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

DONNA PATRICK, JAMES K. BARNETT, and JOHN P. LAMBERT, Appellants, vs. INTERIOR VOTERS FOR JOHN COGHILL, WORKING FAMILIES OF ALASKA, and THE ALASKA PUBLIC OFFICES COMMISSION, Appellees.	CASE NO. 3 AN-18-05726 CI

ORDER

I. Introduction.

Three citizens filed separate but identical complaints with the Alaska Public Offices Commission (APOC) alleging that two groups had violated statutory limitations on political contributions. APOC denied the complaints, finding that an earlier advisory opinion called into question the constitutionality of the statutory limitations. The citizens appealed to the superior court. The Court concludes that APOC, by continuing to follow its advisory opinion, has construed the constitutional restrictions on these types of contributions too broadly, ignoring subsequent federal precedent. APOC should reinstate enforcement of the contribution limits at issue here. Thus it erred in dismissing the complaints.

II. The Complaints.

On 31 January 2018, Donna Patrick, James K Barnett, and John P. Lambert (collectively "Patrick") filed complaints alleging that two groups, Interior Voters for John Coghill ("Interior Voters") and Working Families of Alaska ("Working Families") accepted monetary contributions that exceeded the limitations of AS 15.13.070.[1] Interior Voters and Working Families are entities created to support particular candidates for political office. As such, they meet the definition of a "group" for purposes of limitations on "contributions" during campaigns for office.[2] [3] Alaska law places limits upon the amount of money an individual or a group may contribute to certain entities each year. This, in turn, places a limit on how much defined entities may accept from an individual or a group in a year.

Patrick alleged that Interior Voters accepted $2,500 from one individual, $2,000 from two other individuals. Those contributions exceeded the $500 annual statutory limit for individuals. Patrick alleged that Interior Voters

---

1 E.R. 49-51 (Patrick complaint), 5-7 (Barnett complaint), and 27-29 (Lambert complaint). Because the complaints were identical the Court will only refer to the Patrick complaint.

2 *See* AS 15.13.400(8)(B) (definition of group) and .400(4) (definition of contribution).

3 AS 15.13.070(b)(1).

accepted $47,000 from a specific group,[4] [5] and Working Families accepted $50,000 or more from each of three unions or union political funds? Those contributions exceeded the $1,000 statutory annual limit for groups.[6]

III. The Development of the Law of Limits on Contributions.

A. The Alaska Statute.

Alaska Statute 15.13.070 provides, in part:

> (b) An individual may contribute not more than
>
> (1) $500 per year to a nongroup entity for the purpose of influencing the nomination or election of a candidate, to a candidate, to an individual who conducts a write-in campaign as a candidate, or to a group that is not a political party;
>
> (2) $5,000 per year to a political party.
>
> (c) A group that is not a political party may contribute not more than $1,000 per year
>
> (1) to a candidate, or to an individual who conducts a write-in campaign as a candidate;
>
> (2) to another group, to a nongroup entity, or to a political party.

B. The History of AS 15.13.070.

The history of Alaska's campaign financing laws has been summarized in two cases, *State* v. *Alaska Civil Liberties Union* and *Thompson* v.[7]

---

4 E.R. 50.

5 *Id.*

6 AS 15.13.070(c)(2).

Dauphinais? In the former case the Alaska Supreme Court described development in 1996.

