

# YES ON 2 FOR BETTER ELECTIONS

V.

Respondents.

)
)
)
)
)
)
)
)
)
)
)

APOC Case No. 20-05-CD

The original Staff Report issued on October 15, 2020, recommended the Alaska Public Offices Commission (Commission) find Alaska Policy Forum (APF) violated multiple provisions of AS 15.13. Specifically, the report recommended finding APF violated:

- On May 28, 2021, APF filed a motion to dismiss on the ground that none of the communications identified by staff meet the statutory requirement that “express

communications” relate to candidates. Further, APF argues there is no plausible interpretation of a YouTube video posted by APF on July 31, 2020, under which it would directly or indirectly identify a candidate or proposition, such that APF cannot have violated the identifier requirement as to that message. Finally, APF argues that finding the identified messages meet the definition of express communication would require reading Alaska law in an unconstitutional fashion, thus warranting dismissal of this matter.

For the following reasons, APF’s motion to dismiss should be denied.

**I. APF violated 15.13.050(a) for failing to register with the Commission before making an expenditure in opposition to a ballot proposition.**

“Before making an expenditure . . . in support of or in opposition to a ballot proposition . . . each person other than an individual shall register, on forms provided by the commission, with the commission.”<sup>1</sup> An expenditure is defined as “a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of . . . influencing the outcome of a ballot proposition or question” and “includes an express communication and an electioneering communication, but does not include an issues communication.”<sup>2</sup>

As a preliminary matter, after review and further analysis, staff agrees with APF that the definition of express communication does not encompass

---

<sup>1</sup> AS 15.13.050(a).

<sup>2</sup> AS 15.13.400(7).

communications for or against a ballot proposition. However, express and electioneering communications are not the only types of communications that qualify as expenditures.

The definition of expenditure is not written in a way that indicates communications are limited strictly to express and electioneering communications. Instead, the definition contemplates that all communications are expenditures, including express and electioneering communications, but excluding issues communications. If the legislature intended for express and electioneering communications to be the only types of communications included in the definition of expenditure, the statute would clearly set out that *only* express and electioneering communications are included as expenditures. Yet, the statute does not include such limiting language in relation to communications and should not be read that way.

Moreover, AS 15.13.010(b) provides that “[e]xcept as otherwise provided, this chapter applies to contributions, expenditures, and *communications made for the purpose of influencing the outcome of a ballot proposition or question* as well as those made to influence the nomination or election of a candidate.”<sup>3</sup> Therefore, communications made by APF in opposition to ranked-choice voting are communications made for the purpose of influencing the outcome of Ballot Measure 2, expenditures which before making required APF’s registration with the Commission.

---

<sup>3</sup> Emphasis added.

As provided in the original Staff Report, APF has not registered as an entity with the Commission. Yet, on July 31, 2020, APF posted to its website the YouTube video titled “*What is Ranked Choice Voting*” from Protect My Ballot’s YouTube channel. This video made explicit claims in opposition to ranked choice voting, calling it “a confusing system that could force voters to support a candidate they don’t want. Instead of giving you more choice, this system could take your choice away.” Further, on October 8, 2020, APF posted the report *The Failed Experiment of Ranked Choice Voting* and the press release *New Study Exposes Alarming Ramifications to Ranked Choice Voting* alerting readers to the published report on the issue.

By July 31, 2020, Ballot Measure 2, or 19AKBE Alaska’s Better Elections Initiative, had already been deemed properly filed by Lieutenant Governor Meyer and its sponsors had been provided a ballot title and proposition for review.<sup>4</sup> Ranked-choice voting was indeed an aspect of Ballot Measure 2. Moreover, early voting in Alaska for the November 2020 election, in which Ballot Measure 2 was to be voted on by Alaskans, began on October 19, 2020, just eleven days after APF’s report and press release critical of ranked-choice voting.

When taken as a whole based on the evidence provided, including the timing and context, the YouTube video and publications on APF’s site were communications made for the purpose of influencing the outcome of a ballot proposition, specifically Ballot Measure 2, and as such meet the definition of expenditures. Yet, before making

---

<sup>4</sup> See <https://www.elections.alaska.gov/petitions/19AKBE/19AKBE-LetterToSponsor.pdf> (last visited June 4, 2021).

these expenditures, APF did not register with the Commission. As such, APF violated AS 15.13.050(a) for failing to register with the Commission before making expenditures in in opposition to Ballot Measure 2.

