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

DONNA PATRICK, JAMES K. )  
BARNETT, and JOHN P. LAMBERT, )

Appellants, )

v. )

INTERIOR VOTERS FOR JOHN )  
COGHILL, WORKING FAMILIES OF )  
ALASKA, and THE ALASKA )  
PUBLIC OFFICES COMMISSION, )

Case No. 3AN-18-05726 CI

Appellees. )

**PETITION FOR REHEARING**

The appellee, the Alaska Public Offices Commission (APOC), hereby petitions for rehearing of this Court’s October 28, 2019, order under Alaska Rule of Appellate Procedure 506 because the Court has overlooked or misconceived a material fact or proposition of law. Specifically, the Court has misconceived the import of the federal district court and Ninth Circuit decisions in *Thompson v. Hebdon*.<sup>1</sup> Those decisions do not validate Alaska’s \$500 individual-to-group contribution limit as applied to independent expenditure groups because they were decided with the understanding that APOC does not apply those limits to such groups.

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 268-5100

<sup>1</sup> See *Thompson v. Dauphinais*, 217 F. Supp. 3d 1023 (D. Alaska 2016), *aff’d in part, rev’d in part and remanded sub nom. Thompson v. Hebdon*, 909 F.3d 1027 (9th Cir. 2018).

Independent expenditure groups are organizations that make election-related expenditures but do not contribute to (or coordinate their activities with) candidates, as contrasted with groups that do contribute to candidates. The statute creating Alaska’s \$500 individual-to-group limit does not distinguish between these two types of groups.<sup>2</sup> But the APOC advisory opinion relied on in this case concluded, based on recent federal caselaw, that an entity called Alaska Deserves Better “—as an independent expenditure group—can obtain contributions in unlimited amounts, with no restriction on the amounts or sources.” [Exc. 117] After this advisory opinion, APOC ceased enforcing the \$500 individual-to-group limit against independent expenditure groups.

The federal court litigation in *Thompson* was initiated and decided in this context—i.e., a context in which APOC does not apply the \$500 individual-to-group limit to independent expenditure groups. The parties’ arguments assumed that the individual-to-group limit being challenged was a limit on contributions only to *groups that contribute to candidates*—indeed, the plaintiffs would not have had standing to challenge the limit as applied to independent expenditure groups, because APOC no longer enforced it against such groups.<sup>3</sup> In defending the limit, the State specifically told the federal courts that the limit did not apply to independent expenditure groups (because it was not being enforced against them).<sup>4</sup> The State’s defenses relied on the

<sup>2</sup> AS 15.13.070.

<sup>3</sup> See Complaint, Docket 1 in *Thompson v. Dauphinais*, Case 3:15-cv-00218-TMB.

<sup>4</sup> See Defendants’ Response to Plaintiffs’ Post-Trial Findings of Fact and Conclusions of Law, Docket 143 in *Thompson v. Dauphinais*, Case 3:15-cv-00218-TMB at 35 (“[I]n the wake of *Citizens United*, 558 U.S. 310 (2010), the Alaska Public

limit's inapplicability to such groups: the State argued that the limit was narrowly tailored in part because it did not apply to such groups, and that contributors were not overly constrained because they remained free to contribute unlimited amounts to such groups.<sup>5</sup> And the Ninth Circuit's approval of the \$500 individual-to-group limit rested on a justification that does not make sense for such groups: that the limit prevents circumvention of the \$500 individual-to-candidate limit because "any two individuals could form a 'group,' which could then funnel money to a candidate."<sup>6</sup> This is not true for independent expenditure groups because—by definition—they do not contribute to candidates. Thus, the federal court decisions in *Thompson* cannot be properly read as

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Offices Commission adopted an advisory opinion recommending against application of contribution limits to independent expenditure groups on the ground that '[w]ith the exception of the foreign national restriction,' the 'contribution restrictions in AS 15.13 are likely unconstitutional for independent expenditure only groups.' *Alaskans Deserve Better*, AO 12-09-CD at 7-8 (2012) *available at* <http://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=4781>"); Answering Brief of Appellees, Docket 25 in *Thompson v. Hebdon*, Ninth Circuit No. 17-35019 at 80 ("APOC does not apply contribution limits to independent expenditure groups. *See Alaskans Deserve Better*, AO 12-09-CD at 7-8 (2012), *available at* <http://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=4781>").

<sup>5</sup> *See* Answering Brief of Appellees, Docket 25 in *Thompson v. Hebdon*, Ninth Circuit No. 17-35019 at 38 ("Alaska's base limit does not apply to other types of campaign contributions that do not create the same risk: for example, contributions in support of ballot measures rather than candidates, because a ballot measure is not a person who can participate in a quid pro quo arrangement, *or contributions to independent expenditure groups*, because the Supreme Court has held that such contributions do not risk corruption.") (emphasis added) & at 80 ("[T]he individual-to-group limit is narrowly focused. It only limits contributions to groups formed 'with the principal purpose of influencing the outcome of one or more [candidate] elections,' and does not apply to ballot measure groups *or independent expenditure groups*.")) (emphasis added).

<sup>6</sup> *Thompson*, 909 F.3d at 1040.

validating a \$500 individual-to-group on independent expenditure groups—those decisions validate only the limit as currently enforced by APOC (i.e., as a limit on contributions to groups that contribute to candidates).

APOC did not thoroughly explain the irrelevance of *Thompson* in its brief before this Court because the appellants did not rely on *Thompson* in this way. Below, the appellants initially argued that *Thompson* supported their position for the reasons stated in this Court’s decision. [Exc. 5] But at some point during the proceedings below—perhaps during the hearing for which the audio was lost—the above-discussed details of the *Thompson* litigation were pointed out. After that point, the appellants abandoned their reliance on *Thompson* for this purpose and did not argue it to this Court, which is why APOC’s brief merely noted—but did not specifically explain—why such reliance would be misplaced. [See Ae. Br. 14 n.31]

Because the Court’s October 28, 2019, order misconstrues the import of *Thompson*, the Court should grant rehearing and rule in favor of APOC instead.

DATED November 4, 2019.

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

KEVIN G. CLARKSON  
ATTORNEY GENERAL

By:



Laura Fox  
Assistant Attorney General  
Alaska Bar No. 0905015

anc.law.ecf@alaska.gov

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CERTIFICATE OF SERVICE


I hereby certify that on this date true and correct copies of the **Petition for**

**Rehearing** and this **Certificate of Service** were served via U.S. Mail on the following:

Jason S. Harrow  
Lawrence Lessig  
Equal Citizens  
12 Eliot Street  
Cambridge, MA 02138

Elizabeth Hodes  
M. Scott Broadwell  
Davis Wright Tremaine, LLP  
188 West Northern Lights Blvd., Suite 1100  
Anchorage, AK 99503

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

 11/4/19  
Virginia Bozeman Date  
Law Office Assistant II