> In 1996 the Alaska legislature comprehensively reformed Alaska's campaign financing laws by enacting SB 191. It passed the bill not long before voters were to vote on an initiative to reform campaign finance. The State asserts here, as it did below, that SB 191 was a response to the initiative and to public concerns about actual and apparent corruption in Alaska politics. The Act recited these legislative findings:
>
> > (3) organized special interests are responsible for raising a significant portion of all election campaign funds and may thereby gain an undue influence over election campaigns and elected officials, particularly incumbents ...
> > ....
> > (5) because, under existing laws, candidates are completely free to convert campaign funds to personal income, there is great potential for bribery and political corruption.
>
> The Act also expressed the following purpose: "It is the purpose of this Act to substantially revise Alaska's election campaign finance laws in order to restore the public's trust in the electoral process and to foster good government."
>
> Senate Bill 191, while less restrictive in some areas, was more comprehensive in scope than the initiative it sought to supplant. Unlike the initiative, SB 191 included not only contribution limits and prohibitions, and expenditure prohibitions, but time restrictions, restrictions on the use of campaign assets, restrictions on the use of gaming proceeds, exemptions from reporting requirements, campaign lending restrictions, and standards of criminal conduct.[9]

---

[7] 978 P.2d 597 (Alaska 1999).

[8] 217 F.Supp.3d 1023 (D. Alaska 2016).

[9] 978 P.2d at 601 (footnotes omitted).

The federal district court then described developments after 1996.

> In 2003, the Alaska Legislature modified Alaska's campaign finance laws by enacting Chapter 108 SLA 2003. Chapter 108 SLA 2003 relaxed some of the campaign contribution limits set by Chapter 48 SLA 1996, including by raising the amount an individual could contribute to a political candidate or group that was not a political party from $500 to $1,000, annually. Chapter 108 SLA 2003 became effective September 14, 2003.
>
> Three years later, 73 percent of Alaska voters voted in favor of Ballot Measure 1, which proposed revising Alaska's campaign finance laws to lower the amount an individual could contribute to a political candidate or group that was not a political party back to $500 per year. The $500 base limits became effective December 17, 2006.[10]

C. Citizens United.

In *Citizens United* v. *FEC,*[11] the United States Supreme Court held that a federal statute that prohibited "corporations and unions from using their general treasury funds to make independent expenditures for speech defined as an 'electioneering communication' or for speech expressly advocating the election or defeat of a candidate"[12] violated the First Amendment.[13] The Supreme Court

---

10 217F.Supp.3dat 1027.

11 538 U.S. 310, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010).

12 *Id.* at 318-19, 130 S.Ct. at 886.

13 *Id.* at 372, 130 S.Ct. at 917.

confirmed its reasoning in *Buckley v. Valeo,*[14] [15] upholding the constitutionality of the "sustained limits on direct *contributions* in order to ensure against the reality or appearance of corruption."[13] In contrast, "independent *expenditures,* including those made by corporations, do not give rise to corruption or the appearance of corruption."[16] [17] [18] In *Citizens United,* the Supreme Court did not address whether political *contributions* to as distinct from *expenditures* by, independent groups could give rise to corruption, nor did it comprehensively consider the various types of corruption, other than quid pro quo corruption, the government may seek to prevent through campaign finance regulation.

In response to *Citizens United,* then-Attorney General Daniel Sullivan issued a memorandum describing the impact of that decision on Alaska campaign finance law.[17] Alaska's prohibition on independent contributions by corporations or labor unions did not survive *Citizens United.*[18] However, he advised that "[t]he decision does not directly call into question the constitutionality of any other contribution, expenditure, disclaimer or disclosure

---

14 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976).

15 538 U.S. at 357, 130 S.Ct. at 908 (italics supplied).

16 *Id.* at 357, 130 S.Ct. at 909 (italics supplied).

17 E.R. 77-84 (Memorandum to Mike Nizich)(19 February 2010).

18 E.R. 80.

law. ... Individuals are still limited to contributing $500 per year to a candidate, and $5,000 per year to a political partyf.]"[19] During the 2010 election the contribution limits in AS 15.13.070 remained in effect.

