IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKANS FOR HONEST ELECTIONS, RANKED CHOICE EDUCATION ASSOCIATION, ARTHUR MATHIAS, and WELLSPRING MINISTRIES,	
Appellants/Cross-Appellees,	
v.	Case No. 3AN-24-04508 CI Case No. 3AN-24-04974 CI
ALASKA PUBLIC OFFICES COMMISSION,	APOC Case No. 23-01-CD
Appellee/Cross-Appellee,	
ALASKANS FOR BETTER ELECTIONS,	
Appellee/Cross-Appellant.	

APPEAL FROM THE ALASKA PUBLIC OFFICES COMMISSION

BRIEF OF APPELLANTS, ALASKANS FOR HONEST ELECTIONS, RANKED CHOICE EDUCATION ASSOCIATION, ARTHUR MATHIAS, and WELLSPRING MINISTRIES

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STATUTORY PROVISIONS PRINCIPALLY RELIED UPON

Alaska Statute 15.13.040 provides:

(a) Except as provided in (g) and (l) of this section, each candidate shall make a full report, upon a form prescribed by the commission,
(1) listing
(A) the date and amount of all expenditures made by the candidate;
(B) the total amount of all contributions, including all funds contributed by the candidate;
(C) the name, address, date, and amount contributed by each contributor; and
(D) for contributions in excess of $50 in the aggregate during a calendar year, the principal occupation and employer of the contributor; and
(2) filed in accordance with AS 15.13.110 and certified correct by the candidate or campaign treasurer.
(b) Each group shall make a full report upon a form prescribed by the commission, listing
(1) the name and address of each officer and director;
(2) the aggregate amount of all contributions made to it; and, for all contributions in excess of $100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor; for purposes of this paragraph, "contributor" means the true source of the funds, property, or services being contributed; and
(3) the date and amount of all contributions made by it and all expenditures made, incurred, or authorized by it.
(c) The report required under (b) of this section shall be filed in accordance with AS 15.13.110 and shall be certified as correct by the group's treasurer.
(d) 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.
(e) Each person required to report under (d) of this section shall file a full report in accordance with AS 15.13.110(h) on a form prescribed by the commission. The report must contain
(1) the name, address, principal occupation, and employer of the individual filing the report;
(2) an itemized list of all expenditures made, incurred, or authorized by the person;
(3) the name of the candidate or the title of the ballot proposition or question supported or opposed by each expenditure and whether the expenditure is made to support or oppose the candidate or ballot proposition or question;
(4) the name and address of each officer and director, when applicable;

(5) the aggregate amount of all contributions made to the person, if any, for the purpose of influencing the outcome of an election; for all contributions, the date of the contribution and amount contributed by each contributor; and, for a contributor
(A) who is an individual, the name and address of the contributor and, for contributions in excess of $50 in the aggregate during a calendar year, the name, address, principal occupation, and employer of the contributor; or
(B) that is not an individual, the name and address of the contributor and the name and address of each officer and director of the contributor.
(f) During each year in which an election occurs, all businesses, persons, or groups that furnish any of the following services, facilities, or supplies to a candidate or group shall maintain a record of each transaction: newspapers, radio, television, advertising, advertising agency services, accounting, billboards, printing, secretarial, public opinion polls, or research and professional campaign consultation or management, media production or preparation, or computer services. Records of provision of services, facilities, or supplies shall be available for inspection by the commission.
(g) The provisions of (a) and (l) of this section do not apply to a delegate to a constitutional convention, a judge seeking judicial retention, or a candidate for election to a municipal office under AS 15.13.010, if that delegate, judge, or candidate
(1) indicates, on a form prescribed by the commission, an intent not to raise and not to expend more than $5,000 in seeking election to office, including both the primary and general elections;
(2) accepts contributions totaling not more than $5,000 in seeking election to office, including both the primary and general elections; and
(3) makes expenditures totaling not more than $5,000 in seeking election to office, including both the primary and general elections.
(h) The provisions of (d) of this section do not apply to one or more expenditures made by an individual acting independently of any other person if the expenditures
(1) cumulatively do not exceed $500 during a calendar year; and
(2) are made only for billboards, signs, or printed material concerning a ballot proposition as that term is defined by AS 15.13.065(c).
(i) The permission of the owner of real or personal property to post political signs, including bumper stickers, or to use space for an event or to store campaign-related materials is not considered to be a contribution to a candidate under this chapter unless the owner customarily charges a fee or receives payment for that activity. The fact that the owner customarily charges a fee or receives payment for posting signs that are not political signs is not determinative of whether the owner customarily does so for political signs.
(j) Except as provided in (l) of this section, each nongroup entity shall make a full report in accordance with AS 15.13.110 upon a form prescribed by the commission and certified by the nongroup entity's treasurer, listing
(1) the name and address of each officer and director of the nongroup entity;
(2) the aggregate amount of all contributions made to the nongroup entity for the purpose of influencing the outcome of an election;

(3) for all contributions described in (2) of this subsection, the name, address, date, and amount contributed by each contributor, for all contributions described in (2) of this subsection in excess of $250 in the aggregate during a calendar year, the principal occupation and employer of the contributor, and for all contributions described in (2) of this subsection in excess of $2,000 in the aggregate during a calendar year, the true source of such contributions and all intermediaries, if any, who transferred such funds, and a certification from the treasurer that the report discloses all of the information required by this paragraph; and

(4) the date and amount of all contributions made by the nongroup entity, and, except as provided for certain independent expenditures in AS 15.13.135(a), all expenditures made, incurred, or authorized by the nongroup entity, for the purpose of influencing the outcome of an election; a nongroup entity shall report contributions made to a different nongroup entity for the purpose of influencing the outcome of an election and expenditures made on behalf of a different nongroup entity for the purpose of influencing the outcome of an election as soon as the total contributions and expenditures to that nongroup entity for the purpose of influencing the outcome of an election reach $500 in a year and for all subsequent contributions and expenditures to that nongroup entity in a year whenever the total contributions and expenditures to that nongroup entity for the purpose of influencing the outcome of an election that have not been reported under this paragraph reach $500.

(k) Every individual, person, nongroup entity, or group contributing a total of $500 or more to a group organized for the principal purpose of influencing the outcome of a proposition, and every individual, person, nongroup entity, or group contributing a total of $500 or more to a group organized for the principal purpose of filing an initiative proposal application under AS 15.45.020 or that has filed an initiative proposal application under AS 15.45.020, shall report the contribution or contributions on a form prescribed by the commission not later than 30 days after the contribution that requires the contributor to report under this subsection is made. The report must include the name, address, principal occupation, and employer of the individual filing the report and the amount of the contribution, as well as the total amount of contributions made to that group by that individual, person, nongroup entity, or group during the calendar year.

(l) Notwithstanding (a), (b), and (j) of this section, for any fund-raising activity in which contributions are in amounts or values that do not exceed $50 a person, the candidate, group, or nongroup entity shall report contributions and expenditures and supplying of services under this subsection as follows:

(1) a report under this subsection must

(A) describe the fund-raising activity;

(B) include the number of persons making contributions and the total proceeds from the activity;

(C) report all contributions made for the fund-raising activity that do not exceed $50 a person in amount or value; if a contribution for the fund-raising activity exceeds $50, the contribution shall be reported under (a), (b), and (j) of this section;

(2) for purposes of this subsection,

(A) "contribution" means a cash donation, a purchase such as the purchase of a ticket, the purchase of goods or services offered for sale at a fund-raising activity, or a donation of goods or services for the fund-raising activity;
(B) "fund-raising activity" means an activity, event, or sale of goods undertaken by a candidate, group, or nongroup entity in which contributions are $50 a person or less in amount or value.
(m) Information required under this chapter shall be submitted to the commission electronically, except that the following information may be submitted in clear and legible black typeface or hand-printed in dark ink on paper in a format approved by the commission or on forms provided by the commission:
(1) information submitted by
(A) a candidate for election to a borough or city office of mayor, membership on a borough assembly, city council, or school board, or any state office, who
(i) meets the requirements of (g)(1) - (3) of this section; or
(ii) does not have reasonable access to the technology necessary to file electronically; in this sub-subparagraph, a candidate is considered not to have reasonable access to the technology necessary to file electronically if the candidate does not own a personal computer or does not have broadband Internet access at the candidate's residence; in this sub-subparagraph, "broadband Internet access" means high-speed Internet access that is always on and that is faster than traditional dial-up access; or
(B) a candidate for municipal office for a municipality with a population of less than 15,000; in this subparagraph, "municipal office" means the office of an elected borough or city
(i) mayor; or
(ii) assembly, council, or school board member;
(2) any information if the commission determines that circumstances warrant an exception to the electronic submission requirement.
(n) The commission shall print the forms to be provided under this chapter so that the front and back of each page have the same orientation when the page is rotated on the vertical axis of the page.
(o) Information required by this chapter that is submitted to the commission on paper and not electronically shall be electronically scanned and published on the Internet by the commission, in a format accessible to the general public, within two working days after the commission receives the information.
(p) Notwithstanding the requirement in (a) of this section that a candidate shall make a full report upon a form prescribed by the commission, the commission shall accept information submitted electronically by a candidate if the information is
(1) entered onto a version of a form accessed on the Internet website of the commission; or
(2) in the form of an electronic spreadsheet or data file that contains field names and data types that conform to a standard defined by the commission.
(q) For purposes of (b), (e), and (j) of this section, "contributor" means the true source of the funds, property, or services being contributed.
(r) Every individual, person, nongroup entity, or group that contributes more than $2,000 in the aggregate in a calendar year to an entity that made one or more independent expenditures

in one or more candidate elections in the previous election cycle, that is making one or more independent expenditures in one or more candidate elections in the current election cycle, or that the contributor knows or has reason to know is likely to make independent expenditures in one or more candidate elections in the current election cycle shall report making the contribution or contributions on a form prescribed by the commission not later than 24 hours after the contribution that requires the contributor to report under this subsection is made. The report must include the name, address, principal occupation, and employer of the individual filing the report and the amount of the contribution, as well as the total amount of contributions made to that entity by that individual, person, nongroup entity, or group during the calendar year. For purposes of this subsection, the reporting contributor is required to report and certify the true sources of the contribution, and intermediaries, if any, as defined by AS 15.13.400(18). This contributor is also required to provide the identity of the true source to the recipient of the contribution simultaneously with providing the contribution itself.
(s) For purposes of (e) of this section,
(1) "director" means a member of the board of directors of a corporation or any person performing a similar function with respect to any organization;
(2) "officer" means a president, vice-president, secretary, treasurer, principal financial officer, or comptroller of a corporation, or any person routinely performing functions similar to those of a president, vice-president, secretary, treasurer, principal financial officer, or comptroller with respect to any organization.

Alaska Statute AS 15.13.065(c) provides:

(c) Except for reports required by AS 15.13.040 and 15.13.110 and except for the requirements of AS 15.13.050, 15.13.060, and 15.13.112 - 15.13.114, the provisions of AS 15.13.010 - 15.13.116 do not apply to limit the authority of a person to make contributions to influence the outcome of a ballot proposition. In this subsection, in addition to its meaning in AS 15.80.010, "proposition" includes
(1) an issue placed on a ballot to determine whether
(A) a constitutional convention shall be called;
(B) a debt shall be contracted;
(C) an advisory question shall be approved or rejected; or
(D) a municipality shall be incorporated;
(2) an initiative proposal application filed with the lieutenant governor under AS 15.45.020.

Alaska Statute AS 15.13.074(b) provides:

(b) A person or group may not make a contribution anonymously, using a fictitious name, or using the name of another. Individuals, persons, nongroup entities, or groups subject to AS 15.13.040(r) may not contribute or accept $2,000 or more of dark money as that term is defined in AS 15.13.400(5), and may not make a contribution while acting as an intermediary without disclosing the true source of the contribution as defined in AS 15.13.400(19).

Alaska Statute AS 15.13.110 provides as follows:

(a) Each candidate, group, and nongroup entity shall make a full report in accordance with AS 15.13.040 for the period ending three days before the due date of the report and beginning on the last day covered by the most recent previous report. If the report is a first report, it must cover the period from the beginning of the campaign to the date three days before the due date of the report. If the report is a report due February 15, it must cover the period beginning on the last day covered by the most recent previous report or on the day that the campaign started, whichever is later, and ending on February 1 of that year. The report shall be filed

(1) 30 days before the election; however, this report is not required if the deadline for filing a nominating petition or declaration of candidacy is within 30 days of the election;

(2) one week before the election;

(3) 105 days after a special election; and

(4) February 15 for expenditures made and contributions received that were not reported previously, including, if applicable, all amounts expended from a public office expense term account established under AS 15.13.116 (a)(8) and all amounts expended from a municipal office account under AS 15.13.116 (a)(9), or when expenditures were not made or contributions were not received during the previous year.

