE to correct the top three contributor disclosure on the radio ads as soon as possible and in no event later than three business days after the issuance of this order, so that the disclosure accurately identifies the top contributors as of DAE's September 17 report. Alternatively, DAE may stop airing the ads with the inaccurate top contributor disclosure.

Under AS 15.13.380(d), the Commission remands to staff to fully investigate and consider on a regular basis whether, and how much, of a penalty should be assessed for this violation. The Commission also remands to staff for a full investigation and consideration on a regular basis the issue of whether DAE's top three contributors were properly disclosed in DAE's communications on two political blogs, Facebook, and its website.¹⁹ The Commission concludes that expedited consideration of these

¹⁸ See AS 15.13.380(c) (factors for granting expedited consideration).

¹⁹ The Commission previously referred additional allegations in Yes on 2's complaint to staff for investigation and consideration on a regular basis in its Order Granting Expedited Consideration (Oct. 6, 2020).

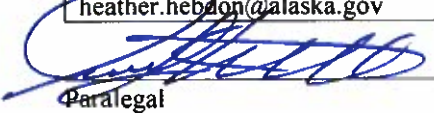
communications is not warranted because an inaccurate top-contributor disclosure on the non-radio ads, while a serious violation if it occurred, is less likely to materially affect the election than an inaccurate top-contributor disclosure announced in a radio ad.

This is a not a final Commission order for the purposes of an appeal to superior court because the Commission has not yet determined a penalty amount, if any, for the violation and has not decided all the issues raised in Yes on 2's complaint.

Dated: October 8, 2020.

BY ORDER OF THE ALASKA PUBLIC OFFICES COMMISSION²⁰

<p>Certificate of Service: I hereby certify that on this date, I served, by certified mail and email a true and correct copy of the foregoing in this proceeding on the following:</p>	
<p>Samuel Gottstein Holmes Weddle & Barcott 701 W. 8th Avenue, Suite 700 Anchorage, AK 99501 sgottstein@hwb-law.com</p> <p>and by email to: Heather Hebdon Executive Director Public Offices Commission heather.hebdon@alaska.gov</p>	<p>Matthew Singer Lee Baxter Schwabe Williamson & Wyatt, PC 420 L Street, Suite 400 Anchorage, AK 99501 msinger@schawbe.com lbaxter@schawbe.com</p>

 10-8-20
Paralegal Date

²⁰ Commissioners Anne Helzer, Richard Stillie, Suzanne Hancock, Dan LaSota, and Van Lawrence participated in this decision. The decision was made on a 4-1 vote.



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Administration

ALASKA PUBLIC OFFICES COMMISSION

2221 E. Northern Lights Blvd., Rm. 128
Anchorage, AK 99508-4149
Main: 907.276.4176
Fax: 907.276.7018
www.doa.alaska.gov/apoc

May 20, 2021

Via Certified Mail and Email

Building Alaska
Attn: Stacey Stone, Holmes Weddle & Barcott, P.C.
701 W. 8th Avenue, Suite 700
Anchorage, Alaska 99501
sstone@hwb-law.com

Re: Commission Meeting Notice

Dear Ms. Stone:

At its upcoming June meeting, the Commission will consider the matter of your advisory opinion request in AO 21-02-CD, *Building Alaska*.

I have attached Staff's Advisory Opinion for your review.

You have a right to participate at the meeting either in person, by telephone (1-650-479-3207, Access Code 177 615 2876#, Meeting Password 32889562#), or via Webex.¹ Please notify our office if you intend to participate. The matter is currently scheduled to be heard at **1:15 p.m. on Wednesday, June 9, 2021**. The meeting will take place at the Anchorage office of the Alaska Public Offices Commission, located at 2221 E. Northern Lights Boulevard, Room 128.

If you do not participate in the meeting, staff will send you a letter and a final order notifying you of the Commission's decision.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

Thomas R. Lucas

Thomas R. Lucas
Campaign Disclosure Coordinator

Encl: Advisory Opinion

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:

Building Alaska Attn: Stacey Stone, Holmes Weddle & Barcott, P.C. 701 W. 8th Avenue, Suite 700 Anchorage, Alaska 99501 sstone@hwb-law.com	<input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> Certified Mail
---	---

Charles Starnment

Law Office Assistant

05/20/2021

Date

9171-9690-0935-0252-3654-42

¹ If you choose to participate via Webex, please contact our offices so that we may send you a meeting invitation.