

BEFORE THE ALASKA PUBLIC OFFICES COMMISSION

YES ON 2 FOR BETTER ELECTIONS,

Complainant,

v.

ALASKA POLICY FORUM AND
PROTECT MY BALLOT,

Respondents.

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APOC Case No. **20-05-CD**

FINAL ORDER

Yes on 2 for Better Elections alleged that Alaska Policy Forum and Protect My Ballot made expenditures opposing Ballot Measure 2 without registering and reporting the expenditures and identifying who paid for the communications. Ballot Measure 2, which the voters approved in the November 2020 election, provides for ranked-choice voting in the state's elections, among other changes to election and campaign laws. The respondents argued their activities opposing ranked-choice voting in general were not directed at Ballot Measure 2, and so did not trigger the registration, reporting, and paid-for-by requirements. After an investigation, the Alaska Public Offices Commission staff agreed that AS 15.13 did not apply to Protect My Ballot's activities but found that Alaska Policy Forum engaged in election-related communications that required it to comply with AS 15.13. After a hearing on June 10, 2021, the Commission adopts staff's conclusions on the merits for both respondents but does not impose a penalty for Alaska Policy Forum's violations.

I. The Commission concludes that Alaska Policy Forum’s communications opposed Ballot Measure 2 and so triggered requirements to register, report expenditures, and provide paid-for-by identifiers on the communications.

The Commission concludes that Alaska Policy Forum’s communications on ranked-choice voting were expenditures and communications that triggered requirements to register before making expenditures, report expenditures, and identify who paid for the communications.¹ Alaska Policy Forum, which had no prior history of communicating about ranked-choice voting or other election methods, opposed ranked-choice voting on its website with press releases and an article, a republished opinion piece, and a video leading up to the election on the ballot measure. Although the materials did not mention the ballot measure by name, all of the communications were decidedly against the ranked-choice voting that Ballot Measure 2 would establish and so they were “susceptible of no other reasonable interpretation but as an exhortation to vote” against the measure.² Thus, the AS 15.13 requirements applied to Alaska Policy Forum’s communications.

The Commission uses the definitions of express and issues communications to inform its analysis of whether Alaska Policy Forum’s activities fall within the scope of election-related communications and expenditures such that AS 15.13 requirements apply. Covered expenditures include express, but not issues, communications.³ Alaska Policy Forum argues that the plain statutory language defining “express communication”

¹ AS 15.13.050(a), AS 15.13.040(d), AS 15.13.090, AS 15.13.140(b).

² AS 15.13.400(7) (eff. 2014).

³ AS 15.13.400(6)(C) (eff. 2014).

and “issues communication” refers exclusively to candidate elections, not ballot measures.⁴ This is true. But AS 15.13 may still apply to Alaska Policy Forum’s activities because the definitions of “expenditure” and “communication” are not so limited. In addition to express communication, covered expenditures include those “incurred or made for the purpose of . . . influencing the outcome of a *ballot proposition or question*,”⁵ covered communications “directly or indirectly identify a candidate or *proposition*,”⁶ and “independent expenditures for or against a ballot proposition or question shall be reported” in accordance with AS 15.13 requirements.⁷ To decide whether Alaska Policy Forum’s activities fit within election-related expenditures and communications to which AS 15.13 applies, the definitions of express and issues communications offer a useful framework even though they do not strictly apply.

Using this framework, the Commission concludes that Alaska Policy Forum’s communications were made to influence the vote on the ballot measure and so were covered expenditures and communications.⁸ An “express communication,” which is a covered expenditure,⁹ is one that “when read as a whole and with limited reference to

⁴ See AS 15.13.400(7), (12) (eff. 2014).

⁵ AS 15.13.400(6)(A)(iv) (eff. 2014) (emphasis added).

⁶ AS 15.13.400(3) (eff. 2014) (emphasis added).

⁷ AS 15.13.140(b)(1).

⁸ The Commission does not address Alaska Policy Forum’s constitutional arguments because “[a]dministrative agencies do not have jurisdiction to decide issues of constitutional law.” *Alaska Pub. Interest Research Grp. v. State*, 167 P.3d 27, 36 (Alaska 2007).

