

**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,)	
)	Case No. 3AN-24-04508 CI
v.)	Case No. 3AN-24-04974 CI
)	
ALASKA PUBLIC OFFICES COMMISSION,)	APOC Case No. 23-01-CD
)	
Appellee/Cross-Appellee,)	
)	
ALASKANS FOR BETTER ELECTIONS,)	
)	
Appellee/Cross-Appellant.)	
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APPEAL FROM THE ALASKA PUBLIC OFFICES COMMISSION

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

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**STATUTORY PROVISIONS
PRINCIPALLY RELIED UPON**

Alaska Statute 15.13.040 provides:

- (a) Except as provided in (g) and (l) of this section, each candidate shall make a full report, upon a form prescribed by the commission,
 - (1) listing
 - (A) the date and amount of all expenditures made by the candidate;
 - (B) the total amount of all contributions, including all funds contributed by the candidate;
 - (C) the name, address, date, and amount contributed by each contributor; and

(D) for contributions in excess of \$50 in the aggregate during a calendar year, the principal occupation and employer of the contributor; and

(2) filed in accordance with AS 15.13.110 and certified correct by the candidate or campaign treasurer.

(b) Each group shall make a full report upon a form prescribed by the commission, listing

(1) the name and address of each officer and director;

(2) the aggregate amount of all contributions made to it; and, for all contributions in excess of \$100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor; for purposes of this paragraph, "contributor" means the true source of the funds, property, or services being contributed; and

(3) the date and amount of all contributions made by it and all expenditures made, incurred, or authorized by it.

(c) The report required under (b) of this section shall be filed in accordance with AS 15.13.110 and shall be certified as correct by the group's treasurer.

(d) Every person making an independent expenditure shall make a full report of expenditures made and contributions received, upon a form prescribed by the commission, unless exempt from reporting.

(e) Each person required to report under (d) of this section shall file a full report in accordance with AS 15.13.110(h) on a form prescribed by the commission. The report must contain

(1) the name, address, principal occupation, and employer of the individual filing the report;

(2) an itemized list of all expenditures made, incurred, or authorized by the person;

(3) the name of the candidate or the title of the ballot proposition or question supported or opposed by each expenditure and whether the expenditure is made to support or oppose the candidate or ballot proposition or question;

(4) the name and address of each officer and director, when applicable;

(5) the aggregate amount of all contributions made to the person, if any, for the purpose of influencing the outcome of an election; for all contributions, the date of the contribution and amount contributed by each contributor; and, for a contributor

(A) who is an individual, the name and address of the contributor and, for contributions in excess of \$50 in the aggregate during a calendar year, the name, address, principal occupation, and employer of the contributor; or

(B) that is not an individual, the name and address of the contributor and the name and address of each officer and director of the contributor.

(f) During each year in which an election occurs, all businesses, persons, or groups that furnish any of the following services, facilities, or supplies to a candidate or group shall maintain a record of each transaction: newspapers, radio, television, advertising, advertising agency services, accounting, billboards, printing, secretarial, public opinion polls, or research and professional campaign consultation or management, media production or preparation, or computer services. Records of provision of services, facilities, or supplies shall be available for inspection by the commission.

(g) The provisions of (a) and (l) of this section do not apply to a delegate to a constitutional convention, a judge seeking judicial retention, or a candidate for election to a municipal office under AS 15.13.010, if that delegate, judge, or candidate

(1) indicates, on a form prescribed by the commission, an intent not to raise and not to expend more than \$5,000 in seeking election to office, including both the primary and general elections;

(2) accepts contributions totaling not more than \$5,000 in seeking election to office, including both the primary and general elections; and

(3) makes expenditures totaling not more than \$5,000 in seeking election to office, including both the primary and general elections.

(h) The provisions of (d) of this section do not apply to one or more expenditures made by an individual acting independently of any other person if the expenditures

(1) cumulatively do not exceed \$500 during a calendar year; and

(2) are made only for billboards, signs, or printed material concerning a ballot proposition as that term is defined by AS 15.13.065(c).

(i) The permission of the owner of real or personal property to post political signs, including bumper stickers, or to use space for an event or to store campaign-related materials is not considered to be a contribution to a candidate under this chapter unless the owner customarily charges a fee or receives payment for that activity. The fact that the owner customarily charges a fee or receives payment for posting signs that are not political signs is not determinative of whether the owner customarily does so for political signs.

(j) Except as provided in (l) of this section, each nongroup entity shall make a full report in accordance with AS 15.13.110 upon a form prescribed by the commission and certified by the nongroup entity's treasurer, listing

(1) the name and address of each officer and director of the nongroup entity;

(2) the aggregate amount of all contributions made to the nongroup entity for the purpose of influencing the outcome of an election;

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

(4) the date and amount of all contributions made by the nongroup entity, and, except as provided for certain independent expenditures in AS 15.13.135(a), all expenditures made, incurred, or authorized by the nongroup entity, for the purpose of influencing the outcome of an election; a nongroup entity shall report contributions made to a different nongroup entity for the purpose of influencing the outcome of an election and expenditures made on behalf of a different nongroup entity for the purpose of influencing the outcome of an election as soon as the total contributions and expenditures to that nongroup entity for the purpose of influencing the outcome of an election reach \$500 in a year and for all subsequent contributions and expenditures to that nongroup entity in a year whenever the total contributions and expenditures

to that nongroup entity for the purpose of influencing the outcome of an election that have not been reported under this paragraph reach \$500.

