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. Alaska Public Offices Commission, Appellee/Cross-Appellee, Alaskans for Better Elections, Inc., Appellee/Cross-Appellant, and Alaskans for Honest Government, Wellspring Fellowship, and Phillip Izon, Appellees/Cross-Appellees.	)	Case Nos. 3AN-24-04508CI ~~3AN-24-04974CI~~ APOC Case No. 23-01-CD

FILED in the TRIAL COURTS
State of Alaska Third District
MAY ... 2024
Clerk of the Trial Courts
By _____ Deputy

APPEAL FROM THE FINAL DECISION OF THE
ALASKA PUBLIC OFFICES COMMISSION DATED JANUARY 3, 2024

BRIEF OF APPELLEE/CROSS-APPELLEE ALASKA PUBLIC OFFICES COMMISSION

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U.S. CONSTITUTION

Amendment I. Establishment of Religion; Free Exercise of Religion; Freedom of Speech and the Press; Peaceful Assembly; Petition for Redress of Grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or 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.

ALASKA STATUTES

Sec. 15.13.040. Contributions, expenditures, and supplying of services to be reported.

. . .

(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.

. . .

(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.

. . .

(q) For purposes of (b), (e), and (j) of this section, "contributor" means the true source of the funds, property, or services being contributed.

. . .

Sec. 15.13.050. Registration before expenditure.

(a) Before making an expenditure in support of or in opposition to a candidate or before making an expenditure in support of or in opposition to a ballot proposition or question or to an initiative proposal application filed with the lieutenant governor under AS 15.45.020, each person other than an individual shall register, on forms provided by the commission, with the commission.

. . .

(c) If a group intends to make more than 50 percent of its contributions or expenditures in support of or in opposition to a single initiative on the ballot, the title or common name of the initiative must be a part of the name of the group. If the group intends to make more than 50 percent of its contributions or expenditures in opposition to a single initiative on the ballot, the group's name must clearly state that the group opposes that initiative by using a word such as "opposes," "opposing," "in opposition to," or "against" in the group's name.

Sec. 15.13.065. Contributions.

. . .

(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

. . .

(2) an initiative proposal application filed with the lieutenant governor under AS 15.45.020.

Sec. 15.13.074. Prohibited contributions.

. . .

(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).

. . .

(e) A person or group may not make a cash contribution that exceeds $100.

. . .

Sec. 15.13.110. Filing of reports.

. . .

(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.

. . .

Sec. 15.13.390. Civil penalty; late filing of required reports.

(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;

(4) violates a provision of this chapter, except as otherwise specified in this section, is subject to a civil penalty of not more than $50 a day for each day the violation continues as determined by the commission, subject to right of appeal to the superior court; and

(5) is assessed a civil penalty may submit to the commission an affidavit stating facts in mitigation; however, the imposition of the penalties prescribed in this

section or in AS 15.13.380 does not excuse that person from registering or filing reports required by this chapter.

. . .

Sec. 15.13.400. Definitions.

In this chapter,

. . .

(4) "contribution"

(A) means a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made, and includes the payment by a person other than a candidate or political party, or compensation for the personal services of another person, that is rendered to the candidate or political party, and that is made for the purpose of

(i) influencing the nomination or election of a candidate;

(ii) influencing a ballot proposition or question; or

(iii) supporting or opposing an initiative proposal application filed with the lieutenant governor under AS 15.45.020;

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

. . .

(9) "group" means

. . .

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

. . .

(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.

ALASKA REGULATIONS

2 AAC 50.258. Prohibited contributions.

(a) A contribution must be made in the name of the true source of the money or thing of value. A person may not make a contribution using the name of another, or use a third-party conduit to obscure the true source of any money or thing of value contributed to a campaign. A contribution in the name of another prohibited by this section includes any contribution

(1) made at the direction of another person, including a parent organization, subsidiary, division, department, branch, or local unit of a business, labor union, or group;

(2) made by an employee, agent, or other person if an employer, principal, supervisor, or contractor lends, pays, or advances money or anything of value to the employee, agent, or other person to contribute in a name other than the true source of the money or thing of value;

(3) made by an employee, agent, or other person if an employer, principal, supervisor, or contractor reimburses the employee, agent, or other person for the contribution in money or anything of value;

(4) in a total amount exceeding the limitations in AS 15.13.070 if made to the same recipient by two or more groups or nongroup entities that

(A) share the majority of members of their boards of directors;

(B) share two or more corporate or organizational officers; in this subparagraph, "officer"

(i) has the meaning given in AS 15.13.040(r)(2); and

(ii) includes a chief executive officer;

(C) are owned or controlled by the same shareholders or members; or

(D) are in a parent-subsidiary relationship;

(5) made by a person who receives a gift of money or anything of value from a parent, spouse, or domestic partner for the purpose of making a contribution;

(6) made by check from a joint bank account in the name of any joint account holder who does not either sign the check or authorize the contribution in writing at the time the contribution is made; or

(7) made with funds derived from contributions, donations, gifts, or dues whose

source is not disclosed to the public at the time the contribution is made.

. . .

2 AAC 50.352. Ballot measure activity.

. . .

(b) A person contributing a total of $500 or more to a group described in (a) of this section shall file a statement of contributions in compliance with AS 15.13.040(k), on a form prescribed by the commission. The statement of contributions must be filed no later than 30 days after the person's total contributions to the group exceed $500. A person making a contribution to a group described in (a) of this section shall make the contribution in the name of the true source of the money or thing of value as required under 2 AAC 50.258.

. . .

PARTIES

The Appellants/Cross-Appellees are four of the seven respondents in the Alaska Public Offices Commission (APOC, or the Commission) matter below. These four are: Alaskans for Honest Elections (AHE), Ranked Choice Education Association (RCEA), Arthur Mathias, and Wellspring Ministries (WM). The three remaining respondents—Alaskans for Honest Government (AHG), Wellspring Fellowship (WF), and Phillip Izon—did not appeal and are therefore nonparticipating Appellees/Cross-Appellees.[1] The complainant below, Alaskans for Better Elections (ABE), is the Appellee/Cross-Appellant. APOC issued the final decision on appeal and is the Appellee/Cross-Appellee.

INTRODUCTION

ABE filed a campaign disclosure complaint against individuals and organizations supporting initiative proposal 22AKHE. That initiative would repeal Alaska's election system of open primaries and ranked-choice voting. The complaint alleged widespread campaign disclosure violations by the ballot initiative group AHE, plus RCEA and other organizations formed and controlled by two of 22AKHE's sponsors, primarily Art Mathias. RCEA is a nonprofit religious corporation that opposes ranked-choice voting.

After an investigation and a hearing, the Commission found that AHE, RCEA, and another entity violated laws (1) requiring registration, accurate and timely reports of contributions and expenditures, and top-donor disclosures on communications for the 22AKHE effort; and (2) banning cash contributions. The Commission also found that

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[1] Alaska R. App. P. 602(h).

Mathias, who controlled RCEA's funds, gave $90,000 to RCEA and then passed that money to AHE. Those transactions and the associated reporting failures amounted to violations by AHE, Mathias, and RCEA of reporting statutes and AS 15.13.074(b), which requires contributors give to ballot groups in their own names. For the more than 15 violations found, the Commission imposed civil penalties totaling nearly $95,000 against Mathias, AHE, RCEA, and another entity.

AHE, RCEA, and Mathias's appeal and ABE's cross-appeal together raise four issues related to Mathias's $90,000 contribution to AHE:

1. *AS 15.13.065(c) interpretation.* This statute makes some aspects of AS 15.13 inapplicable to "limit the authority of a person to make contributions to influence the outcome of a ballot proposition." The Commission has clarified, in regulation and a 2009 decision, that consistent with the statutes' language and purpose to inform the public about who funds ballot measure campaigns, the rule against contributing "using the name of another" applies to ballot propositions. Is that longstanding interpretation reasonable?

2. *Factual basis for violations.* Under AS 15.13.074(b), Mathias could not contribute funds to AHE "using the name of another," but that is what the Commission found he did. RCEA reported to APOC, belatedly, that Mathias was the source of the contribution RCEA passed through to AHE. Mathias and Izon both confirmed in statements to the public and to the Commission during its investigation that Mathias gave to AHE through RCEA. Does substantial evidence support the Commission's findings that Mathias and RCEA violated AS 15.13.074(b)?

3. *Penalties.* AS 15.13.074(b) forbids making a contribution "using the name of another." The associated penalty provision, AS 15.13.390(a)(3), applies to violations by the "contributor or intermediary" and caps the penalty amount at the contribution value, which the Commission may treble "upon a showing that the violation was intentional." APOC's regulations give discretion to impose penalties within the statutory limit. Did APOC abuse its discretion when it applied these rules to RCEA and Mathias and imposed penalties of $19,935 against RCEA and $45,000 against Mathias?

4. *First Amendment.* Alaska's campaign laws require transparency. Contributors to ballot groups cannot use others' names, and a ballot group cannot simply report an entity as a contributor if the entity passed along its own donations. The requirement to disclose donors' identities burdens the First Amendment rights of election funders to some degree, while advancing the important state interest in informing voters about the donors behind ballot measure campaigns. Do Alaska's donor disclosure laws survive exacting scrutiny review because they are narrowly tailored to further the interest in meaningful disclosure of who is funding elections?

ABE's cross-appeal raises two additional issues:

5. *Cash contribution.* The Commission found that when Mathias gave $90,000 to RCEA and then passed it through to AHE, he primarily wrote checks from RCEA's accounts. He also gave $2,358 of the $90,000 using cash, in violation of AS 15.13.074(e), but the violation was later corrected by AHE returning the cash and RCEA issuing a check, as the statutes contemplate. Did the Commission abuse its discretion by finding that Mathias was the source of the full $90,000?

6. The Commission made findings about AHE's reporting violations and dismissed them without prejudice to be addressed in separate matters. Was this approach an abuse of the Commission's discretion?

STATEMENT OF THE CASE

I. Art Mathias and Phillip Izon sponsor a ballot initiative to repeal ranked-choice voting, and they formed organizations that participate in that effort.

Alaska voters adopted a new voting system by ballot initiative in November 2020 implementing a top-four open primary followed by a ranked-choice general election. That system was used for the first time during 2022's statewide elections. Shortly after the November general election, a group of three ballot initiative sponsors—Art Mathias, Phillip Izon, and one other person—filed a new ballot initiative, which the sponsors themselves designated 22AKHE.[2] [Exc. 194-96; R. 572] The initiative seeks to repeal open primaries and ranked-choice voting, returning to the previous system. [R. 570] The sponsors filed their application on November 23, 2022, and the lieutenant governor certified 22AKHE for signature gathering on January 20, 2023. [R. 570]

Meanwhile, leading up to and shortly after 22AKHE's certification, Mathias and Izon formed entities related to their opposition to ranked-choice voting.[3] First, on November 1, 2022, Izon registered Alaskans for Honest Government (AHG) as an entity

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2 *See* AS 15.45.020; AS 15.45.030. The initiative itself with the sponsors' proposed language is not in the record, but it is available on the Division of Elections website at https://www.elections.alaska.gov/petitions/22AKHE/22AKHE%20-%20The%20Bill.pdf.

3 A chart summarizing the respondent organizations and their relationships with Mathias and Izon is found in the Commission's final order at Exc. 228.

with APOC.[4] [R. 573] AHG acquired the domain for its website shortly before that registration. [R. 577] Second, Mathias and Izon incorporated Ranked Choice Education Association (RCEA) as a Washington nonprofit religious corporation on December 16, 2022. [Exc. 32] RCEA purchased a web domain six days later [R. 673], and did not register with APOC. Third and finally, Mathias and Izon incorporated Alaskans for Honest Elections (AHE) as a nonprofit corporation and registered it as an entity with APOC on January 23, 2023. [Exc. 38; R. 71] AHE, the ballot initiative group for 22AKHE, bought its website domain in mid-November 2022—months before its incorporation and entity registration. [Exc. 76] It did not register with APOC under its correct designation—a group—until months later. [Exc. 60] Unlike an entity, a group "organize[s] for the principal purpose of filing an initiative proposal application" or has "file[d]" such an application.[5] [Exc. 60]

Izon informed APOC Staff in November 2022 that he was "starting a citizen initiative" and asked how to report expenditures "prior to the state approved initiative," without identifying any of the entities in particular. [R. 592] Staff responded that "[i]t appears that what you are contemplating is a referendum (a ballot proposition to repeal a law), not an initiative," and that "the definition of an expenditure does not include money spent during the signature gathering stage of a referendum (unlike, an initiative)."