(b) Each contribution that exceeds $250 and that is made within nine days of the election shall be reported to the commission by date, amount, and contributor within 24 hours of receipt by the candidate, group, campaign treasurer, or deputy campaign treasurer. Each contribution to a nongroup entity for the purpose of influencing the outcome of an election that exceeds $250 and that is made within nine days of the election shall be reported to the commission by date, amount, and contributor within 24 hours of receipt by the nongroup entity.

(c) All reports required by this chapter shall be filed with the commission's central office and shall be kept open to public inspection. The commission shall keep a report filed on paper under AS 15.13.040 (m) open to public inspection by scanning the report and posting a copy of the scanned image on the commission's Internet website within two working days after the report is filed. The commission shall prepare a summary of each report, which shall be made available to the public at cost upon request. Each summary must use uniform categories of reporting. Summaries for reports filed

(1) electronically shall be made available within 30 days after the report is filed; and

(2) on paper shall be made available within 30 days after each election.

(d)[Repealed, Sec. 35 ch 126 SLA 1994].

(e) A group formed to sponsor a referendum or a recall shall report 30 days after its first filing with the lieutenant governor. Thereafter, each group shall report within 10 days after the end of each calendar quarter on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) of this section.

(f) During the year in which the election is scheduled, each of the following shall file the campaign disclosure reports in the manner and at the times required by this section:

(1) a person who, under the regulations adopted by the commission to implement AS 15.13.100, indicates an intention to become a candidate for elective state executive or legislative office;
(2) a person who campaigns as a write-in candidate for elective state executive or legislative office at the general election; and
(3) a group or nongroup entity that receives contributions or makes expenditures on behalf of or in opposition to a person described in (1) or (2) of this subsection, except as provided for certain independent expenditures by nongroup entities in AS 15.13.135(a).
(g) An initiative committee, person, group, or nongroup entity receiving contributions exceeding $500 or making expenditures exceeding $500 in a calendar year in support of or in opposition to an initiative on the ballot in a statewide election or an initiative proposal application filed with the lieutenant governor under AS 15.45.020 shall file a report within 10 days after the end of each calendar quarter on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) and (b) of this section. If the report is a first report, it must cover the period beginning on the day an initiative proposal application is filed under AS 15.45.020 and ending three days before the due date of the report.
(h) An independent expenditure report required under AS 15.13.040(e) shall be filed with the commission not later than 10 days after an independent expenditure has been made. However, an independent expenditure that exceeds $250 and that is made within nine days of an election shall be reported to the commission not later than 24 hours after the expenditure is made.
(i) During a campaign period, the commission may not change the manner or format in which reports required of a candidate under this chapter must be filed. In this subsection, "campaign period" means the period beginning on the date that a candidate becomes eligible to receive campaign contributions under this chapter and ending on the date that a final report for that same campaign must be filed.
(j) Before the primary election, a candidate seeking nomination by petition under AS 15.25.140 - 15.25.200 for the office of governor, lieutenant governor, state senator, or state representative shall file the reports under (a)(1) and (2) of this section.
(k) Once contributions from an individual, person, nongroup entity, or group to an entity that made one or more independent expenditures in one or more candidate elections in the previous election cycle, that is making one or more independent expenditures in one or more candidate elections in the current election cycle, or that the contributor knows or has reason to know is likely to make independent expenditures in one or more candidate elections in the current election cycle exceed $2,000 in a single year, that entity shall report that contribution, and all subsequent contributions, not later than 24 hours after receipt. For purposes of this subsection, the entity is required to certify and report the true source, and all intermediaries if any, of the contribution as defined by AS 15.13.400(18).

Alaska Statute AS 15.13.390(a)(1)-(3) provides:

(a) A person who

(1) fails to register when required by AS 15.13.050(a) or who fails to file a properly completed and certified report within the time required by AS 15.13.040, 15.13.060(b)-(d), 15.13.110(a)(1),(3),or(4),(e),or(f) is subject to a civil penalty of not more than $50 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. A person who fails to file a properly completed and certified report within the time required by AS 15.13.110(a)(2) or 15.13.110(b) is subject to a civil penalty of not more than $500 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court;
(2) whether as a contributor or intermediary, delays in reporting a contribution as required by AS 15.13.040(r) is subject to a civil penalty of not more than $1,000 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court;
(3) whether as a contributor or intermediary, misreports or fails to disclose the true source of a contribution in violation of AS 15.13.040(r) or 15.13.074(b) is subject to a civil penalty of not more than the amount of the contribution that is the subject of the misreporting or failure to disclose; upon a showing that the violation was intentional, a civil penalty of not more than three times the amount of the contribution in violation may be imposed; these penalties as determined by the commission are subject to right of appeal to the superior court;

Alaska Statute AS 15.13.400(19 provides:

(19) "true source" means the person or legal entity whose contribution is funded from wages, investment income, inheritance, or revenue generated from selling goods or services; a person or legal entity who derived funds via contributions, donations, dues, or gifts is not the true source, but rather an intermediary for the true source; 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.

JURISDICTIONAL STATEMENT

The Alaska Public Offices Commission ("APOC") issued its Final Order on January 3, 2024. [Exc. 302-334] Appellants filled their Notice of Appeal in this court on February 2, 2024. The superior court has jurisdiction over this appeal from APOC pursuant to AS 22.10.020(d) and Alaska R. App. Pro. 601(b).

LIST OF PARTIES

The Parties to these cross-appeals are Alaskans for Honest Elections ("AHE"); Ranked Choice Education Association ("RCEA"); Arthur Matthias ("Matthias"); Wellspring Ministries ("WM"); the Alaska Public Offices Commission ("APOC"); and Alaskans for Better Elections ("ABE").[1]

STATEMENT OF THE ISSUES

Matthias made a $90,000 donation to RCEA, a nonprofit corporation that had already previously received hundreds of thousands of dollars in donations from different lower-48 donors other than Matthias. At the time Matthias made his donation, RCEA had already received hundreds of thousands of dollars in donations from other donors in the lower-48 and Matthias' donation to RCEA represented a mere twenty-six percent of RCEA's total funds. Eventually Matthias' donation represented only fifteen percent of RCEA's total funding. Matthias promptly announced to the public, the press, and media that he had donated "$100,000" to "the effort," meaning the effort to stop ranked choice voting (in general) from being adopted and used throughout the United States as an

[1] Other parties to the administrative proceeding below who are not participating in this appeal are Wellspring Fellowship ("WF"); Alaskans for Honest Government ("AHG"); and Phillip Izon ("Izon").

election system. RCEA has been and is primarily involved in substantial activities in the lower-48 aimed at furthering its mission of warning Americans about what it perceives to be the flaws and negative aspects of ranked choice voting. Later over a period of four months, RCEA paid a series of smaller donations that eventually totaled over $130,000 to AHE, the ballot group supporting the initiative known as 22AKHE, with those donations being drawn from RCEA's single bank account that contained fungible, intermingled, and unearmarked dollars that could not be individually traced to Matthias.

The questions presented are:

1. Does the prohibition set forth in AS 15.13.074(b) against giving in the name of another, apply to an initiative campaign even though AS 15.13.065(c) states that it does not?

2. Can Matthias, as a minority donor to RCEA, be penalized for intentionally giving to AHE in the name of RCEA with the design to hide his donation when (a) he publicly announced his donation to "the effort," (b) RCEA reported him as the "true source" of $90,000 of its donations to AHE, and (c) there is not an iota of evidence in the record that it was Matthias' money, as opposed to another RCEA donor's money, that RCEA used to make donations to AHE, and under the first-in-first-out rule it was not Matthias' money?

3. Can RCEA be penalized for intentionally giving AHE donations for Matthias in RCEA's own name and for allegedly misreporting to APOC that it rather than Matthias donated $90,000 to AHE, when RCEA filed a report, albeit delayed, that stated that

Matthias was the "true source" of $90,000 of RCEA's donations to AHE despite RCEA's inability to trace the dollars to Matthias?

4. Did APOC violate due process and contravene AS 15.13.390(a)(1) and (3) when it (a) fined Matthias twice for the same failure to "report" the $90,000 contribution, once under AS 15.13.390(a)(1) at $50 per day,[2] and then again under AS 15.13.390(a)(3) at "the amount of the contribution,"[3] and (b) purported to ground the "amount of the contribution" penalty under AS 15.13.390(a)(3) for Matthias' "failing to report," despite the fact that the only reporting statute that is tied to that penalty is AS 15.13.040(r) which is expressly limited in application to "candidate elections"?

5. Did APOC abuse its discretion when it refused to give Matthias credit for RCEA's ultimate reporting of him as the "true source" of $90,000 in contributions made to AHE, and a corresponding additional fifty percent reduction of the penalty assessed against him for a "true source" reporting deficiency, despite having separately concluded that Matthias was responsible for all of RCEA's actions—effectively attributing every action of RCEA to Matthias when concluding that he was the source of the $90,000 contribution to AHE—but then ignoring his connection RCEA and refusing to credit him with RCEA's ultimate reporting compliance when applying mitigation of penalty under 2 AAC 50.865(a)(1)(B)?

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[2] R. 1193 (finding a reporting violation under AS 15.13.040(k)).

[3] R. 1204 (finding a reporting violation under AS 15.13.040(k)). APOC also premised this $90,000 penalty upon a "giving in the name of another" violation of the prohibition contained in AS 15.13.074(b), which is a separate charge, and the only charge that APOC Staff attached the $90,000 penalty to when it prosecuted the case at formal hearing. *See* R. 215.

STATEMENT OF THE CASE

A. Proceedings Below.

On July 5, 2023, ABE filed a complaint with APOC[4] against AHE, RCEA, Matthias, and WM[5] alleging various violations of AS 15.13.010 *et. seq.* APOC Staff investigated ABE's allegations[6] and on September 11, 2023, issued a report explaining their findings and conclusions.[7]

1. APOC Staff's Report.

APOC Staff recommended the dismissal of some claims, accepted other claims as reflecting violations, and recommended substantially reduced penalties because of the inexperience of all the respondents.[8] As pertinent to this appeal, APOC Staff identified violations and recommended penalties as described below.[9]

RCEA. APOC Staff concluded that RCEA violated AS 15.13.074(b) by "misreporting" on its May 9, 2023, statement of contributions report,[10] that it was the contributor of $79,740 that it had given to AHE.[11] APOC Staff recommended a penalty

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4 *See* AS 15.13.380(b).

5 Exc. 1-31. ABE also filed its complaint against AHG, WF, and Izon [Exc. 1], but those parties to the APOC proceeding below are not participating in this appeal.

6 *See* AS 15.13.030(7); AS 15.13.045; AS 15.13.380(e).

7 R. 190-220.

8 *Id.*

9 APOC Staff's conclusions and recommendations related to AHG, WM, and Izon are not addressed herein as they are not parties to this appeal.

10 R. 643 (this report is also known as a Form 15-5).

11 R. 216, 218. In addition, APOC Staff concluded that RCEA committed separate violations unrelated to the $90,000 donation—these violations included failure to register, failure to report, making a cash contribution, and not stating "paid for identifiers" under AS 15.13.050; AS 15.13.074(e); AS 15.13.090; AS 15.13.110(h); and AS 15.13.110(g).

of $79,740 against RCEA for this violation,[12] and then recommended that the penalty be reduced by seventy-five percent to $19,935 because RCEA was an inexperienced filer and because "RCEA ultimately reported that Mr. Matthias was the true source of its contributions to AHE on its June 11, 2023 (sic) statement of contributions report."[13]

Matthias. APOC Staff concluded that Matthias contributed funds to RCEA "knowing that they would be repurposed to support AHE through contributions as needed," and thereby contributed $90,000 to AHE "using RCEA as a third-party conduit."[14] By this contribution, APOC Staff concluded Matthias violated the prohibition against making contributions "using the name of another" that is contained in AS 15.13.074(b) and 2 AAC 50.258(a).[15] APOC staff did not conclude that Matthias committed a true source "misreporting" violation[16]—he had filed no contribution report. APOC Staff separately concluded that Matthias failed to report his $90,000 contribution to AHE as required under AS 15.13.040(k).