D. APOC's Advisory Opinion AO-12-09-CD.

In order to give guidance to potential contributors or recipients of contributions, APOC is authorized to issue advisory opinions.[20] In May 2012 APOC received a request for an advisory opinion from an independent expenditure group that wanted to receive contributions from individuals in excess of the $500 annual limit.[21] APOC issued an opinion on the impact of *Citizens United* that differed from that of Attorney General Sullivan.[22] Concerning the contribution limits, APOC concluded:

> Although *Citizens United* directly implicated only one aspect of Alaska's campaign finance laws, notably Alaska's prohibition on independent expenditures by corporations or labor unions in candidate elections, *Citizens United* has also affected the validity of other campaign finance laws. Applying the holding of *Citizens United* to groups like [the requesting group], several federal district and appellate courts have invalidated other states' restrictions on amounts of contributions to organizations that make only independent campaign expenditures.

---

19 *Id.* (citing, at the end of the quote, to AS 15.13.070(b)(l)-(2).)

20 AS 15.13.030(10) and AS15.13.374.

21 E.R. 111 (question 7). The group posed a total of 14 questions.

22 E.R. 111-20 (AO-12-09-CD).

> Given the status of laws similar to Alaska's that have been found invalid in the 9th Circuit Court of Appeals and in other circuits, APOC Staff recommends that [the group's] proposed contribution activity be allowed because the statutory limitation to that activity may be unconstitutional.[23]

E. The Effect of an Advisory Opinion.

Once APOC issues an advisory opinion, members of the public may rely upon the advice contained in the opinion. APOC itself must follow the opinion while it remains in effect. Alaska Statute 15.13.374(e) provides, in part:

> (e) A complaint under AS 15.13.380 may not be considered about a person involved in a transaction or activity that
>
> (1) was described in an advisory opinion approved under (d) of this section;
>
> (2) is indistinguishable from the description of an activity that was approved in an advisory opinion approved under (d) of this section[.]

APOC may revisit and revise an advisory opinion.[24]

When Patrick filed her complaint, APOC staff relied upon the 2012 advisory opinion to dismiss it.[25] Patrick appealed to the full Commission. APOC

---

[23] E.R. 117-18 (footnote omitted; citing to *Thalheimer v. City of San Diego,* 45 F.3d 1109, 1121-22 (9th Cir, 2011); *Long Beach Chamber of Commerce* v. *City of Long Beach,* 603 F.3d 684, 687 (9th Cir. 2010); *Wise. Right to Life State Political Action Comm. v. Borland,* 664 F.3d 139, 154-55 (7th Cir. 2011); and *Yamada* v. *Weaver,* 2012 WL 983559 (D. Hawai'i)).

[24] *See* 2 AAC 50.840 ("Nothing in this section precludes the commission from revising a previous advisory opinion for good cause.").

[25] E.R. 76.

voted 3-2 to affirm the dismissal.[26] Patrick appealed to the superior court. The superior court held a limited trial de novo.[27] Judge Peterson heard expert testimony about the understanding of the framers of the Unites States Constitution concerning corruption.[28]

IV. The Scope of Judicial Review.

Patrick challenges APOC's decision to rely upon its advisory opinion that concluded AS 15.13.070 was unconstitutional. She contends APOC erred in following federal cases that construed *Citizens United* more broadly than its specific holding. Patrick's boldest argument depends upon her prediction of how the United States Supreme Court would define corruption once it heard the historical evidence that Patrick presented to the superior court.

APOC argues that this is a much narrower case, one that attacks APOC's discretion to pursue alleged violations of campaign finance laws. APOC questions the Court's ability to review its decision not to pursue Patrick's

---

[26] E.R. 103 n.2.

[27] Judge Andrew Peterson presided over the trial de novo. When he transferred to the criminal bench this case was reassigned to the undersigned.