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

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

(1) a report under this subsection must

(A) describe the fund-raising activity;

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

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

(2) for purposes of this subsection,

(A) "contribution" means a cash donation, a purchase such as the purchase of a ticket, the purchase of goods or services offered for sale at a fund-raising activity, or a donation of goods or services for the fund-raising activity;

(B) "fund-raising activity" means an activity, event, or sale of goods undertaken by a candidate, group, or nongroup entity in which contributions are \$50 a person or less in amount or value.

(m) Information required under this chapter shall be submitted to the commission electronically, except that the following information may be submitted in clear and legible black typeface or hand-printed in dark ink on paper in a format approved by the commission or on forms provided by the commission:

(1) information submitted by

(A) a candidate for election to a borough or city office of mayor, membership on a borough assembly, city council, or school board, or any state office, who

(i) meets the requirements of (g)(1) - (3) of this section; or

(ii) does not have reasonable access to the technology necessary to file electronically; in this sub-subparagraph, a candidate is considered not to have reasonable access to the technology necessary to file electronically if the candidate does not own a personal computer or does not have broadband Internet access at the candidate's residence; in this sub-subparagraph,

"broadband Internet access" means high-speed Internet access that is always on and that is faster than traditional dial-up access; or

(B) a candidate for municipal office for a municipality with a population of less than 15,000; in this subparagraph, "municipal office" means the office of an elected borough or city

(i) mayor; or

(ii) assembly, council, or school board member;

(2) any information if the commission determines that circumstances warrant an exception to the electronic submission requirement.

(n) The commission shall print the forms to be provided under this chapter so that the front and back of each page have the same orientation when the page is rotated on the vertical axis of the page.

(o) Information required by this chapter that is submitted to the commission on paper and not electronically shall be electronically scanned and published on the Internet by the commission, in a format accessible to the general public, within two working days after the commission receives the information.

(p) Notwithstanding the requirement in (a) of this section that a candidate shall make a full report upon a form prescribed by the commission, the commission shall accept information submitted electronically by a candidate if the information is

(1) entered onto a version of a form accessed on the Internet website of the commission; or

(2) in the form of an electronic spreadsheet or data file that contains field names and data types that conform to a standard defined by the commission.

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

(r) Every individual, person, nongroup entity, or group that contributes more than \$2,000 in the aggregate in a calendar year to an entity that made one or more independent expenditures in one or more candidate elections in the previous election cycle, that is making one or more independent expenditures in one or more candidate elections in the current election cycle, or that the contributor knows or has reason to know is likely to make independent expenditures in one or more candidate elections in the current election cycle shall report making the contribution or contributions on a form prescribed by the commission not later than 24 hours after the contribution that requires the contributor to report under this subsection is made. The report must include the name, address, principal occupation, and employer of the individual filing the report and the amount of the contribution, as well as the total amount of contributions made to that entity by that individual, person, nongroup entity, or group during the calendar year. For purposes of this subsection, the reporting contributor is required to report and certify the true sources of the contribution, and intermediaries, if any, as defined by AS 15.13.400(18). This contributor is also required to provide the identity of the true source to the recipient of the contribution simultaneously with providing the contribution itself.

(s) For purposes of (e) of this section,

(1) "director" means a member of the board of directors of a corporation or any person performing a similar function with respect to any organization;

(2) "officer" means a president, vice-president, secretary, treasurer, principal financial officer, or comptroller of a corporation, or any person routinely performing functions similar to those

of a president, vice-president, secretary, treasurer, principal financial officer, or comptroller with respect to any organization.

Alaska Statute AS 15.13.074(b) provides:

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

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

(a) A person who

(1) fails to register when required by AS 15.13.050(a) or who fails to file a properly completed and certified report within the time required by AS 15.13.040, 15.13.060(b)-(d), 15.13.110(a)(1),(3),or(4),(e),or(f) is subject to a civil penalty of not more than \$50 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. A person who fails to file a properly completed and certified report within the time required by AS 15.13.110(a)(2) or 15.13.110(b) is subject to a civil penalty of not more than \$500 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court;

(2) whether as a contributor or intermediary, delays in reporting a contribution as required by AS 15.13.040(r) is subject to a civil penalty of not more than \$1,000 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court;

(3) whether as a contributor or intermediary, misreports or fails to disclose the true source of a contribution in violation of AS 15.13.040(r) or 15.13.074(b) is subject to a civil penalty of not more than the amount of the contribution that is the subject of the misreporting or failure to disclose; upon a showing that the violation was intentional, a civil penalty of not more than three times the amount of the contribution in violation may be imposed; these penalties as determined by the commission are subject to right of appeal to the superior court;

Alaska Statute AS 15.13.400(19) provides:

(19) "true source" means the person or legal entity whose contribution is funded from wages, investment income, inheritance, or revenue generated from selling goods or services; a person or legal entity who derived funds via contributions, donations, dues, or gifts is not the true source, but rather an intermediary for the true source; notwithstanding the foregoing, to the extent a membership organization receives dues or contributions of less than \$2,000 per person per year, the organization itself shall be considered the true source.

