

BEFORE THE ALASKA PUBLIC OFFICES COMMISSION

STAND FOR ALASKA – VOTE NO ON ONE,)	
)	
Complainant,)	
)	
v.)	APOC Case Nos. 18-06-CD,
)	18-07-CD, and 18-08-CD
YES FOR SALMON – VOTE YES ON ONE,)	
THE ALASKA CENTER, and)	
STAND FOR SALMON)	
)	
Respondents.)	
_____)	

FINAL ORDER

The complainant—Stand for Alaska – Vote No on One—is a group organized to oppose the 2018 ballot initiative titled, “An Act providing for protection of wild salmon and fish and wildlife habitat.” The three respondents—the Alaska Center, Stand for Salmon, and Yes for Salmon – Vote Yes on One—all supported that same ballot initiative. Stand for Alaska – Vote No on One alleges that the three respondents, together and separately, violated various APOC registration and disclosure laws. For the following reasons, the Commission rejects most of the allegations, but finds that Stand for Salmon violated AS 15.13.090 by issuing two advertisements without paid-for-by identifiers, and imposes a civil penalty of \$2,900 for those violations.

I. Background

The organization Stand for Salmon was formed in 2013 with the mission of protecting salmon habitat. In June 2017, several individuals involved with Stand for Salmon filed an initiative application with the Office of the Lieutenant Governor

proposing a ballot initiative that would amend state law to create new permitting requirements for development projects that could harm fish habitat. This initiative was entitled “An Act providing for the protection of wild salmon and fish and wildlife habitat” and became popularly known as the “Stand for Salmon” initiative. The initiative sponsors initially registered with APOC as an initiative proposal group under the name “Stand for Salmon,” but later changed the group’s name to “Yes for Salmon” to distinguish it from the pre-existing organization Stand for Salmon, which they saw as having a purpose broader than just supporting this particular initiative.

On March 13, 2018, the Lieutenant Governor certified the Stand for Salmon initiative to be placed on the ballot for the 2018 General Election. The initiative was designated as Ballot Measure One. The initiative proposal group Yes for Salmon then updated its name to “Yes for Salmon – Vote Yes on One.” As an initiative proposal group, Yes for Salmon – Vote Yes on One filed APOC reports under AS 15.13.040(b) disclosing contributions it received and expenditures it made.

Other organizations supported Ballot Measure One as well. Both Stand for Salmon and the Alaska Center—a nonprofit corporation involved in education and outreach on environmental issues that has existed since the early 1990s—were active in the campaign. They coordinated their efforts and expended money and resources advocating in support of the initiative. They also made large contributions of both money and resources—such as staff time and office space—to the group Yes for Salmon – Vote Yes on One.

Unlike Yes for Salmon – Vote Yes on One, neither Stand for Salmon nor the Alaska Center are themselves registered with APOC as “groups” that must file reports under AS 15.13.040(b). But both Stand for Salmon and the Alaska Center are registered with APOC as entities that make expenditures,¹ and both reported their political activities in support of Ballot Measure One to APOC, either on statement of contributions forms as monetary and non-monetary contributions to the group Yes for Salmon – Vote Yes on One,² or on independent expenditure reports disclosing expenditures made and contributions received for the purposes of influencing the election.³

II. Proceedings

On September 19, 2018, Stand for Alaska – Vote No on One filed expedited complaints against the Alaska Center, Stand for Salmon, and Yes for Salmon – Vote Yes on One alleging violations of various registration and disclosure laws. Specifically, the complaints alleged that the Alaska Center and Stand for Salmon violated AS 15.13.050 by failing to register with APOC as “groups” and that all three respondents violated that same statute by coordinating their initiative-related efforts but failing to register together as a “group.” The complaints further alleged that the Alaska Center and Stand for Salmon violated AS 15.13.040(b) by failing to report all of the contributions they received. They alleged that Stand for Salmon violated AS 15.13.090 by failing to include “paid for by” information in some of its advertisements. Finally, the complaints alleged that in the

¹ AS 15.13.050(a).

² See AS 15.13.040(k).