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[4] Note that for reasons irrelevant to this appeal, the statutory designation "non-group entity" in AS 15.13.400 is not in use. "Entity" is not defined, but an APOC entity is a "person" as used in the statutes. *See* AS 15.13.040(d)-(e); AS 15.13.110(g).

[5] AS 15.13.400(9)(C).

[R. 590-91; Exc. 157] APOC Staff also explained that a group may want to register and report so that it could carry over any excess funds to the election campaigning stage, if any. [R. 591] Izon then asked specifically about AHG and AHE, and Staff responded that AHG was already registered and that AHE had no registration requirement unless "it spends to support or oppose a candidate or ballot proposition."[6] [R. 589-90] AHE did not register with APOC in 2022. [*See* Exc. 38, 60]

In February 2023, signature-gathering for the initiative began with the Division of Elections' delivery of the petition booklets to the sponsors.[7] [R. 572] That month, AHE held a petition signing and fundraising event at the gymnasium in the Wellspring Ministries building on Sentry Drive. [Exc. 31; R. 646-48] Mathias is the president and treasurer of Wellspring Ministries (WM), a longstanding Alaska nonprofit corporation, which owns the building, and he spoke at the event. [Exc. 31, 209; R. 646-47, 706]

AHE's use of the gymnasium eventually came under scrutiny as to whether it must be reported to APOC as a contribution. The respondents explained to APOC Staff that WM leases space in the building to other nonprofit organizations, including Wellspring Fellowship, a church formed and controlled by Mathias, of which RCEA is an "integrated auxiliary." [Exc. 209; R. 650, 653, 709] They explained that WM charges its nonprofit tenants only the cost attributable to operating and maintaining the leased space the tenant occupies, rather than fair market value. [R. 650, 653] Wellspring Fellowship as one of

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6 The respondents' opening brief misstates the order of these emails. [At. Br. 14-15]

7 *See* AS 15.45.070; AS 15.45.140 (providing that sponsors have one year to gather the required signatures to place an initiative on the ballot).

these tenants leases the gymnasium, which it uses for religious services, as well as some office space and a conference room. [Exc. 209-10; R. 650] During Staff's investigation, the respondents explained that Wellspring Fellowship in turn charges $1 to the Association of Mature American Citizens (AMAC) for that group to use the gymnasium for its monthly meetings. [R. 552-53, 653, 687-88] They stated that it was AMAC, not Wellspring Fellowship or WM, that hosted AHE's event in the gymnasium. [R. 552-53, 653, 687-88] Neither AHE's invitation to the signature-gathering event nor the articles written about it afterwards, however, mentioned AMAC. [R. 368-75, 392-97, 646-48]

About a week after the signature-gathering event, APOC's director followed up with Izon about AHE's entity registration. [Exc. 158] On February 23 and 24, 2023, she advised him that because AHE had actually filed an initiative proposal application—not a referendum as Staff had mistakenly guessed—AHE needed to register as a group and file reports. [Exc. 158-59; R. 594-600] She emphasized that "money raised and spent for the purpose of supporting an initiative application must be reported" and that AHE's reporting obligations were "not contingent on approval of the application." [R. 594]

AHE still did not register as a group with APOC until a month later, on March 20, 2023, despite telling APOC Staff they would do so "immediately." [Exc. 60, 160] Izon and Mathias are AHE directors; Izon is chair of the registered group. [R. 586; Exc. 60] AHE has at all times used its website, which it acquired in November 2022 [R. 656], to promote 22AKHE. [R. 657-59] From its inception until at least April 6, 2023, the website stated that it was "Paid for by Alaskans for Honest Elections," naming none of AHE's contributors. [Exc. 166; R. 657-58] Sometime in April 2023, the website was updated to

identify Izon, RCEA, and another person as AHE's top three contributors. [Exc. 166; R. 659] AHE also published numerous videos on YouTube with paid-for-by identifiers that named only the group itself and none of its donors. [Exc. 166-67; R. 660-62]

AHG—the entity that registered with APOC back in the fall—also supported 22AKHE. Izon told APOC during the investigation that he registered AHG with APOC by mistake. [Exc. 154] In an affidavit provided in the investigation, he described AHG's purpose as "a Political Action Committee that was formed to make independent expenditures related to the November 2022 general election for Alaska's U.S. House and U.S. Senate seats." [Exc. 154] But soon after its November 1, 2022, APOC registration, AHG's website consisted solely of material related to the effort to repeal ranked-choice voting in Alaska through 22AKHE. [Exc. 163; R. 578-79]

Finally, the unregistered RCEA also engaged in advocacy for 22AKHE. At its website's inception in December 2022 [R. 673], the landing page bore the heading "Alaska's Efforts to Repeal Ranked Choice" and linked to AHE's website. [Exc. 167; R. 675-80] The website contained no paid-for-by identifier. [Exc. 167; R. 675-80] In July 2023, RCEA published tweets stating that Izon "wrote the bill to repeal [ranked-choice voting] from Alaska," that it hopes to get 22AKHE on the ballot so ranked choice voting can be removed from "our state," and identifying itself as "the group behind" the signature drive to repeal ranked-choice voting in Alaska. [Exc. 168; R. 435-37]

II. Mathias contributed $90,000 to the ballot initiative group, AHE, through an organization that he controls, RCEA.

Shortly after RCEA was formed in December 2022, Mathias made a $90,000

donation to the new nonprofit. [R. 717] Mathias, who testified at the Commission hearing that he has the sole check-writing authority for RCEA [Tr. 66], later wrote the checks contributing roughly that same amount to AHE ($90,740). [R. 701-05] Izon told a reporter that "Mathias had contributed a large donation in a lump sum in December, which was then transferred to the ballot group in several smaller payments over a period of months to meet the group's needs." [R. 396] The respondents' attorney wrote to APOC Staff that "Mr. Mathias made the first contribution to RCEA that RCEA then contributed to AHE," noting that Mathias could alternatively have "contribute[d] those funds to AHE directly." [R. 463] And RCEA published a tweet in July 2023 stating that "[f]rom our organization we only used one donor's contributions for our efforts in Alaska." [R. 447]

RCEA reported these contributions to AHE on two Statement of Contributions reports filed with APOC on May 9 and June 11, 2023. [Exc. 97-98, 118-19; R. 698-700] The two reports listed a series of five contributions in varying amounts between February 6, 2023, and June 11, 2023, totaling $90,000. [R. 698-700] One of the five contributions RCEA reported was a cash contribution in the amount of $2,358. [Exc. 206] AHE later returned that cash contribution to RCEA and replaced it with a contribution by check in the same amount. [R. 575, 705] The May report did not identify the true source of the four contributions it reported. [Exc. 206-07] On the June report, however, RCEA stated that Mathias was the source of all five contributions totaling $90,000. [Exc. 208]

APOC Staff's investigation found that the five reported contributions from RCEA to AHE occurred, though the precise details—such as dates and check numbers—were slightly different than what RCEA had reported. [Exc. 168-69] And the amount of the

fifth contribution was slightly higher. [Exc. 169] RCEA reported a $10,260 contribution by check number 2010 on June 11, 2023, bringing the total annual contribution to AHE to $90,000. [Exc. 207] In fact, RCEA contributed $11,000 (not $10,260) slightly earlier, on May 22, 2023. [Exc. 215] The total of RCEA's five contributions to AHE was therefore $90,740. [*See* Exc. 212-16, 168-69] One of five contributions, $1,382 in February 2023, paid for printing of petition booklets for AHE. [Exc. 214; R. 556, 703]

Mathias spoke at AHE's signature gathering and fundraising event held at the Wellspring building in February 2023. [R. 394, 646-47; Exc. 31] Media who attended and wrote about the event reported that "Mathias repeatedly told attendees that he had contributed $100,000 to the ballot measure group seeking to overturn ranked choice voting." [R. 394; *see* Exc. 31, R. 646-47]

III. The Commission found multiple and varied violations of Alaska's campaign disclosure laws, including the failure to report Mathias's contribution to AHE through RCEA.

Alaskans for Better Elections (ABE) filed a complaint with APOC alleging various violations of Alaska campaign finance law in connection with the funding of the 22AKHE initiative effort. [Exc. 1; R. 1] Both sides provided extensive documentary evidence and written arguments. APOC Staff investigated the allegations and issued a report recommending that the Commission find a number of violations and dismiss other allegations, and impose penalties for the violations. [Exc. 161-91] The Commission held a hearing on November 16, 2023, where Izon and Mathias testified. [Tr. 59, 67]

On January 3, 2024, the Commission issued an order finding violations by four respondents (AHG, AHE, RCEA, and Mathias) and imposing fines. [Exc. 223-24, 253-

54] The Commission organized the violations it found into five categories:

(1) failures of AHE, AHG, and RCEA to register with APOC (AS 15.13.050(a)) [Exc. 232-33];

(2) late, incomplete, and/or inaccurate reports by AHE, AHG, and RCEA (AS 15.13.040 and AS 15.13.110) [Exc. 232, 236-40];

(3) failure to include accurate paid-for-by identifiers on communications published by AHE, AHG, and RCEA (AS 15.13.090(a)) [Exc. 232, 241-44];

(4) cash contribution violation by RCEA (AS 15.13.074(e)) [Exc. 232, 244-45]; and

(5) violations related to Mathias's contribution of $90,000 to AHE through RCEA. [Exc. 232, 240, 245-52]

Alaskans for Better Elections (ABE) as Cross-Appellant challenges aspects of the Commission's decision in the fourth and fifth categories. [Cr. App. Br. 2-3] RCEA, AHE, and Mathias's arguments focus on the fifth category, but their arguments also implicate aspects of the Commission's findings of reporting violations by RCEA, AHE, and Mathias as well as AHE's paid-for-by identifier violations.[8] [At. Br. 2-3]

AHE is the "group" that filed the initiative proposal application for 22AKHE.[9] The central problem raised by the Complaint and addressed in APOC's order is the failure of AHE and its supporters to register and report their fundraising and expenditures in support of 22AKHE, as required in order to inform the public. Groups (like AHE) and entities (like RCEA) that make expenditures "in support of or in opposition to . . . an initiative proposal application" must first register with APOC[10] and must then file

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8 AHG, Izon, and Wellspring Fellowship did not appeal. WM appealed but raised no issues.

9 *See* AS 15.13.400(9)(C) (defining "group").

10 AS 15.13.050(a); AS 15.13.400(16) (defining "person" as including groups and

quarterly reports during the period of time before an election campaign begins.[11] A group or entity making independent expenditures in support of an initiative application must file independent expenditure reports.[12] And those who contribute more than $500 to a ballot group must report the contribution on a statement of contributions report.[13]

Registration violations. The Commission first found that AHE, AHG, and RCEA all made express communications in support of 22AKHE and therefore should have registered before making expenditures. [Exc. 233-36] AHE and AHG eventually did properly register, but while the matter was pending before APOC, RCEA never did. [*Id.*] None of these three respondents appealed the findings that they were required to register, nor did RCEA appeal the penalty associated with that violation. [Exc. 234-36, 253] Because they were first-time filers, the Commission did not assess penalties against AHE and AHG for their late registrations. [Exc. 234, 236]

Reporting violations. The Commission also found that because AHG and RCEA were entities that received contributions and/or made expenditures in support of 22AKHE, they should have filed independent expenditure reports and quarterly reports, disclosing contributions received and expenditures made.[14] [Exc. 236-40] Penalties were imposed for those violations. [Exc. 236-40]

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various types of entities); AS 15.13.400(7) (defining "expenditure").

11 AS 15.13.110(g).

12 AS 15.13.040(d)-(e); AS 15.13.110(h).

13 AS 15.13.040(k).

14 AS 15.13.040(d); AS 15.13.110(g).

AHE similarly failed to file independent expenditure reports, and AHE filed its quarterly reports late and/or with inaccuracies. [Exc. 238] Because AHE's reporting violations were already the subject of separate Staff-initiated penalty assessment matters, the Commission dismissed the reporting violation allegations against AHE without prejudice to be addressed in those separate matters. [Exc. 238] The Commission, however, made findings based on the evidence in this case "for purposes of those civil penalty assessment matters." [Exc. 238] First, APOC found "that AHE should have reported a non-monetary contribution from Wellspring Ministries for the use of the gymnasium in its building for a signature drive and fundraising event lasting more than two hours on February 16, 2023." [Exc. 238] The Notice of Appeal in this case included that issue, and the Appellants' opening brief describes their interpretation of the finding itself and of the relevant facts in the Statement of the Case. [At. Br. 12-13, 19-20] Appellants did not, however, mention this issue in the Questions Presented or Argument sections of their brief. [At. Br. 2-3, 25-50] Any challenge to this aspect of the Commission's order has therefore been waived.[15]

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15 *City of Fairbanks v. Rice*, 20 P.3d 1097, 1106 (Alaska 2000) (holding that an issue was "so sparely briefed that it is effectively waived").