**II. APF violated AS 15.13.040(d) for failing to report independent expenditures.**

“Every person making an independent expenditure shall make a full report of expenditures made and contributions received, upon a form prescribed by the commission, unless exempt from reporting.”<sup>5</sup> An independent expenditure is defined as “an expenditure that is made without the direct or indirect consultation or cooperation with, or at the suggestion or the request of, or with the prior consent of, a candidate, a candidate’s campaign treasurer or deputy campaign treasurer, or another person acting as a principal or agent of the candidate.”<sup>6</sup> And, while the words “ballot proposition” do not appear here, “[a]n independent expenditure for or against a ballot proposition or question shall be reported in accordance with AS 15.13.040”.<sup>7</sup>

As provided above and in the original Staff Report, APF made expenditures in opposition of Ballot Measure 2. However, APF has not made a report of *any* of the expenditures it made in opposition of Ballot Measure 2. As such, APF violated AS 15.13.040(a) for failing to report its expenditures made in opposition to Ballot Measure 2. Further, while not originally charged with violating AS 15.13.140(b)(1),

---

<sup>5</sup> AS 15.13.040(d).  
<sup>6</sup> AS 15.13.400(11).  
<sup>7</sup> AS 15.13.140(b)(1).

the Commission should find that APF also violated AS 15.13.140(b)(1) for the same reasons that APF violated AS 15.13.040(d).

**III. APF violated 15.13.090(a) for failing to identify its communications.**

“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.”<sup>8</sup> A communication is defined as “an announcement or advertisement disseminated through print or broadcast media, including radio, television, cable, and satellite, the Internet, or through a mass mailing, excluding those placed by an individual or nongroup entity and costing \$500 or less and those that do not directly or indirectly identify a candidate or proposition, as that term is defined in AS 15.13.065(c).”<sup>9</sup> APF is not an individual or nongroup entity as those terms are defined under APOC statutes, so the exemption for communications placed by nongroup entities and individuals does not apply to APF. Further, APF’s criticism of ranked-choice voting in its communications can, when taken as a whole, be reasonably interpreted as an indirect identification of a ballot proposition. As such, the identification requirement provided by AS 15.13.090 applies to APF’s communications.

As provided above and in the original Staff Report, APF made communications by posting Protect My Ballot’s video on its YouTube site, by publishing the report *The Failed Experiment of Ranked Choice Voting*, and by announcing its publication of the report with the press release *New Study Exposes Alarming Ramifications to Ranked*

---

<sup>8</sup> AS 15.13.090(a).

<sup>9</sup> AS 15.13.400(3).

*Choice Voting.* None of these communications were accompanied by the paid-for-identifier required by state law. As such, APF violated AS 15.13.090(a) for failing to identify its communications.

#### **IV. Conclusion**

For the foregoing reasons and for the reasons identified in the original Staff Report, APF violated AS 15.13.050(a) for failing to make a full report of expenditures made in opposition to Ballot Measure 2. Furthermore, APF violated AS 15.13.050(a) for failing to register with the Commission before making an expenditure in opposition to Ballot Measure 2. Finally, APF violated AS 15.13.090(a) for failing to identify its communications in opposition to Ballot Measure 2 with the words “paid-for-by” and providing required information in the communication, including, among other requirements, names, addresses, and specific details about the person paying for its communications. As such, APF’s motion to dismiss should be denied.

DATED June 4, 2021.

TREG R. TAYLOR  
ATTORNEY GENERAL

By: /s/Morgan A. Griffin  
Morgan A. Griffin  
Assistant Attorney General  
Alaska Bar No. 1511113

**CERTIFICATE OF SERVICE**

To my knowledge, email service was successful on:

Samuel Gottstein; [sgottstein@hwb-law.com](mailto:sgottstein@hwb-law.com)

Owen Yeates; [oyeates@ifs.org](mailto:oyeates@ifs.org)

Bethany Markum; [info@EPIOnline.org](mailto:info@EPIOnline.org)

Craig Richards; [crichards@alaskaprofessionalservices.com](mailto:crichards@alaskaprofessionalservices.com)

John Thorness; [jbt@cplawak.com](mailto:jbt@cplawak.com)

Dated: 6/4/2021 at 4:15pm

Staff Response To Respondent's Motion To Dismiss (8 pages)

/s/ Ivy Greever

Ivy Greever, Paralegal I

[ivy.greever@alaska.gov](mailto:ivy.greever@alaska.gov)