INTRODUCTION

The Alaska Public Offices Commission (“APOC”)¹ applied an incorrect penalty to RCEA and Matthias with respect to RCEA’s donations to AHE. A straightforward reading of the plain English contained in AS 15.13.390(a)(3); AS 15.13.040(r); and AS 15.13.074(b) dictates that the “amount of the contribution” penalty set forth in AS 15.13.390(a)(3) should not have been applied to RCEA or Matthias—by the plain words of the applicable statutes that penalty applies only to “true source” reporting in the context of candidate elections.

Despite APOC’s misreading of AS 15.13.074(b), the statute plainly contains both (1) a prohibition against contributions made “anonymously,” “using a fictitious name”, “or using the name of another,”²—the statute states that “a person or group **may not make**,”³ and (2) a true source reporting requirement that by way of its reliance upon and incorporation of AS 15.13.040(r), is tied exclusively to candidate elections. APOC’s argument that AS 15.13.074(b) contains nothing but a reporting requirement, impermissibly attempts to rewrite the statute. The statute’s plain provision stating that “a person or group **may not make** a contribution” is unmistakably a contribution prohibition and it is separated from the remainder of the statute that addresses true source reporting in candidate elections, by a period (“.”) or full stop. “‘A period, or ‘full stop,’ is a punctuation mark in English that expresses the end of a sentence.”

¹ Citations to “APOC, p. ___” are to pages within APOC’s Appellee’s brief.

² AS 15.13.074(b).

³ AS 15.13.074(b) (emphasis added).

APOC’s interpretation and application of AS 15.13.074(b)—both its prohibition and its “true source” reporting requirement—violates the First Amendment. The prohibition cannot survive strict scrutiny under *Thompson v. Hebdon*, 589 U.S. ___, 140 S. Ct. 348, 349 (2019); *Randall v. Sorrell*, 548 U.S. 230, 247-248 (2006); *Buckley v. American Const. Law Found., Inc.*, 525 U.S. 182, 203 (1999); and *Thompson v. Hebdon*, 7 F.4th 811, 822 (9th Cir. 2021). Initiatives do not implicate concerns over *quid pro quo* corruption. The “true source” reporting requirement—a requirement that according to APOC requires RCEA, a nonprofit, to disclose its donors—cannot survive exacting scrutiny under *Americans for Prosperity Foundation v. Bonta*, 594 U.S. ___, 141 S. Ct. 2373, 2382 (2021) and *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958).

Moreover, the agency improperly penalized Matthias twice for the same failure to report his alleged contribution—once under AS 15.13.390(a)(1) and again under AS 15.13.390(a)(3).⁴ Despite APOC’s assertion that Matthias was not fined twice for the same failure to report,⁵ he obviously was—Matthias’ failure to report was based upon the exact same failure to act, no matter how APOC tries to parse it now. Matthias was not charged with or fined for “misreporting” under AS 15.13.390(a)(3) because he filed no report—to “misreport” Matthias would have had to have filed an incorrect report—“misreport” is a term that plainly requires someone to file an incorrect report, not to simply fail to file a report.⁶ Matthias was charged only with violating **the prohibition** of

⁴ See Exc. 240, 251, 253.

⁵ APOC, p. 31.

⁶ See *Merriam-Webster Dictionary*, <https://www.merriamwebster.com/dictionary/>

AS 15.13.074(b) for giving in the name of another.⁷ He was never charged with a “true source” **reporting** violation.⁸ For his single “failure to report”—Matthias allegedly failed to report once and only once regarding the alleged \$90,000 contribution he made to AHE—he was fined twice, once under AS 15.13.040(k) and AS 15.13.390(a)(1) at \$50 per day for failing to report a \$90,000 contribution to AHE [Exc. 251, 253], and then a second time under AS 15.13.074(b) and AS 15.13.390(a)(3) for allegedly making and not reporting the exact same \$90,000 contribution to RCEA. [Exc. 251, 253]

Despite APOC’s suggestions in its brief, in its Final Order APOC inconsistently blamed (and even now continues to blame⁹) Matthias for all of RCEA’s actions when asserting that he (and not another RCEA donor) was the “true source” of the \$90,000 in contributions RCEA made to AHE,¹⁰ but then failed (and continues to refuse¹¹) to credit him for RCEA’s reporting of him as the true source of the nonprofit’s contributions to AHE.¹² APOC cannot have it both ways, either Matthias was RCEA and is responsible for

misreport.

⁷ Exc. 215, 217-218, 251, 253; Tr. 37, 39, 41.

⁸ *Id.* APOC is trying now to rewrite the statute so as to lump the prohibition and the true source reporting provisions together, with its goal being to avoid the constitutional problem the prohibition faces under First Amendment strict scrutiny.

⁹ APOC, p. 27 (“The Commission reasonably considered the report itself and the \$740 error to be evidence that Mathias intended to transfer exactly \$90,000”).

¹⁰ Exc. 249-250 (“he himself makes the decisions about money going out of RCEA. And he personally signed the checks from RCEA to AHE”).

¹¹ APOC, p. 32 (“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”).