To the extent the Court considers Appellants' cursory arguments about the issue in their statement of the case, those arguments fail. The finding in question is that AHE failed to report the use of the Wellspring gymnasium space for its fundraising and signature drive as a contribution. [Exc. 238] The Commission concluded that Wellspring Ministries was the contributor of the use of the space to AHE. [Exc. 238-39] That is a factual finding, and the record strongly supports it.

Appellants do not acknowledge the applicable standard of review. *See, e.g.*, *Carlson v. Doyon Universal-Ogden Servs.*, 995 P.2d 224, 227 (Alaska 2000) (explaining that it is not the court's role to reweigh the evidence so long as substantial evidence

The second finding the Commission made "for purposes of th[e] civil penalty assessment matters" regarding AHE's reporting obligations was that "AHE's reports violated AS 15.13.110(g) because they did not identify the true source of the $90,740 AHE received from RCEA."[16] [Exc. 238]

Next, the Commission found that AHG, AHE, and RCEA all failed to include appropriate "paid-for-by" identifiers on their websites and on AHE's many YouTube videos in support of 22AKHE. [Exc. 241-44] AHE eventually updated the paid-for-by identifiers on its website, but the Commission found that the disclosures were still out of compliance because AHE named RCEA as one of its top-three donors, even though

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supports it). They instead simply present their version of the facts—that "AMAC," an organization whose name appears nowhere in the contemporaneous record evidence about AHE's event at the Wellspring building, was the source of the in-kind contribution to AHE. [*See* R. 368-75, 392-97, 646-48; Exc. 30-31] WM, which is controlled by Mathias, is the building owner, and it allows Wellspring Fellowship, which Mathias also controls, to use the gymnasium, for far less than its fair market value. [Exc. 31, 209-11; R. 650, 653, 706] Mathias spoke at AHE's event in the gymnasium in support of 22AKHE, an initiative of which he is a sponsor. [R. 572, 646-47] AHE did not mention AMAC as the host of its event on its invitations. [R. 648] And contemporaneous reports about the event did not mention AMAC either. [Exc. 122-29; R. 392-97, 646-47] This Court cannot reweigh the evidence to reach a conclusion different than the Commission's, which the evidence supports. *Carlson*, 995 P.2d at 227.

Fundamentally though, even if the Court were to accept the assertion that AMAC, rather than WM, provided AHE with space for the event, the finding of a violation and the penalty should still be affirmed. Changing the identity of the contributor does not relieve AHE of its obligation to report the nonmonetary contribution. AS 15.13.110(g) (requiring quarterly reports that include "contributions received"); 2 AAC 50.250(b) (describing how to value nonmonetary contributions). This Court should find the issue waived, or, in the alternative, affirm the Commission's decision.

[16] 2 AAC 50.321(b) (requiring groups that file reports required by AS 15.13.110 to include all the information required by AS 15.13.040(b), which in turn requires the reporting of the true sources of contributions); AS 15.13.400(19) (defining true source).

Mathias was the source of the $90,000 contribution through RCEA.[17] [Exc. 242-43]

Cash contribution. Next, the Commission found that RCEA violated AS 15.13.074(e) when it gave $2,358 to AHE in cash. [Exc. 244; *see* R. 607, 698] The Commission noted that the statutes provide a remedy for such a violation: the recipient must return the cash to the donor. [Exc. 244] Accepting the evidence that AHE did return the cash to RCEA and noting that Staff had not recommended a penalty for the period of time before that occurred, the Commission declined to impose a separate monetary penalty for the unlawful cash contribution. [Exc. 244-45; *see* R. 575, 705]

Giving in the name of another violations. Finally, the Commission made findings regarding Mathias, RCEA, and AHE's failure to correctly report Mathias's contribution of $90,000 to AHE through RCEA. [Exc. 245-52] The Commission first rejected the respondents' argument that AS 15.13.065(c) makes AS 15.13.074(b) (the prohibition against giving in the name of another) and 2 AAC 50.258 (the regulatory requirement that reported contributors be the "true source" of the contribution) inapplicable to ballot initiative campaigns. [Exc. 246-47] In a short paragraph, the Commission rejected respondents' argument that true-source reporting rules violate the First Amendment associational rights of donors to give anonymously to nonprofits like RCEA.[18] [Exc. 248]

The Commission also rejected respondents' fact-based arguments. Respondents

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17 AS 15.13.090(a).

18 The order spent little time on this argument; only courts can decide constitutional issues. *Alaska Pub. Int. Rsch. Grp. v. State*, 167 P.3d 27, 36 (Alaska 2007) (explaining that administrative agencies do not have jurisdiction over constitutional issues).

asserted that "because RCEA had other donors besides Mr. Mathias and because money is fungible, the money RCEA gave to AHE is 'not traceable' to him." [Exc. 248] APOC first observed that RCEA and AHE have legal obligations to disclose the true source(s) of the full $90,740 in contributions, whether or not the source was Mathias. [Exc. 248-49] And the Commission found that the evidence "compel[led]" the conclusion that Mathias "was the true source of $90,000 out of the $90,740 RCEA gave to AHE." [Exc. 249] The Commission thus found that AHE violated AS 15.13.040(b), AS 15.13.110(g), and AS 15.13.074(b) by failing to report that Mathias was the true source of $90,000 of the contributions it received from RCEA and by failing to report a true source for the remaining $740 that it received from RCEA. [Exc. 238, 251]

Mathias "violated AS 15.13.040(k), [AS] 15.13.074(b), and 2 AAC 50.258(a) by contributing $90,000 to AHE in the name of another and [by] failing to report his contribution." [Exc. 251] And "RCEA violated AS 15.13.040(d), [AS] 15.13.110(h), [AS] 15.13.074(b), and 2 AAC 50.258(a) by failing to disclose the true source of the $79,740 of contributions to AHE shown on its May 9, 2023 statement of contribution report." [Exc. 251] The Commission noted that the maximum penalty for both contributor (Mathias) and intermediary (RCEA) is "the amount of the contribution that is the subject of the misreporting or failure to disclose," and that this penalty can be trebled "if an intentional violation is found." [Exc. 251[19]] But "[b]ecause the public was ultimately informed about the true source of the $90,000," the Commission "elect[ed] not to treble

[19] Citing AS 15.13.390(a)(3).

the penalties." [Exc. 251] Applying its penalty assessment and mitigation regulations, the Commission assessed a $19,935 penalty for RCEA's violation and a $45,000 penalty for Mathias's violation. [Exc. 252]

This appeal and cross-appeal followed.

STANDARDS OF REVIEW

When reviewing the Commission's findings of fact, courts apply the substantial evidence standard, affirming if there is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[20] Substantial evidence does not require that decision be the "only possible solution to the problem, for it is not the function of the court to reweigh the evidence or choose between competing inferences, but only to determine whether such evidence exists."[21] Contrary to the Appellants' suggestion, the Alaska Supreme Court rejects the notion that AS 44.62.570(c) mandates a court's "independent judgment on the evidence" and has consistently avoided reviewing an agency's factual findings de novo to "prevent[] a dislocation of the respective functions of administrative agencies and the courts."[22] [*See* At. Br. 24]

For questions of law, the standard of review depends on whether the issue involves agency expertise. Again contrary to the Appellants' statement of the standard, not all

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20 *E.g., Repub. Govs. Ass'n v. Alaska Pub. Offs. Comm'n*, 485 P.3d 545, 549 (Alaska 2021).

21 *Carlson v. Doyon Universal-Ogden Servs.*, 995 P.2d 224, 227 (Alaska 2000).

22 *State, Alcoholic Beverage Control Bd. v. Decker*, 700 P.2d 483, 486 (Alaska 1985), *superseded on other grounds*; *see Borrego v. State, Dep't of Pub. Safety*, 815 P.2d 360, 363 (Alaska 1991) (noting that applying the substantial evidence, rather than de

legal questions receive de novo review in an administrative appeal. [*See* At. Br. 24] Instead, "when the question involves fundamental policy decisions or administrative expertise," the Court defers to an agency's reasonable interpretation of a statute.[23] This standard, which asks "whether the agency's decision is supported by the facts and has a reasonable basis in law," recognizes that the agency's expertise puts it "in a better position than a court to make such determinations."[24] Questions outside an agency's expertise, including constitutional issues, are subject to independent review.[25] The Court adopts the rule of law "most persuasive in light of precedent, reason, and policy,"[26] while giving weight to an agency's longstanding and consistent statutory interpretation.[27]

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novo, standard of review is particularly justified "where the findings of fact were made in a quasi-judicial proceeding").

[23] *Repub. Govs. Ass'n*, 485 P.3d at 549; *Alaska Police Standards Council v. Parcell*, 348 P.3d 882, 886 (Alaska 2015) (stating that two circumstances generally call for reasonable basis review: "(1) where the agency is making law by creating standards to be used in evaluating the case before it and future cases, and (2) when a case requires resolution of policy questions which lie within the agency's area of expertise and are inseparable from the facts underlying the agency's decision." (cleaned up)).

[24] *Harr v. State, Dep't of Admin., Div. of Motor Vehicles*, 349 P.3d 173, 180-81 (Alaska 2015).

[25] *Repub. Govs. Ass'n*, 485 P.3d at 549; *Alaska Pub. Offs. Comm'n v. Patrick*, 494 P.3d 53, 56 (Alaska 2021).

[26] *Repub. Govs. Ass'n*, 485 P.3d at 549.

[27] *E.g., Alaska Jud. Council v. Kruse*, 331 P.3d 375, 381 (Alaska 2014) ("A longstanding agency interpretation may also be viewed as legislative acquiescence to that interpretation."); *Chugach Elec. Ass'n, Inc. v. Regulatory Comm'n of Alaska*, 49 P.3d 246, 250 (Alaska 2002) ("[E]ven under the independent judgment standard we have noted that the court should give weight to what the agency has done, especially where the agency interpretation is longstanding." (cleaned up)); *State v. Jeffery*, 170 P.3d 226, 230 (Alaska 2007) ("A statutory construction adopted by those responsible for administering a statute should not be overruled in the absence of weighty reasons." (cleaned up)).

Finally, the Court reviews an agency's imposition of fines for abuse of discretion.[28] Imposing sanctions is "a discretionary function which, if within the statutory authority of an agency, must not be overturned unless that discretion is abused."[29]

ARGUMENT

I. The Commission's conclusions regarding Mathias's $90,000 contribution to AHE in the name of RCEA should be affirmed.

The issues in this appeal center primarily on the violations the Commission found regarding Mathias's $90,000 contribution to AHE through RCEA and the associated penalties. Appellants AHE, RCEA, and Mathias, and Cross-Appellant ABE raise several challenges to that aspect of the final order. All of these challenges should be rejected and the Commission's decision affirmed.

A. The prohibition against giving in the name of another applies to ballot initiative campaigns.

Mathias and RCEA challenge the findings and penalties against them under AS 15.13.074(b), arguing that the requirement of giving in one's own name does not apply to ballot measures. [At. Br. 40-44] Before the Commission, Mathias and RCEA moved for partial summary judgment that AS 15.13.065(c) makes this rule inapplicable to contributions to ballot initiative campaigns like the one supporting 22AKHE. [R. 882] The Commission has long rejected Mathias and RCEA's reading of AS 15.13.065(c) and

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28 *Odom v. State, Div. of Corps.*, 421 P.3d 1, 6 (Alaska 2018).

29 *Id.* at 6 n.20 (quoting *Colo. Real Estate Comm'n v. Hanegan*, 947 P.2d 933, 936 (Colo. 1997) (en banc)).