For these violations, APOC Staff recommended separate smaller penalties. R. 217-220. ABE alleged in its complaint that RCEA was created to serve as a pass-through for the purpose of laundering donations to AHE and obscuring the actual source of donations. [Exc. 7 ¶ b; 182] APOC Staff rejected these claims. [Exc. 182 ("Complainant contends that RCEA was created for the purpose of laundering donations to AHE. Staff does not agree.... [I]t is abundantly clear that RCEA has been involved in substantial activities in the lower-48 to further its mission of warning Americans about what it perceives to be the flaws and negative aspects of ranked choice voting."); *see also* Exc. 168 (describing APOC Staff's findings regarding RCEA's substantial lower-48 activity); Tr. 37, 39, 41.

[12] R. 218.

[13] R. 220. The June 11, 2023, report, also known as a Form 15-5, is found in the record at R. 644-645.

[14] R. 215, 217.

[15] R. 215.

[16] R. 215, 217-218; Tr. 37, 39, 41.

For the failure to report violation under AS 15.13.040(k), APOC Staff concluded the maximum penalty was $8,300 under AS 15.13.390(a)(1), calculated at $50 per day for 166 days.[17] APOC Staff recommended that this penalty be mitigated by ninety percent to $830 because Matthias was an "inexperienced filer," "inaccurate advice from APOC staff contributed to" "the failed attempts to comply with AS 15.13 until February 23, 2023," and the maximum civil penalty was "significantly out of proportion to the degree of harm suffered by the public."[18] For making a contribution "using the name of another" in violation of AS 15.13.074(b), APOC Staff concluded the maximum penalty was $90,000.[19] APOC Staff recommended that this penalty be mitigated by seventy-five percent to $22,500 because Matthias was an inexperienced filer and RCEA ultimately reported Matthias as the true source of its contributions to AHE.[20]

AHE. APOC Staff concluded AHE misreported the source of donations it received from RCEA and thus violated AS 15.13.110(g) and AS 15.13.074(b), but did not recommend that a penalty be assessed against AHE in that regard.[21] APOC Staff also concluded that AHE violated AS 15.13.110(g) by failing to include a nonmonetary contribution from WM when AMAC invited AHE to hold an event in the gymnasium that

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17 R. 218.

18 R. 220. APOC Staff inadvertently neglected to reference Matthias' failure to report violation under AS 15.13.040(k) in its mitigation discussion [R. 220], but clearly intended that the $8,300 maximum penalty be mitigated by ninety percent. *Id.*

19 R. 219.

20 R. 220 (relying on the June 11, 2023, Form 15-5 [R. 644-645]).

21 Exc. 187, 189, 191.

it regularly sub-rented from WF that rented it from WM, but did not recommend that a penalty be assessed against AHE in that regard.[22]

WM. APOC Staff concluded that WM, a nonprofit building owner, made a nonmonetary contribution to AHE because it rented space, including a gymnasium, at cost to WF, a nonprofit church, which in turn sub-rented the gymnasium for a nominal fee to AMAC, another non-profit, for its regular monthly meetings, which then invited AHE to hold a signature gathering event at no cost in the gymnasium during one of its meetings.[23] APOC Staff did not conclude that WM violated any law and did not recommend any penalty against WM because of the alleged nonmonetary gift to AHE.[24]

2. APOC'S FINAL ORDER

A formal hearing was held before APOC on November 16, 2023.[25] APOC issued its Final Order on January 3, 2024.[26] As pertinent to this appeal, in its Final Order APOC identified violations and recommended penalties as described below.

RCEA. APOC concluded that RCEA violated AS 15.13.040(d), AS 15.13.110(h), AS 15.13.074(b), and 2 AAC 50.258(a) by misreporting, for a total of only thirty-three days, that it, rather than Matthias, gave $79,740 to AHE.[27] For this thirty-three days of

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22 Exc. 181, 187, 191.
23 Exc. 166, 180-181.
24 Exc. 166, 180-181, 188. APOC Staff separately recommended that ABE's claim against WM regarding an alleged nonreported nonmonetary gift to RCEA over the use of rented building space be dismissed. Exc. 188.
25 R. 879; Tr. 1.
26 Exc. 223, 254.
27 Exc. 251. APOC acknowledged that although RCEA reported it had contributed $79,740 to AHE on May 9, 2023, it corrected that report thirty-three days later, on June

"delayed true source disclosure,"[28] APOC concluded that the maximum penalty against RCEA was $79,740 even though RCEA ultimately informed "the public...about the true source,"[29] and despite the fact that the only "true source" reporting statute tied to the "amount of the contribution" penalty contained in AS 15.13.390(a)(3) is one that is expressly limited in application to candidate elections.[30]

APOC accepted Staff's recommendation to reduce the penalty against RCEA by seventy-five percent ($19,935) "because RCEA did report that Mr. Matthias was the true source,"[31] and because RCEA was an inexperienced filer involved in its first election cycle.[32]

Matthias. APOC concluded that Matthias' $90,000 contribution to RCEA was really a contribution to AHE, because his money, as opposed to someone else's money, was repurposed into RCEA's donations to AHE.[33] APOC reached this conclusion despite the fact that (a) RCEA had received hundreds of thousands of dollars in donations from other donors before Matthias made his contribution,[34] (b) all of RCEA's funding was

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11, 2023, by stating in a second report that Matthias was the true source of $90,000 of its contributions to AHE. [Exc. 232, 248-249, 251] APOC confirmed Staff's conclusions and recommendations regarding RCEA's other registration and reporting violations. Exc. 235, 239, 243-244, 253.

28 Exc. 251-252.

29 Exc. 251.

30 The only reporting statute that is referenced in AS 15.13.390(a)(3) and tied to its "amount of the contribution" penalty, is AS 15.13.040(r), a statute that expressly limits itself in application to "candidate elections" three separate times.

31 Exc. 251.

32 Exc. 251-252.

33 Exc. 240.

34 Exc. 217, 219-222.

comingled in a single bank account without separate accounting of which dollars came from which RCEA donors,[35] and (c) there was no possible way to trace which RCEA donor's money was being utilized when RCEA wrote checks to AHE.[36]

APOC concluded that RCEA had repurposed Matthias's money, as opposed to another of its donor's money, into the donations it made to AHE because: (a) after Matthias's donation, RCEA made multiple smaller contributions to AHE that in total ultimately exceeded $90,000;[37] (b) Izon, on behalf of RCEA and not as an agent of Matthias,[38] and without knowledge of which RCEA donor's money was being utilized,[39] filed a report that named Matthias as the "true source" of $90,000 of RCEA's contributions to AHE;[40] (c) Matthias, who had no way to discern which of RCEA's donors' money was being utilized to fund RCEA's donations to AHE,[41] signed RCEA's donation checks;[42] (d) Matthias allegedly "acknowledged his contribution to AHE publicly";[43] and by (e) misconstruing a letter that legal counsel had written to APOC's

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35 Exc. 219-222.
36 Tr. 60-61, 63, 74-75.
37 Exc. 249.
38 Tr. 64, 73.
39 Tr. 63, 73-75.
40 Exc. 249.
41 Tr. 60-63.
42 Ex. 250.
43 APOC misquoted Matthias' public statement. Matthias never stated that he donated to AHE. In truth, the record reflects that Matthias' public statement was that he donated "to the effort" [Exc. 31], by which be meant RCEA's overall educational mission and effort to fight the adoption of ranked choice voting in the lower-48. Tr. 61. Rather than reply upon the contemporaneous news report published the morning following AHE's initial fundraising event [Exc. 31], APOC relied upon a Daily News article that was

attorney Staff member during the course of its investigation and incorrectly treating it as a factual admission of Matthias.[44]

Having concluded that Matthias donated to AHE rather than RCEA, APOC then concluded that under AS 15.13.040(k) Matthias should have reported his donation on a statement of contributions within thirty days of the date of the contribution.[45] For this failure to report APOC concluded that Matthias was subject to a penalty of $8,250 under AS 15.13.390(a)(1), calculated at $50 per day for 165 days.[46]

APOC then concluded that Matthias violated AS 15.13.074(b) for "contributing $90,000 to AHE in the name of another," RCEA.[47] APOC concluded that "giving in the name of another" prohibition of AS 15.13.074(b) applies to a ballot measure signature gathering campaign even though AS 15.13.065(c) says that it does not.[48] APOC concluded that a nonprofit organization such as RCEA, can never be a "true source" of a donation it gives to a ballot group because they "derive[] [their] ... funds from 'contributions, donations, dues, or gifts," and always serve as an "intermediary" for such donations.[49] By APOC's decision, in order for a nonprofit organization and its donors to exercise their First Amendment right to political speech and association and to maintain

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written by a reporter on July 6, 2023, five months after the fundraising event occurred and only after ABE had filed its complaint with APOC. [R. 392, 394]

[44] Exc. 249. *See Lightning Lube, Inc. v. Witco Corp.*, 4 F.3d 1153, 1198 (3d Cir. 1993); *United States v. Dolleris,* 408 F.2d 918, 921 (6th Cir. 1969).

[45] Exc. 240, 253.

[46] Exc. 240, 253.

[47] Exc. 251.

[48] Exc. 245-247.

[49] Exc. 248-249 (citing AS 15.13.400(19)).

their concomitant right to associational privacy,[50] they must forfeit their political speech and association in the form of supporting ballot groups. Put differently, APOC's decision presents nonprofit organizations with a Hobson's choice of either (1) forfeiting their and their donors' political speech and association in the form of supporting ballot groups, or (2) forfeiting their associational privacy as well as subjecting both the nonprofit and its donors to sizeable penalties for "giving in the name of another." APOC determined that this Hobson's choice does not violate the First Amendment.[51]

APOC assessed a penalty against Matthias for the "giving in the name of another" violation under AS 15.13.390(a)(3) in the amount of the contribution, $90,000. And, to bolster its application of the $90,000 penalty to Matthias, APOC concluded that Matthias could be penalized again, for a second time, for his failure to "report" his contribution under AS 15.13.040(k), but this time under AS 15.13.390(a)(3) in the amount of the contribution, $90,000. In reaching this conclusion, APOC ignored that (1) Matthias had already been penalized once for the failure to report, (2) that RCEA had in fact reported Matthias as the "true source" of $90,000 of its donations to AHE, thus informing the

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[50] *See Americans for Prosperity Foundation v. Bonta*, 594 U.S. __, 141 S. Ct. 2373, 2382 (2021); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958).

[51] Exc. 248. APOC provided no analysis of how the statutes' satisfied the "exacting scrutiny" required of compelled disclosure laws that burden First Amendment free speech, association, and associational privacy. *See Bonta*, 594 U.S. __, 141 S. Ct. at 2385 ("exacting scrutiny requires that there be 'a substantial relation between the disclosure requirement and a sufficiently important governmental interest,'...and that the disclosure requirement be narrowly tailored to the interest it promotes."), citing *Doe v. Reed*, 561 U.S. 186, 196 (2010); *Shelton v. Tucker*, 364 U.S. 479, 488 (1960).

public of who was supporting 22AKHE,[52] and (3) the only reporting statute referenced in AS 15.13.390(a)(3) and that is linked to its "amount of the contribution" penalty, is AS 15.13.040(r), a statute that expressly limits itself in application to "candidate elections" three separate times. APOC also ignored the fact that APOC Staff had never presented an argument to the Commission to the effect that Matthias should be penalized under AS 15.13.390(a)(3) for any violation other than "giving in the name of another" under AS 15.13.074(b) (he was never charged with a "true source" reporting violation).[53]

AHE. APOC concluded that AHE violated AS 15.13.040(b); AS 15.13.110(g) and AS 15.13.074(b) "by filing inaccurate first and second quarter reports,"[54] "by failing to report that Mr. Matthias was the true source of $90,000 of the contributions it received from RCEA,"[55] and by failing to report "a nonmonetary contribution from [WM] ... for the use of the gymnasium in its building."[56] APOC dismissed these charges from "this complaint matter" without prejudice, leaving them to be "addressed through the civil

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[52] Based upon APOC's interpretation and application of the reporting statutes and assessment of duplicative penalties, one is left to wonder just exactly how many times the public needs to be informed of a "true source" for the public's interest in "information" to be satisfied.

[53] Exc. 215, 217-218; Tr. 37, 39, 41.

[54] Exc. 238.

[55] Exc. 251, 253.