³ See AS 15.13.040(d)-(e).

months before it changed its name from “Yes for Salmon” to “Yes for Salmon – Vote Yes on One,” that group failed to comply with the requirement in AS 15.13.050(c) that a ballot measure group include a reference to the ballot measure in its name.

Stand for Alaska – Vote No on One requested expedited consideration of its complaints. At a September 24, 2018 special meeting, the Commission granted expedited consideration. The next day, the Commission held a hearing on the merits. The Commission granted Stand for Alaska – Vote No on One’s request to participate as a party. Attorney Matt Singer appeared on behalf of Stand for Alaska – Vote No on One, and attorney Holly Wells appeared on behalf of all three respondents. The Commission heard from several witnesses and considered exhibits presented by the parties.

At the conclusion of the hearing, the Commission, with the agreement of all parties, asked its staff to present its opinion on the law and precedent governing the allegations. The Commission and the parties agreed that staff would present its opinion on September 27, that the parties could file responses on October 1, and that the Commission would issue a decision on October 3. Staff presented its opinion in a September 27 report to which both parties filed timely responses.

After the hearing, the Commission remanded the complaints to the executive director for consideration on a regular rather than an expedited basis. The Commission’s staff investigated and issued a report on November 2, 2018. Staff recommended that the Commission reject most of the allegations, but find that Stand for Salmon violated

AS 15.13.090 by issuing two advertisements without paid for by identifiers. Stand for Alaska – Vote No on One filed a response disagreeing with the staff report.

The Commission considered the matter at its January 24, 2019 regular meeting. Attorneys Holly Wells and Jack McKenna appeared on behalf of the three respondents. Attorney Lee Baxter appeared on behalf of Stand for Alaska – Vote No on One.

III. Analysis

A. The Alaska Center and Stand for Salmon were not required to register and report as “groups.”

Stand for Alaska – Vote No on One alleged that the Alaska Center “violated AS 15.13.050 by failing to register as a group.”⁴ Stand for Alaska – Vote No on One further alleged that the Alaska Center and Stand for Salmon both violated AS 15.13.040(b), which is a reporting requirement applicable to groups.⁵

“Group” is defined for purposes of AS 15.13 in relevant part as

any combination of two or more individuals acting jointly who organize for the principal purpose of influencing the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election.⁶

A “group” meeting this definition is subject to somewhat different reporting requirements than other entities, such as businesses and nonprofit corporations with non-election related purposes.⁷ But all of these entities, whether or not they are “groups,” are required

⁴ Complaint at pg. 2.

⁵ *Id.*

⁶ AS 15.13.400(8)(B).

⁷ *See, e.g.,* AS 15.13.040(b).

to register with APOC before making expenditures related to an election, because every “person other than an individual” must do so.⁸ And all of these entities, whether or not they are “groups,” are required to report expenditures that they make, and contributions that they receive, for the purposes of influencing a ballot measure election.⁹

Because the Alaska Center’s “principal purpose” is not “influencing the outcome of one or more elections,” it does not meet the definition of “group” and was not required to register and report as a group. The Alaska Center is the business name of Alaska Conservation Voters, an organization that incorporated in 1991 as the Alaska Environmental Lobby, Inc. It was not organized for the principal purpose of influencing the results of this particular ballot initiative election or any other election. Both historically and to date, its principal purpose has been engaging in educational activities on issues such as the environment, clean energy, and transparent government.

Similarly, because Stand for Salmon’s “principal purpose” is not “influencing the outcome of one or more elections,” it also was not required to register and report as a group. Stand for Salmon was formed in 2013 with the mission of protecting salmon habitat. Among its early goals and projects were opposing legislation and infrastructure projects that it believed would harm salmon habitat, engaging in advocacy before the Board of Fish, and supporting legislation to protect salmon habitat. In May 2017, Stand

⁸ AS 15.13.050(a).