AS 15.13.074(b), based on the statutory text and purposes, and did so here.[30] [Exc. 245-26] Whether this Court defers to the Commission's "reasonable interpretation" of statutes within its area of expertise or independently reviews them, it should affirm the conclusion that AS 15.13.074(b) applies to ballot initiative campaigns.[31]

Alaska Statute 15.13.065(c) states that "except for" enumerated statutes covering registration, reporting, campaign treasurers, and the handling of campaign contributions, "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." Mathias and RCEA argue that because .074 falls between .010 and .116, the prohibition against giving in another's name has "no application to ballot initiative campaigns."[32] [R. 882, 886-87]

The Commission rejected this argument, concluding based on the plain language of the statutes that the requirement to give in one's own name "does not 'limit the authority of a person to make contributions to influence the outcome of a ballot proposition' that the person would otherwise have." [Exc. 247[33]] Therefore, APOC held, subsection .065(c) does not make subsection .074(b) inapplicable to ballot measure

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30 *Alaska Pub. Offs. Comm'n v. Renewable Resources Coalition, Inc.*, OAH No. 09-0231-APO, APOC Nos. 09-01-CD, 09-04-CD, 09-05-CD, and 09-06-CD (Nov. 19, 2009) [R. 1091-1100].

31 *Repub. Govs. Ass'n v. Alaska Pub. Offs. Comm'n*, 485 P.3d 545, 549 (Alaska 2021).

32 Before the Commission, Mathias and RCEA also argued based on the same reasoning that the cash contribution prohibition in AS 15.13.074(e) does not apply to ballot measures. [R. 882] But they did not appeal that issue.

33 *Citing* AS 15.13.065(c).

campaigns. [Exc. 245-48] Reading the statute otherwise would be inconsistent with the obligations imposed by the reporting statutes. [Exc. 246] The reporting statutes, in addition to AS 15.13.074(b), mandate reporting that Mathias was the source of the $90,000 contribution. [Exc. 246] The statutes work together to further the public interest in "transparency about the funding of ballot initiative campaigns." [Exc. 247[34]]

When interpreting a statute de novo, the Alaska Supreme Court considers the language of the statute, its legislative history, and its underlying purpose.[35] And, "whenever possible," the Court will "interpret each part or section of a statute" to create "a harmonious whole."[36] A statute that is "part of a larger framework or regulatory scheme" should be read "in light of the other portions" of the regulatory structure.[37] These interpretive tools all favor APOC's interpretation.

Moreover, understanding the interplay of AS 15.13.065(c) and AS 15.13.074(b) is the sort of policy-laden legal issue where courts consider it appropriate to defer to an agency's reasonable interpretation of the statutes it is tasked with administering.[38] In such cases, courts apply the "reasonable basis" standard of review, which includes giving serious consideration to an agency's "longstanding and continuous" interpretation of the

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34 *Citing Messerli v. State*, 626 P.2d 81, 87 (Alaska 1981).

35 *E.g., City of Valdez v. State*, 372 P.3d 240, 248 (Alaska 2016).

36 *Alaska Airlines, Inc. v. Darrow*, 403 P.3d 1116, 1127 (Alaska 2017).

37 *Id.*

38 *See Repub. Govs. Ass'n*, 485 P.3d at 549.

statute.[39] And the Commission has been clear since at least 2009 that it does not read AS 15.13.065(c) to exempt ballot measure contributions from the requirements of AS 15.13.074(b).[40] [R. 1081, 1091-1100, 1106]

Plain language. In a 2009 opinion, the Commission rejected Mathias and RCEA's reading that AS 15.13.065(c) "simply makes every provision between AS 15.13.010 and 15.13.116 inapplicable to ballot measures, apart from the six it specifically enumerates." [R. 1094] Noting that "neither party" to that case advanced this "sweeping" reading, the Commission easily dismissed it as impossible because some of the unenumerated provisions within the range "expressly address ballot propositions." [R. 1094[41]]

The Commission went on to address the language used in subsection .065(c): the statutes "do not apply to *limit the authority of a person to make* contributions" to influence a ballot proposition. [R. 1094[42]] That language, in APOC's view in 2009 and now, plainly covers the questions of "whether" a person may contribute and "how much." [Exc. 247, 1094] The statutes in the covered range cannot be applied to prevent any person from contributing, or to place a ceiling on contribution amounts. [R. 1094-95] "[R]estrictions on the timing, reporting, and manner of contributing," though, leave "the authority to contribute" intact. [R. 1095] The plain language of the statute is therefore best read to leave intact AS 15.13.074(b)'s requirement of giving in one's own name to

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39 *Marathon Oil Co. v. State, Dep't of Nat. Res.*, 254 P.3d 1078, 1082 (Alaska 2011).

40 *Renewable Resources Coalition, Inc.*, OAH No. 09-0231-APO [R. 1091-1100].

41 Citing AS 15.13.010(b) & (d), AS 15.13.020(e)(3), and AS 15.13.084(1)(B).

42 Emphasis in original.

influence a ballot initiative. That requirement does not restrict authority to contribute. It merely prescribes the *manner* in which a contribution must be made. [Exc. 247, R. 1095]

Resolving disagreements about the meaning of statutes is a task that ordinarily falls to the courts. But here, the Legislature explicitly gave the Commission authority to "clarify" the provisions of AS 15.13 in regulation.[43] And, as the Commission observed in 2009, any doubt about the meaning of AS 15.13.065(c) with respect to AS 15.13.074(b) has long been clarified through 2 AAC 50.352(b). [R. 1097] That regulation requires a "person making a contribution to" a ballot initiative group to "make the contribution in the name of the true source of the money or thing of value as required under 2 AAC 50.258."[44] [R. 1097]

Legislative history. The Commission noted that the language of subsection .065(c) "received little independent attention" before it was adopted in 1996. [R. 1095[45]] A "brief mention of [subsection] .065(c) in the Attorney General's bill review letter" explained that the statute meant the campaign finance laws "would not limit the amount of contributions that a group could make to influence the outcome of a ballot proposition." [R. 1095-96] In other words, subsection .065(c) "was essentially a provision to prevent the contribution caps [that applied to candidate elections] from applying to ballot initiatives." [R. 1096]

Statutory scheme and purpose. The Commission's 2009 decision freely

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43 AS 15.13.030(9).

44 2 AAC 50.352(b).

45 Citing Sec. 9, CSSB 191 (S. Jud.) (Apr. 22, 1996).

acknowledged that no reading of AS 15.13.065(c) achieves the goal of giving effect to every word in the text, in the context of the statutory scheme as a whole. [R. 1095] "This is because some of the specifically excepted provisions simply cannot be construed to 'limit the authority of a person to make a contribution' in the first place, and thus there was no need to list them as express exceptions." [R. 1095[46]] Given the conundrum presented by this "not particularly tightly drafted" provision, the Commission turned to the rest of AS 15.13, which provides "rich context in which to interpret" the provision. [R. 1096] As the Commission did in this case, the 2009 analysis focused on the "requirements created by AS 15.13.040" that contributions received by groups be reported by identifying the "true source of the funds." [Exc. 246, R. 1096] Eliminating AS 15.13.074(b)'s prohibition on making contributions in the name of another would be facially inconsistent with those overlapping reporting requirements. The Commission also pointed out that eliminating the prohibition on anonymous contributions in AS 15.13.074(b) could not be squared with subsection .065(c)'s explicit preservation of AS 15.13.114(b). [R. 1097] That statute requires prohibited anonymous contributions to be "forfeited to the state unless the contributor is identified within five days."[47]

"Most fundamentally," as the Commission observed in 2009 and again here, making AS 15.13.074(b) inapplicable to ballot campaigns "does not square with the overall purpose of campaign finance reporting with respect to ballot propositions."

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[46] Discussing, among others, AS 15.13.050, which regulates registration before expenditures and not contributions.

[47] AS 15.13.114(b).

[R. 1097; *see* Exc. 247] That purpose is "to assist the electorate in making a '[p]roper evaluation of the arguments on either side . . . by knowing who is backing each position.'" [R. 1097[48]] Exempting contributions to influence ballot measures from the requirements of AS 15.13.074(b) would "gut" this purpose, rendering "the reporting function a paperwork exercise." [R. 1097]

This Court should apply reasonable basis review to the Commission's longstanding reading of AS 15.13.065(c) and affirm its ruling that AS 15.13.074(b) applies to Mathias and RCEA.[49] But even under an independent review, the Court should affirm the conclusion that AS 15.13.074(b) applies to ballot initiative campaigns because this interpretation is "the most persuasive in light of precedent, reason, and policy."[50]

B. The record supports the Commission's findings that both Mathias and RCEA violated AS 15.13.074(b) due to Mathias's $90,000 contribution.

Appellants argue that as a factual matter, the evidence did not show that Mathias "intended to pass his money to AHE when he made his donation to RCEA." [At. Br. 44] The Commission found that "the weight of the evidence show[ed] that Mr. Mathias intended his $90,000 contribution to RCEA to be passed through to AHE as needed and that he effectuated that intent." [Exc. 250-51] The record contains extensive "relevant evidence as a reasonable mind might accept as adequate to support" that conclusion."[51]

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48 Quoting *Messerli*, 626 P.2d at 87.

49 *See Repub. Govs. Ass'n*, 485 P.3d at 549.

50 *Id.*

51 *E.g., id.*

In making this argument, Mathias misunderstands the elements of an AS 15.13.074(b) violation. He contends that the statute requires a factual finding that he "intended to pass his money to AHE *when* he made his donation to RCEA." [At. Br. 44[52]] But no temporal finding is required. The statute prohibited Mathias from giving to AHE "using the name of another," meaning he broke the law when he passed the $90,000 he had donated to RCEA along to AHE without disclosing that the contribution actually came from him, not RCEA.[53] The statute does not ask whether Mathias formed the intent to give to AHE in RCEA's name at the exact time he made the donation to RCEA [Exc. 217], or shortly thereafter when he made the piecemeal contribution to AHE from RCEA's account.[54] [Exc. 212-16] Similarly, Mathias is wrong that the statute required the Commission to find that he "intended to use RCEA as a conduit to hide himself from public exposure." [At. Br. 44] APOC's concern is whether a contribution is accurately reported *to APOC*, because the public has a right to find accurate and complete campaign finance information in one place—*APOC reports*. The statute prohibits giving in the

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52 Emphasis added.

53 AS 15.13.074(b).

54 Mathias is wrong that "AHE did not exist" at the time he donated to RCEA. [At. Br. 44; *see* At. Br. 32 n.149] AHE became an APOC group in November, when the sponsors submitted their application to the lieutenant governor. [R. 570] Incorporation is a separate legal concept that is not relevant to APOC group status. *See* AS 15.13.400(9)(C) (defining "group" to include individuals who have filed an initiative application); 2 AAC 50.290(d) ("For 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, the obligation to file required reports begins on the date the initiative proposal application is filed with the lieutenant governor.").

name of another; it does not require a showing of any particular motive for doing so.[55] RCEA also suggests that AS 15.13.074(b) applies only to those subject to AS 15.13.040(r), a provision that requires reporting by contributors to entities that make independent expenditures in candidate elections. [At. Br. 47-48] But AS 15.13.074(b) plainly applies far more broadly; it prohibits a "person" from making "a contribution anonymously, using a fictitious name, or using the name of another."[56]

The record contains extensive evidence supporting the Commission's finding that Mathias gave $90,000 to AHE in RCEA's name. [Exc. 249-51] The Commission recounted some of that evidence in its order. First, when Izon submitted RCEA's June 11 Statement of Contributions report, he identified Mathias as the source of $90,000 in contributions to AHE. [Exc. 207-08, 249] The Commission pointed out that RCEA's reports mistakenly included $90,000 in contributions—the exact amount Mathias gave to RCEA—rather than the $90,740 Mathias actually transferred from RCEA to AHE. [Exc. 207-08, 249] The Commission reasonably considered the report itself and the $740 error to be evidence that Mathias intended to transfer exactly $90,000, and that Izon understood that to be his intent, even though Mathias "overshot slightly." [Exc. 249]

RCEA's report that Mathias was the source of the contribution to AHE is consistent with other statements Izon made. He told a reporter that "Mathias had contributed a large donation in a lump sum in December, which was then transferred to

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55 AS 15.13.074(b).

56 *Id.* Under AS 15.13.400(16), "person" includes both RCEA and Mathias.

the ballot group in several smaller payments over a period of months to meet the group's needs." [R. 396] And he published a tweet in July 2023 from RCEA's account stating that "[f]rom our organization we only used one donor's contributions for our efforts in Alaska." [R. 447] Mathias and RCEA now protest that evidence like this is "hearsay," [At. Br. 46], but APOC can consider hearsay evidence to supplement other evidence.[57] And in any event, even under the Rules of Evidence, Izon's, Mathias's, and RCEA's out-of-court statements would be admissible to prove Mathias's and RCEA's intent.[58]

The Commission also relied on respondents' attorney's statement to APOC Staff that "Mr. Mathias made the first contribution to RCEA that RCEA then contributed to AHE," and that Mathias could alternatively have "contribute[d] those funds to AHE directly." [Exc. 249; R. 463] Appellants now argue that APOC could not rely on their attorney's statements. [At. Br. 46] But the material upon which the Commission relied was not "communication between legal counsel" or an ordinary "out-of-court statement" by the respondents' attorney. [*See id.*] Rather, the attorney's letter responded to APOC Staff's request for "documents and information as part of [Staff's] investigation related to the complaint." [R. 461] RCEA and Mathias cannot submit evidence to APOC Staff for the purposes of an investigation through their attorney, and then disclaim that evidence because they provided it in a letter signed by an attorney. In the language of the cases they cite, an attorney's out-of-court statement "directly related to the management of the

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57 AS 44.62.460(d); 2 AAC 50.891(a).

