

MEMORANDUM

State of Alaska

ALASKA PUBLIC OFFICES COMMISSION

DEPARTMENT OF ADMINISTRATION

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TO: APOC Members

DATE: June 4, 2009

**FROM: Jerry Anderson
Assistant
Director**

**SUBJECT: APOC Staff Report
APOC Case No. 09-01-CD**

OAH Case No. 09-231-APO

**Pebble Limited Partnership, Pebble Mines Corp. and
Resource Development Council**

v.

**Renewable Resources Coalition, Inc., Alaskans for Clean Water, Inc.,
Americans for Job Security, and Robert Gillam**

SUMMARY

Pebble Limited Partnership, Pebble Mines Corp. and Resource Development Council filed a Complaint against Renewable Resources Coalition, Inc. (“RRC”), Alaskans for Clean Water, Inc. (“AFCW”), Americans for Job Security (“AJS”), and Robert Gillam (“Gillam”), alleging the following violations in connection with the campaign over Ballot Measure 4, which appeared on the August 26 statewide ballot:

1. RRC violated AS 15.13.040(b) by failing to register as a group and disclose its contributors.
2. RRC violated AS 15.13.074 by acting as a “pass through” for Robert Gillam to make secret contributions to AFCW.
3. RRC violated AS 15.13.040 and/or AS 15.13.140(b) by failing to disclose the expenditures related to the ballot initiative campaign that it coordinated with Alaskans for Clean Water and Americans for Job Security.

4. RRC violated AS 15.13.040 and/or AS 15.13.140(b) by failing to report its website and email advocacy campaign, despite an express opinion letter from APOC advising that this was a reportable expenditure.
5. RRC violated AS 15.13.040 and/or AS 15.13.140(b) by failing to report several radio advertisements that contain ballot initiative advocacy.
6. RRC violated AS 15.13.040 and/or AS 15.13.140(b) by failing to report television advertisements that contain ballot initiative advocacy.
7. RRC violated AS 15.13.040 and/or AS 15.13.140(b) by failing to report newspaper advertisements that contain ballot initiative advocacy.
8. RRC violated AS 15.13.040 and/or AS 15.13.140(b) by failing to disclose wages and expenses for employees and consultants who engaged in ballot initiative advocacy.
9. RRC violated AS 15.13.040 and/or AS 15.13.140(b) by failing to disclose the cost of event booths where it engaged in ballot initiative advocacy.
10. RRC violated AS 15.13.040 and/or AS 15.13.140(b) by failing to disclose the costs of posters and publicity materials it produced to advocate for a ballot initiative.
11. RRC violated AS 15.13.040 and/or AS 15.13.140(b) by failing to disclose mailers that it sent to Alaskans, as well as support it provided for mailers sent by Alaskans for Clean Water.
12. AFCW violated AS 15.13.114 and 2 AAC 50.258 by receiving and accepting contributions from RRC and AJS which it knew were made in violation of Alaska law because the funds were in fact contributed by Robert Gillam using the names of RRC and AJS.
13. AFCW violated AS 15.13.040(b) by failing to report as contributions various campaign expenses that were paid directly by Robert Gillam for the benefit of AFCW.
14. AFCW violated AS 15.13.040(b) by failing to report all monetary and in-kind contributions.
15. AJS violated AS 15.13.074 by acting as a “pass through” and allowing Robert Gillam to use AJS’s name to make secret contributions to AFCW.

16. AJS violated AS 15.13.040 and/or AS 15.13.140 by failing to disclose its expenditures related to the ballot initiative campaign that it coordinated with RRC and AFCW.
17. Robert Gillam made prohibited contributions in violation of AS 15.13.074 and 2 AAC 50.258 by using the names of others to contribute secret funds to AFCW. Complainants allege that Gillam made nearly \$2 million in secret contributions by funneling his money through RRC and AJS.
18. Gillam, in order to avoid disclosure of his contributions as required by AS 15.13.040(b) and AS 15.13.140(b), violated AS 15.13.084 by making anonymous expenditures. Gillam did so by directly paying vendors and service providers for various AFCW campaign expenses.^[1]

Respondents filed “Initial Response of Alaskans for Clean Water and Renewable Resources Coalition and Robert Gillam” and “Response to Complaint ... by Americans for Job Security.” APOC Staff has conducted as thorough an investigation as time allowed, and concludes that the majority of alleged violations are supported by a preponderance of the evidence. Additionally, in the course of the investigation, APOC staff found several other violations.