⁹ See AS 15.13.040(d)-(e) (reporting requirements for independent expenditures). An “independent expenditure” is any expenditure that is made without coordination with a candidate for office, and expenditures made in ballot measure elections will almost always meet this definition.

for Salmon incorporated as an Alaska nonprofit corporation, indicating its purpose as “educating and advocating for Alaska’s salmon resources.” Like the Alaska Center, Stand for Salmon was not organized for the principal purpose of influencing the results of this particular ballot initiative election or any other election.

The Commission’s prior decisions support the conclusion that these entities are not “groups” for purposes of AS 15.13. In Complaint 10-04-CD, *Truth About Pebble v. Alaska Wild Salmon, Inc.*, the Commission was asked to interpret the definition of “group” and agreed that Alaska Wild Salmon, Inc., was not a group because its principal purpose over a course of years had not been to influence the results of one or more elections, but rather, had been issue advocacy involving mining in the Bristol Bay Fisheries Reserve.¹⁰ Similarly, in Advisory Opinion 10-15-CD, *Laborers Local 341*, the Commission opined that a labor organization was not required to report as a “group” simply because it made independent expenditures related to an election.¹¹

Stand for Alaska – Vote No on One also argued that Stand for Salmon met a different definition of “group” by being a “combination of two or more individuals acting jointly who organize for the principal purpose of filing an initiative proposal application.”¹² But the individuals who filed the initiative proposal for Ballot Measure One did register and report as a “group”—that group is Yes for Salmon – Vote Yes on

¹⁰ Exhibits 42-43 to Staff Report.

¹¹ Exhibit 46 to Staff Report.

¹² AS 15.13.400(8)(C).

One. The fact that some of the same individuals were also involved with Stand for Salmon does not transform Stand for Salmon into a “group” under this definition.

Stand for Alaska – Vote No on One further relies on 2 AAC 50.352(c) to argue that the Alaska Center and Stand for Salmon were “groups” because they solicited contributions for the purpose of making contributions and expenditures to support Yes for Salmon – Vote Yes on One, and did not limit the source of their contributions and expenditures to their general treasury funds. But this regulation requires only registration and reporting with APOC—not specifically registration as a “group”—and Alaska Center and Stand for Salmon complied by registering with APOC and reporting the information required by AS 15.13.040(b) and (c) on their independent expenditure reports. The history of 2 AAC 50.352 confirms that it does not require registration as a “group,” because such a requirement used to exist and was eliminated in 2011.¹³

The Commission notes that although the Alaska Center and Stand for Salmon were not required to register and report as “groups,” they nonetheless had to—and did—register with APOC and report information similar to that which they would have had to report if they were groups. The Alaska Center registered with APOC in January 2018. And during 2018, the Alaska Center filed independent expenditure reports disclosing expenditures made, and contributions received, for the purposes of influencing candidate and ballot measure elections.¹⁴ When the Alaska Center received donations earmarked for

¹³ See Exhibit 44 to Staff Report, 2 AAC 50.352 before 2011.

¹⁴ See AS 15.13.040(d)-(e) (reporting requirements for independent expenditures).

election purposes (including Ballot Measure One), it reported them as contributions on its independent expenditure forms. The Alaska Center also reported its monetary and non-monetary contributions to the group Yes for Salmon – Vote Yes on One on a statement of contributions report.¹⁵ Stand for Salmon registered with APOC in December 2017 and similarly reported expenditures and contributions solicited or earmarked for use supporting Ballot Measure One on independent expenditure reports.

The Commission finds that neither the Alaska Center nor Stand for Salmon violated the law by not registering as “groups.”

B. The three respondents’ coordination of efforts did not require them to collectively register together as a “group.”

Stand for Alaska – Vote No on One alleged that the three respondents violated AS 15.13.050 “by actively coordinating but failing to register as a group.”¹⁶ Stand for Alaska – Vote No on One contends that, “Alaska law requires legally separate entities to register as a ‘group’ for campaign finance purposes when they are actively coordinating their political advocacy,” but cites no authority for this proposition.¹⁷

The three respondents are a group only if together, they meet the definition of “group” in AS 15.13.400(8). But a group must be “two or more individuals,” and the respondents are not individuals. An “individual” is a “natural person.”¹⁸ The *individuals* that worked in support of the initiative did register and report as a “group,” which they

¹⁵ See AS 15.13.040(k) (requirement for statement of contributions report).