58 *See* Alaska R. Evid. 801(d)(1) & (2).

litigation" may bind a client as a party admission. [At. Br. 46[59]] A letter providing information in response to an investigation plainly meets this criteria.

Other evidence upon which the Commission relied included (1) testimony that Mathias makes all decisions about money going out of RCEA and that he wrote the checks [Exc. 249-50; Tr. 66], (2) the absence of any alternative explanation for RCEA's report that Mathias was the source of the $90,000 "other than the obvious reason," that it was true [Exc. 250; Tr. 73-74], and (3) Mathias's public statements at the February 2023 signature drive. [Exc. 250] One report about that event recounted that Mathias "repeatedly told attendees that he had contributed $100,000 to the ballot measure group seeking to overturn ranked choice voting." [Exc. 250; R. 394; *see also* Exc. 31, R. 646-47] The Commission rejected Mathias's alternative version of events—a resolution of conflicting evidence reserved to the agency, which this Court should not re-determine.[60]

Lastly, RCEA incorrectly states that the Commission did not find that it violated AS 15.13.074(b) and argues that it disclosed Mathias as the true source. [At. Br. 47] But the Commission found that "RCEA violated . . . AS 15.13.074(b) by failing to disclose the true source of the $79,740 contribution to AHE shown on its May 9, 2023 statement of contributions report." [Exc. 251] The May report fully supports this finding—RCEA identified no true source for the four contributions on that report. [Exc. 97-98] Only the

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[59] Citing *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).

[60] *E.g., Carlson v. Doyon Universal-Ogden Servs.*, 995 P.2d 224, 227 (Alaska 2000) (stating that "it is not the function of the court to reweigh the evidence or choose between competing inferences, but only to determine whether [substantial] evidence exists").

June report, which disclosed a fifth contribution to AHE, identified Mathias as the true source, apparently including the earlier contributions because the amount attributed to Mathias equaled RCEA's reported "total annual contribution." [Exc. 97-98, 207-08]

This Court should affirm the Commission's decision that Mathias and RCEA violated AS 15.13.074(b) because substantial evidence supports it.[61]

C. The statutes and the record support RCEA's and Mathias's penalties for violating AS 15.13.074(b) and the reporting statutes.

Mathias, RCEA, and ABE challenge the Commission's imposition of monetary penalties for Mathias's contribution of $90,000 to AHE through RCEA. [At. Br. 47-49; Cr. At. Br. 11-24] None of these challenges have merit. The Commission acted within its discretion in imposing separate fines on Mathias and RCEA for their distinct violations of AS 15.13.074(b) and the reporting requirements in AS 15.13.040 and in selecting the penalty amounts. [Exc. 251, 253]

Mathias makes a couple of arguments that misrepresent the facts and the law or are irrelevant. First, Mathias *did* fail to file a statement of contributions report as required by AS 15.13.040(k) because he is an "individual" who contributed more than $500 to AHE, which is "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."[62] [Exc. 194-96; R. 572] Second, Mathias's argument that subsection .040(k) "contains no 'true source' language" is irrelevant. [At. Br. 48] The statute simply requires

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61 *See id.*

62 AS 15.13.040(k); AS 15.13.400(12) (defining "individual" as "a natural person").

Mathias to report his own contribution, of which he presumably is the true source.[63] Mathias is also incorrect that AS 15.13.074(b) applies only to an intermediary, not him. [At. Br. 48] The statute plainly forbids making a contribution "using the name of another," and the associated penalty provision applies to violations by the "contributor or intermediary."[64]

Mathias and RCEA also argue, without citing authority, that they were improperly penalized "twice for the same failure to report." [At. Br. 48-49] This assertion is not true, as a factual matter. Mathias and RCEA were fined under AS 15.13.074(b) and AS 15.13.390(a)(3) for the conduct of giving in the name of another. [Exc. 251-52] That is different conduct than failing to file a required report (or filing one late), for which Mathias was fined under AS 15.13.040(k) and RCEA was fined under AS 15.13.040(d)-(e). [Exc. 239-40] They do not say what principle they believe is violated by APOC fining them for both violations. The subject heading of Mathias's argument on this point references "due process," but the brief makes no argument about why the penalties against Mathias (or RCEA) were unconstitutional as a matter of either substantive or procedural due process. [*See* At. Br. 48-49] Any constitutional challenge to these penalties against them is therefore waived.[65]

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[63] That said, APOC regulations do require statement of contributions reports from a contribution's true source. 2 AAC 50.352(b) (requiring statements of contributions to ballot measure groups to be made under AS 15.13.040(k) and to be made "in the name of the true source of the money or thing of value as required under 2 AAC 50.258").

[64] AS 15.13.074(b); AS 15.13.390(a)(3).

[65] *See Iverson v. Griffith*, 180 P.3d 943, 946 n.12 (Alaska 2008) (holding that a litigant waived a due process claim mentioned only in passing in her opening brief).

Finally, Mathias argues that APOC abused its discretion by "giving RCEA an additional 50% reduction" to the AS 15.13.074(b) penalty "but not Mathias." [At. Br. 49] But it was not arbitrary to mitigate RCEA's penalty because it filed a report (albeit late) documenting that Mathias was the source of the money RCEA passed to AHE, without giving Mathias similar mitigation. The evidence showed that it was Izon, not Mathias, who chose to make the disclosure to APOC because Izon "assumed that [the disclosure] was a requirement for [APOC's] purposes." [Tr. 73-74] Izon did this on RCEA's behalf; Mathias did not approve the disclosure. [Tr. 63, 72-73]

In its cross appeal, ABE also challenges the penalties imposed on RCEA and Mathias for the $90,000 contribution to AHE, arguing that the Commission made a procedural error and should have assessed a higher penalty. [Cr. At. Br. 11-24] ABE contends that the Commission was required to first treble the full amount of the illegal contributions, before applying APOC's regulations to consider mitigation of the penalty.

Alaska Statute 15.13.390(a)(3) provides that a person who "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" and that "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[.]" Here, APOC did not

find an intentional violation supporting trebling. Even if it had, the Commission can impose the same penalties even with a higher starting point.[66] [Exc. 251]

The central problem with ABE's argument is that it misreads the Commission's decision with respect to Mathias's and RCEA's AS 15.13.074(b) violations. ABE writes, "[t]he Commission found that Mr. Mathias and the RCEA intentionally concealed Mr. Mathias's identity when making substantial contributions to AHE," which "allowed AHE to keep Mr. Mathias's name off its three-largest-contributors disclaimer for the entire signature gathering campaign for 22AKHE." [Cr. At. Br. 11] This language about "intentional concealment" is ABE's. APOC wrote that "the weight of the evidence shows that Mr. Mathias intended his $90,000 contribution to RCEA to be passed through to AHE as needed and that he effectuated that intent." [Exc. 250-51] The Commission then identified $90,000 as the "amount of the contribution" for Mathias and $79,740 for RCEA (because that was the amount shown on RCEA's first report, which did not name Mathias as the source).[67] [Exc. 97-98, 251]

The Commission noted its authority to impose a penalty as high as three times these amounts, in its "discretion," "if an intentional violation is found." [Exc. 251] But the Commission's order does not find that the violation was intentional, which would be necessary for trebling. Instead, the order states that "[b]ecause the public was ultimately

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66 AS 15.13.390(a)(3) (providing that the penalties are "as determined by the commission"); 2 AAC 50.855 & 2 AAC 50.865 (providing mitigating and aggravating factors for the Commission to consider).

67 AS 15.13.390(a)(3).

informed about the true source of the $90,000, the Commission elects not to treble the penalties in this matter." [Exc. 251]

"Intentional" is not defined in AS 15.13.390(a)(3). The statute cannot, however, logically be read to permit trebling the penalty every time a donor contributes in the name of another with the intent to do the prohibited action—contributing money in a name other than one's own. That interpretation would render *every* AS 15.13.074(b) violation "intentional" for purposes of treble damages. As the Court of Appeals noted in a different context, a contribution can be made "in the name of another" with or without the intent "to deceive anyone regarding the source of the money."[68] In some circumstances, including the ones APOC found here, "the source of the money might be readily ascertainable" from sources other than accurate reporting, such as the newspaper articles reporting Mathias's public statements.[69] [R. 394, 396; Exc. 31] Consistent with ABE's own argument, which describes "intentional conceal[ment]" of the donor's identity as a basis for a heightened penalty [Cr. At. Br. 11], trebling must require something more than the basic elements of the violation. Here, the Commission did not find "more."

The Court need not go farther to reject ABE's challenge to its imposition of penalties for the subsection .074(b) violations. But if the Court does engage with ABE's additional arguments, those fail as well. First, it is true, and uncontroversial, that the "plain language" of the statute "supports the trebling of maximum civil penalties."

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68 *Latchem v. State*, No. 4084, 1999 WL 587238, at *3 (Alaska App. Aug. 4, 1999).

69 *See id.*

[Cr. At. Br. 13-14] But the fact that a statute "supports" trebling does not mean it *mandates* trebling. ABE insists that, despite the existence of the word "may" in the statute—typically understood as a grant of discretionary authority[70]—APOC has *no discretion* to decide whether the facts warrant a penalty triple the amount of the contribution.[71]

ABE's arguments also fail because the Commission's discretion is broad, whether or not it uses a treble penalty as its starting point. Though ABE frames its challenge as one of statutory interpretation, it in fact attacks APOC's application of its own longstanding regulations guiding assessment and mitigation of penalties.[72] The phrase "maximum penalty" that ABE goes to great lengths to interpret does not appear in AS 15.13.390(a)(3). Instead, those words appear throughout 2 AAC 50.855, APOC Staff's penalty assessment regulation. 2 AAC 50.865 then guides the Commission in its

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70 *Gerber v. Juneau Bartlett Mem'l Hosp.*, 2 P.3d 74, 76 (Alaska 2000) (stating that "the term 'may' generally denotes permissive or discretionary authority and not a mandatory duty"); *Rutter v. State, Alaska Bd. of Fisheries*, 963 P.2d 1007, 1008 (Alaska 1998) (stating that a statutory provision's "use of the permissive word 'may' indicates the Board has discretion" to treat categories of fishing differently).

71 Note the difference between the language of AS 15.13.390(a)(3)—treble damages "may be imposed"—and the Unlawful Trade Practices Act's language, which provides that a person injured "may bring a civil action to recover for each unlawful act or practice three times the actual damages or $500, whichever is greater." AS 45.50.531(a). The Alaska Supreme Court has interpreted the UTPA language to mean "treble damages are to be awarded as a matter of course" upon a "finding that the UTPA has been violated." *Kenai Chrysler Ctr., Inc. v. Denison*, 167 P.3d 1240, 1259 (Alaska 2007).

72 *See State v. Marshall*, 633 P.2d 227, 229-30 (Alaska 1981) ("APOC has, by regulation, provided for a schedule of civil penalties and for a process of assessment, notice, challenge, resolution, and appeal regarding these penalties." (internal citations omitted)). The regulations were substantially revised, repealed, and reenacted in 2011. *See* 2 AAC 50.855 & 2 AAC 50.865 (effective Dec. 22, 2011).

exercise of discretion to set penalties above or below the Staff-assessed penalty, based on mitigating and aggravating factors. The "substitution of judgment standard of review" does not apply to APOC's application of its penalty regulations.[73] [*See* Cr. At. Br. 12-13]

ABE assumes that, had APOC begun with trebled amounts for the "maximum penalty" when assessing and mitigating penalties under its regulations, the resulting penalties would by necessity have been much higher. [Cr. At. Br. 23] But, as ABE acknowledges [Cr. At. Br. 17], the regulatory penalty procedure affords significant discretion to the Commission to impose a penalty it views as commensurate with the circumstances, based on many factors.[74] *Even if* the Commission began from trebled maximums as ABE insists it was required to do, it could have imposed the same penalties. The Commission can even go so far as to waive a penalty entirely if, in the Commissioners' judgment, the circumstances warrant that result.[75]

In sum, ABE misreads the Commission's order, which did not make the finding of an intentional violation necessary to support a treble penalty. But even if the Court disagrees with that interpretation and agrees with ABE that the regulatory assessment and mitigation process should have begun with a higher maximum penalty, a remand would serve no purpose. The Commission's order makes clear that it imposed penalties it

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73 *N. Slope Borough v. State*, 484 P.3d 106, 113 (Alaska 2021) ("We review an agency's interpretation and application of its own regulations using the reasonable basis standard of review and will defer to the agency's interpretation unless [it] is plainly erroneous and inconsistent with the regulation.").