[28] Judge Peterson heard from Professor Adam Bonica, E.R. 214-276, and Professor Jack Rakove, E. R. 277-337. Bonica is a political scientist. Rakove is an historian. Both teach at Stanford University. Each supplied an expert report. E.R. 142-52 (Bonica) and E.R. 180-222 (Rakove).

complaint. It relies upon *Yankee v. City and Borough of JuneauY* [29] Patrick contends the scope of the Court's authority to review APOC's decision is defined by *State, Dept, of Fish & Game* v. *Meyer.*[*30]

In *Yankee,* a landowner appealed the refusal of a city's Community Development Department to enforce what he claimed to be a land use restriction in a plat. The supreme court observed that "Generally, courts decline to review executive-branch decisions *not* to prosecute an individual or *not* to enforce a law under particular circumstances."[31] Nonetheless, the supreme court observed an appellate court "will sometimes inquire into the basis of an agency's decision to assure that it is in conformity with law and that it is not so capricious or arbitrary as to offend due processf.]"'[32] Thus in *Vickv. Board of Electrical Examiners* the supreme court considered whether a licensing board abused its discretion when it opted not to commence a license revocation proceeding.[33]

---

[27] 407 P.3d 460 (Alaska 2017).

[30] 906 P.2d 1365 (Alaska 1995).

[31] 407 P.3d at 464 (italics in original).

[32] *Id.* (quoting *Vickv. Board of Electrical Examiners, 626* P.2d 90, 93 (Alaska 1981) citing *K&L Distribs., Inc.* v. *Murkowski,* 486 P.2d 351, 358 (Alaska 1971).

[33] 626 P.2dat93.

The *Yankee* court noted that in *Heckler v. Chaney,*[34] the United States Supreme Court observed "that when an agency refuses to act it generally does not exercise its *coercive* power over an individual's liberty or property rights, and thus does not infringe upon areas that courts often are called upon to protect."[35] But the *Heckler* Court also noted that some enforcement decisions are subject to judicial review. A legislature could permit that review "either by setting substantive priorities, or by otherwise circumscribing an agency's power to discriminate among issues or cases it will pursue."[36]

An example of expanded judicial review because the legislature has restricted agency enforcement discretion is found in *Meyer.* Meyer filed a complaint with the Alaska State Commission on Human Rights against her state employer.[37] The Commission closed the case, finding there was insufficient evidence of discrimination.[38] The supreme court held the Commission's decision was reviewable by an appellate court.

> Unlike *Vick or Heckler,* Meyer's case does not involve the exercise of prosecutorial discretion at all. The statute here

---

34 470 U.S. 821, 105 S.Ct. 1649, 84 L.Ed.2d 714 (1985).

35 407 P.3d at 465-66 (quoting *Heckler,* 470 U.S. at 832, 105 S.Ct. at 1656).

36 407 P.3d at 466 (quoting *Heckler, MK)* U.S. at 833, 105 S.Ct. at 1656).

37 906 P.2d at 1367.

38 *Id.*

> provides that if the executive director or designated staff member conducting the investigation finds substantial evidence of discrimination, the investigator "shall ... try to eliminate the discrimination complained of by conference, conciliation, and persuasion." AS 18.80.110. If the problem is not eliminated informally, the Commission "shall" conduct a hearing and issue an order at the completion of the hearing. AS 18.80.120, .130(a). Thus, the statute grants no discretion to discontinue the process once the investigator finds substantial evidence of discrimination, unlike the statutes at issue in *Vick* and *Heckler.* [39]

APOC's discretion to dismiss a complaint seeking enforcement of a contribution limit is similarly constrained. When the Legislature passed a comprehensive revision of Alaska' campaign finance laws and APOC's authority, it expressed its intention to "restore the public's trust in the electoral process and to foster good government."* [40] "The legislature conceives of APOC as a 'watchdog agency' and its stated purpose in adding the administrative complaint provision was to strengthen the oversight of Alaska's ethics laws'"[41]

---

[39] 906 P.2d at 1373 (footnote omitted).

[40] 978 P.2d at 601 (quoting ch. 48, § 1, SLA 1996).