SUMMARY OF APPLICABLE LAWS

Alaska Statutes

Sec. 15.13.040. Contributions, expenditures, and supplying of services to be reported.

Sec. 15.13.074. Prohibited contributions.

Sec. 15.13.084. Prohibited expenditures.

Sec. 15.13.114. Disposition of prohibited contributions.

Sec. 15.13.140. Independent expenditures for or against ballot proposition or question.

Sec. 15.13.400. Definitions.

^[1] These allegations are not numbered as such in the Complaint. For ease of reference here, staff extrapolated all the allegations from the complaint, and assigned the numbers above.

Sec. 15.56.012. Campaign misconduct in the first degree.

Sec. 15.56.016. Campaign misconduct in the third degree.

Sec. 15.56.019. Definition.

Alaska Administrative Code

2 AAC 50.258. Contributions using the name of another.

2 AAC 50.266. Prohibited contributions.

2 AAC 50.270. Independent expenditures.

2 AAC 50.336. Reporting statements of contribution or of independent expenditure.

2 AAC 50.352. Ballot measure activity.

OVERVIEW

The campaign over Ballot Measure 4, which appeared on the ballot in the primary election, held August 26, 2008, was the most expensive in Alaska's history. Millions of dollars were spent supporting and opposing the ballot measure. The airwaves and mailboxes of Alaska were filled with admonitions to vote either for or against the ballot measure. Ballot Measure 4 was closely tied to the movement against construction of a large-scale mining operation in southwest Alaska, commonly referred to as the Pebble Mine project. Ballot Measure 4 sought to place certain limits on discharges and impose certain water quality standards on mine operators. Proponents of the ballot measure argued that these limits and standards were necessary to prevent an environmental disaster in southwest Alaska and the wholesale destruction of the of the Bristol Bay salmon fishery. Opponents of Ballot Measure 4 argued that it would shut down all mining operations in Alaska and bring economic ruin to the state.

There were three separate initiatives that backers attempted to place on the ballot. These were dubbed Clean Water 1, Clean Water 2, and Clean Water 3. The backers of Clean Water 1 applied for certification by the Lieutenant Governor on April 25, 2007. Clean Water 1 was rejected on June 21, 2007.

Court challenges were filed, and the superior court ordered certification on October 12, 2007. Litigation continued in the Supreme Court, and Clean Water 1 was eventually withdrawn. The backers of Clean Water 2 applied to the Lieutenant Governor on July 30, 2007, and that initiative was rejected on September 28. No appeal followed. Clean Water 3, which eventually became Ballot Measure 4 was presented to the Lieutenant Governor on October 9, 2007, and petitions were submitted on January 14, 2008. The Lieutenant Governor approved this initiative on March 11, 2008, and after appeals in the superior and supreme courts of Alaska, was placed on the ballot for the August 26, 2008 primary election. It was voted down by a margin of 108,391 votes to 83,574.

The main proponent of the Clean Water Initiatives and Ballot Measure 4 was the respondent Robert Gillam. As early as 2005, Gillam embarked on an effort to prevent the development of Pebble Mine. Gillam pursued several different avenues in this effort, including a legislative solution that failed. He attempted to persuade mining companies not to get involved in the pebble prospect.^[2] He provided the financial backing for a public education effort to alert people to the dangers of the mine. And Gillam used the initiative process to seek to place on the ballot, and persuade voters to vote for, an initiative that would impose strict clean water standards on Pebble Mine operations. In attempting to use the ballot initiative process to achieve his goals, Gillam triggered the application of Alaska's campaign finance laws.