¹² Exc. 251-252 (giving RCEA an additional 50% reduction because of its report of the \$90,000 and attributing it to Matthias but refusing to give that same credit to Matthias—

its actions, or he is not—APOC cannot flip-flop on this conclusion going one way when it benefits the agency, and then going the other way when it works against Matthias.

ARGUMENT

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

The statute, AS 15.13.074(b) unmistakably—when read consistent with plain English and proper grammar—contains a prohibition against giving in the name of another. The statute contains two provisions, one a prohibition and the other a true source reporting requirement. The statute contains two sentences separated by a period or a full stop.

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).¹³

This statute prohibits certain types of contributions—it does not simply require true source reporting of those contributions.

APOC’s current assertion that the statute contains nothing more than a single true source reporting requirement,¹⁴ attempts to rewrite the statute and ignores APOC’s clear holding with respect to how the statute applies to nonprofit organizations. The grammatical

the individual who APOC had already earlier concluded was responsible for all of RCEA’s actions. Exc. 249-250.

¹³ AS 15.13.074(b) (emphasis added).

¹⁴ APOC, pp. 38-40.

significance of a period is that it ends a sentence: “‘A period, or ‘full stop,’ is a punctuation mark in English that expresses the end of a sentence.”¹⁵ Reading the statute by its plain English and consistent with rules of grammar, as this court is required to do,¹⁶ and refraining from rewriting APOC’s Final Order,¹⁷ the statute clearly sets forth a prohibition against campaign contributions by nonprofit organizations to initiative ballot groups. According to APOC, a nonprofit that derives its funds from donations can never be a “true source” of a donation that it makes to a ballot group, and thus would violate AS 15.13.074(b)’s prohibition anytime it makes such a contribution.¹⁸

APOC’s Final Order declared that: “[b]ecause RCEA derives its funds from ‘contributions, donations, dues, or gifts,’ it is an intermediary and not, by definition, the true source of a contribution.”¹⁹ In other words, according to APOC any time a nonprofit donates to a ballot group it would be acting as an intermediary and passing along to the ballot group the donations it had received from someone else, namely its donors.²⁰ APOC’s assertion, that RCEA and Mathias “fundamentally misunderstand[]” the law when they contend “that by donating to a ballot group, RCEA causes all its donors to violate

¹⁵ See *Grammarly* <https://www.grammarly.com/blog/period/#:~:text=When%20it%20comes%20to%20English%20grammar%2C%20a%20period,purposes%3A%20ending%20a%20sentence%20and%20indicating%20an%20omission.>

¹⁶ "Statutory interpretation in Alaska begins with the plain meaning of the statute's text." *Phillips v. Bremner-Phillips*, 477 P.3d 626, 631-632 (Alaska 2020); *Ward v. State, Dep't of Pub Safety*, 288 P.3d 94, 98 (Alaska 2012); *Tesoro Alaska Petro. v. Kenai Pipe Line*, 746 P.2d 896, 904 (Alaska 1987); AS 01.10.040(a).

¹⁷ Exc. 248-249.

¹⁸ Exc. 248-249.

¹⁹ Exc. 248-249.

²⁰ Exc. 248-249.

AS 15.13.074(b),”²¹ is incorrect. To the contrary, APOC’s current assertion ignores the agency’s own Final Order that proclaims exactly that result.²² APOC is not entitled to rewrite its own Final Order in the context of this appeal. In other parts of its brief, APOC admits that the statute contains the prohibition that RCEA and Matthias point out—*See* APOC, p. 26-27 (“The statute **prohibits giving** in the name of another”) (emphasis added); APOC, p. 27 (“AS 15.13.074(b) plainly applies far more broadly; it **prohibits a “person” from making “a contribution ... using the name of another”**) (emphasis added).

If AS 15.13.074(b) contains but a single true source reporting requirement as APOC now suggests,²³ then the entirety of the statute is driven by and limited to the parameters of its true source reporting requirement—a requirement that as detailed in Appellants’ earlier opening brief²⁴ and below, is limited to candidate elections when read by the plain English of the statute and proper grammar.

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

APOC tries to dodge the unconstitutionality of AS 15.13.074(b)’s campaign contribution prohibition by claiming that the statute is only a true source reporting requirement. But as demonstrated above, APOC’s current argument improperly rewrites the statute, ignores the agency’s own Final Order, and contradicts portions of its own arguments in this appeal. As a prohibition of campaign contributions by nonprofit

²¹ APOC, p. 42.

²² Exc. 248-249.

²³ APOC, p. 38-40.

²⁴ Appellants Brf., pp. 3, 8, 12, 47-48.

organizations to initiative ballot groups, the first sentence of AS 15.13.074(b) violates the First Amendment.