[41] *Seybert v. Alsworth,* 367 P.3d 32, 41 (Alaska 2016) (quoting Minutes, H. Fin. Comm. Hearing on H.B. 281, 25th Leg., 2d Sess. 2:33-2:36 (Mar. 31, 2008) (testimony of Mike Sica, staff to Representative Bob Lynn, bill sponsor)). Although the *Seybert* decision was addressing APOC's role in evaluating complaints alleging ethical violations by public officials, there is no reason to believe that it has a lesser duty to police campaign finance laws and limitations on contributions.

The statutes that define how APOC must handle a complaint reflect the legislative intent that APOC should rigorously enforce contribution limitations. If APOC receives a regular (non-expedited) complaint, then it must afford the respondent an opportunity to respond.[42] Then APOC "shall hold a hearing on the complaint not later than 45 days after the respondent's written response is due."[43]

It is true that APOC is authorized to resolve a complaint by relying upon an advisory opinion that addressed a similar set of facts.[44] APOC argues that it reasonably based its rejection of Patrick's complaint on its Advisory Opinion AO-12-09-CD. That Opinion noted the possibility that *Citizens United* forecast the unconstitutionality of parts, if not all, of AS 15.13.070.[45] That prediction was not unreasonable; however, there is a legislative instruction to APOC when it is confronted with a constitutional challenge to a statute. "If a complaint involves a challenge to the constitutionality of a statute or regulation.. .the commission may request the attorney general to file a complaint in superior court alleging a

---

42 AS 15.13.380(e).

43 7c7.

44 AS 15.13.374(e)(2).

45 E.R. 118 ("APOC Staff recommends that ADB's proposed contribution activity be allowed because the statutory limitation to that activity may be unconstitutional").

violation of this chapter."[46] That directive strongly suggests that APOC should seek judicial review of allegations that statutes or its advisory opinions are constitutionally flawed. This is particularly true when, by its own admission, APOC's conclusion that contribution limits were unconstitutional was speculative. It was based upon an expansive reading of *Citizens United.* Rather than base its advisory opinion and subsequent enforcement policy on decisions from federal courts addressing different election laws, APOC should have gone into superior court for a ruling on the status of Alaska's contribution limits.

But there is another, even stronger, indication that the legislature intended APOC to have only limited discretion to elect not to enforce a contribution limit. APOC's treatment of a complaint, including its rejection of one, is appealable. Alaska Statute 15.13.380(g) provides for an appeal to the superior court of any order APOC issues in response to either an expedited or regular complaint.

While the ability of a disappointed complainant to appeal APOC's dismissal of a complaint is certain, the standard of review is not specified by the statute. The fact that APOC's duty to enforce campaign finance laws is analogous to the duty of the Alaska State Commission on Human Rights to enforce human rights law suggests that APOC's enforcement discretion is governed by the

---

[46] AS 15.13.380 (f).

standards identified in *Meyer* rather than the more deferential abuse of discretion standard of *Vick.* The Court need not determine whether the Meyer standard or some intermediate standard of review applies as it concludes that APOC abused its discretion by continuing to follow its advisory opinion AO-12-09-CD.

V. Did APOC Abuse its Discretion?

Judicial review of APOC's reliance on its own advisory opinion is particularly apt in this case. The prohibitions on contributions above specific annual limits are intended to protect the public from political actors who try to influence elected officials and from public officials who are influenced by the exchange of money. Among APOC's missions is the duty to enforce those limits and thus protect the electorate from corruption or improper influence. APOC itself is not authorized to make binding decisions about the constitutionality of the campaign finance laws; that is ultimately for the judicial branch.

APOC has placed fealty to AS 15.13.473(e)(2) and its 2012 advisory opinion over its obligation to comply with and enforce AS 15.13.070. Even if that advisory opinion was a reasonable preliminary decision in the immediate aftermath of *Citizens United,* that decision is no longer reasonable. The 2012 advisory opinion was based upon federal courts evaluating the campaign finance laws of other states. APOC now has the benefit of two federal decisions addressing the very contribution limits that Patrick alleged had been violated.