74 2 AAC 50.855 & 50.865.

75 2 AAC 50.865.

considers appropriate to the circumstances. [Exc. 251-52] And the Commission would have the discretion to impose the same penalties again even if the "maximum penalty" starting point for the analysis were increased.

The Court should reject Mathias's, RCEA's, and ABE's arguments about the penalty amounts and affirm the Commission's order.

D. The laws requiring giving campaign contributions in one's own name and identifying the true sources survive First Amendment scrutiny.

Mathias and RCEA argue that the statutes requiring giving campaign contributions in one's own name and identifying the true sources of those contributions violate the First Amendment, but these laws survive the applicable level of constitutional scrutiny.[76] They suggest that strict scrutiny applies to evaluate AS 15.13.074(b)'s requirement to give in one's own name by arguing that it is a prohibition and pointing out burdens. [At. Br. 28-34] But their arguments misconstrue how the statute works. The statute operates to mandate disclosure—not to ban campaign contributions—and thus, it is properly evaluated under the less demanding standard of exacting scrutiny.[77]

Moreover, despite conceding that the true-source reporting required by other statutory provisions is subject to exacting scrutiny, Mathias and RCEA argue that true-

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[76] RCEA and Mathias make their claims under the federal First Amendment, not under the Alaska Constitution's free speech provision; the state constitution may apply a more rigorous standard than federal law. *See* Alaska Const., art. I, § 5; *VECO Int'l, Inc. v. Alaska Pub. Offs. Comm'n*, 753 P.2d 703, 711 (Alaska 1988).

[77] *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 366 (2010).

source disclosures and AS 15.13.074(b) do not pass even that less rigorous review.[78] [At. Br. 35-40] They are wrong. The rules are constitutional because they are narrowly tailored to the "sufficiently important" government interest in an informed electorate—an interest "vital" to "advancing the democratic objectives underlying the First Amendment."[79] The Court should affirm the Commission's order.

1. The level of First Amendment scrutiny that applies to AS 15.13.074(b) and the true-source reporting rules is exacting, not strict.

Because AS 15.13.074(b) is a campaign disclosure law, exacting scrutiny is the appropriate level of review. The statute does not limit campaign spending. It simply requires a contributors to give money in their own names, informing the electorate about who is financing election spending supporting or opposing a proposed ballot measure. Contrary to Mathias and RCEA's arguments, AS 15.13.074(b) does not apply to all of a nonprofit organization's donors, but only to a person who donates for the purpose of influencing an election, ballot measure, or initiative proposal.[80] That person must report

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78 AS 15.13.074(b) (requiring giving in one's own name); AS 15.13.040(d)-(e) (requiring independent expenditure reports, including disclosure of the contributions used to make those expenditures), (k) (requiring certain contributors to ballot measure groups to report their contributions), (q) (applying true source rule to (e)'s reporting requirements); AS 15.13.400(19) (defining "true source"). RCEA and Mathias also identify AS 15.13.110(h) as a "true-source reporting statute," but this statute sets report-filing timeframes, rather than specifying the content of the report, and Appellants do not challenge the required timing for disclosures. [At. Br. 35]

79 *Human Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1005 (9th Cir. 2010); *see Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2383-84 (2021) (stating test for exacting scrutiny).

80 AS 15.13.074(b) (applying to "contributions"); AS 15.13.400(4)(A) (defining "contribution" in relevant part as funds given "for the purpose of (i) influencing the nomination or election of a candidate; (ii) influencing a ballot proposition or question; or

the contribution only if he gives more than $500 to a ballot group, not to an intermediary.[81] Exacting scrutiny applies to such campaign disclosure laws because the minimal burden—disclosing one's identity when contributing to an election or initiative campaign—is indispensable to voters' "vital" informational interest.[82]

The U.S. Supreme Court has held that limits on campaign giving and spending may be justified only by an interest in avoiding the quid pro quo corruption of candidates.[83] Such limits often fail the tighter tailoring required by strict scrutiny, which demands that the laws "be the least restrictive means of achieving their ends."[84] The courts, however, have "recognized a stark contrast" between these laws, which are viewed as significant incursions on the rights to free speech and association, and

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(iii) supporting or opposing an initiative proposal application filed with the lieutenant governor under AS 15.45.020").

81 AS 15.13.040(k) (requiring a donor to report contributions of more than $500 to a group "organized for the principal purpose of influencing the outcome of a proposition," or "filing an initiative proposal application," or to a group "that has filed an initiative proposal application.").

82 *Brumsickle*, 624 F.3d at 1005; *Citizens United*, 558 U.S. at 366-67; *accord No on E v. Chiu*, 85 F.4th 493, 505 (9th Cir. 2023) (The Ninth Circuit has "repeatedly recognized an important (and even compelling) informational interest in requiring ballot measure committees to disclose information about contributions." (citation omitted)).

83 *Citizens United*, 558 U.S. at 340-65 (striking down federal ban on corporations contributing to campaigns and making independent expenditures); *Randall v. Sorrell*, 548 U.S. 230, 248 (2006) (striking down Vermont's expenditure limits on amounts state office candidate could spend on campaigns and its contribution limits on amounts individuals, organizations, and political parties could contribute to candidates); *Thompson v. Hebdon*, 7 F.4th 811, 817 & 822-23 (9th Cir. 2021) (striking down Alaska's $500 limit on the amount an individual could contribute to a candidate or a group).

84 *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2383 (2021).

campaign disclosure requirements like AS 15.13.074(b).[85] Disclosure requirements enhance the political marketplace of ideas by supplying more information.[86] Such laws are therefore routinely upheld as narrowly tailored to the informational interest in an informed electorate.[87]

RCEA and Mathias argue that AS 15.13.074(b) is a "prohibition" that chills free speech and association, suggesting that strict scrutiny applies. [At. Br. 33] But the law, which does not allow a "person or group" to "make a contribution anonymously, using a fictitious name, or using the name of another," falls squarely on the side of a campaign disclosure, not a "prohibition" or contribution restriction. Alaska Statute 15.13.074(b) imposes no limit how much someone may give, nor does it ban contributions from any

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85 *Smith v. Helzer*, 95 F.4th 1207, 1217 (9th Cir. 2024) (citing *Citizens United*, 558 U.S. at 366-67).

86 *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 197 (2003) (noting that individual citizens have "competing First Amendment interests" in making "informed choices in the political marketplace"); *accord Brumsickle*, 624 F.3d at 1005; *Messerli v. State*, 626 P.2d 81, 87 (Alaska 1980).

87 *Buckley v. Valeo*, 424 U.S. 1, 69-74, 82-84 (1976) (rejecting argument that disclosure laws cannot constitutionally apply to minor parties and independents unlikely to win elections and affirming $100 threshold for reporting contributions); *Citizens United*, 558 U.S. at 366-71 (upholding federal disclosure and disclaimer rules); *Doe v. Reed*, 561 U.S. 186 (2010) (rejecting facial challenge to law, justified by government interest in integrity of elections, requiring public disclosure of the names of voters who signed initiative petitions); *Smith*, 95 F.4th at 1215-21 (upholding denial of preliminary injunction because challengers were unlikely to prevail in striking down as unconstitutional Alaska's on-ad disclaimer rules in AS 15.13.090 and its donor-reporting rules in AS 15.13.040(r)); *Gaspee Project v. Mederos*, 13 F.4th 79, 82 (upholding Rhode Island's disclosure rule requiring covered organizations to disclose donors over $1,000 and disclaimer rule requiring identification of top five contributors) (1st Cir. 2021).

source. It simply requires that contributions be made in the donor's own name, so that voters will know who is contributing to election campaigns and initiative proposals.

In addition, AS 15.13.074(b) and the other disclosure laws at issue here are limited by their plain terms to election-related activity and so do not result in violations by donors in the situations that Mathias and RCEA describe. [At. Br. 31-32] Alaska Statute 15.13.074(b) applies to a "contribution"—which is statutorily defined as funds given for the purpose of influencing elections or initiative proposals.[88] And AS 15.13.040(k) requires contributors to file statement of contribution reports only when they give more than $500 to a group "organized for the principal purpose of influencing the outcome of a proposition" or "filing an initiative proposal application," or to a group "that has filed an initiative proposal application." The Commission found that Mathias violated AS 15.13.074(b) and AS 15.13.040(k) because he intended to give and did give to the ballot group, AHE, not the intermediary, RCEA. [Exc. 249-51] The Commission's conclusion relied on facts that do not apply to all of RCEA's donors, including, among others, (1) Mathias's contemporaneous public statements that he gave funds to the 22AKHE effort; (2) his direct and controlling involvement with RCEA and AHE, including holding the check-writing authority for RCEA; and (3) RCEA's disclosure identifying him as the source of funds contributed to the ballot group.[89] [Exc. 249-51]

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88 AS 15.13.400(4)(A).

89 The Commission rejected RCEA and Mathias's version of the facts and as discussed in Section B, above, substantial evidence supports these findings, so this Court should reject their invitation to reweigh and adopt their view of the evidence. [At. Br. 33-35] *Carlson v. Doyon Universal-Ogden Servs.*, 995 P.2d 224, 227 (Alaska 2000) (stating

RCEA and Mathias's contention that by donating to a ballot group, RCEA causes all its donors to violate AS 15.13.074(b) fundamentally misunderstands the law. [At. Br. 30] RCEA and Mathias identify a parade of implausible scenarios, but they are wrong that a donor has any obligation or liability in these scenarios. [At. Br. 31-32] Those who—unlike Mathias—intend to donate funds for purposes other than election-related activities are not exposed to liability under AS 15.13.074(b) *even if* the entity takes their donation and later contributes funds to a group or entity engaged in election or initiative spending.[90] These donors are not exposed to liability under AS 15.13.040(k), either, because—unlike Mathias who gave to AHE—they did not give to a group "organized for the principal purpose" of ballot elections or initiative proposals.[91]

RCEA and Mathias are correct that the intermediary may have reporting obligations, but these requirements, too, are limited to providing information to voters about election and initiative spending. [At. Br. 29-30] Donors like RCEA and Mathias must report contributions to a ballot group of $500 or more.[92] And an entity that makes its own independent expenditures in support of an initiative proposal, like RCEA did here, must register and report its contributors on independent expenditure reports.[93]

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that "it is not the function of the court to reweigh the evidence or choose between competing inferences, but only to determine whether [substantial] evidence exists").

90 AS 15.13.074(b) (applies only to "contributions"); AS 15.13.400(4)(A) (defining "contribution" as limited to election-related activities).

91 AS 15.13.040(k).

92 *Id.*

93 AS 15.13.040(d)-(e) (requiring persons making independent expenditures to file reports); AS 15.13.400(16) (defining "person" as including corporations and other types

For independent expenditure reports, the reporter must specify the "true source" of the funds contributed to or spent on election-related activities.[94] If the reporter is an individual or business with normal sources of income like wages, investments, or business profits, the reporter can likely identify itself as the true source (assuming the sums donated do not exceed normal income).[95] If the reporter is an entity that has no normal sources of income—getting money only through gifts, dues, and donations—it can still report itself as the true source, so long as it is passing on money that it received only in increments of less than $2,000.[96] Entities like RCEA that participate in both elections and other types of advocacy on an issue can further protect donors who want privacy or anonymity by segregating the funds they receive.[97] Creating an account solely

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of entities or organizations). The Commission found that RCEA made such expenditures by using its website to advocate for 22AKHE. [Exc. 234-35]

94 AS 15.13.040(e), (q).

95 AS 15.13.400(19).

96 *See id.* ("[T]o 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."). Although this exception applies only to a "membership organization," that term is not defined, so any entity that amasses contributions of under $2,000 per person could likely qualify.

