



November 28, 2022

Anne Helzer, Chair  
Alaska Public Offices Commission  
2221 East Northern Lights, Room 128  
Anchorage, AK 99508

RE: Draft AO 22-03-CD

Dear Chair Helzer and Members of the Commission,

Campaign Legal Center (“CLC”) respectfully submits this comment regarding the Alaska Public Offices Commission’s (“the Commission”) draft AO 22-03-CD (“Draft AO”). CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy across all levels of government. Since the organization’s founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court, as well as in numerous other federal and state court cases. Our work promotes every American’s right to participate in the democratic process.

CLC has long supported campaign finance disclosure reforms that would put an end to “dark money” spending in elections. In particular, CLC advocates for disclosure reforms that require big independent spenders to identify the original sources of the money they spend on elections, along with any intermediaries who act as conduits to facilitate that spending, much like the “true source” disclosure requirements enacted in Ballot Measure 2.<sup>1</sup>

The Draft AO interprets the “true source” reporting requirement for contributors who make contributions in excess of \$2,000 to an entity making independent expenditures in Alaska candidate elections. Specifically, the Draft AO would require such contributors to identify the true sources of *all* funds they received since the February 28, 2021, effective date of Ballot Measure 2, regardless of whether such funds were actually used for

<sup>1</sup> See AS 15.13.040(j)(3), (r); AS 15.13.110(k); *see also* AS 15.13.400(19).

contributions. This approach is inconsistent with text and purpose of the amendments to Alaska law enacted in Ballot Measure 2.<sup>2</sup>

As explained below, we thus recommend the Commission reject the approach in the Draft AO. Instead, the Commission should only require intermediaries to identify the true sources of funds equivalent to their contributions. This alternative approach, described in greater detail below, is both consistent with the statutory language and would further the goals of Ballot Measure 2.

## Discussion

### **I. The Draft AO is inconsistent with the plain language of the statute.**

Under AS 15.13.040(r), “[e]very individual, person, nongroup entity, or group that contributes more than \$2,000 in the aggregate in a calendar year to an entity” that has made, is making, or is likely to make independent expenditures in Alaska candidate elections must report the contribution within 24 hours to the Commission. Further, those reports must include “the true sources of the contribution, and intermediaries, if any, as defined by AS 15.13.400(18).”<sup>3</sup> The contributor must also “provide the identity of the true source to the recipient of the contribution simultaneously with providing the contribution itself.”<sup>4</sup>

Revised Alaska law also provides similar reporting requirements for entities making independent expenditures. Once an entity making independent expenditures receives a contribution exceeding \$2,000 in the aggregate in a calendar year, “that entity shall report that contribution, and all subsequent contributions, not later than 24 hours after receipt,” and must include “the true source, and all intermediaries, if any, of the contribution as defined by AS 15.13.400(18).”<sup>5</sup>

As these statutory provisions make clear, the “true source” reporting requirements explicitly apply to the source of “*the* contribution.” None of these provisions requires, or suggests, that a person or entity contributing over \$2,000 to an independent spender would be required to report the true sources of *all* funds received since the effective date of this law.

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<sup>2</sup> 2020 Alaska Ballot Measure 2, 2020 Alaska Sess. Laws I.M. 2.

<sup>3</sup> AS 15.13.040(r).

<sup>4</sup> *Id.*

<sup>5</sup> AS 15.13.110(k); *see also* AS 15.13.040(j)(3) (requiring true source reporting for nongroup entities for contributions received totaling more than \$2,000 in the aggregate in a calendar year).

The Draft AO addresses the mismatch between its interpretation and the statutory language by suggesting that “while money is fungible, contributors are not,” and, thus, that “[t]he true sources of the money [an intermediary] intends on contributing to Alaska independent expenditure groups are its contributors.”<sup>6</sup> But that explanation does not support an interpretation requiring that *all* donors to an intermediary since the law’s effective date must be considered the “true sources” of *every* contribution the intermediary makes.

The facts of the particular matter at issue here provide a pertinent example. Based on its filings with the Federal Election Commission, Unite America PAC appears to have received hundreds of thousands of dollars from hundreds of individual contributors since February 21, 2021.<sup>7</sup> As noted in the Draft AO, Unite America PAC contributed \$30,000 to Putting Alaskans First Committee, an Alaska group. To attribute a portion of this contribution to each of Unite PAC’s contributors as a “true source” stretches that term beyond the plain language of the revised law. Although that approach may satisfy constitutional requirements, it is not the approach enacted in Ballot Measure 2.