[56] Exc. 238. In reaching the conclusion that WM and not AMAC had donated the use of the gymnasium to AHE, APOC incorporated "true source" concepts into AS 15.13.110(g)—a statute that neither states nor incorporates "true source" requirements, and in doing so misapplied AS 15.13.400(19) (which limits the definition of "true source" to "funds" and how monetary contributions are "funded" through "wages, investment income, inheritance, or revenue generated from selling goods or services." "True source" concepts have no application to "nonmonetary" contributions. *See* AS 15.13.400(19).

penalty assessment process."[57] APOC determined that no penalty under AS 15.13.390(a)(3) was appropriate or necessary as to AHE.[58]

WM. APOC concluded that WM "and/or Wellspring Fellowship," were the "true source" of a nonmonetary contribution to AHE for the use of the gymnasium that AMAC rented from WF.[59] APOC reached this conclusion despite WM's lack of contractual privity with either AMAC or AHE, despite WF's lack of contractual privity with AHE, and despite the fact that AMAC, the only entity with a legal right to occupy and use the gymnasium at the time of the February 16, 2023, AHE event,[60] had made the decision to invite AHE to its regularly scheduled monthly meeting.[61] APOC found no violations by WM or WF and assessed no penalties against either organization.[62]

B. Appeal

RCEA, Matthias, AHE, and WM timely appealed APOC's Final Order to this court on February 2, 2024. The court denied a partial stay, expedited the briefing and decision schedule in the case, and set a briefing and oral argument schedule by orders dated March 15 and 19, 2023.

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[57] Exc. 238. APOC Staff had assessed civil penalties against AHE for its failure to report and inaccurate reporting. Exc. 238 ("Staff issued civil penalty assessments for these violations").

[58] Exc. 238, 253.

[59] Exc. 237-238. In this respect, APOC misapplied the definition of "true source" set forth in AS 15.13.400(19).

[60] *See* AS 34.03.090(a); AS 34.03.160(b); and AS 34.03.170(a), (b).

[61] R. 655 (email to APOC Staff from Robert Coulter, leader of the Greater Anchorage AMAC).

[62] Exc. 237-238, 253.

C. Facts.

On November 18, 2022, Izon inquired of Tom Lucas ("Lucas"), an attorney who served as the Campaign Disclosure Coordinator on APOC's Staff,[63] about how certain planned organizations that might be used to support an effort to repeal closed primaries and ranked choice voting in Alaska would need to register and report with APOC. Izon inquired as follows:

> I have three entities I want to make sure are filed correctly with the State.
> One entity is Alaskans For Honest Elections - 501(C)4 (sic) not for profit
> One entity is Alaskans For Honest Government PAC registered with FEC
> One entity is Alaskans For Honest Elections Bill Initiative - no official formation documents just the name of the initiative.
> How would these need to be registered with the State? As entities or groups, thank you.[64]

Lucas responded that same day in two separate emails, informing Izon that what the Sponsors were planning to pursue was a referendum and that, therefore, they would not need to register their organizations with, or report to, APOC until after their petition became a "proposition" via the Lieutenant Governor's ultimate certification of signatures. In his first email, Lucas stated:

> One entity is Alaskans For Honest Elections - 501(C)4 (sic) not for profit. No registration requirement unless it spends to support or oppose a candidate or ballot proposition. Then it would be required to register as an entity.[65]

Lucas' second email explained APOC Staff's advice further:

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[63] *See* https://alaskabar.org/for-lawyers/member-directories/; Exc. 164.

[64] Exc. 199; R. 589-590.

[65] R. 589. Lucas gave this advice even though Izon had referred to a "Bill Initiative" in his November 18, 2022, email. Exc. 199.

> It appears that what you are contemplating is a referendum (a ballot proposition to repeal a law), not an initiative. The two are treated differently during the signature gathering stage. For a referendum, any money spent is not considered an expenditure until the referendum becomes a proposition (that is, sufficient signatures were gathered and the Lieutenant Governor has scheduled it for the ballot at an election). Nevertheless, a group formed to sponsor a referendum must file a report within 30 days after its first filing with the Lieutenant Governor and within 10 days after the end of each calendar quarter thereafter.... [T]he definition of an expenditure does not include money spent during the signature gathering stage of a referendum (unlike, an initiative) ....[66]

APOC Staff's advice through Lucas to Izon was incorrect. Under the Alaska Constitution a referendum is defined as an effort by the people to "reject acts of the legislature."[67] The same is true under Alaska statutes.[68] Because it was the people by initiative who put closed primaries and ranked choice voting into Alaska law,[69] an effort to repeal those laws would not be a referendum, but rather an initiative.[70]

After receiving APOC Staff's incorrect advice to the effect that they would have no registration or reporting obligations during the signature gathering part of their campaign, on November 23, 2022, primary sponsors Izon, Matthias, and Jamie R. Donley (hereafter "Sponsors"), filed an application for certification of a bill entitled "An Act Restoring Political Party Primaries and Single-Choice General Elections."[71]

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66 Exc. 199-200.
67 AK Const., Art. 11, §§ 1, 5.
68 *See* AS 14.45.250.
69 *See* https://www.adn.com/politics/2020/11/17/alaska-becomes-second-state-to-approve-ranked-choice-voting-as-ballot-measure-2-passes-by-1/
70 AK Const., Art. 11, §§ 1, 5; AS 14.45.250.
71 Exc. 194-196.

RCEA is a Washington nonprofit corporation that was formed on December 16, 2022.[72] Matthias is RCEA's president and a director; Izon and Patricia Matthias are also directors.[73] RCEA is an educational foundation[74] and was created for the primary purpose of (1) educating Americans about what Matthias and Izon believe to be the faults, flaws, and negative aspects of ranked choice voting, and then (2) training, developing, and supporting Americans to become leaders opposing ranked choice voting in their own communities.[75] RCEA was not created for the purpose of "laundering" or acting as an "intermediary" for donations.[76] At the time that RCEA was created, the Sponsors were not thinking about contribution reporting obligations because they were operating under the advice of APOC Staff that they had no registration or reporting obligations.[77]

On December 21, 2022, during the time period when the Sponsors were operating under APOC Staff's incorrect advice that they had no registration or reporting obligations, a donor in the lower-48—someone other than Matthias—gave a $250,000 donation to RCEA.[78] The following day, December 22, 2022, Matthias donated $90,000

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72 R. 667-672. RCEA is also an IRC § 508(c)(1)(A) tax-exempt entity that is "an integrated auxiliary" of WF. R. 667.

73 R. 668.

74 RCEA is not a church. Exc. 209.

75 Exc. 209; R. 667 ("Train, develop, and support leaders in our community and nation as called for in our beliefs").

76 Exc. 182 ("Complainant contends that RCEA was created for the purpose of laundering donations to AHE. Staff does not agree."); Tr. 35 (same). At the time that RCEA was created, AHE, the ballot group for 22AKHE, did not exist. R. 586-587.

77 Exc. 199-200; R. 589-590.

78 Exc. 219; Tr. 59.

to RCEA.[79] RCEA maintained one checking account with Wells Fargo Bank into which it deposited all of its donations received, and all of its funds were comingled in that one account.[80] RCEA had no separate accounting, painting of the dollars, or any other way to trace dollars deposited into the single bank account back to any particular donor.[81] As of the end of December 2022, Matthias' donation to RCEA represented only roughly twenty-six percent (26%) of RCEA's total funds.[82]

The Alaska Department of Law and the State Division of Elections reviewed and approved the Sponsors' application, and the Lieutenant Governor certified the bill on January 20, 2023.[83] AHE is an Alaska nonprofit corporation that was formed on January 23, 2023.[84] Matthias, Diamond Metzner, and Izon were the directors of AHE.[85] The Sponsors selected AHE to be the organization they would use as the ballot group[86] to support the signature gathering campaign for the 22AKHE initiative proposal application.[87] But because APOC Staff had advised the Sponsors that they had no registration or reporting obligations until after the signature gathering campaign had been

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79 Exc. 217, 219; Tr. 59-60. When RCEA's initial $250,000 donor and Matthias donated to RCEA, there was no initiative to support because the Sponsors' application had not yet been approved or certified by the Lieutenant Governor. Tr. 69-70.

80 Exc. 219-222.

81 Tr. 60-61.

82 Tr. 59-60. The court can take judicial notice of the fact that $90,000 is roughly twenty-six percent (26%) of $340,033. Alaska R. Evid. 201(b) (court can take judicial notice of facts that are not subject to reasonable dispute in that they are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned).

83 Exc. 194-195.

84 R. 586-587.

85 R. 586.

86 *See* AS 15.13.400(19).

87 R. 588.

completed,[88] they did not register AHE (or any other organization they had formed) with APOC at that time.[89]

Over the course of February 2023, during the time when the Sponsors were operating under APOC Staff's faulty advice to the effect that they had no registration or reporting obligations,[90] RCEA made a series of donations to AHE that totaled $79,740:

RCEA donated $1,000 to AHE by check on February 6, 2023;[91]

RCEA donated $75,000 to AHE by cashier's check dated February 8, 2023;[92]

RCEA donated $2,358 to AHE in cash on February 22, 2023;[93] and

RCEA donated $1,382 to AHE by check payable to Royal Printing on February 23, 2023;[94]

Throughout the period when the Sponsors were operating under APOC Staff's faulty advice to the effect that they did not have registration or reporting obligations, Izon did not take care to ensure that the technical requirements of registration, reporting, and paid-for-disclaimers on communications were observed, or that proper separation was

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88 Exc. 199-200; R. 589-590.

89 Exc. 198; Tr. 42-44 (Lucas acknowledged that his incorrect advice was the likely reason that the Sponsors believed they had no registration or reporting obligations and did not register groups or entities and did not report to APOC, until March 2023).

90 Exc. 199-200; R. 589-590.

91 Exc. 212. This $1,000 check was written on January 9, 2023, but the endorsements on the back of the check reflect that it was not deposited to RCEA's account until February 6, 2023. *Id.*; *see also* Exc. 221 (RCEA's bank statement reflects that check did not clear RCEA's account until February 8, 2023).

92 The cashier's check is dated February 3, 2023, [Exc. 213] but like the $1,000 check was not delivered to and deposited by AHE days later. It was reported as being donated on February 8, 2023. Exc. 48.

93 R. 698. The cash contribution was later refunded and replaced with a check on August 1, 2023. Exc. 198 ¶ 7, 216; R. 631 ¶ 15.

94 Exc. 214. This was an in-kind donation, in that RCEA paid for printing services for AHE that AHE had received from a third-party service provider. AS 15.13.400(4)(A).

maintained between the various entities and their respective websites.[95] The Sponsors and the various entities that had been created, conducted their affairs from November 2022 through February 2023 as if they had no registration or reporting compliance obligations under the Alaska campaign finance laws because APOC had told them that they had no such obligations at that time.

On February 8, 2023, the Sponsors' petition was identified as 22AKHE and the Division issued petition booklets to them.[96] On February 16, 2023, AMAC invited AHE to attend AMAC's regularly scheduled monthly meeting and, without charge, to discuss and promote 22AKHE with AMAC's members and other members of the public, including former Governor Sarah Palin.[97] AMAC, which hosted the February 16, 2023, event for AHE, is a national organization for mature American citizens that serves as an alternative to the American Association of Retired Persons ("AARP").[98] AMAC rents the use of a gymnasium from WF in which AMAC holds its regular monthly meetings for its members.[99]

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[95] For example, Izon had created webpages for AHG, AHE, and RCEA, and as APOC Staff found in its later investigation, he had linked the web pages together, had placed links for donations to AHE on other entities' web pages, and had otherwise failed to place paid-for-identifiers on communications and videos that he had created for distributed to advocate for 22AKHE. [Exc. 163-168, 175-178, 184-185] All of this noncompliance was the result of APOC Staff's "massive mistake," as Izon described it. Tr. 68.

[96] R. 572.

[97] Exc. 210 ¶ 10; R. 655.

[98] Exc. 210 ¶ 10.

[99] Exc. 210-211.

The gymnasium, which also serves as an auditorium, is located within a building located at 2511 Sentry Dr., Anchorage, Alaska that is owned by WM.[100] The building that WM owns is commonly known in general parlance as the "Wellspring" building.[101] WF, a nonprofit corporation that operates as a church,[102] leases space in the Wellspring building from WM, including the gymnasium/auditorium that it uses to hold its church services.[103] Because it is a nonprofit organization, WM leases space in the building only "at cost."[104] WF in turn, sub-rents the use of its leased gymnasium to AMAC as sub-tenant at "modest" cost for AMAC to hold its regular monthly member meetings.[105]

As sub-tenant to WF, it was AMAC that controlled the use of the gymnasium/auditorium on the evening of February 16, 2023.[106] With AMAC's approval, the February 16, 2023, event served as a "kick off" for the 22AKHE signature gathering campaign and as a fundraiser to solicit and accept donated funds to support the signature gathering campaign.[107] At the event, Matthias spoke and stated that he had donated

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[100] Exc. 210 ¶¶ 9-10. WM is an Alaska nonprofit organization that was formed in 1999. [R. 706] Matthias, along with Monica Mosier, Janice Coulter, Patrick Hadley, and Patricia Matthias serve as WM's officers and directors. R. 706-707.