Gillam recruited several other individuals in his attempt to place an initiative on the ballot and persuade voters to pass the initiative. These individuals included Art Hackney, Richard Jameson and Michael Dubke. Gillam, however, was the main proponent of the effort and was by far its largest financial backer. Day-to-day execution of the effort was left to Hackney, who directed the expenditure of millions of dollars in print and broadcast advertisements in favor of

^[2] He did in fact manage to convince Rio Tinto to back out of the project. [Gillam Dep p.7-8]

Ballot Measure 4. Dubke was a media and political consultant who worked on advertising, messaging, and the get-out-the-vote effort for the ballot initiative.

Dubke was also instrumental in attempting to veil the fact that the entire effort was being funded by Gillam. Jameson, as president of RRC, placed his organization largely at the service of the ballot campaign working in conjunction with the others. Together, these four individuals operated as a de facto “group” organized to influence the outcome of an election. They will be referred to in this report as “the Gillam Group.”

Gillam and the Gillam Group created several corporations to further the goals of the group. The Renewable Resources Coalition, Inc. (“RRC”) was incorporated on August 11, 2005. RRC was created as 501(c)(6)^[3] non-profit corporation. The original directors of RRC were Jameson, Hackney, Brian Kraft and Francis Gallela. RRC was organized as a 501(c)(6) at least partly because Hackney believed that this form would allow them to veil RRC’s contributors and members and he claims credit for coming up with the idea for the organization. [Hackney Depo 14:14-15.]

Alaskans for Clean Water, Inc., was incorporated on March 14, 2008. AFCW was incorporated as a 501(c)(3) organization, and was intended to be the public face of the Ballot Measure 4 campaign. Although the initial board of directors was Luki Akelkok, John Holman, and Jack Hobson, the evidence shows Gillam, Hackney and Jameson had near total control of the corporation’s contributions and expenditures. In numerous e-mails Gillam, Hackney and Jameson refer to how they set up and ran AFCW. AFCW received 89% of its \$2.9 million in contributions directly or indirectly from Gillam, and 91% of its \$2.9 million in expenditures were controlled by either Hackney or Dubke, with no oversight from AFCW’s board members or staff.

^[3] 26 U.S.C. § 501(c)(6) is the section of the Internal Revenue Code that grants non-profit status to certain trade organizations and business leagues..

Gillam, Hackney and Jameson also created the Renewable Resources Foundation, Inc. in 2006. This “foundation” was set up as a 501(c)(3) organization, and its original board members included Gillam, Jameson, Hackney, Kraft and Gallela. The purpose of RRF is not exactly clear.

Gillam and or the Gillam Group created Alaska Wild Salmon Protection Inc. in 2007. This corporation was set up to be another 501(c)(6), and its purpose was to allow Gillam to spend money on lobbying without disclosing that he was employing lobbyists. Both AWSP and RRF share an address with the offices of Hackney & Hackney.

In addition to these organization set up by Gillam and the others to oppose Pebble Mine and support the clean water ballot measures, Gillam used Americans for Job Security to make contributions to AFCW without disclosing those contributions. AJS is an Alexandria, Virginia based non-profit corporation whose sole purpose is to allow individuals and corporations to financially support various causes without having to disclose that financial support. AJS is closely intertwined with the Gillam Group. Hackney is a board member of AJS and has been since 2005. Dubke was the president and sole employee of AJS from 1998 to March 31, 2008. During his tenure as president Dubke had the sole discretion and authority to spend AJS money as he saw fit. Dubke is currently a “consultant” to AJS. And, even though Dubke is no longer president, or even an employee of AJS, he is required to counter sign all AJS checks in excess of \$2,500.

The Gillam Group was the heart of the campaign to pass Ballot Measure 4. The evidence shows that the four members of the group were well aware of campaign finance rules and regulations; and they set up and used the various organizations listed above in an attempt to appear to comply with those rules. RRC was set up to be a coalition of various interests opposed to Pebble Mine, and not incidentally, to veil the identity of its contributors. AFCW was set up to

be the face of the pro-Ballot Measure 4 campaign and be the “group” which would register with APOC. AWSP was set up to be a separate lobbying arm of the effort. However, as might expected when the staff and directors of these organizations were so intertwined, the corporate boundaries were blurred, crossed and ignored. These actions have resulted in numerous violations of the campaign disclosure laws, as discussed below.