More specifically, while policymakers or the people through direct democracy could elect to require intermediaries to report the true sources of “*all* contributions, donations, dues, or gifts” received after the effective date of a law,<sup>8</sup> Ballot Measure 2 revised Alaska law to require that contributors report the true sources of “*the* contribution.”

## **II. Ballot Measure 2’s approach furthers the goal of making election spending more transparent.**

As the Draft AO notes, Ballot Measure 2 declared that “[t]he people of Alaska have the right to know in a timely manner the source, quantity, timing, and

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<sup>6</sup> Draft AO at 4.

<sup>7</sup> See Unite America PAC, Request for Advisory Opinion (Sept. 8, 2022), Ex. A, <https://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=24128>.

<sup>8</sup> Other campaign finance disclosure laws are explicit in this regard. For example, under Rhode Island law, a person or entity making a “covered transfer”—that is, a transfer of funds either designated or intended for independent expenditures or electioneering communications, or given to or by a group having made independent expenditures or electioneering communications exceeding \$5000 in the previous two years, R.I. Gen. Laws. § 17-25-3(18)—that exceeds \$1,000 in a calendar year must report “the identity of *all donors* of an aggregate of one thousand dollars (\$1,000) or more to such person ... within the current election cycle.” *Id.* § 17-25.3-1(h) (emphasis added). That law also specifically provides that, if the person making a covered transfer maintains a “a separate campaign-related account,” this requirement only applies to that campaign-related account. *Id.*; see also *id.* § 17-25.3-2 (detailing requirements for separate campaign-related accounts).

nature of resources used to influence candidate elections in Alaska.”<sup>9</sup> The approach codified in Alaska law by Ballot Measure 2 advances that goal by requiring intermediaries to identify true sources equal to the amount of the intermediaries’ contribution.

The Draft AO indicates that allowing “a contributing organization [to] pick and choose its contributors to be identified so long as the total contributed by those contributors is equal to or exceeds the amount the organization contributes” would be “fundamentally at odds with AS 15.13 and the intent of ballot measure 2.”<sup>10</sup> We disagree.

First, an intermediary that receives funds from many donors is best situated to determine which funds are being passed along to the independent spender.<sup>11</sup> In the absence of earmarking, a multipurpose intermediary—that is, one engaged in candidate electoral work amongst other purposes, or one that supports multiple candidates—is in the best position to determine how to attribute the true sources of its particular spending.

Second, under Alaska law as amended by Ballot Measure 2, an intermediary cannot use all of the funds received from other true sources for contributions to independent spenders without disclosing the true sources of all of those funds. A donor cannot, of course, specify that the same true source of funds are being contributed more than once. Thus, to the extent an intermediary functions as a conduit for electoral spending, the law prevents the intermediary from being used to conceal the true sources of electoral spending because the intermediary must identify the true sources in connection with each of the contributions that it makes.

Thus, requiring intermediaries to identify only the true sources of funds equivalent to the amount of their contributions, as the plain language of Ballot Measure 2 requires, is consistent with Ballot Measure 2’s goals.<sup>12</sup>

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<sup>9</sup> Draft AO, Ex. 4 at 2.

<sup>10</sup> Draft AO at 2.

<sup>11</sup> *Cf. Smith v. Helzer*, --- F. Supp. 3d ----, 2022 WL 2757421, at \*6 (D. Alaska July 14, 2022) (explaining that “the contributor will *always* be in a better position than the [independent expenditure entity] to both identify the true source of its own contribution and quickly report it”).

<sup>12</sup> Although the plain language of Measure 2 does not require the creation of separate accounts by intermediaries—and such accounts are not necessary to advance its transparency goals under our recommended interpretation—the Commission’s proposed clarification that contributors filing reports under AS 15.13.040(r) may utilize a “political activities account” and report only the true sources of contributions to that account, as provided in 2 AAC 50.270(e), provides a workable alternative.

## Conclusion

We respectfully urge the Commission to reject the interpretation of AS 15.13.040(r) provided in the Draft AO and to, instead, require that an intermediary report true sources equivalent to the amount of the intermediary's contribution. We thank the Commission for consideration of our comments, and we would be happy to answer questions or provide additional information to assist the Commission.

Respectfully submitted,

s/ Patrick Llewellyn

Patrick Llewellyn

Director, State Campaign Finance