[101] R. 369.

[102] Exc. 209-211; R. 369.

[103] Exc. 210 ¶ 10.

[104] Exc. 238.

[105] Exc. 210 ¶ 10.

[106] Exc. 210 ¶ 10; AS 34.03.090(a) (landlord (WF) has a duty to deliver possession of rented premises to tenant (AMAC)); AS 34.03.170(a) (same); AS 34.03.160(b) (tenant (AMAC) can sue landlord (WF) for damages if landlord (WF) fails to deliver possession of rented premises); AS 34.03.170(b) (landlord (WF) can be held liable to tenant (AMAC) if landlord does not deliver possession of rented premises).

[107] Exc. 210 ¶ 10; R. 655. AMAC periodically allows other organizations to attend its regular monthly meetings and to address its members in the gymnasium that it rents from

$100,000 to "the effort."[108] By "the effort," Matthias meant the "overall effort" to fight against the adoption of ranked choice voting nationwide, with AHE focused on Alaska and RCEA focused on the lower-48.[109] Matthias never said he had given money to AHE or that he had given money to RCEA to have it passed to AHE.[110] Matthias did not donate to AHE,[111] nor did he donate to RCEA with an intent to have his money passed on to AHE.[112] When Matthias donated to RCEA on December 22, 2022,[113] AHE did not exist,[114] and he and the other Sponsors were operating under the faulty advice of APOC Staff to the effect that they would have no registration or reporting obligations under Alaska's campaign finance statutes until much later (as much as a year later) when the Lieutenant Governor would eventually certify the gathered signatures[115] (something that only happened on March 8, 2024).[116]

At close of business, February 23, 2023, Heather Hebdon ("Hebdon"), APOC's Executive Director, wrote an email to Izon informing him that APOC Staff's prior advice had been incorrect.[117] Hebdon disingenuously tried to shift blame for the mistake to

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WF. AMAC never charges a fee to those other organizations it invites to attend its meetings. *Id.*

[108] Exc. 31, 209 ¶ 4.
[109] Exc. 209 ¶ 4; Tr. 61.
[110] Tr. 58.
[111] Exc. 217; Tr. 70.
[112] Tr. 61.
[113] Exc. 217.
[114] R. 586-587.
[115] Exc. 199-200; R. 589.
[116] See https://www.thegatewaypundit.com/2024/03/repeal-ranked-choice-voting-makes-ballot-alaska/
[117] Exc. 158-159.

Izon,[118] and then proceeded to inform Izon that AHE in fact had registration and reporting obligations and was late in making its APOC filings.[119]

Upon learning of Lucas' "massive mistake," AHE began trying to garner records of earlier transactions and activity and to catch-up with its APOC filings.[120] On March 20, 2023, Izon, the individual responsible for the Sponsors' APOC filings,[121] registered AHE with APOC as a ballot group.[122] Izon then timely filed AHE's First Quarter Report on April 10, 2023.[123] In that report, Izon reported the donations AHE had received from RCEA as of that time totaling $79,740.[124] On May 9, 2023, Izon, acting for RCEA as its agent, filed a Statement of Contributions Form 15-5 with APOC stating that RCEA had donated $79,740 to AHE.[125] On May 22, 2023, RCEA made another donation by check to AHE in the amount of $11,000,[126] bringing RCEA's donations to AHE to a total of $90,740. Thereafter, on June 11, 2023, Izon, as an agent of RCEA and not of Matthias, filed a second Statement of Contributions Form 15-5 with APOC, misreporting a $10,260 contribution to AHE.[127] Matthias played no part in preparing or filing either Form 15-5

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[118] Exc. 158 ("It does not appear that you corrected his [Lucas'] understanding and unfortunately the information he provided is not accurate as to your group's requirements").
[119] Exc. 158-159.
[120] Tr. 68-69.
[121] Tr. 75.
[122] R. 588.
[123] R. 601-610.
[124] R. 602, 607.
[125] Exc. 206; Tr. 63-64, 71-73.
[126] Exc. 215.
[127] Exc. 207; Tr. 63-64, 72-73. RCEA never made a $10,260 donation to AHE, but rather an $11,000 donation on May 22, 2023. Exc. 215.

for RCEA, and never saw the forms before they were field.[128] Izon prepared the Forms 15-5 having no information about or access to RCEA's bank account.[129]

In the June 11, 2023, Form 15-5, Izon, who (a) had no access to RCEA's bank account,[130] (b) had no information about what donors other than Matthias had donated to RCEA or in what amounts they had donated,[131] (c) had no information about how Matthias's donation compared to those of other RCEA donors, or what percentage Matthias' donation represented in terms of RCEA's total funds received,[132] and (d) had no information about RCEA's accounting or which RCEA donor's money might have funded RCEA's donations to AHE,[133] inexplicably stated in the form that Matthias was the "true source" of $90,000 of RCEA's donations to AHE.[134] In truth, Matthias was only a twenty-six percent (26%) donor to RCEA as of March 2023, eventually only a fifteen percent (15%) donor.[135] RCEA eventually received about $700,000 in total donations, with all but $90,000 coming from donors other than Matthias.[136] Even

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[128] Tr. 63, 73.
[129] Tr. 73.
[130] Tr. 73.
[131] Tr. 74.
[132] Tr. 74.
[133] Tr. 73-74.
[134] Exc. 207-208. Izon testified that he believed the Form 15-5 and the identification of "True Sources" were required [Tr. 73-74], but never testified that he thought he was required to state that RCEA's donations to AHE had come from Matthias [Tr. 73-74]—a statement that he had absolutely no factual basis to make. [Tr. 73-74] Izon, without consulting Matthias [Tr. 63, 73], simply blundered in naming Matthias as a true source of the RCEA donations to AHE (donations that in truth totaled $90,740 and exceeded Matthias' $90,000 donation to RCEA) in his frantic effort to "catch up because we were behind on our filing." Tr. 74.
[135] Tr. 60.
[136] Tr. 60.

Matthias had no way to trace RCEA's donations to AHE out of its single comingled account to himself or to any other RCEA donor.[137]

Between March 2023 and throughout the rest of that year, RCEA, through Matthias and Izon, was engaged in substantial educational activity in the lower-48—activities that had nothing to do with supporting 22AKHE, but that rather had to do with its mission to convince Americans that the ranked choice voting election system is flawed and should be avoided.[138] Matthias and Izon traveled to at least eight states to speak and make presentations to community leaders and members regarding the faults and flaws of ranked choice voting.[139]

STANDARD OF REVIEW

The court reviews questions of law, interpreting and applying constitutional and statutory provisions, *de novo*. *Kohlhaas v. State*, 518 P.3d 1095, 1103 (Alaska 2022). The court exercises independent judgment on the evidence and reviews APOC's factual findings for whether they are not supported by the weight of the evidence, or substantial evidence in light of the whole record. AS 44.62.570(c). With respect to discretionary matters, an abuse of discretion occurs when a decision is arbitrary, capricious, or manifestly unreasonable, deprives a party of a substantial right, or is seriously prejudicial.

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[137] Tr. 60-61.

[138] Exc. 211 ¶¶ 11-13; R. 628-631; Exc. 182 (APOC Staff concluded that "RCEA has been involved in substantial activities in the lower-48 to further its mission of warning Americans about what it perceives to be the flaws and negative aspects of ranked choice voting").

[139] Exc. 211 ¶¶ 11-13; R. 628-631.

Del Rosario v. Clare, 378 P.3d 380, 383 (Alaska 2016); *State, Dept. of Transp. v. Miller*, 145 P.3d 521, 528 (Alaska 2006).

ARGUMENT

I. APOC'S INTERPRETATION AND APPLICATION OF THE PROHIBITION SET FORTH IN AS 15.13.074(b) AGAINST "GIVING IN THE NAME OF ANOTHER" AND RELATED "TRUE SOURCE" REPORTING STATUTES, VIOLATE THE FIRST AMENDMENT

Free speech and expressive association as protected by the First Amendment are two of the fundamental liberties protected by the Fourteenth Amendment's guarantee of due process. *See Gitlow v. New York*, 268 U.S. 652, 666 (1925); *NAACP*, 357 U.S. at 462. The First Amendment's protections of speech and association, therefore, apply to the states as well as the federal government. *Gitlow*, 268 U.S. at 666; *NAACP*, 357 U.S. at 462. The First Amendment "prohibits government from 'abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.'" U.S. CONST. AMEND. I; *Bonta*, 594 U.S. __, 141 S. Ct. at 2382.

The United States Supreme Court has long held that implicit in the rights expressly protected by the First Amendment is a corresponding right to associate with others. *Bonta*, 594 U.S. __, 141 S. Ct. at 2382, *citing and quoting Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984). The Court has also recognized a right to privacy in association, noting that "[i]t is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a

restraint on freedom of association as [other] forms of governmental action." *NAACP*, 357 U.S. at 462 *cited and quoted in Bonta*, 594 U.S. at __, 141 S. Ct. at 2382.

Nonprofit corporations, like RCEA, have a First Amendment right to engage in core political speech. *See Citizens United v. Federal Elec. Comm'n*, 558 U.S. 310, 342-343 (2010); *see also Bonta*, 594 U.S. at __, 141 S. Ct. at 2382; *NAACP*, 357 U.S. at 462. The First Amendment safeguards an individual's right to participate in public debate through political expression and political association. *McCutcheon v. Federal Elec. Comm'n*, 572 U.S. 185, 203 (2014) *citing Buckley v. Valeo*, 424 U.S. 1, 15 (1976). One way in which citizens can exercise those rights is to contribute to a campaign. *Id.* at 191. Thus, the right to make political contributions is protected by the First Amendment. *Id.*

Ballot petition circulation constitutes core political speech because it involves "interactive communication concerning political change." *Meyer v. Grant*, 486 U.S. 414, 422 (1988). Making political contributions, including to a ballot group, constitutes core political speech and association that the government may only burden or limit to prevent *quid pro quo* corruption or its appearance. *See, e.g., Thompson v. Hebdon*, 589 U.S. __, 140 S. Ct. 348, 349 (2019); *Randall v. Sorrell*, 548 U.S. 230, 247-248 (2006); *Thompson v. Hebdon*, 7 F.4th 811, 822 (9th Cir. 2021).[140] When an individual contributes money to a campaign, he exercises both the right to political expression and the right to political association: The contribution serves as a general expression of support for the

[140] The phrase *quid pro quo* in the context of campaign contributions means "dollars for political favors." *McCutcheon*, 572 U.S. at 192 *citing Federal Election Comm'n v. National Conservative Political Action Comm.*, 470 U.S. 480, 497 (1985).

campaign and its views and serves to affiliate a person with the campaign. *See, e.g., McCutcheon*, 572 U.S. at 203.

Strict scrutiny applies to contribution restrictions that operate as more than just limitations on the amount a donor may give to a campaign. *See, e.g., Id.* at 196-197 (holding that expenditure limits, unlike limits placed on how much a person can contribute to a campaign, were subjected to strict scrutiny). A limitation that denies an individual even "the symbolic expression of support evidenced by a contribution" and/or that "infringe the contributor's freedom to discuss ... issues" or to participate in the discussion, is subject to strict scrutiny. *Id.* Under strict scrutiny, the government may regulate protected speech and association only to promote a compelling interest by the least restrictive means. *See, e.g., Id.*

Under controlling Supreme Court precedent, prohibitions that prevent people from exercising their right to contribute to ballot groups are *per se* unconstitutional. "Ballot initiatives do not involve the risk of 'quid pro quo' corruption present when money is paid to, or for, candidates." *Buckley v. American Const. Law Found., Inc.*, 525 U.S. 182, 203 (1999) *citing Meyer*, 486 U.S. at 427–428 *citing First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 790 (1978) ("The risk of corruption perceived in cases involving candidate elections ... simply is not present in a popular vote on a public issue"); *see also McIntyre v. Ohio Elec. Comm'n*, 514 U.S. 334, 352 n. 15 (1995). Thus, prohibiting a nonprofit from contributing to a ballot measure campaign violates the First Amendment because the prohibition serves no permissible government interest in preventing *quid pro corruption* or its appearance—a ballot measure once passed into law cannot give a *quo* (a

political favor) for a *quid* (the dollars represented by a campaign contribution). *See American*, 525 U.S. at 203.