Ballot petition circulation constitutes core political speech because it involves “interactive communication concerning political change.” *Meyer v. Grant*, 486 U.S. 414, 422 (1988). Making political contributions, including to a ballot group, constitutes core political speech and association that the government may only burden or limit to prevent *quid pro quo* corruption or its appearance. *See, e.g., Thompson*, 589 U.S. ___, 140 S. Ct. at 349; *Randall*, 548 U.S. at 247-248; *Thompson*, 7 F.4th at 822.²⁵ Strict scrutiny applies to contribution restrictions that operate as more than just limitations on the amount a donor may give to a campaign—in other words, to a contribution prohibition. *See, McCutcheon v. Federal Elec. Comm’n*, 572 U.S. 185, 196-197 (2014) (holding that expenditure limits, unlike limits placed on how much a person can contribute to a campaign, were subjected to strict scrutiny). A limitation that denies an individual even “the symbolic expression of support evidenced by a contribution” and/or that “infringe the contributor’s freedom to discuss ... issues” or to participate in the discussion, is subject to strict scrutiny. *Id.* Under strict scrutiny, the government may regulate protected speech and association only to promote a compelling interest by the least restrictive means. *See, e.g., Id.*

Under controlling Supreme Court precedent, prohibitions that prevent people from exercising their right to contribute to ballot groups are *per se* unconstitutional. “Ballot

²⁵ The phrase *quid pro quo* in the context of campaign contributions means “dollars for political favors.” *McCutcheon*, 572 U.S. at 192 *citing Federal Election Comm’n v. National Conservative Political Action Comm.*, 470 U.S. 480, 497 (1985).

initiatives do not involve the risk of ‘quid pro quo’ corruption present when money is paid to, or for, candidates.” *Buckley v. American Const. Law Found., Inc.*, 525 U.S. 182, 203 (1999) citing *Meyer v. Grant*, 486 U.S. 414, 427–428 (1988) (citing *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 790 (1978) (“The risk of corruption perceived in cases involving candidate elections ... simply is not present in a popular vote on a public issue”); see also *McIntyre v. Ohio Elec. Comm’n*, 514 U.S. 334, 352 n. 15 (1995). Thus, prohibiting a nonprofit from contributing to a ballot measure campaign violates the First Amendment because the prohibition serves no permissible government interest in preventing *quid pro corruption* or its appearance—a ballot measure once passed into law cannot give a *quo* (a political favor) for a *quid* (the dollars represented by a campaign contribution). See *Buckley*, 525 U.S. at 203.

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

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

APOC's current assertion that AS 15.13.074(b)'s nonprofit donor disclosure requirement "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,"²⁶ belies its own arguments elsewhere,²⁷ and contradicts how the agency applied the law to Matthias.²⁸ APOC found Matthias donated to AHE through RCEA by effectively concluding in its Final Order that:

(a) to penalize a nonprofit donor for giving in the name of another (namely the nonprofit), it is unnecessary for the Commission to trace the comingled dollars that flowed from the nonprofit organization to the ballot group, back to the particular donor;²⁹

(b) to conclude that Matthias was the source of the RCEA funds donated to AHE, it could ignore the unrefuted facts showing that RCEA had received a \$250,000 donation before Matthias donated his funds to RCEA, a donation that was sufficient to cover the \$90,000 in donations to AHE more than twice over without tapping Matthias' donated funds;³⁰

(c) Matthias, as a donor to a nonprofit, can be penalized for donating "in the name of another" even though when the nonprofit later donated to the ballot group, Matthias had every expectation that under the First-in-First-Out accounting rule RCEA was funding its donations to AHE with money it had

²⁶ APOC, p. 38.

²⁷ APOC, p. 42 ("violating AS 15.45.074(b) hinges on "intent" of the donor"); APOC, p. 26 ("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 ..., or shortly thereafter when he made the piecemeal contribution to AHE from RCEA's account.... 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.").

²⁸ Exc. 249-251 (finding that Matthias violated the statute because, in part, his intent was to give to AHE through RCEA).

²⁹ Here RCEA's account contained comingled funds from all its donors, and there was no accounting or "painting" of dollars, and there was no way to trace funds that came out of the account to any specific donor. Tr. 60-61, 63, 74; Exc. 219; Tr. 59.

³⁰ Exc. 219, Tr. 59.

received from other donors who gave larger amounts to RCEA before Matthias;³¹

(d) a minority donor who gave the nonprofit no more than 15-26% (or perhaps less) of the nonprofit's total funds, can be penalized if the nonprofit's donations to the ballot group came from a comingled account into which the minority donor's gifts were deposited;³²

(e) even a donor who gave to the nonprofit at a time when (1) no ballot proposition yet existed (because it had not yet been certified by the Lieutenant Governor), and (2) no ballot group yet existed, can be penalized if the nonprofit later donates to a later formed group;³³ and

(f) a nonprofit donor can be penalized even if all the donations (to the nonprofit and from the nonprofit to the ballot group) are made after APOC Staff has advised that registration and reporting is not required.³⁴

[See Exc. 245-251]

The true source reporting requirements, as APOC interprets and applies them to nonprofits, violate the First Amendment. It is not an adequate response for APOC to assert that RCEA could have avoided donor disclosure by refraining from donating to AHE. RCEA had a First Amendment right to donate to AHE and to support the initiative. It is not an adequate response to assert that RCEA could have refrained from exercising its First Amendment rights.

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

³¹ Exc. 219; Tr. 59.

³² Matthias' donation amounted to only 26% of RCEA's funds through March 2023, and later only 15% of its total funds. Tr. 59-60; Exc. 219.

³³ Matthias made his donation to RCEA on December 22, 2022, [Exc. 217] a month before (a) the Lieutenant Governor certified the petition [Exc. 194-195], and (b) AHE was created on January 23, 2023. [R. 586-587]

³⁴ Exc. 199-200; R. 589-590.