¹⁶ Complaint at pg. 2.

¹⁷ Complaint at pg. 16.

¹⁸ AS 15.13.400(11).

called Yes for Salmon – Vote Yes on One. The fact that some of the same individuals were also involved with the Alaska Center and Stand for Salmon neither transforms those entities into groups nor requires the three entities to register under an umbrella group.

Nothing in APOC statutes or regulations prevents different groups and entities supporting or opposing a ballot proposition from coordinating their efforts. Indeed, prior Commission decisions suggest the opposite. For example, in AO 13-04-CD, *Renewable Resources Foundation*, the Commission considered the reporting requirements for a non-profit corporation that was coordinating its activity with a ballot measure group.¹⁹ The Commission determined that the non-profit would have to report its various activities as either independent expenditures or in-kind contributions to the ballot measure group depending on the particular situation. But the Commission did not say that the coordination was inappropriate or that the non-profit and the ballot measure group would have to register and report as a new, separate umbrella group because of it.

As discussed above, the Alaska Center and Stand for Salmon reported their activities in support of the initiative as either independent expenditures or in-kind contributions to the ballot measure group Yes for Salmon – Vote Yes on One. The Commission notes that the word “independent” for purposes of the term “independent expenditure” does not refer to lack of coordination between organizations, only to lack of

¹⁹ Exhibit 45 to Staff Report.

coordination with a *candidate*.²⁰ Thus, expenditures made in ballot measure elections, as opposed to candidate elections, will almost always meet this definition.

The Commission concludes that the three respondents did not violate the law by not registering together as a collective “group.”

C. The Alaska Center and Stand for Salmon were not required to disclose donations to their general funds that were not solicited or earmarked for election-related purposes.

Stand for Alaska – Vote No on One alleged that the Alaska Center violated AS 15.13.040(d) “by failing to disclose the contributors of \$234,111.00 it has expended in support of Ballot Measure 1.”²¹ It also alleged that Stand for Salmon failed to disclose some of its contributors.²² Neither the Alaska Center nor Stand for Salmon reported donations to their general funds on their independent expenditure reports.

But donations made to support these organizations’ general purposes—issue advocacy and education—are not made for the purpose of influencing an election and are thus outside the scope of AS 15.13. A donation is only a “contribution” if it is made for the purpose of influencing an election.²³ The Alaska Center has been accepting donations since 1991, well before the initiative was filed. Likewise, Stand for Salmon has been accepting donations since 2013, well before the initiative was filed. Donations to these organizations that are not made for election-related purposes are not “contributions.”

²⁰ AS 15.13.400(11).

²¹ Complaint at pg. 2.

²² Complaint at pg. 5.

²³ *Id.*

The Commission has previously held that donations to an organization’s general treasury account need not be identified when the organization makes an independent expenditure. In Advisory Opinion 10-15-CD, *Laborers Local 341*, the Commission concluded that a labor organization making independent expenditures is generally not required to report its dues-paying members as contributors since dues are generally not paid for the purpose of influencing elections and are thus not “contributions.”²⁴

Even if the Alaska Center and Stand for Salmon were required to register and report as “groups,” they still would not have to report non-election-related donations because they are not “contributions.”²⁵ Usually, any donation to a ballot measure group would constitute a “contribution” because a group’s principle purpose is election-related advocacy. But if an entity with broad general purposes like the Alaska Center were required to register as a group, it would likely receive many donations that would not be reportable “contributions.” Requiring registration as a “group” would not change the fact that only election-related donations are reportable to APOC. And despite not being registered as groups, both the Alaska Center and Stand for Salmon had to—and did—report donations solicited or received for use in supporting the initiative.

²⁴ Exhibit 46 to Staff Report.

²⁵ See AS 15.13.400(4) (defining “contribution” as being “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”).

The Commission concludes that the Alaska Center and Stand for Salmon were not required to disclose donations to their general funds that were not solicited or earmarked for election-related purposes because they are not “contributions.”