97 *The Alaska Center* Advisory Op., AO 21-11-CD (approved June 20, 2022), https://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=23802; *see Elias Law Grp. for "The Organization"* Advisory Op., AO 22-01-CD (approved June 20, 2022), https://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=23803; *Unite America PAC* Advisory Op., AO 22-03-CD (approved Feb. 6, 2023), https://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=24452; *Ams. for Prosperity Action* Advisory Op., AO 22-04-CD (approved Feb. 6, 2023), https://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=24454; 2 AAC 50.270(e).

The Commission has not adopted a first-in, first-out rule, so RCEA's argument about how that would apply to Mathias and its donors is irrelevant. [*See* At. Br. 34-35] Because RCEA expended funds on its website promoting 22AKHE, it must disclose on its

for donations that that an entity intends to use to support a ballot group, ballot measure, or initiative proposal allows the entity to disclose only the names of those donors who give in increments of $2,000 or more specifically to support those efforts.[98]

Alaska Statutes 15.13.040(e), 15.13.040(k), and 15.13.074(b) therefore burden only those engaged in election-related activities—and fit under the exacting-scrutiny framework for campaign disclosure laws. Courts praise laws like these as less burdensome alternatives to laws that censor speech or impose ceilings on campaign-related activities, like contribution or expenditure limits.[99] As the Supreme Court explained in *Citizens United v. Federal Election Commission*, "[d]isclaimer and disclosure requirements may burden the ability to speak, but they impose no ceiling on campaign-related activities, and do not prevent anyone from speaking."[100] Moreover, providing information to voters "is vital to the efficient functioning of the marketplace of ideas, and thus to advancing the democratic objectives underlying the First

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independent expenditure reports all of those who gave to RCEA before it made expenditures in support of 22AKHE. [Exc. 250-51; *see* Exc. 234-35, 239]

98 *The Alaska Center* Advisory Op., *supra* note 97; "*The Organization*" Advisory Op., supra note 97; *Unite America PAC* Advisory Op., *supra* note 97; *Ams. for Prosperity Action* Advisory Op., *supra* note 97; *see* AS 15.13.052; 2 AAC 50.270(e).

99 *Citizens United*, 558 U.S. at 369 ("The Court has explained that disclosure is a less restrictive alternative to more comprehensive regulations of speech."); *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 223 (2014) ("[D]isclosure often represents a less restrictive alternative to flat bans on certain types or quantities of speech.").

100 558 U.S. at 366 (quoting *Buckley*, 424 U.S. at 64, and *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 201 (2003) (cleaned up)).

Amendment."[101] Knowing about the sources of election spending ultimately informs voters' decisions, preventing groups from "hiding behind dubious and misleading names" and individuals from hiding in anonymity.[102] "When citizens vote on the basis of misinformation, or a lack of relevant information, the decision-making process on which our government ultimately rests suffers."[103]

Current political realities make this informational interest more critical than ever. As the Ninth Circuit explained, "[a]ccess to reliable information becomes even more important as more speakers, more speech—and thus more spending—enter the marketplace, which is precisely what has occurred in recent years."[104] Disclosure laws "help ensure that voters have the facts they need to evaluate the various messages competing for their attention."[105] The First Circuit has similarly noted that in "an age characterized by the rapid multiplication of media outlets and the rise of internet .

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101 *Hum. Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1005 (9th Cir. 2010); *accord McConnell*, 540 U.S. at 197 (noting that individual citizens have "competing First Amendment interests" in making "informed choices in the political marketplace"); *Gaspee Project*, 13 F.4th at 95 ("[A] well-informed electorate is as vital to the survival of a democracy as air is to the survival of human life"); *Messerli v. State*, 626 P.2d 81, 86 (Alaska 1980) ("The effective functioning of our democratic form of government is premised on an informed electorate.").

102 *Citizens United*, 558 U.S. at 367 (quoting *McConnell*, 540 U.S. at 197).

103 *Messerli*, 626 P.2d at 86.

104 *Brumsickle*, 624 F.3d at 1007.

105 *Id.* at 1005; *see id.* at 1008 ("An appeal to cast one's vote a particular way might prove persuasive when made or financed by one source, but the same argument might fall on deaf ears when made or financed by another."); *accord Messerli*, 626 P.2d at 87 ("Proper evaluation of the arguments made on either side can often be assisted by knowing who is backing each position.").

reporting," citizens "rely ever more on a message's source as a proxy for reliability and a barometer of political spin."[106] Moreover, courts have recognized that the informational interest applies fully, if not more so, to ballot measures, which require voters to "act as legislators" and decide "some of the day's most contentious and technical issues."[107]

Finally, Mathias and RCEA imply that their First Amendment right to free association, separate from their allegations about free speech, may require a closer look at the statutes challenged here. [At. Br. 25-26, 28] Yet they ultimately acknowledge—as they must—that exacting scrutiny applies whenever a law challenged under the First Amendment is a disclosure requirement.[108] [At. Br. 28] This is true even when the disclosure reveals an individual's association with an organization, rather than or in addition to the individual's views on candidates or issues on the ballot.[109]

Exacting scrutiny is the applicable standard here.

2. The true-source reporting rules survive exacting scrutiny.

Mathias and RCEA argue that true-source reporting "reach[es] too deeply in [the] effort to inform the public about ballot measures." [At. Br. 39] But the rule is crafted to

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106 *Nat'l Org. for Marriage v. McKee*, 649 F.3d 34, 57 (1st Cir. 2011).

107 *Brumsickle*, 624 F.3d at 1006 (cleaned up); *see No on E v. Chiu*, 85 F.4th 493, 505 (9th Cir. 2023) ("We have 'repeatedly recognized an important (and even compelling) informational interest in requiring ballot measure committees to disclose information about contributions.'" (citation omitted)); *Messerli*, 626 P.2d at 87 ("The need for an informed electorate applies with full force to ballot issues.").

108 *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2383 (2021) (rejecting the argument that strict scrutiny should apply to evaluate a law requiring the disclosure of a charity's donors outside the campaign disclosure context).

109 *Id.*

provide meaningful disclosure to the electorate, which is a "sufficiently important governmental interest" under exacting scrutiny.[110] The disclosure rules satisfy exacting scrutiny because they are "narrowly tailored" to that interest.[111] Their fit between the informational interest and means "is not necessarily perfect, but reasonable; . . . not necessarily the single best disposition but one whose scope is in proportion to the interest served."[112] True-source reporting passes exacting scrutiny because it addresses the reality that the informational interest is best served by disclosing to voters the originating sources of election funds.

Mathias and RCEA do not dispute that the interest in an informed electorate is a "sufficiently important governmental interest" adequate to satisfy exacting scrutiny.[113] [*See* At. Br. 38-39] Disclosure laws, however, also further governmental interests in preventing corruption and enforcing substantive campaign finance restrictions,[114] though

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110 *Citizens United*, 558 U.S. at 366-67 (cleaned up).

111 *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2383 (2021). In *Citizens United*, the Court described the standard as calling for "a 'substantial relation' between the disclosure requirement and [the] governmental interest." 558 U.S. at 366-67. The Court has not yet applied the newer *Americans for Prosperity* formulation to campaign disclosures, but the laws here survive under either formulation. The respondents' brief conflates the two without addressing which applies. The brief states that "a substantial relation" is required while citing *Ams. for Prosperity Found.*, 141 S. Ct. at 2383, when that case required that a disclosure law evaluated under exacting scrutiny, be "narrowly tailored," rather than substantially related to the government interest. *Id.* [At. Br. 28, 38]

112 *Ams. for Prosperity Found.*, 141 S. Ct. at 2384 (citation omitted).

113 *Citizens United*, 558 U.S. at 366-67 (cleaned up).

114 *Smith v. Helzer*, 614 F. Supp. 3d 668, 678 n.42 (D. Alaska 2022), *aff'd*, 95 F.4th at 1207 (9th Cir. 2024) (concluding that Alaska may justify its campaign disclosure laws not only with the interest in an informed electorate but also with interests "in deterring

these interests carry less force for ballot measures where there is no risk of bribing a candidate.[115] [*See* At. Br. 33] The disclosure laws advance these interests because the conclusion that expenditures do not risk corruption or circumvention of substantive campaign rules rests on the premise that voters and regulators know who is doing what when it comes to election-related spending.[116] "Sunlight is said to be the best of disinfectants" in elections.[117] If funders stay in the shadows, the electorate has no assurance that the money spent to influence their votes does not originate from prohibited foreign or state sources or, for candidates, from corrupt dealings.[118]

The laws challenged here are narrowly tailored to serve these governmental interests. RCEA and Mathias argue that disclosing only direct donors, even if they are intermediaries, is enough to serve the informational interest, particularly absent proof of intentional circumvention. [At. Br. 40] But disclosures have limited value if they reveal

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the appearance of and actual corruption in elections, as well as foreign influence in elections").

115 *Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182, 203 (1999) ("[B]allot initiatives do not involve the risk of '*quid pro quo*' corruption present when money is paid to, or for, candidates." (emphasis in original)).

116 *Buckley v. Valeo*, 424 U.S. 1, 67 (1976) ("Congress could reasonably conclude that full disclosure during an election campaign tends 'to prevent the corrupt use of money to affect elections.'"); *see also McCutcheon v. Fed. Elections Comm'n*, 572 U.S. 185, 224 (2014) ("Today, given the Internet, disclosure offers much more robust protections against corruption.").

117 *Buckley*, 424 U.S. at 67 (quoted in *Smith*, 95 F.4th at 1211).

118 AS 15.13.068; AS 15.13.140; AS 15.13.145; *SpeechNow.org v. Fed. Election Comm'n*, 599 F.3d 686, 698 (D.C. Cir. 2010) ("[R]equiring disclosure . . . deters and helps expose violations of other campaign finance restrictions, such as those barring contributions from foreign corporations or individuals.").

only that the election funding came to the spender from an intermediary with an opaque or misleading name like "Citizens for a Better Alaska."[119] If the interest in informing voters justifies disclosure of the funding behind election spending—which, as discussed above, it does—it also justifies true-source reporting necessary to make that disclosure meaningful, reliable, and accurate.[120]

For the Court to strike a law down on its face, Mathias and RCEA must show that "a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep."[121] They claim the law sweeps too broadly because its disclosures delve too deep.[122] [At. Br. 39-40] But decades of precedent upholding

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119 *Cf. McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 128 n.23 (2003) ("[E]xamples of mysterious groups included 'Voters for Campaign Truth,' 'Aretino Industries,' 'Montanans for Common Sense Mining Laws,' 'American Seniors, Inc.,' 'American Family Voices,' and the 'Coalition to Make our Voices Heard'") (internal citation omitted).

120 *Smith*, 95 F.4th at 1216 ("[A]ccess to *reliable* information becomes even more important as more speakers, more speech—and thus more spending—enter the marketplace, which is precisely what has occurred in recent years." (quoting *Hum. Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1007 (9th Cir. 2010) (emphasis added))); *see Vt. Right to Life Comm., Inc. v. Sorrell*, 758 F.3d 118, 138 (2d. Cir. 2014) ("[Donor] disclosure requirements simply address[] the situation where, for example, a corporation creates an entity with an opaque name—say 'Americans for Responsible Solutions'—contributes money to that entity, and has that entity engage in speech on its behalf. By requiring that entity to meet reporting and organizational requirements, Vermont can ensure that the underlying speaker is revealed.").

121 *Ams. for Prosperity Found.*, 141 S. Ct. at 2387.

122 They distinguish a disclosure case, *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999), cited in the final order. [At. Br. 35-37] Although that case did not involve a true-source rule similar to the one at issue here, it is useful for the proposition that the Commission cited it for—a "state can require disclosure of funding sources supporting signature collection for ballot initiatives." [Exc. 248]

disclosure requirements make clear that there is no constitutional right to anonymous election spending.[123] Thus, no right exists to avoid disclosure by using intermediaries.