APOC recites the evidence that it relied upon to conclude that Matthias was the source of RCEA’s donations to AHE.³⁵ But the flaw in APOC’s analysis is the unrefuted evidence that it ignored in reaching its decision that RCEA used Matthias’ money to make its donations to AHE—namely evidence showing that RCEA had received a \$250,000 donation before Matthias put his \$90,000 into RCEA. [Exc. 219; Tr. 58] This donation was more than sufficient to fund RCEA’s \$90,000 in donations to AHE more than twice over without ever touching the money Matthias had put into RCEA.

And APOC ignores, and does not even discuss, how the FIFO accounting rule would have obviously **impacted Matthias’ knowledge and intent** when he made his donation to RCEA and when he signed RCEA’s donation checks to AHE.³⁶ Whether APOC has adopted the FIFO rule or not is immaterial—the rest of the world operates under FIFO when it comes to money leaving a bank account,³⁷ and Matthias plainly understood that the FIFO rule applied when he wrote RCEA’s checks to AHE—he knew his donation to RCEA was but a fraction of the nonprofit’s funding, and he thought RCEA was tapping into a another donor’s prior contribution to RCEA when the nonprofit donated to AHE. [See Tr. 58-62] Because APOC hinges its application of AS 15.13.074(b) to Matthias based upon his intent when he donated to RCEA and when he signed RCEA’s checks to AHE [APOC, pp. 25, 27, 33, 54], FIFO is extremely pertinent because it framed Matthias’s state of mind (his intent) at those pertinent times.

³⁵ APOC, pp. 27-29.

³⁶ APOC simply delivers the irrelevant point that “[t]he Commission has not adopted a first-in, first-out rule. [APOC, p. 43 n. 97]

³⁷ See *In re Christensen*, 149 P.3d 40, 50 (Nev. 2006).

An agency cannot ignore unrefuted evidence in the record, and then draw contrary conclusions. That type of a finding—e.g., the findings that Matthias was the source of the \$90,000 donated by RCEA to AHE, and that he intended to pass his money through RCEA to AHE—are findings that are not supported by the weight of the evidence, or substantial evidence in light of the whole record. AS 44.62.570(c).

III. RCEA DID NOT VIOLATE TRUE SOURCE REPORTING

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

"Statutory interpretation in Alaska begins with the plain meaning of the statute's text.³⁸ Common dictionary definitions and common rules of grammar control the interpretation of Alaska statutes absent compelling evidence to the contrary.³⁹ When construing statutes, the court must presume that "every word, sentence, or provision of a

³⁸ *Phillips*, 477 P.3d at 631-632; *Ward*, 288 P.3d at 98; *Tesoro*, 746 P.2d at 904; AS 01.10.040(a).

³⁹ *See Tesoro*, 746 P.2d at 904; AS 01.10.040(a).

statute” has “some purpose, force, and effect, and that no words or provisions are superfluous.”⁴⁰

Alaska Statute 15.13.074(b), by its express link to AS 15.13.040(r), limits its “true source” reporting requirement to candidate elections. The statute’s “true source” reporting provision provides:

(b) 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).⁴¹

With respect to “true source” reporting, this statute limits its application to “[i]ndividuals, persons, nongroup entities, or groups **subject to AS 15.13.040(r)**.”⁴² Those “[i]ndividuals, persons, nongroup entities, or groups subject to AS 15.13.040(r)” —the subject of the statute (the noun in the sentence)—are proscribed from doing two things (the two verbs in the sentence):

- (1) they may not “contribute or accept \$2,000 or more of dark money,” and
- (2) they may not make a contribution while acting as an intermediary “without disclosing the true source of the contribution.”⁴³

The conjunction “and” in the statute’s single sentence, separates the two proscriptions—*i.e.*, the two verbs⁴⁴—and does not separate multiple nouns. There is only one “noun” that

⁴⁰ *M.M. ex rel. Kirkland v. State*, 462 P.3d 539, 544 (Alaska 2020); *Nelson v. Municipality of Anchorage*, 267 P.3d 636, 642 (Alaska 2011).

⁴¹ AS 15.13.074(b).

⁴² *Id.* (emphasis added).

⁴³ AS 15.13.074(b).

⁴⁴ The verbs being “contribute” and “without disclosing.” *See* AS 15.13.074(b).

is the subject of the sentence—*i.e.*, “[i]ndividuals, persons, nongroup entities, or groups **subject to AS 15.13.040(r)**.”⁴⁵

When read in a grammatically correct manner, the statute provides that “[i]ndividuals, persons, nongroup entities, or groups **subject to AS 15.13.040(r)**” may not do two things: (1) they may not contribute or accept \$2,000 or more of dark money; **“and”** (2) they may not contribute while acting as an intermediary without disclosing the true source of the contribution.⁴⁶ In other words, both (1) contributing or accepting \$2,000 or more of dark money; and (2) contributing while acting as an intermediary without disclosing the true source of the contribution, are proscribed only for “[i]ndividuals, persons, nongroup entities, or groups **subject to AS 15.13.040(r)**.”⁴⁷ The only persons or entities covered by AS 15.13.040(r) are those that contribute more than \$2,000 in the aggregate in a calendar year to entities that made, are making, or are likely to make independent expenditures in “one or more candidate elections.”⁴⁸ AS 15.13.074(b)’s reference to AS 15.13.040(r)—a statute that only applies to candidate elections—controls both of the two conjunctive proscriptions that follow, thus limiting both of the proscriptions to “candidate elections.”