Nonprofit corporations and their donors also have First Amendment rights to association and to associational privacy that protect them from government compelled disclosure of their relationship. *Bonta*, 594 U.S. at __, 141 S. Ct. at 2382; *NAACP*, 357 U.S. at 462. The Court applies "exacting scrutiny" to laws that compel the disclosure of the identities of nonprofit donors. *Bonta*, 594 U.S. at __, 141 S. Ct. at 2383 *citing Buckley*, 424 U.S. at 64. Under that standard, there must be a substantial relation between the disclosure requirement and a sufficiently important governmental interest. *Id. citing Doe*, 561 U.S. at 196. The Court has ruled that such scrutiny is appropriate given the "deterrent effect on the exercise of First Amendment rights" that arises as an "inevitable result of the government's conduct in requiring disclosure." *Id. quoting Buckley*, 424 U.S., at 65. "To withstand this scrutiny, the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights"—namely the deterrent effect that is imposed on free speech and association. *Id.*

A. The Prohibition of AS 15.13.074(b) Unconstitutionally Infringes Both RCEA's Right to Engage in Core Political Speech by Contributing Money to AHE, and RCEA and its Donors Right to Association.

APOC's Final Order interprets and applies AS 15.13.074(b) in a way that infringes, burdens, and chills (a) RCEA's and its donors' core political speech, as well as (b) the association and associational privacy of RCEA and its donors, including Matthias. That statute sets forth a flat prohibition against any person making a "contribution"

"using the name of another."[141] The statute contains a prohibition and not simply a "true source" disclosure requirement—the statute provides that "[a] person or group may not make a contribution...using the name of another." AS 15.13.074(b).[142] It is true that in addition to the prohibition against giving in the name of another, the statute also contains a "true source" reporting requirement (discussed in more detail below) that in the context of this case only applies to the nonprofit entity and not its donors.[143]

According to APOC, any time a nonprofit organization like RCEA donates to a ballot group that is pursuing an initiative, one or more of the nonprofit's donors has violated the AS 15.13.074(b) prohibition. [Exc. 245, 248] According to APOC, when a nonprofit organization like RCEA that "derives its funds from 'contributions, donations,

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[141] AS 15.13.074(b).

[142] The statute also contains a second prohibition against contributing or accepting "dark money" that is not applicable to this case. The second prohibition applies only to candidate elections. *See* AS 15.13.074(b) and AS 15.13.040(r). It applies to any "[i]ndividuals, persons, nongroup entities, or groups" that "contribute" "to an entity that made one or more independent expenditures" in the previous election, or that is currently making or is likely to make independent expenditures, in one or more "*candidate elections*." *Id.* (emphasis added). By incorporating AS 15.13.040(r), the second prohibition is limited in application to "candidate elections".

[143] In the context of nonprofit donations, the "true source" reporting requirement of the statute only applies to the nonprofit "while acting as intermediary." AS 15.13.074(b) ("Individuals, persons, nongroup entities, or groups...may not make a contribution *while acting as an intermediary* without disclosing the true source of the contribution as defined in AS 15.13.400(19)") (emphasis added). If a person were to donate "while acting as an intermediary" then the person would likewise have a true source reporting obligation. *Id.* As APOC interprets the statutes, the nonprofit's donors are obligated to reporting the nonprofit's "intermediary" contributions as their own under. AS 15.13.040(k). [Exc. 251] Unlike a "misreport" or a failure "to disclose the true source of a contribution" under AS 15.13.040(r) (candidate elections) or AS 15.13.074(b), a failure to report under AS 15.13.040(k) is subject only to a $50 per day fine.

dues, or gifts'"[144]—as is the case with all nonprofit organizations—the nonprofit is always "an intermediary and not by definition, the true source of a contribution." [Exc. 248-249] According to APOC, because the nonprofit is never a "true source" of a donation [Exc. 248], the nonprofit's donors violate AS 15.13.074(b) and 2 AAC 50.258(a) when the nonprofit makes the donation to the ballot group. [Exc. 245 and n. 77, 248] The violation occurs because the donors (not the nonprofit) are the ones who made the donation, and the donation was not made in the nonprofit's donors' names. [Exc. 245 and n. 77, 248 (citing 2 AAC 50.258(a)][145]

This statute, therefore, infringes a nonprofit organization's (like RCEA's) exercise of its First Amendment right to engage in core political speech by donating to a ballot measure campaign, because if the nonprofit (RCEA) does donate to a ballot group it will cause its donors (the so-called "true source" of the nonprofit's funds) [146] to violate the AS 15.13.074(b) prohibition. Concerned that its nonprofit donors might refrain from giving to it because of the potential liability under AS 15.13.074(b), RCEA (and other nonprofits) would reasonably be driven to refrain from exercising their First Amendment right to contribute to ballot groups. Likewise, potential liability under AS 15.13.074(b) would drive nonprofit donors to refrain from exercising their First Amendment right to associate with RCEA (and other nonprofits) via nonprofit donations, out of concern that the organizations might donate to a ballot group.

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[144] Exc. 248-249 and n. 88, quoting the definition of "true source" in AS 15.13.400(19).
[145] "A contribution must be made in the name of the true source of the money or thing of value." 2 AAC 50.258(a).
[146] AS 15.13.400(19).

The chill and resulting burden on First Amendment rights is very probable. Violating the AS 15.13.074(b) prohibition is nothing trivial—a violation subjects the donors to significant penalties in the amount of the nonprofits' contribution to the ballot group. AS 15.13.390(a)(3). If the nonprofit's donations to the ballot group are in the tens or hundreds of thousands, then so is the penalty—in this case RCEA's donations to AHE totaled $90,740. If nonprofits want to exercise their free speech and associational rights related to the important political and policy matters raised in ballot petitions and propositions by making contributions to ballot groups, they will be required to (a) address the risks up front with potential donors—frightening many donors away, and (b) separately account for each donor's contributions.

The statute infringes the nonprofit's (RCEA's) and its donors' (Matthias' and others') First Amendment association because it chills donors from exercising their right to associate with nonprofits through donations—donors, fearing the possibility that a nonprofit might donate to a ballot group and thus subject them to a significant penalty, will hesitate or refrain from donating. *NAACP*, 357 U.S. at 452; *see also Bonta*, 594 U.S. at __, 141 S. Ct. at 2384 (applicable scrutiny applies where First Amendment activity is chilled—even if indirectly—"[b]ecause First Amendment freedoms need breathing space to survive."), *citing and quoting NAACP v. Button*, 371 U.S. 415, 433 (1963) *citing Shelton*, 364 U.S. 479.

Making matters worse, the chilling effect on nonprofit donations is amplified exponentially because by APOC's interpretation and application of the statute:

(a) in order to penalize a nonprofit donor, it is unnecessary for the Commission to trace the comingled dollars that flowed from the nonprofit organization to the ballot group, back to any particular donor;[147]

(b) a minority donor who gave the nonprofit no more than 15-26% (or perhaps less) of the nonprofit's total funds, can be penalized if the nonprofit's donations to the ballot group came from a comingled account into which the minority donor's gifts were deposited;[148]

(c) even a donor who gave to the nonprofit at a time when (1) no ballot proposition yet existed (because it had not yet been certified by the Lieutenant Governor), and (2) no ballot group yet existed, can be penalized if the nonprofit later donates to a later formed group;[149] and

(d) a nonprofit donor can be penalized even if all the donations (to the nonprofit and from the nonprofit to the ballot group) are made after APOC Staff has advised that registration and reporting is not required.[150]

See Exc. 245-251.

These infringements make the prohibition of AS 15.13.074(b)(4) against giving in the name of another as interpreted and applied by APOC, an unconstitutional violation of RCEA's, Matthias's, and RCEA's other donors'[151] First Amendment rights to free speech

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[147] Here RCEA's account contained comingled funds from all its donors, and there was no accounting or "painting" of dollars and there was no way to trace funds that came out of the account to any specific donor. Tr. 60-61, 63, 74.

[148] Matthias' donation amounted to only 26% of RCEA's funds through March 2023, and later only 15% of its total funds. Tr. 59-60; Exc. 219.

[149] Matthias made his donation to RCEA on December 22, 2022, [Exc. 217] a month before (a) the Lieutenant Governor certified the petition [Exc. 194-195], and (b) AHE was created on January 23, 2023. [R. 586-587]

[150] Exc. 199-200; R. 589-590.

[151] No donor other than Matthias was ever named or charged in the APOC proceeding below (Case 23-01-CD), and APOC never investigated or prosecuted any claims against them. Nonetheless, APOC's Final Order implicated them, at least so far as AHE's and RCEA's duty to identify them as potential "true sources." [Exc. 249 ("AHE and RCEA must therefore identify the true source of money RCEA contributes, even if it is not Mr. Mathias")] APOC's conclusion in this regard is extremely unreasonable and capricious. APOC offered no explanation for how the unearmarked dollars that were coming out of

and association. The chilling effect on First Amendment free speech (*i.e.*, chilling the nonprofit organization from contributing to ballot groups) and free association (*i.e.*, chilling the nonprofit donors from contributing to the nonprofit) makes the prohibition in AS 15.13.074(b) unconstitutional. The prohibition serves no compelling government interest. The only government interest that can support the prohibition is preventing *quid pro quo* corruption or its appearance, and no such interest is present in the case of a ballot measure. *Thompson*, 589 U.S. __, 140 S. Ct. at 349; *American*, 525 U.S. at 203; *Meyer*, 486 U.S. at 427–428; *First Nat.*, 435 U.S. at 790.

With respect to RCEA, it is not an adequate response for APOC or ABE to claim that RCEA brought the situation upon itself by choosing to donate to AHE. RCEA has a fundamental First Amendment right to engage in the speech and association represented by its donations to AHE. *Citizens United*, 558 U.S. at 342-343; *Bonta*, 594 U.S. at __, 141 S. Ct. at 2382; *NAACP*, 357 U.S. at 462. It is never an acceptable answer for the state to claim that a constitutional burden could have been avoided if the individual or entity had simply refrained from speaking or associating.

With respect to Matthias, it is no adequate response for APOC or ABE to point to Matthias' position and check signing authority for RCEA,[152] and to assert that he unlike

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RCEA's single bank account containing comingled funds (funds totaling $340,000 in January through March 2023 and later totaling $700,000 [Exc. 219; Tr. 60]) could be traced to Matthias or any other specific donor (Tr. 60-61, 63). By its silence in this regard, APOC effectively acknowledged the impossibility of the task. [Exc. 249-250] The first-in-first-out accounting method is sometimes used in such circumstances to account for funds coming out of a bank, but it is simply an accounting fiction. *See In re Christensen*, 149 P.3d 40, 50 (Nev. 2006).

[152] R. 668; Tr. 66.

other RCEA donors controlled his own destiny with respect to his exposure to the penalty attached to the AS 15.13.074(b) violation. Because dollars in RCEA's single bank account are comingled and there is no "painting" or separate accounting of dollars donated to RCEA by its multiple donors, Matthias had no idea whose money (meaning which donor's money) was being tapped to fund RCEA's donations when he signed RCEA's checks payable to AHE.[153] In fact, Matthias had every reason to believe that his $90,000 donation was not funding RCEA's donations to AHE because during the time frame when the donations were made he knew that RCEA had received hundreds of thousands of dollars from other donors that completely apart from his donation were sufficient to fund the donations to AHE more than two times over.[154]

And under the first-in-first-out (FIFO) accounting method, the first funds deposited in a commingled account are also the first funds withdrawn or paid out of that account. *See Christensen*, 149 P.3d at 50. Using FIFO, RCEA's donations to AHE were not funded with Matthias's dollars because the first dollars in, that were more than enough to cover the donations, did not come from Matthias.[155] Moreover, Matthias was not expecting any exposure for either him or RCEA under AS 15.13.074(b) when RCEA

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[153] Tr. 60-61, 63. Izon likewise knew of no way to trace the ultimate source of the dollars coming out of RCEA's account. Tr. 74 (Izon did not know how many donations RCEA had received or in what total amount, and he did not know how Matthias' donation compared percentage wise to the total donations RCEA had received from other donors). APOC Staff presented no evidence, and APOC stated no basis in its Final Order, for tracing Matthias' $90,000 to the donations RCEA made to AHE.

[154] RCEA received a $250,000 donation on December 21, 2022, from someone in the lower-48 other than Matthias before Matthias made his donation to RCEA the following day. Exc. 219; Tr. 59.