D. Two of Stand for Salmon’s advertisements should have included paid-for-by identifiers.

Stand for Alaska – Vote No on One alleged that Stand for Salmon “violated AS 15.13.090 by failing to include the words ‘paid for by’” in seven advertisements.²⁶

Alaska Statute 15.13.090(a) mandates that “all communications” must be clearly identified with a paid-for-by identifier. “Communication” is defined as

an announcement or advertisement disseminated through print or broadcast media, including radio, television, cable, and satellite, the Internet, or through a mass mailing, excluding those placed by an individual or nongroup entity and costing \$500 or less and *those that do not directly or indirectly identify a candidate or proposition*, as that term is defined in AS 15.13.065(c).²⁷

In Advisory Opinion 08-02-CD, *Renewable Resources Coalition*, the Commission was asked to determine whether certain anti-Pebble Mine advertisements would trigger reporting and disclosure requirements when run while two “clean water” initiatives were on the ballot.²⁸ The Commission concluded that reporting was not required because the ads did not mention the initiatives, did not advocate a position on the initiatives, and were susceptible to interpretations other than as exhortations to vote for the initiatives.

²⁶ Complaint at pg. 2.

²⁷ AS 15.13.400(3) (emphasis added).

²⁸ Exhibit 48 to Staff Report.

In Advisory Opinion 14-04-CD, *Renewable Resources Foundation, Inc.*, the Commission concluded that an ad extolling the virtues of the Bristol Bay fisheries did not trigger reporting or disclosure requirements—even though set to run while an initiative to protect Bristol Bay salmon was on the ballot—because it did not mention the initiative, did not advocate any position on the initiative, and was susceptible to interpretations other than an exhortation to vote for or against the initiative.²⁹

In this case, four of the seven advertisements do not identify the initiative and are susceptible of interpretations other than an exhortation to vote for the initiative, and thus did not require paid-for-by identifiers:

- The two “Imagine Alaska” videos juxtapose an open pit mine with pristine streams and landscape. They do not name the initiative or address voting for or against it. Although they say that “protections for our fisheries” are outdated, such protections could include things other than the initiative, such as state or federal legislative action and treaties.
- The “Understanding the Wild Salmon Legacy Act” flyer focuses on state legislative action and requests help to pass the Wild Salmon Legacy Act, a bill pending in the legislature. The flyer does not name the initiative or address voting for or against it.

²⁹ Exhibit 49 to Staff Report.

- The “Have You Heard” mailer contains the words, “Stand for Salmon” but in the context of the mailer, this is a reference to the respondent, the organization Stand for Salmon: “Have you heard about Stand for Salmon? We will be in your neighborhood to talk to you about salmon habitat protection – we look forward to meeting you.” The mailer could reasonably be interpreted as a method to let the recipient know that people from Stand for Salmon would be in the neighborhood.

One of the seven advertisements actually contains a paid-for-by identifier and is thus not in violation regardless of its content.

The final two of the seven advertisements clearly identify the initiative, are not susceptible of interpretations other than an exhortation to vote for the initiative, and do not contain paid-for-by identifiers:

- The “Here are the Facts” flyer clearly identifies and supports the initiative, saying it would support responsible development, create certainty in permitting processes, save Alaska money and give Alaskans a voice in project permitting.
- The “Alaska Sport Fishing” flyer also clearly identifies and supports the initiative. It says there is a “problem” which is that “Currently there are no standards in Alaska law to determine if a planned project properly protects fish and game.” It then says, “Luckily, the fix is simple, Stand for Salmon”;

and further, “Stand for Salmon updates Alaska’s law so responsible projects can move forward.”

The Commission finds that because the “Here are the Facts” and “Alaska Sport Fishing” flyers clearly identify and support the initiative, they both required paid-for-by identifiers, and Stand for Salmon violated AS 15.13.090 by not providing them.