Moreover, true-source reporting is no barrier to anonymous *non-election* spending and association. The rule does not prevent solicitation or donation; it just requires donors and recipients to be clear about their intentions and to reveal the sources of funds they wish to direct toward election spending. If a donor or intermediary is unwilling or unable to disclose the true source of funds, that does not mean they cannot pass on those funds—it simply means those funds cannot go toward ballot measure or candidate advocacy. A donor who wishes to remain anonymous (or who refuses to disclose its own sources), may still donate, so long as the recipient places the funds in an account that will not be

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123 *Buckley*, 424 U.S. at 69-74, 82-84 (1976); *McConnell*, 540 U.S. at 196-98; *Citizens United*, 558 U.S. at 367-71; *Gaspee Project v. Mederos*, 13 F.4th 79, 88-90 (1st Cir. 2021) (upholding Rhode Island's laws that required covered organizations to disclose donors over $1,000); *Nat'l Ass'n for Gun Rts., Inc. v. Mangan*, 933 F.3d 1102, 1118 (9th Cir. 2019) (upholding Montana's laws except for a provision requiring campaign treasurers to be registered voters in the state and noting that "[o]nce reporting requirements are triggered, states may constitutionally mandate disclosure of even small contributions," like $25.01); *Del. Strong Fams. v. Att'y Gen. of Del.*, 793 F.3d 304, 311-12 (3d Cir. 2015) (upholding Delaware's disclosure laws, including requirement that organization disclose donors of $100 or more, regardless of whether they earmarked their donations to fund election communications); *Yamada v. Snipes*, 786 F.3d 1182, 1194-1203 (9th Cir. 2015) (upholding Hawaii's noncandidate committee reporting laws in an as-applied challenge brought by a corporation); *Ctr. for Ind. Freedom v. Madigan*, 697 F.3d 464, 470 & n.1 (7th Cir. 2012) (upholding Illinois's laws and stating that all other federal courts of appeal (five) that had decided cases challenging campaign disclosure rules had upheld the rules against facial attacks after *Citizens United*); *Hum. Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1005-06 (9th Cir. 2010) (upholding Washington state's laws); *Alaska Right to Life Comm. v. Miles*, 441 F.3d 773, 788-94 (9th Cir. 2006) (upholding Alaska's registration requirement, reporting rules for nongroup entities, and paid-for-by disclaimer rules under *strict* scrutiny).

used for election-related activities.[124] In other words, true-source reporting just means money going towards election spending in Alaska cannot be masked by intermediaries.

To the extent that Mathias and RCEA are challenging the disclosure rules as applied to them, this challenge fares no better than their facial one. They suggest the laws present a risk of reprisals or harassment—a theory under which courts have allowed as-applied challenges.[125] [At. Br. 39-40] But RCEA has presented no evidence that it even has any secondary, deeper disclosures to make. It did not appeal the Commission's findings that it must file register and file independent expenditure reports, on which it must identify its contributors.[126] [Exc. 234-35, 239-40] That is at the first layer of disclosure; RCEA has not claimed that the donors it must report are intermediaries, rather than the true sources of RCEA's donations.[127] The situation is similar for Mathias. He, too, has not alleged that the true source of his $90,000 contribution was not from his usual sources of income like wages, investments, or business profits.[128]

But even if Mathias and RCEA must make secondary disclosures, they have offered no evidence of "a reasonable probability" that disclosure of their contributors'

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124 *The Alaska Center* Advisory Op., *supra* note 97; "*The Organization*" Advisory Op., supra note 97; *Unite America PAC* Advisory Op., *supra* note 97; *Ams. for Prosperity Action* Advisory Op., *supra* note 97; *see* AS 15.13.052; 2 AAC 50.270(e).

125 *Citizens United*, 558 U.S. at 370; *Ams. for Prosperity Found.*, 141 S. Ct. at 2389.

126 AS 15.13.040(d)-(e).

127 *See* AS 15.13.040(e), (q) (requiring reporting of true sources).

128 *See* AS 15.13.400(19).

names would subject them to "threats, harassment, or reprisals."[129] They allege nothing more than generic fears of "threats and harassment" that do not meet the standard required for this type of as-applied challenge.[130] [At. Br. 39-40] Such a claim of a need for privacy is wholly misplaced as applied to Mathias because his involvement—sponsoring 22AKHE and donating $90,000 to the effort—is already public. [R. 394, 572, 647] For other donors, as Justice Scalia once wrote, "harsh criticism, short of unlawful action, is a price our people have traditionally been willing to pay for self-governance. Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed."[131]

Lastly, Mathias and RCEA suggest that *Americans for Prosperity Foundation v. Bonta*, a recent Supreme Court decision striking down a disclosure law in another context somehow supports their claims.[132] [At. Br. 39] It does not. As the Ninth Circuit

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129 *Citizens United*, 558 U.S. at 370 (cleaned up); *see Ams. for Prosperity Found.*, 141 S. Ct. at 2389 (stating that if exacting scrutiny is satisfied, the plaintiffs must bear the evidentiary burden of showing that donors to a substantial number of entities will face harassment or reprisals); *Doe v. Reed*, 561 U.S. 186, 201 (2010) (rejecting challenge where plaintiffs offered "scant evidence or argument" to support that disclosure burdened signers of typical initiative petitions).

130 *Cf. Rio Grande Found. v. Oliver*, 2020 WL 6063442, at *11 (D.N.M. 2020) (plaintiffs failed to show a reasonable probability of retaliation sufficient to show likely success on the merits of an as-applied challenge); *ProtectMarriage.com v. Bowen*, 830 F. Supp. 2d 914, 934 (E.D. Cal. 2011), *aff'd in part, dismissed in part sub nom.*, 752 F.3d 827 (9th Cir. 2014) (rejecting plaintiffs' request for an as-applied disclosure exemption, noting that "picketing, protesting, boycotting, distributing flyers, destroying yard signs and voicing dissent do not necessarily rise to the level of 'harassment' or 'reprisals,' especially in comparison to acts directed at groups in the past").

131 *Doe*, 561 U.S. at 228 (Scalia, J., concurring).

132 141 S. Ct. at 2373.

explained, "[t]hat case involved neither public disclosure of information nor an electioneering matter."[133] In that case, the Supreme Court struck down a California law requiring charities to provide donor information to the state.[134] The Court rejected the state's asserted interest in investigating charity fraud because the state rarely used the law for that purpose, concluding that the true state interest—ease of administration—did not survive exacting scrutiny.[135] Here, the interest is indisputably a sufficiently important one—that of an informed electorate.[136]

For all these reasons, AS 15.13.074(b) and true-source reporting do not violate the First Amendment.

II. The Commission's resolution of the illegal cash contribution to AHE was consistent with the statutes and supported by the evidence.

ABE argues that the Commission's handling of the $2,358 cash contribution to AHE was an abuse of discretion. "A person or group may not make a cash contribution that exceeds $100."[137] RCEA and AHE initially conceded before the Commission that the $2,358 cash contribution violated this rule, and, consistent with that concession, AHE returned it to RCEA.[138] [Exc. 182, 198, 204; R. 396, 855] Returning the money to the

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133 *Smith*, 95 F.4th at 1217 n.7 (discussing *Ams. for Prosperity Found.*, 141 S. Ct. at 2385-87).

134 *Id.* (discussing *Ams. for Prosperity Found.*, 141 S. Ct. at 2385-87).

135 *Id.*

136 *See id.*

137 AS 15.13.074(e).

138 Respondents later argued that AS 15.13.074 does not apply at all to ballot initiative campaigns, including the $100 limit on cash contributions. [R. 870, 878]

contributor —whether in its "original form" or "equivalent value"—is the statutorily prescribed way to correct an illegal contribution.[139] Conceding that APOC "ordinarily would have the discretion" to accept AHE's correction of the problem and impose no monetary penalty [Cr. At. Br. 26], ABE nevertheless requests reversal and remand arguing that there was "no evidence" to support what it characterizes as "the Commission's finding that Mr. Mathias was the one who actually contributed $2,538 in cash [to AHE] on February 23, 2023." [At. Br. 26-27]

ABE misunderstands the Commission's factual findings about the cash contribution. The Commission did *not* find, as ABE suggests, that "Mr. Mathias was the one" who withdrew $2,358 in cash from his own account and gave it to AHE on February 22, 2023. [At. Br. 27] Instead, the Commission found that Mathias intended to pass the full amount of his $90,000 donation to RCEA to AHE, "as needed." [Exc. 250-51; *see* Exc. 244-45; R. 396] And the Commission found that he "effectuated that intent" by moving almost exactly $90,000 of RCEA funds to AHE. [Exc. 249-51] That $90,000 contribution to AHE was made in part using RCEA's cash. The record shows that Mathias completed the pass-through contribution through the following steps:

- Mathias wrote a $90,000 check from his own account to RCEA on December 27, 2022. [Exc. 217]
- Mathias wrote a $1,000 check from RCEA's account to AHE on January 9, 2023. [Exc. 212]
- Mathias transferred $75,000 from RCEA's account to AHE by cashier's check on February 3, 2023. [Exc. 213, Tr. 66]

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139 AS 15.13.114(a).

- Someone—presumably Izon or Mathias—gave AHE $2,358 of cash that belonged to RCEA on February 22, 2023. Izon told APOC that they did this, rather than Mathias writing another check, "to avoid the holds that banks were then placing on RCEA's checks due to the newly formed nature of the entity." [Exc. 198, 204, 206]
- Mathias wrote a check in the amount of $1,382 on February 23, 2023 from RCEA's account to Rand Printing to pay for petition booklet printing on AHE's behalf. [Exc. 214, R. 855-56]
- Mathias wrote another check in the amount of $11,000 from RCEA's account to AHE on May 22, 2023, bringing the total contribution to $90,740. [Exc. 215]
- On August 1, 2023, Mathias replaced the $2,358 cash contribution with a $2,358 check from RCEA to AHE, leaving the total contribution amount unchanged. [Exc. 204, 216]

The Commission did not misunderstand or mischaracterize this sequence of events. Mathias's intent—according to ABE's own allegations and the Commission's findings—was to transfer the $90,000 he gave RCEA to AHE. [Exc. 250-51] The fact that Mathias initially accomplished that objective in part using cash that RCEA had on hand does not change the fact that his intent was to move $90,000 from RCEA to AHE because that was the amount of the contribution he had made to RCEA.

The $2,358 was either (1) part of the $90,000 Mathias contributed to AHE through RCEA, or (2) a separate contribution RCEA made to AHE (with an undisclosed true source or sources). The same $2,358 contribution cannot logically have been both things. The Commission found that it was the former—part of the $90,000—and that finding is well supported by the evidence, as explained above in response to Mathias's factual challenge. The fact that Mathias improperly used RCEA *cash* rather than another RCEA check to effectuate part of his $90,000 contribution does not render the Commission's conclusion an abuse of discretion. And after the respondents returned the illegal cash gift

and replaced it with a check instead, any reason to treat the $2,358 differently than the rest of Mathias's pass-through contribution to AHE disappeared.

ABE's true concern with the cash is not about the fact that it initially was part of Mathias's pass-through contribution to AHE. Rather, ABE would like to know where RCEA got the physical currency it gave to AHE, and which AHE later returned: "Simply put, the source of the illegal $2,358 cash contribution remains a mystery." [Cr. At. Br. 27] This concern stems from RCEA's continuing failure to comply with APOC's determination that it was required to register as an entity and report accordingly.[140] Separate from Mathias's donation, the Commission has ordered RCEA to disclose its funding sources as the statutes require.[141] [Exc. 239, 251] Those obligations include disclosing the identities of contributors to RCEA.[142]

The Court should affirm the Commission's conclusions that the illegal cash gift was (1) part of Mathias's $90,000 gift to AHE and (2) corrected as to the cash illegality problem when it was replaced by a check on August 1, 2023.

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140 *See* Attachment A, Status Update re: Final Order, to APOC's Non-Opp. to Mot. to Expedite Briefing Schedule (Mar. 7, 2024).

141 AS 15.13.040(d)-(e), (q) (requiring the reporting of contributors and true sources of contributions); 2 AAC 50.270(b)(1) (requiring independent expenditure reports for a "person making an independent expenditure for any purpose" to include "information required by AS 15.13.040(d) and (e)"); AS 15.13.110(g) (requiring reporting of "contributions received").

142 AS 15.13.040(e).

III. AHE's reporting violations can appropriately be addressed in separate Staff-initiated matters.

Finally, ABE argues that the Commission was required to impose civil penalties against AHE for its reporting violations in the context of *this* matter. [Cr. At. Br. 28] But the Commission made specific findings about AHE's many violations [Exc. 236, 238-39, 242-43], imposed penalties for violations that were pled only in this matter [Exc. 253], and ordered AHE to correct its violations within 30 days. [Exc. 254] The Commission dismissed the reporting violations *without prejudice* to be addressed in overlapping matters that Staff had initiated. [Exc. 238] ABE does not explain how this approach was an abuse of discretion. Ongoing violations of the Commission's order can be further addressed, if necessary, in subsequent matters initiated by Staff or through a complaint.[143]

CONCLUSION

For these reasons, the Court should affirm the Commission's order.

143 AS 15.13.380(b); *see also* 2 AAC 50.855 & 50.865.