In *Thompson v. Dauphinais,*[41] the federal district court of Alaska upheld the limits in AS 15.13.070 that individuals may contribute no more than $500 annually to candidates for public office or to a group that is not a political party. The district court acknowledged that "[ajfter *Citizens United,* what constitutes a sufficiently important state interest to support limits on campaign contributions has narrowed. Now, the prevention of quid pro quo corruption, or its appearance, is the only state interest that can support limits on campaign contributions."[40]

The district court first looked to unique aspects of Alaska's political environment that made it especially vulnerable to corruption and thus made particularly important that APOC guard against quid pro quo corruption. Those findings warrant a lengthy quote.

> At trial, the State put forward evidence that the risk of quid pro quo corruption or its appearance in Alaska politics and government is both actual and considerable. To start, Dr. Gerald McBeath, a Professor Emeritus of Political Science at the University of Alaska Fairbanks who was qualified as an expert in this case on the topic of Alaska state and local politics and government, identified several factors that make Alaska highly, if not uniquely, vulnerable to corruption in politics and government. The first of these factors is legislative size. Alaska has the second smallest legislature in the United States and the smallest senate, with only twenty senators. As Dr. McBeath explained at trial, that means that just ten votes can stop a legislative action such as an oil or gas tax

---

47 217 F.Supp.3d 1023 (D. Alaska 2016).

[45] *Id.* at 1028 (footnote omitted).

> increase from becoming law. Consequently, the incentive to buy a vote, and the chances of successfully doing so, are therefore higher in Alaska than in states with larger legislative bodies. A second factor is Alaska's almost complete reliance on one industry for a majority of its revenues. The percentage of Alaska's budget generated by royalties, taxes, and revenues from oil and gas is the highest among all of the oil and gas producing states in the United States. In fact, it is exponentially greater: typically 85 to 92 percent in Alaska compared to less than 50 percent for every other state. Another factor making Alaska susceptible to corruption in politics and government is its small population coupled with its vast size. According to Dr. McBeath, these characteristics make enforcement of campaign finance laws much more challenging, as it limits both the number and abilities of watchdog organizations.[49]

After finding that "the risk of quid pro quo corruption or its appearance in Alaska politics and government from large campaign contributions is pervasive and persistent,"[50] [51] the district court evaluated whether the $500 limits were "closely drawn" to further the governmental interest to stop corruption. It applied the "closely drawn" test set forth in *Montana Right to Life Association v. Eddleman.*[5X] Contribution limits are "closely drawn" if they "'(a) focus narrowly on the state's interest, (b) leave the contributor free to affiliate with a candidate, and (c) allow the candidate to amass sufficient resources to wage an effective

---

49 *Id.* at 1029.

50 *Id.* at 1031.

51 343 F.3d 1085 (9th Cir. 2016).

campaign.'" [52] The district court found that Alaska's contribution limits met all three factors.[53] [54] *

The *Thompson* decision, issued in 2016, should have caused APOC to question and re-evaluate is 2012 advisory opinion. But there is an even more recent development undercutting the advisory opinion. In *Thompson v. Hebdon*^ the Ninth Circuit affirmed the district court's ruling on the constitutionality of limitations on an individual's ability to contribute to candidates and non-political party groups.[53] The circuit court confirmed that the district court had used the proper three-factor test from *Eddleman* when it evaluated the contributions limits.[56]

It confirmed that the individual-to-candidate contribution limits targeted an important state interest—the prevention of actual or perceived quid pro

---

52 217 F.Supp.3d at 1032 (quoting *Edelman,* 343 F.3d at 1092).

53 *Id.* at 1036.

54 909 F.3d 1027 (9th Cir. 2018).

" *Id.* at 1039 (individual-to- candidate) and 1040 (individual-to-group). The Ninth Circuit did reverse the district court's conclusion that Alaska's aggregate nonresident contribution limit was constitutional. It held that this limit violated the First Amendment. *Id.* at 1043.