In the pages that follow, APOC presents graphic representations to better illustrate the Gillam Group’s activities in support of Ballot Measure 4.

TIMELINE

Two-page timeline shows the chronology of key events relevant to this case.

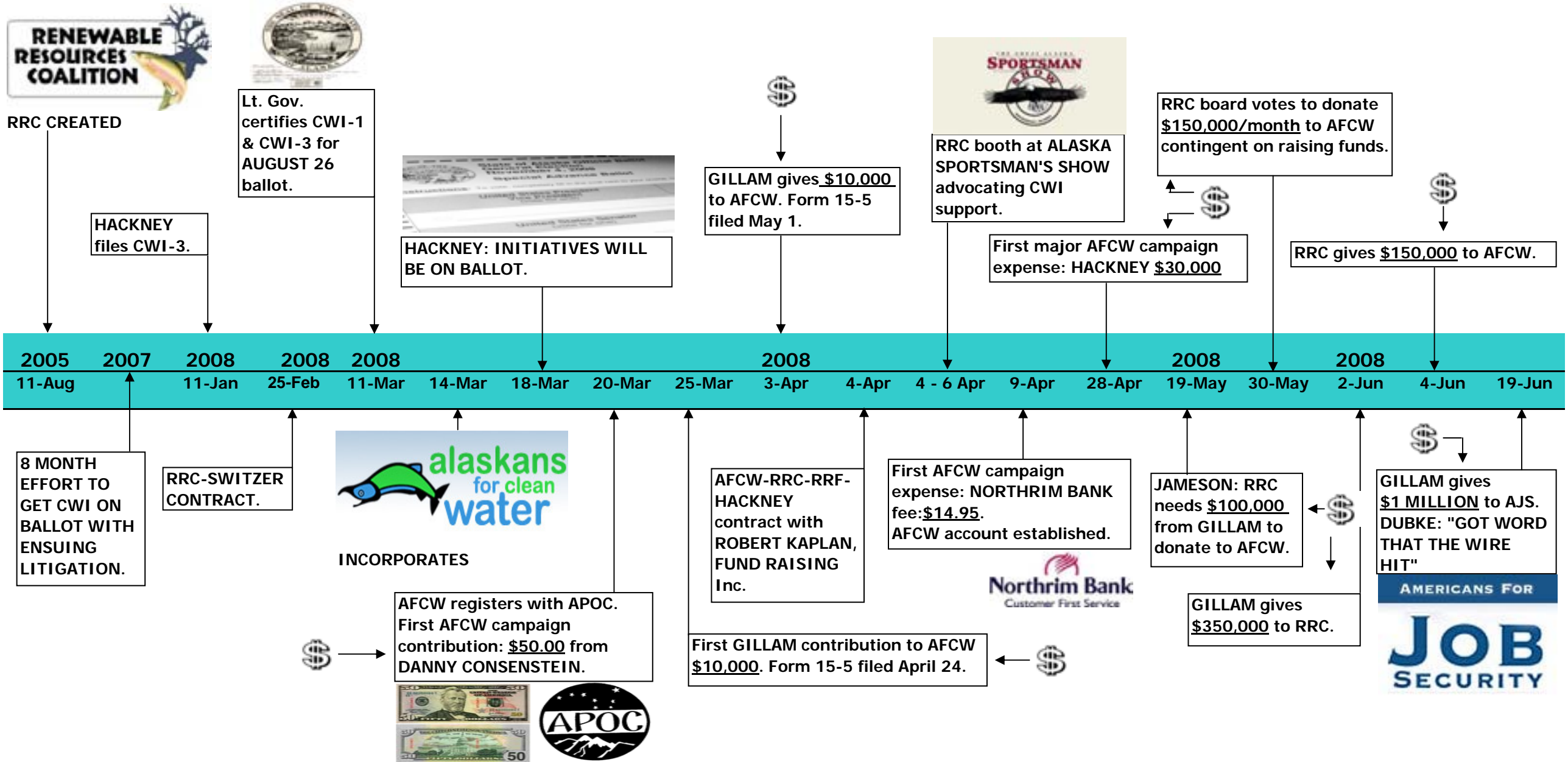
AFCW INCOME

Chart showing key sources of income for AFCW by amounts and percentages.