⁹ AS 15.13.400(6)(C) (eff. 2014).

outside events, is susceptible of no other reasonable interpretation but as an exhortation to vote for or against” a ballot measure.¹⁰ An “issue communication,” which is excluded as a covered expenditure,¹¹ addresses an issue of political importance and directly or indirectly identifies a ballot measure without supporting or opposing it.¹² In previous advisory opinions addressing whether an entity’s communications disseminated near an election with a ballot measure on the same subject require compliance with AS 15.13, the Commission has considered the entity’s history of communicating about the topic and the substance of the communications at issue, including the extent to which the communications were neutral and whether they identified the ballot measure.¹³

As staff’s investigation report describes, Alaska Policy Forum had no longstanding history of communicating about elections in general or ranked-choice voting in particular, and its communications were not neutral. Alaska Policy Forum’s communications about ranked-choice voting began when the elections initiative was proposed. In November 2019, petition booklets began circulating to gather enough signatures to put the initiative before the voters. Over the next few months, Alaska Policy

¹⁰ AS 15.13.400(7) (eff. 2014).

¹¹ AS 15.13.400(6)(C) (eff. 2014).

¹² AS 15.13.400(12) (eff. 2014).

¹³ *Bags for Change*, AO 19-04-CD (approved Sept. 18, 2019) (available at <http://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=21018>); *Renewable Renewable Resources Foundation*, AO 13-04 CD (approved June 6, 2013) (available at <http://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=8475>); *Resources Coalition*, AO 08-02-CD (approved June 11, 2008) (available at <http://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=4878>).

Forum founded Protect My Ballot, a national coalition against ranked-choice voting, and republished on its website a Maine coalition member's opinion piece directed toward Alaska's signature-gathering for the initiative. The piece, "Ranked Choice Voting Fails to Deliver on its Promises," ended with a warning: "Like Alaska, we in Maine regularly deal with an onslaught of ballot initiatives because we live in a cheap media market. The system may soon be coming to your neck of the woods. Don't be surprised when it produces the opposite result of what you were promised."

A month or so after the opinion post, the lieutenant governor reviewed the gathered signatures and accepted the elections initiative for placement on the ballot in the November 2020 election.¹⁴ In a July press release, Alaska Policy Forum announced the launch of Protect My Ballot, touting that the national campaign "exposes flaws in ranked choice voting." Alaska Policy Forum's chief executive officer warned in a link from the press release, "As Alaskans take to the polls in November, history should be a warning for what ranked choice voting would lead to." That same month, Alaska Policy Forum posted a Protect My Ballot video disparaging ranked-choice voting.

Finally, in October—shortly before early voting began for the November election—Alaska Policy Forum published a report that called ranked-choice voting a "failed experiment" and a press release characterizing the report as revealing the "alarming ramifications" of ranked-choice voting. Alaska Policy Forum and another

¹⁴ March 9, 2020, letter from Lt. Gov. Kevin Meyer re: 19AKBE Alaska's Better Elections Initiative, (available at <https://www.elections.alaska.gov/petitions/19AKBE/19AKBE-LetterToSponsor.pdf>).

entity in the Protect My Ballot coalition co-wrote the report. A few days later, Alaska Policy Forum published an article, “Ranked-Choice Voting Disenfranchises Voters.” The article described that the “trend” of ranked-choice voting “has made it all the way to Alaska,” criticized ranked-choice voting, and warned that the vote-counting method disenfranchises voters when “[a]ll Alaskans deserve to have their votes counted.”

Even though Ballot Measure 2 was never mentioned by name, there is no other reasonable interpretation of these communications but as an exhortation to vote against implementing ranked-choice voting, a key component of the initiative. Thus, Alaska Policy Forum’s communications at least as of its July press release were election-related expenditures and communications requiring compliance with AS 15.13. Alaska Policy Forum violated AS 15.13.050(a) by not registering before making expenditures opposing a ballot measure, AS 15.13.040(d) and AS 15.13.140(b) by not filing reports on its expenditures, and AS 15.13.090 by not including a paid-for-by identifier on its communications.

The Commission waives imposition of civil penalties for these violations. Staff calculated the maximum penalties, which accrued at a rate of \$50 per day for each day the violations continued,¹⁵ but recommended a reduction. Staff’s recommended reduction was based on Alaska Policy Forum’s inexperienced filer status¹⁶ and because the

¹⁵ AS 15.13.390(a) (providing that a civil penalty for these violations is “not more than \$50 a day for each day the violation continues”).