[155] Exc. 219; Tr. 59.

made its first set of donations to AHE from January 9, 2023, through February 23, 2023 (totaling $79,740),[156] because at that time he and the rest of the Sponsors were operating under APOC Staff's faulty advice that they had no registration or reporting obligations.[157]

B. The Compelled Disclosure of RCEA's Donors Violates the First Amendment

Related true source reporting statutes, namely AS 15.13.040(d), (e), (k), (q); AS 15.13.074(b); AS 15.13.110(h), abridge nonprofit/donor association and associational privacy. Again, as interpreted by APOC these statutes require a nonprofit, like RCEA, to attribute any donation that it gives to a ballot group during a signature gathering campaign, to the nonprofit's donors and report the identity of the donors. [Exc. 248] Compelled disclosure of nonprofit donors is unconstitutional. *See Bonta*, 594 U.S. at __, 141 S. Ct. at 2382; *NAACP*, 357 U.S. at 462 ("[i]t is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action.").

APOC asserted that Alaska's "true source" reporting statutes are constitutional despite the fact that they condition a nonprofit organization's exercise of its First Amendment right to free speech in the form of ballot group donations, upon compelled disclosure of the nonprofit's donors. [Exc. 248 and n. 86] APOC reached this conclusion by misreading and misapplying *American*, 525 U.S. at 205. According to APOC, the Court in *American* ruled that "states can 'legitimately require[] sponsors of ballot

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[156] Exc. 212-214, 221.

[157] Exc. 199-200; R. 589-590. Hebdon did not correct Lucas' faulty advice until the close of business (4:55 PM) February 23, 2023, and her email was sent to Izon not to Matthias.

initiatives to disclose who pays petition circulators, and how much." [Exc. 248 n. 86] But, in using *American* to sustain Alaska's "true source" reporting statutes—laws that delve to the depths of the identity of donors to nonprofits that contribute to ballot groups,[158] APOC read too much into the decision and wrongly assumed that the Colorado law at issue in that case required anything more than the name of the petition circulating company employing and paying the circulators. *See American Const. Law Found., Inc. v. Meyer*, 120 F.3d 1092, 1103-1105 (10th Cir. 1997); *American Const. Law Found., Inc. v. Meyer*, 870 F. Supp. 995, 1003 (D. Colo. 1994).

Colorado did not have a "true source" reporting law like Alaska. The laws at issue in *American* required only that the proponents of an initiative file periodic reports stating all contributions received and expenditures made—including the identity of the payee,[159] and that any paid circulators wear a badge disclosing "the name and telephone number of the individual employing the circulator."[160] The proponents' disclosure of contributions did not require them to delve into and reveal the sources or their committee's donors' contributors—*i.e.*, the donor the Colorado initiative proponents would have been required to disclose would have been RCEA only, and not RCEA's donors.[161] With respect to the identity of a "payee," Colorado law required only that the proponents identify any contracted petition circulating company that employed circulators as well as the identity

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158 *See* AS 15.13.400(19).
159 *See American*, 870 F. Supp. at 1003 (citing C.R.S.A. § 1-45-106 & 108 (Supp.1994)).
160 *See American*, 120 F.3d at 1101 (citing C.R.S.A. § 1-40-112(2)(b)).
161 *See* C.R.S.A. §§ 1-45-106-108; C.R.S.A. § 1-45-103(12). These disclosure laws were not even challenged in *American*, 525 U.S. 182.

of the circulators themselves.[162] The concern that prompted the Colorado laws at issue in *American* had been the practice of initiative proponents hiring contractors to do their circulation.[163] The "payors" of initiative circulators that were required to be disclosed in *American*, were the companies "in the business of circulation for hire" who paid the individual circulators handling the petitions.[164]

Thus, when the Supreme Court stated in dicta in *American* that states can legitimately require the disclosure of "who pays petition circulators, and how much," the Court was speaking about the compelled disclosure (from initiative proponents) of any payments they made to companies in the business of circulation for hire that employed and paid the individual circulators who personally handled the petitions.[165] The issue the Court addressed in *American*—as well as the "who pays" issue the Court referenced in dicta—came nowhere near broaching the issue in this case of whether a campaign disclosure law can breach the associational privacy of a nonprofit organization and its donors.

Under the authority of *Bonta*, 594 U.S. __, 141 S. Ct. 2373 and *NAACP*, 357 U.S. 449, the compelled disclosure of RCEA's donors violates RCEA's and its donors' associational privacy protected by the First Amendment. *Bonta* requires that Alaska's

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[162] *See American*, 120 F.3d at 1103-1105; *American*, 870 F. Supp. at 1003 (citing C.R.S.A. § 1-40-121(1) (Supp. 1994)).

[163] *See American*, 870 F. Supp. at 1003 ("the circulation of initiative petitions has become a business and the proponents of several petitions, particularly those seeking authorized gambling, have hired contractors to do the circulation").

[164] *Id.* ("Given the business of circulation for hire, there is an interest in compelling disclosure by the proponents of the persons or entities being hired."); *see also American*, 120 F.3d at 1104-1105 (discussing C.R.S.A. § 1-40-121 (Supp. 1994)).

[165] *American*, 525 U.S. at 205.

"true source" disclosure laws as applied to nonprofits and ballot measures be subjected to exacting scrutiny. Under that standard there must be "a substantial relation between the disclosure requirement and a sufficiently important governmental interest," an interest that "reflect[s] the seriousness of the actual burden on First Amendment rights." *Id.* at __, 141 S. Ct. at 2383. Moreover, the disclosure requirement "must be narrowly tailored to the interest it promotes." *Id.* at __, 141 S. Ct. at 2384.[166] The Court explained:

> "In the First Amendment context, fit matters. Even when the Court is not applying strict scrutiny, we still require a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served, that employs not necessarily the least restrictive means but a means narrowly tailored to achieve the desired objective."

Id. quoting McCutcheon, 572 U.S. at 218. Narrow tailoring is required, the Court held, because:

> The "government may regulate in the [First Amendment] area only with narrow specificity," ... and compelled disclosure regimes are no exception. When it comes to "a person's beliefs and associations," "[b]road and sweeping state inquiries into these protected areas ... discourage citizens from exercising rights protected by the Constitution."

Id. quoting NAACP v. Button, 371 U.S. 415, 433 (1963) and *Baird v. State Bar of Ariz.*, 401 U.S. 1, 6 (1971).

Here, the State will claim an interest in providing the electorate with information as to where political campaign money comes from, thereby aiding electors in evaluating

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[166] "A substantial relation is necessary but not sufficient to ensure that the government adequately considers the potential for First Amendment harms before requiring that organizations reveal sensitive information about their members and supporters. Where exacting scrutiny applies, the challenged requirement must be narrowly tailored to the interest it promotes, even if it is not the least restrictive means of achieving that end." *Id.*

those who seek their vote. *See American*, 525 U.S. at 202, *citing and quoting Buckley*, 424 U.S. at 66. But like the nonprofit donor disclosure requirement that was struck down in *Bonta*, there is a dramatic mismatch between the interest that the state seeks to promote and the disclosure regime that it has implemented. 594 U.S. __, 141 S. Ct. at 2386. The state is not free to enforce *any* disclosure regime that furthers its interests. Rather, it must demonstrate its specific need for the identities of a nonprofit's donors "in light of any less intrusive alternatives." *Id.*, *citing Shelton*, 364 U.S., at 488.

Alaska's "true source" laws reach too deeply in their effort to inform the public about ballot measures. In *American* the disclosure the court called "legitimate," was merely of the identities of the companies that employed and paid circulators. 525 U.S. at 205. Alaska's probing down to require the disclosure of not only the identity of the nonprofit organizations that contributed to a ballot group, but also the identity of the individual Americans who donated their personal funds (derived from "wages, investment income, inheritance, or revenue generated")[167] to the nonprofits—and then probing even deeper in the case of a nonprofit that donated to another nonprofit that made a contribution to a ballot group—creates an unnecessary risk of chilling free speech and association in violation of the First Amendment. Individual Americans, unlike the nonprofit organizations they support, are the ones who have legitimate reason to remain anonymous. As the Court explained in *Bonta*, it is sadly too common for nonprofit donors whose identities are publicly disclosed to be subjected to threats

[167] AS 15.13.400(19).

and harassment. 594 U.S. at __, 141 S. Ct. at 2388.[168] The state's interest would be satisfied by simply requiring the disclosure of the direct donors to the ballot group—in this case, RCEA. Or by simply penalizing those who intentionally create and utilize a dummy or phony organizational form (such as a nonprofit or other entity) to hide their support for a ballot group or to circumvent campaign contribution limits. Such a concern was not present in this case.[169]

II. AS 15.13.074(b) DOES NOT APPLY TO INITIATIVE CAMPAIGNS

The plain reading of the applicable statutes, strengthened by pertinent legislative history, confirm that AS 15.13.074(b), has no application to ballot initiative campaigns. AS 15.13.065(c) provides that "Except for reports required by AS 15.13.040[170] and

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[168] "The petitioners here, for example, introduced evidence that they and their supporters have been subjected to bomb threats, protests, stalking, and physical violence.... Such risks are heightened in the 21st century and seem to grow with each passing year, as "anyone with access to a computer [can] compile a wealth of information about" anyone else, including such sensitive details as a person's home address or the school attended by his children. *Id.*, *citing Reed*, 561 U.S. at 208 (Alito, J., concurring).

[169] APOC Staff specifically concluded after its investigation that RCEA was not created for the purpose of "laundering" or acting as an "intermediary" for donations. Exc. 182; Tr. 35. Furthermore, at the time that RCEA was created, AHE, the ballot group for 22AKHE, did not exist. R. 586-587. Matthias hid nothing about his donation to RCEA, declaring it publicly [Exc. 31], and RCEA later reported his donation as a "true source." [Exc. 207-208] Matthias testified that when he made his donation to RCEA he had no intent to see his money pass on to AHE (and entity that did not yet exist). Tr. 61.

[170] AS 15.13.040 relates to the reporting of contributions, expenditures, and the supplying of services. This statute has nothing to say about how a person may make contributions. Instead, AS 15.13.040(k) requires an individual contributing $500 or more to a ballot group to report the contributions. AS 15.13.040(d) and (e) require a nongroup entity like RCEA to report its expenditures and contributions and their true sources. AS 15.13.040(r) relates exclusively to "candidate elections."

15.13.110[171] and except for the requirements of AS 15.13.050,[172] 15.13.060,[173] and 15.13.112-15.13.114,[174] the provisions of AS 15.13.010—15.13.116 do not apply to limit the authority of a person to make contributions to influence the outcome of a ballot proposition." In AS 15.13.065(c), in addition to the meaning set forth in AS 15.80.010[175] the term "proposition" also includes "an initiative proposal application filed with the lieutenant governor under AS 15.45.020."[176]

The Alaska Supreme Court directs that statutes be interpreted "according to reason, practicality, and common sense, taking into account the plain meaning and purpose of the law as well as the intent of the drafters." *Marathon Oil Co. v. State, Dept. of Nat. Res.*, 254 P.3d 1078, 1082 (Alaska 2011). The Court uses a sliding scale: "[T]he plainer the language of the statute, the more convincing contrary legislative history must be." *Id.* As pertinent to this case, the plain language of the statutes make plain that except for reporting—including some "true source" reporting—the provisions of AS 15.13.010—15.13.116 do not apply "to limit the authority of a person to make contributions to influence the outcome of a ballot proposition." AS 15.13.065(c). The

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[171] AS 15.13.110 relates to reporting. AS 15.13.110(h), in combination with AS 15.13.040(e, requires a nongroup entity like RCEA to report its expenditures and contributions and their true sources. AS 15.13.110(k) applies only to "candidate elections."

[172] AS 15.13.050 relates to registration before expenditures.

[173] AS 15.13.060 relates to campaign treasurers.

[174] These statutes, AS 15.13.112 and AS 5.13.114 relate only to the uses of campaign contributions and the disposition of prohibited contributions.

[175] Under AS 15.80.010(31) the term "proposition" means "an initiative, referendum, or constitutional amendment submitted at an election to the public for vote."

[176] AS 15.13.065(c)(2).

AS 15.13.074(b) prohibition against giving in the name of another, falls squarely between AS 15.13.010 and AS 15.13.116.