IV. FOR ALL THE ABOVE REASONS, MATTHIAS ALSO DID NOT VIOATE THE “TRUE SOURCE” REPORTING REQUIREMENT OF AS 15.13.074(b)

⁴⁵ AS 15.13.074(b) (emphasis added).

⁴⁶ *See* AS 15.13.074(b) (emphasis added).

⁴⁷ AS 15.13.074(b) (emphasis added).

⁴⁸ AS 15.13.040(r).

APOC Staff charged Matthias with violating the prohibition of AS 15.13.074(b) by allegedly contributing to AHE in the name of RCEA. [Exc. 186, 188] APOC staff did not conclude that Matthias committed a true source “**misreporting**” violation⁴⁹—he had filed no contribution report and thus did not “misreport.” A “misreport” is the filing of an incorrect report.⁵⁰ Misreporting is distinct from failing to disclose.

Following the hearing, APOC decided to convert the charge against Matthias into a “true source” reporting violation—apparently because it wanted to improperly link his violation to AS 15.13.390(a)(3). Having concluded that Matthias donated to AHE rather than RCEA, APOC then concluded that under AS 15.13.040(k) Matthias should have reported his donation on a statement of contributions within thirty days of the date of the contribution.⁵¹ For this failure to report APOC concluded that Matthias was subject to a penalty of \$8,250 under AS 15.13.390(a)(1), calculated at \$50 per day for 165 days.⁵²

But APOC then assessed a penalty against Matthias for the “giving in the name of another” violation, but this time under AS 15.13.390(a)(3)—an inapplicable statute—in the amount of the contribution, \$90,000. In doing this, APOC apparently decided that Matthias could be penalized again, for a second time, for the exact same failure to “report” the \$90,000 contribution under AS 15.13.040(k), but this time using the penalty provided in AS 15.13.390(a)(3) instead of AS 15.13.390(a)(1), in the amount of the \$90,000

⁴⁹ R. 215, 217-218; Tr. 37, 39, 41.

⁵⁰ See *Merriam-Webster Dictionary*, <https://www.merriamwebster.com/dictionary/misreport>.

⁵¹ Exc. 240, 253.

⁵² Exc. 240, 253.

contribution. In reaching this conclusion, APOC ignored that (1) Matthias had already been penalized once for the failure to report, (2) that RCEA had in fact reported Matthias as the “true source” of \$90,000 of its donations to AHE,⁵³ and (3) the only “true source” reporting statutes referenced in AS 15.13.390(a)(3) and that are linked to its “amount of the contribution” penalty, are AS 15.13.040(r) and AS 15.13.074(b), two statutes that expressly limit their “true source” reporting requirements to “candidate elections.”

The “amount of the contribution” penalty (AS 15.13.390(a)(3)) is not applicable to this case which did not involve candidate elections. As an initial matter, it must be noted that the penalty is not connected to the proscription that is set forth in AS 15.13.074(b).⁵⁴ Instead, the penalty is twice connected exclusively to true source reporting—*i.e.*, “[a] person who...misreports or fails to disclose.”⁵⁵ The two “true source” reporting statutes that are tied to the “amount of the contribution” penalty set forth in AS 15.13.390(a)(3) are ones that expressly limit their application to candidate elections.⁵⁶

⁵³ Based upon APOC’s interpretation and application of the reporting statutes and assessment of duplicative penalties, one is left to wonder just exactly how many times the public needs to be informed of a “true source” for the public’s interest in “information” to be satisfied.

⁵⁴ The proscription of AS 15.13.074(b) provides that “[a] person or group may not make a contribution anonymously, using a fictitious name, or using the name of another.” Nothing in AS 15.13.390(a)(3) ties its stated penalty to the first sentence of AS 15.13.074(b) and its prohibition against making an anonymous contribution, using a fictitious name, or using the name of another, when contributing—instead, the AS 15.13.390(a)(3) penalty is connected exclusively to the “true source” reporting obligations set forth in AS 15.13.040(r) and the second sentence of AS 15.13.074(b).

⁵⁵ AS 15.13.390(a)(3).

⁵⁶ *See* AS 15.13.390(a)(3); AS 15.13.040(r); AS 15.13.074(b) (and the discussion above regarding the express tethering of AS 15.13.074(b) to AS 15.13.040(r) and thus to candidate elections).