56 909 F.3d at 1033-34.

quo corruption.[57] [58] The limits on individual-to-group contributions furthered "an important interest in the prevention of circumvention of the base limits."[59]

The circuit court concluded that the contribution limits were sufficiently narrowly focused.[59]

> Although the $500 limit is low compared to the laws of most other states, whether it is unreasonably low requires a deeper dive. The $500 limit affects only the top 12.6% of contributions that

---

[57] 909 F.3d at 1035-36.

[58] 9 09 F.3d at 1040. The court reasoned:

> *McCutcheon's* tacit embrace of anticircumvention as an important state interest in combating quid pro quo corruption or its appearance means that another Supreme Court case, *California Medical Ass'n,* 453 U.S. 182, 101 S.Ct. 2712, 69 L.Ed.2d 567, remains good law. In that case, applying intermediate scrutiny to limits on individual contributions to PACs, the Court upheld the limits as "furtherfing] the governmental interest in preventing the actual or apparent corruption of the political process" because they prevent contributors from "evad[ing] the ... limit on contributions to candidates ... by channeling funds through a multicandidate political committee." *Cal. Med. Ass'n,* 453 U.S. at 197—98, 101 S.Ct. 2712; *see also FEC v. Colo. Republican Fed. Campaign Comm'n,* 533 U.S. 431, 456, 121 S.Ct. 2351, 150 L.Ed.2d 461 (2001) ("[A]ll Members of the Court agree that circumvention is a valid theory of corruption...."); *Thalheimer* v. *City of San Diego,* 645 F.3d 1109, 1125 (9th Cir. 2011) ("[TJhere is nothing in the explicit holdings or broad reasoning of *Citizens United* that invalidates the anti-circumvention interest in the context of limitations on direct candidate contributions."). *Id.* at 1039-40.

[59] 909 F.3d at 1036 (while the contribution limit "need not employ 'the least restrictive means,' it should be 'narrowly tailored to achieve the desired objective.' *[McCutcheon,* 572 U.S. at 218] (quoting *[Bd. of Trustees of State Univ, of N.Y. v. Fox,* 492 U.S. 469, 480, 109 S.Ct. 3028, 106 L.Ed.2d 388 (1989)]).").

> all candidates received in elections occurring after the initiative passed in 2006. This is on par with the Montana law's limit, which we upheld in *Eddleman* and *[Lair v. Motl,* 873 F.3d 1170 (9th Cir. 2017) *(Lair III), reh'g en banc denied,* 889 F.3d 571 (9th Cir. 2018)]. That limit targeted the top 10% of contributions—i.e., "the high-end contributions most likely to result in actual or perceived corruption." *Lair III,* 873 F.3d at 1181; *Eddleman,* 343 F.3d at 1O94.[60]

Finally, the circuit court evaluated the limits' impact on a contributor's ability to affiliate with a candidate or the candidate's ability to campaign effectively. "Thompson does not argue that the $500 individual-to-candidate limit prevents supporters from affiliating with candidates. His tacit acknowledgment that Alaska has met its burden on this factor is well taken. ... Accordingly, we conclude that the $500 limit does not hobble contributors' ability to affiliate with candidates.[61] Thompson did argue that the $500 limit was "impermissibly low because, he assert[ed], it favors incumbents at the expense of challengers, causes campaigns in competitive races to run deficits, and is not indexed for inflation."[62] The circuit court reviewed the evidence on the ability of candidates to raise money and the expense of running campaigns in Alaska. It

---

60 909 F.3d at 1037.