Prior to 1974, Alaska had no limits on campaign contributions. *See State v. Alaska Civil Liberties Union*, 978 P.2d 597, 601 (Alaska 1999). By 1993 Alaska's campaign finance statutes stated that they generally applied, "[e]xcept as otherwise provided," "to contributions, expenditures and communications made by a candidate, group, municipality or individual 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."[177] But, under this 1993 version of the laws—like all other versions after—there was no limit placed on the amount that an individual or group could contribute or expend in favor of or in opposition to a ballot proposition.[178] And, the prohibition against making contributions "in the name of another," that at the time was stated in *former* AS 15.13.070(d), was expressly limited to contributions made "to influence the election of a candidate."[179]

In 1996 the legislature added AS 15.13.065 and AS 15.13.074 to the statutes, and in doing so reconfigured the provisions that made "giving in the name of another" a prohibition that only applied to candidate elections. In 1996, AS 15.13.065(c) provided as it does now. The 1996 change moved the prohibition against "giving in the name of

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[177] *See former* AS 15.13.010(b) (1993).
[178] *See former* AS 15.13.070(a)(2) (1993).
[179] *See former* AS 15.13.070(d) (1993).

another" from AS 15.13.070 to the newly added AS 15.13.074(b).[180] But with the changes, the legislature continued to provide that (1) contribution limits and prohibitions (those found in AS 15.13.010 to AS 15.13.116) did not apply to ballot propositions; and conversely that (2) contribution limits and prohibitions applied only to candidate elections. The legislature eliminated the confusing language about not prohibiting contributions in an amount "more than $1,000 a year" from *former* AS 15.13.070(a)(2) (1993); creating a new provision in AS 15.13.065(c) which just like *former* AS 15.13.070(d) (1993) exempted ballot propositions from the contribution limits and prohibitions, and then placing the prohibition against giving in the name of another into a section that fell squarely between AS 15.13.010 and .116.

In 2010 the legislature amended AS 15.13.065(c) to state that the contribution limits and prohibitions found in AS 15.13.010—15.13.116 do not apply to "an initiative proposal application filed with the lieutenant governor under AS 15.45.020."[181] The pertinent laws remained unchanged until 2020 when the people by initiative, amended the statutes but in doing so left AS 15.13.065(c) unchanged.

Contrary to APOC's reasoning [Exc. 247], AS 15.13.074(b) does squarely prohibit a person from donating to a nonprofit organization that engages in communications designed to influence the outcome of an initiative proposal application—as APOC concluded RCEA did—if that nonprofit later donates to the group pursuing the application. APOC points out that Matthias could have donated unlimited amounts to

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[180] *See former* AS 15.13.074(b) (1996) ("A person or group may not make a contribution anonymously, using a fictitious name, or using the name of another.").
[181] *See former* AS 15.13.065(c) (2010).

AHE [Exc. 247]—a point that undermines the logic for interpreting AS 15.13.065(c) so that the prohibition of AS 15.13.074(b) applies to Matthias' donation to RCEA—but entirely misses the point that its interpretation and application of the statutes (1) bars Matthias from donating to a nonprofit (like RCEA) if the nonprofit later donates to AHE; and (2) effectively bars the nonprofit (like RCEA) from exercising its constitutional right to donate to AHE if it cares to protect its donors' privacy and not subject them to substantial penalties.

III. THE RECORD DOES NOT SUPPORT THE CONCLUSION THAT MATTHIAS VIOLATED AS 15.13.074(b)

For Matthias to have violated AS 15.13.074(b), RCEA must have passed Matthias' money—not someone else's money—to AHE. Moreover, to have violated the statutes' prohibition against contributing in the name of another, Matthias must have intended to pass his money to AHE when he made his donation to RCEA. Taking the latter point first, there is no evidence that Matthias had such an intent when he made his donation to RCEA on December 22, 2022. At that time, AHE did not exist—AHE was not created until January 23, 2023. [R. 586-587] Moreover, at that time, no ballot proposition yet existed (because it had not yet been certified by the Lt. Governor)—that did not occur until January 20, 2023. [Exc. 194-195]. Matthias could not have intended his funds donated to RCEA to be passed to a ballot group that did not yet exist to support a ballot proposition that was not yet certified.

Moreover, to violate AS 15.13.074(b) Matthias must have intended to use RCEA as a conduit to hide himself from public exposure. But Matthias did the exact opposite—

he publicly announced his donation to "the effort," including to the press and media. [Exc. 31; R. 392, 394] By APOC's incongruous factual conclusion, Matthias surreptitiously gave to AHE via RCEA to hide his involvement, only to immediately announce that he was supporting "the effort" to stop ranked choice voting.

On the second point, there is no evidence that it was Matthias' money, as opposed to someone else's money, that RCEA used to fund its later donations to AHE. RCEA had received a $250,000 donation from someone other than Matthias before it received his $90,000 donation. [Exc. 219; Tr. 59] RCEA maintained one checking account with into which it deposited all of its funds, and all of its monies were comingled.[182] RCEA had no separate accounting, painting of the dollars, or any other way to trace dollars deposited into the single bank account back to any particular donor.[183] As of the end of December 2022, Matthias' donation to RCEA represented only 26% of RCEA's total funds and later only 15%.[184]

Izon's uninformed signature on RCEA's June 11, 2023, Form 15-5 [Exc. 207-208; Tr. 74]—a form that Izon filed for RCEA as RCEA's agent and not for Matthias as Matthias' agent [Tr. 63-64, 73-75], provides no evidence from which APOC could reasonably conclude that RCEA drew from Matthias' money as opposed to another's when it sent contributions to AHE. APOC incorrectly treated the Form as if it were an admission of Matthias under Alaska R. Evid. 801(d)(2), which it was not. Matthias had played no part in reviewing or preparing the Form [Tr. 63, 73] and Izon was not his agent

[182] Exc. 219-222.
[183] Tr. 60-61.
[184] Tr. 59-60.

when Izon prepared and filed the form. [Tr. 63-64, 73-75] Whether the evidence rules apply to the APOC proceeding or not, under these circumstances and upon this record APOC abused its discretion in holding the form against Matthias.

APOC concluded that Matthias was the source of AHE's contributions by (1) accepting hearsay evidence of conflicting newspaper accounts,[185] (2) crediting an unfounded Form 15-5 that Izon filed without foundational knowledge and without consulting Matthias [Tr. 63-64, 73-74], and (3) then impermissibly used a communication between APOC's staff attorney Tom Lucas and Respondents' legal counsel, as an alleged admission. [Exc. 249] Using an attorney's statement in a communication between legal counsel as a vicarious admission, is improper. *See United States v. Jung*, 473 F.3d 837, 841 (7th Cir. 2007);[186] *Lightning Lube*, 4 F.3d at 1198 ("not every out-of-court statement by an attorney constitutes an admission which may be used against his or her client. Rather, an attorney has authority to bind the client only with respect to statements directly related to the management of the litigation."); *Dolleris*, 408 F.2d at 921 ("[a]n attorney, merely because of his employment in connection with litigation, does not have the authority to make out-of-court admissions for his client, except those which are directly related to the management of that litigation."). In any event, APOC misconstrued counsel's statement—counsel merely stated that AHE and Matthias

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[185] *Compare* Exc. 31 (contemporaneous report) to R. 392, 394 (an alleged report from another reporter about a different event written some seven months after the fact).

[186] In *Jung*, the Seventh Circuit held the district court abused its discretion in admitting out-of-court statements of an attorney, explaining that "[t]he unique nature of the attorney-client relationship...demanded that trial courts exercise caution in admitting such statements. *Id.*

tried to be candid with the public (Matthias stating publicly that he had donated to "the effort")

Under the FIFO accounting method, the first funds deposited in a commingled account are also the first funds withdrawn or paid out of that account. *See Christensen*, 149 P.3d at 50. Using FIFO, RCEA's donations to AHE were not funded with Matthias's dollars because the first dollars in, that were more than enough to cover the donations twice over, did not come from Matthias.[187]

IV. RCEA DID NOT VIOLATE TRUE SOURCE REPORTING

APOC rightly did not conclude that RCEA violated the prohibition against contributing "in the name of another" contained in AS 15.13.074(b) [Exc. 251]—RCEA made the donations to AHE in its own name. [Exc. 206-208] But APOC erred when it concluded that RCEA violated the "true source" reporting requirement of the statute. [Exc. 251] That part of the statute provides that "nongroup entities...subject to AS 15.13.040(r)...may not make a contribution while acting as an intermediary without disclosing the true source of the contribution as defined in AS 15.13.400(19)."

RCEA was not subject to reporting under AS 15.13.074(b) because it was not subject to AS 15.13.040(r). RCEA did not contribute to any entity that made independent expenditures in one or more candidate elections. *Id.* In any event, RCEA did make a "true source" disclosure with respect to its donations to AHE. [Exc. 207-208][188] For that same reason, RCEA did not violate the true source reporting requirements of AS 15.13.040(d)

[187] Exc. 219; Tr. 59.

[188] As APOC concluded, RCEA did inform "the public...about the true source of the $90,000." [Exc. 251]

or AS 15.14.110(h)—it made a true source disclosure regarding its donations to AHE. [Exc. 207-208] The penalty for RCEA's **late** true source report is $50 per day under AS 15.13.390(a)(1) and APOC assessed that penalty against RCEA. APOC was not permitted to penalize RCEA a second time for the same tardy report in the amount of $79,740 (reduced to $19,935) under AS 15.13.390(a)(3)—that statute is tied to AS 15.13.040(r) and AS 15.13.074(b), neither of which, as explained above, apply to RCEA.

V. APOC VIOLATED DUE PROCESS AND CONTRAVENED THE STATUTES BY PENALIZING MATTHIAS IN THE AMOUNT OF HIS CONTRIBUTION TO RCEA AND BY PENALIZING HIM TWICE FOR HIS UNFILED CONTRIBUTION REPORT

Unlike RCEA, Matthias was not charged with violating a "true source" reporting statute. [Exc. 251] APOC's references to true source reporting failures as to Matthias, therefore, as an alternative basis for penalizing him under AS 15.13.390(a)(3) [Exc. 246] was meaningless and without foundation. Matthias was charged with failing to file a report under AS 15.13.040(k) which contains no "true source" language. AS 15.13.040(q) incorporates true source reporting into AS 15.13.040(b), (e), and (j), but not AS 15.13.040(k). And Matthias was not subject to AS 15.13.040(r) for the same reason that RCEA was not subject to that statute—he did not contribute to an entity that made independent expenditures in candidate elections.

With respect to AS 15.13.074(b), that statute has no application to Matthias or Matthias' donation to RCEA—the statute's true source reporting requirement applies only to an entity "acting as an intermediary."

With respect to AS 15.13.390(a)(3) Matthias did not "misreport"—he filed no report in 2023 (but then did so in 2024 under protest). For his failure (late) report, APOC fined him $50 per day for 165 days under AS 15.13.390(a)(1). [Exc. 240, 253] APOC was not entitled to fine Matthias twice for the same failure to report, the second time in the amount of his $90,000 donation under AS 15.13.390(a)(3). In any event, AS 15.13.390(a)(3) has no application to Matthias' failure to report—he was not subject to AS 15.13.040(r) nor was he subject to the AS 15.13.074(b) "true source" reporting requirement (which applies only to the entity "intermediary").

VI. APOC ABUSED ITS DISCRETION WHEN IT REFUSED TO CREDIT MATTHIAS FOR RCEA'S TRUE SOURCE REPORT AND THEN MITIGATE HIS PENALTY ANOTHER FIFTY PERCENT

APOC abused its discretion when it refused to give Matthias credit for RCEA's ultimate reporting of him as the "true source" of $90,000 in contributions made to AHE, and then a corresponding additional fifty percent reduction of the penalty assessed against him for a "true source" reporting deficiency. [Exc. 252] Despite having separately concluded that Matthias was responsible for all RCEA actions—attributing every action of RCEA to Matthias when concluding that he was the source of the $90,000 contribution to AHE—namely the Form 15-5 report [Exc. 249]—but then ignoring his connection RCEA and refusing to credit him with RCEA's ultimate reporting compliance when applying mitigation of penalty under 2 AAC 50.865(a)(1)(B). [Exc. 252] APOC's refusal to credit Matthias with RCEA's true source reporting after having credited RCEA with it—giving RCEA an additional 50% reduction but not Matthias—and after having treated the report as if it were Matthias' admission to the effect that he was the true source of

RCEA's contributions, was arbitrary, capricious, and manifestly unreasonable and thus an abuse of discretion. *See Del Rosario*, 378 P.3d at 383.

CONCLUSION

For the reasons stated above, the court should reverse APOC's Final Order in part.

DATED this 15th day of April 2024.

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