¹⁶ 2 AAC 50.865(a)(1)(B).

maximum penalties were significantly out of proportion to the degree of public harm.¹⁷

Alaska Policy Forum reported spending \$643.20 on preparing ranked-choice voting materials during the period that penalties were accruing for the violations.¹⁸ Staff's recommended reduced penalty of \$8,065 still "exceeds the value of the transactions that were not reported"—\$643.20 for the unreported expenditures and no monetary value for entity information that should have been provided on the registration and paid-for-by identifiers.¹⁹ Thus, the Commission declines to impose the recommended penalty and waives the penalty altogether because it is "significantly out of proportion to the degree of harm to the public for not having the information."²⁰

II. The Commission decides Protect My Ballot was not engaged in activities requiring it to comply with campaign disclosure laws.

The Commission concludes that Protect My Ballot's website against ranked-choice voting is susceptible of other reasonable interpretations than as an exhortation to vote against Ballot Measure 2 for the reasons explained in staff's report.²¹ In particular, Protect My Ballot had partners in other states with no pending ballot initiatives addressing ranked-choice voting and with different agendas, and the vast majority of the

¹⁷ 2 AAC 50.865(b)(5).

¹⁸ Staff exhibit 3 at pgs. 10-11. Staff ended the accrual of the daily penalties with the filing of the complaint.

¹⁹ 2 AAC 50.865(b)(5). The entity information was available on Alaska Policy Forum's website.

²⁰ 2 AAC 50.865(b)(5).

²¹ See AS 15.13.400(7) (eff. 2014) (defining an "express communication").

materials on its website opposed ranked-choice voting as a general matter. Only two pieces mentioned Ballot Measure 2 and voting—links to opinion pieces published elsewhere. Thus, the Commission dismisses the complaint against Protect My Ballot.

III. The Commission dismisses the allegation against Alaska Policy Forum that it failed to comply with the laws regulating lobbying.

The Commission adopts staff’s recommendation and dismisses the allegation that Alaska Policy Forum violated the lobbying laws in AS 24.45. A “lobbyist” is a paid employee or contractor who communicates with public officials “for the purpose of influencing legislation or administrative action for more than 10 hours in any 30-day period in one calendar year” or represents oneself as a lobbyist.²² Alaska Policy Forum explained that its employees’ lobbying activities did not meet the threshold number of hours and none of its employees represented themselves as lobbyists. Staff uncovered no evidence to the contrary. A tax return showing that Alaska Policy Forum spent \$4,027 on lobbying offers no information on the number of hours spent lobbying in any 30-day period in one calendar year.

IV. CONCLUSION

The Commission denies Alaska Policy Forum’s motion to dismiss the election-related allegations. The Commission concludes that Alaska Policy Forum’s communications were intended to influence the election on Ballot Measure 2 and necessitated that it comply with the requirements to register before making

²² AS 24.45.171(11).

expenditures,²³ report independent expenditures,²⁴ and identify who paid for communications.²⁵ The Commission does not impose a penalty for Alaska Policy Forum's violations of these requirements. The Commission agrees with staff that no evidence supported that AS 24.45 applies to any lobbying activities of Alaska Policy Forum and dismisses that allegation.

The Commission concludes that Protect My Ballot's website opposing ranked-choice voting did not trigger the registration, reporting, and paid-for-by identifier requirements, and dismisses the complaint against it.

This is a final Commission order. It may be appealed to the superior court within 30 days from the date of this order.²⁶ A request for the Commission to reconsider this order must be filed within 15 days from the date this order is delivered or mailed.²⁷

Dated: June 21, 2021.

BY ORDER OF THE ALASKA PUBLIC OFFICES COMMISSION²⁸

²³ AS 15.13.050(a).

²⁴ AS 15.13.040(d), AS 15.13.140(b).

²⁵ AS 15.13.090.

²⁶ AS 15.13.380(g), AS 44.62.560, Alaska R. App. P. 602.

²⁷ 2 AAC 50.891(g).

²⁸ Commissioners Suzanne Hancock, Dan LaSota, and Van Lawrence voted to approve this order. Commissioners Anne Helzer and Richard Stillie dissented.

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:

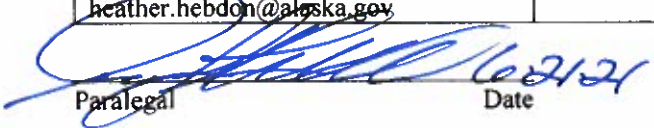
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