61 *Id.*

62 *Id.*

agreed "with the district court that the $500 individual-to-candidate limit allows candidates to amass sufficient funds to run an effective campaign." [3] [6]

APOC has the authority (indeed the responsibility) to revisit its advisory opinions as the legal landscape evolves.[63] [64] While acknowledging that authority, APOC argues that to revise an opinion would be unfair to members of the public who have relied upon it.[65] But that outcome does not necessarily follow from the revision of an obsolete advisory opinion. There is no reason APOC could not revise an opinion in response to a complaint that seeks or requires the revision and still honor the safe harbor that the old opinion afforded those who relied upon it. Furthermore, if APOC is concerned of the possible unfairness of eliminating a safe harbor in response to a complaint against a person or group who complied with the advisory opinion, then it should be proactive and revisit potentially obsolete advisory opinions on its own motion without waiting for a complaint.

APOC should have re-examined the continuing validity of AO-12-09-CD after the federal district court issued its decision in *Thompson v. Dauphinais,* upholding the constitutionality of AS 15.13.070 in 2016. When APOC issued its advisory opinion in 2012, the impact of *Citizens United* was

---

[63] *Id.* at 1039 (footnote omitted).

[64] *See* 2 AAC 50.840 ("Nothing in this section precludes the commission from revising a previous advisory opinion for good cause.").

[65] Appellee's Br. at 9.

uncertain. However, it was clear that federal and state courts would be exploring its scope and meaning in cases throughout the nation. Freezing the advisory opinion in the new world of 2012 and ignoring subsequent judicial developments was not reasonable.

The decision in *Thompson v. Hebdon,* affirming the district court, reinforced the wealmess of the 2012 advisory opinion. Now, it is true that *Hebdon,* issued on 27 November 2018, had not been decided when Patrick filed her complaint in January 2018 or when APOC declined to act on the complaint in March 2018.[66] But now that APOC has the benefit of *Hebdon,* it should be given the opportunity to reconsider AO-12-09-CD, conforming its enforcement of statutory contribution limits with *Hebdon's* holding that those limits it addressed do not violate the First Amendment.[67]

VI. Conclusion.

The Court concludes that APOC abused its discretion by not revising AO-12-09-CD after the district court issued its decision in *Thompson v. Dauphinais.* The Court concludes that APOC abused its discretion by dismissing Patrick's complaint on the basis of AO-12-09-CD without considering the

---

66 E.R. 101-03.

67 The Court is not suggesting that APOC ignore the conclusion in *Hebdon* that "Alaska's aggregate nonresident contribution limit violated the First Amendment[.]" 903 F.3d at 1043.

continuing validity of *State v. Alaska Civil Liberties Union* in light of *Dauphinais.* The Court finds that APOC abused its discretion by not revising AO-12-09-CD after the Ninth Circuit issued its decision in *Thompson* v. *Hebdon.*™

APOC's decision dismissing Patrick's complaint is REVERSED. The case is remanded to APOC to consider the Patrick complaint (and the two others).[69]

DONE this 4th day of November 2019, at Anchorage, Alaska.

William F. Morse
Superior Court Judge

---

[68] In light of *State v. Alaska Civil Liberties Union, Thompson* v. *Dauphinais,* and *Thompson v. Hebdon,* the Court need not address Patrick's argument about the understanding of corruption that the Founders of the United States Constitution had. But I certainly enjoyed it.

[69] The Court encourages all parties to seek immediate review of these important issues from the Alaska Supreme Court and recommends that it grant that review. The Court does not think it necessary for it to address the constitutionality of AS 15.13.070 in light of the procedural posture of the appeal of the dismissal of the complaints. However, if the Court were to address directly the constitutionality of AS 15.13.070, it would find the evidence that Chief Judge Burgess found to be credible and convincing about the vulnerability of Alaska's political environment to corruption to be very powerful and concerning. The Court would follow *Dauphinais* and *Hebdon.*

CERTIFICATE OF SERVICE

I certify that on 4 November 2019
a copy of the above was emailed/mailed to each of the
following at their addresses of record:

E. Hodes
L. Fox

Ellen Bozzini
Judicial Assistant