E. The name Yes for Salmon – Vote Yes on One complied with the naming requirements for ballot measure groups.

Stand for Alaska – Vote No on One alleged that Yes for Salmon – Vote Yes on One “violated AS 15.13.050(c) by failing to include reference to Ballot Measure 1 in its name until August 15, 2018.”³⁰

Alaska Statute 15.13.050(c) requires, for a group intending to make more than half of its contributions or expenditures in support of a single initiative on the ballot, that the “title or common name of the initiative” be part of the name of the group.³¹ It does not require words such as “vote yes” or “supporting,” in contrast with the naming convention for a group opposing an initiative, which requires words indicating opposition.³²

In Complaint 12-02-CD, *Vote No on 2 v Alaska Sea Party: Restoring Coastal Management*, the Commission was asked whether the name, “The Alaska Sea Party: Restoring Coastal Management” sufficiently identified the group’s support of an initiative titled, “An act establishing the Alaska coastal management program.”³³ There,

³⁰ Complaint at pg. 2.

³¹ AS 15.13.050(c).

³² *Id.*

³³ Exhibit 50 to Staff Report.

the Commission reasoned that “Coastal Management” was one of the common names for the initiative, and that the word “restoring” sufficiently indicated support of the initiative. The Commission concluded that the allegation that this name was non-compliant was “not plausible under any reasonable interpretation of the statute.”³⁴

In this case, “Stand for Salmon” became a common name of the initiative because the sponsors initially called themselves “Stand for Salmon.” But nothing in AS 15.13 compels a finding that an initiative may have only one common name. The name, “Yes for Salmon” appears to have also become a common name for the initiative. The name “Yes for Salmon” substantially complied with the naming convention in AS 15.13.050(c) because it sufficiently alerted the public that this group supported an initiative called “An act providing for the protection of wild salmon and fish and wildlife habitat,” and because “Yes for Salmon” became a common name of this initiative.

The Commission concludes that the Yes for Salmon – Vote Yes on One did not violate the naming convention in AS 15.13.050(c).

IV. Civil Penalty

The Commission finds that two of Stand for Salmon’s advertisements should have included paid-for-by identifiers, and thus Stand for Salmon violated AS 15.13.090. The maximum civil penalty for this is \$50 per day for each day the violation continues.³⁵ The “Here are the Facts” flyer was circulated between November 14, 2017 and January 16,

³⁴ Exhibit 51 to Staff Report.

³⁵ AS 15.13.390(a).

2018 (64 days); and the “Alaska Sport Fishing” flyer was circulated between March 3, 2018 and May 13, 2018 (52 days). Thus, the maximum civil penalty is \$5,800.

Having first registered with APOC in December 2017, Stand for Salmon has been subject to a reporting requirement for less than 365 days, and this is the first election cycle it has been involved in. Stand for Salmon is thus an inexperienced filer, allowing the penalty to be reduced by up to 50 percent.³⁶ The Commission adopts its staff’s recommendation and assesses a reduced penalty of \$2,900.

V. Conclusion

The Commission finds that Stand for Salmon violated AS 15.13.090 and imposes a civil penalty of \$2,900. The Commission rejects the other allegations in the complaint.

This is a final Commission order. It may be appealed to the superior court within 30 days from the date of this order under AS 44.62. A request for the Commission to reconsider this order must be filed within 15 days from the date this order is delivered or mailed under 2 AAC 50.891(g).

Dated: February 4, 2019

BY ORDER OF THE ALASKA PUBLIC OFFICES COMMISSION³⁷

³⁶ 2 AAC 50.865(a)(1)(B).

³⁷ Commissioners Anne Helzer, Irene Catalone, Robert Clift, Jim McDermott, and Richard Stillie participated in this matter. The decision was made on a 4-1 vote.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused a true and correct copy of the foregoing Commission Order and this Certificate of Service to be delivered as indicated to the following:

Birch Horton Bittner & Cherot. Attn: Jack McKenna 510 L Street Anchorage, AK 99501 jmckenna@BHB.com	<input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> Certified Mail
Holland & Knight LLP Attn: Matt Singer 420 L Street, STE. 400 Anchorage, AK 99501 Matt.Singer@hklaw.com	<input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> U.S. Mail



Signature

2/4/2019

Date

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