AS 15.13.390(a)(3) provides in pertinent part:

(a) A person who ... (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**.⁵⁷

The penalty set forth in this statute applies only to “a person,” “whether as a contributor or intermediary,” who “misreports or fails to disclose” a “true source” in violation of either “AS 15.13.040(r) or 15.13.074(b).”⁵⁸

The first reporting statute referenced in AS 15.13.390(a)(3), and that is tied to its “amount of the contribution” penalty, is AS 15.13.040(r). That statute expressly limits its application to “candidate elections” three separate times. AS 15.13.040(r) provides:

(r) Every individual, person, nongroup entity, or group that contributes more than \$2,000 in the aggregate in a calendar year to an entity that made one or more independent expenditures **in one or more candidate elections** in the previous election cycle, that is making one or more independent expenditures **in one or more candidate elections** in the current election cycle, or that the contributor knows or has reason to know is likely to make independent expenditures **in one or more candidate elections** in the current election cycle shall report making the contribution or contributions on a form prescribed by the commission not later than 24 hours after the contribution that requires the contributor to report under this subsection is made. The report must include the name, address, principal occupation, and employer of the individual filing the report and the amount of the contribution, as well as the total amount of contributions made to that entity by that individual, person, nongroup entity, or group during the calendar year. For purposes of this subsection, the reporting contributor is required to report and certify the true sources of the contribution, and intermediaries, if any, as defined by AS 15.13.400(19). This contributor is also required to provide the identity of

⁵⁷ AS 15.13.390(a)(3) (emphasis added).

⁵⁸ *Id.*

the true source to the recipient of the contribution simultaneously with providing the contribution itself.⁵⁹

This case did not involve “candidate elections” and, therefore, AS 15.13.040(r) has no application to RCEA, Matthias, or for that matter AHE.

The second “true source” reporting statute that is referenced in AS 15.13.390(a)(3) is AS 15.13.074(b)—more specifically the second sentence of AS 15.13.074(b).⁶⁰ As demonstrated above, the “true source” reporting requirement of AS 15.13.074(b), by its specific incorporation of and reference to AS 15.13.040(r), is also limited in application to candidate elections (the second sentence of AS 15.13.074(b)—the true source reporting requirement—applies only to “[i]ndividuals, persons, nongroup entities, or groups subject to AS 15.13.040(r).”⁶¹ Accordingly, the penalty of AS 15.13.390(a)(3) applies only to “true source” reporting violations in candidate elections. This conclusion is mandated by the straightforward plain language of the statutes.

V. APOC IMPROPERLY PENALIZED MATTHIAS AND RCEA IN THE AMOUNT OF THE CONTRIBUTIONS TO RCEA/AHE, AND IMPROPERLY PENALIZED MATTHIAS TWICE FOR HIS FAILURE TO REPORT

Based upon the discussion above, APOC erred by fining both Matthias and RCEA under AS 15.13.390(a)(3). That statute’s penalty is exclusively tied to candidate elections. APOC also erred by twice penalizing Matthias for the same failure to report the \$90,000

⁵⁹ AS 15.13.040(r).

⁶⁰ The first sentence of AS 15.13.074(b), as explained above, is a prohibition against contributions in the name of another and is not a “true source” reporting provision. The “true source” reporting provision in AS 15.13.074(b) is found only in its second sentence.

⁶¹ AS 15.13.074(b).

contribution. APOC attempts to defend its double penalty of Matthias—for the exact same failure to report his alleged \$90,000 donation—by claiming that the fines are attached to different conduct. [APOC, pp. 31-32] But APOC is wrong—there was but one donation of \$90,000 and (assuming he was required to report) Matthias failed to report it but once.

For that one failure to report, APOC fined him under both AS 15.13.390(a)(1) and AS 15.13.390(a)(3). In a criminal context, imposing multiple penalties against a person for a single offense violates the Alaska Constitution’s protection against double jeopardy. *See Whitton v. State*, 479 P.2d 302, 310 (Alaska 1970). In a civil context, a double fine would be unconstitutionally excessive (violating due process) if it is obviously unreasonable.⁶² “The penalty cannot be ‘so severe and oppressive as to be wholly [disproportionate] to the offense and obviously unreasonable.’” *VECO Int’l*, 753 P.2d at 716 (quoting *St. Louis Iron Mountain & Southern Ry. Co. v. Williams*, 251 U.S. 63, 67 (1919)). APOC fining Matthias twice for the exact same conduct is excessive and unreasonable.

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

APOC determined that Matthias was the source of the \$90,000 in contributions that RCEA made to AHE. In reaching this conclusion, APOC attributed RCEA’s actions to Matthias and essentially treated RCEA as if it were an extension of Matthias. [Exc. 249-

⁶² *RGB Bush Planes, LLC v. Alaska Public Offices Comm’n*, 361 P.3d 886, 895 (Alaska 2015); *VECO Int’l, Inc. v. Alaska Pub. Offices Comm’n*, 753 P.2d 703, 716 (Alaska 1988).

250] But when it reached the point of deciding whether to mitigate penalties, APOC then inconsistently refused to credit Matthias for RCEA’s actions when it reported Matthias as the true source of the \$90,000 in donations. [Exc. 252] Despite crediting RCEA—who it previously determined was Matthias—for reporting Matthias as the “true source” of the \$90,000, APOC refused to credit Matthias with that same reporting of himself as the “true source.” This is an inconsistency that represents an arbitrary and capricious decision and thus a reversible error. Based on APOC’s decision to blame Matthias with RCEA’s actions when deciding he was the source of the \$90,000, it was arbitrary and capricious for APOC to not credit him with RCEA’s actions when mitigating penalties.

CONCLUSION

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

DATED this 29th day of May 2024.

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