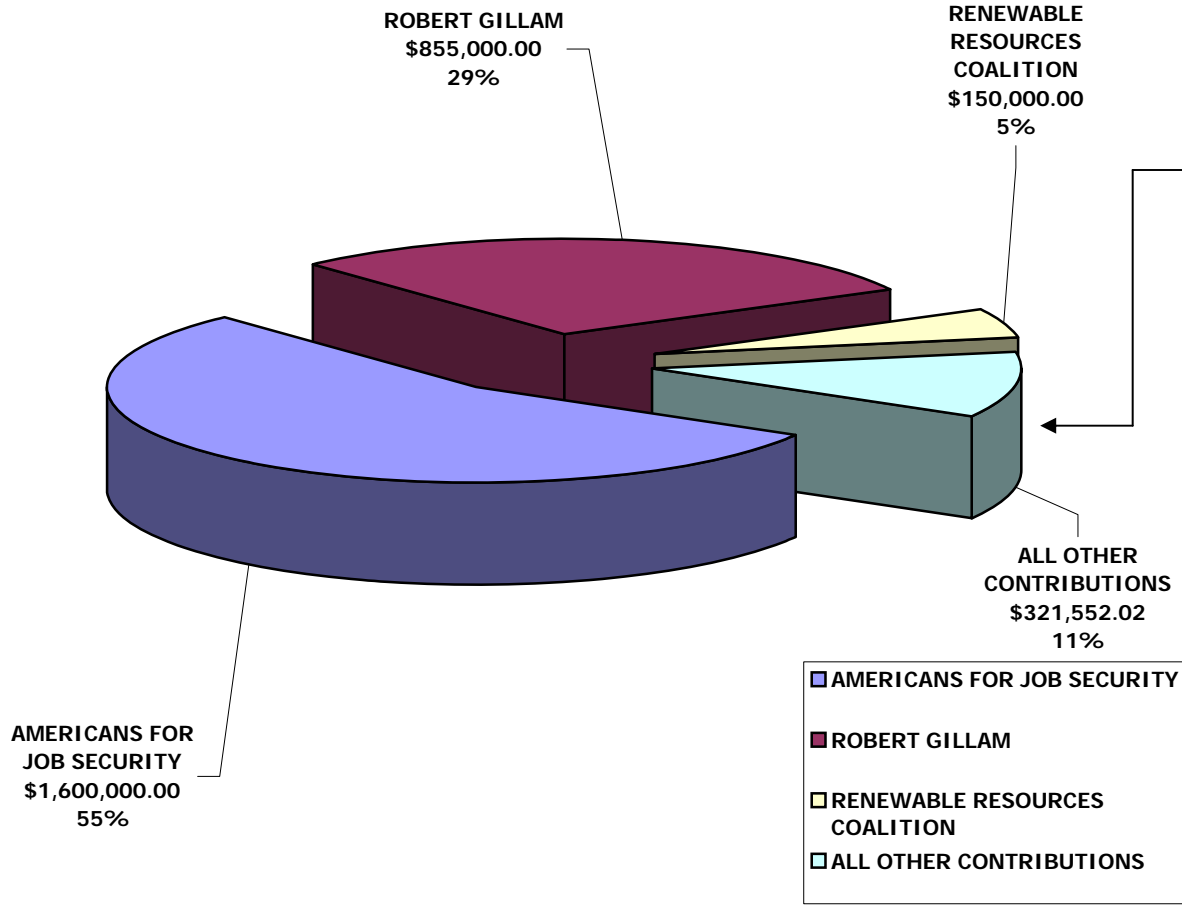
AFCW EXPENSES

Chart showing where AFCW spent its money in support of Ballot Measure 4.

09-01-CD KEY EVENTS TIMELINE



AFCW INCOME TOTALS



ALL OTHER CONTRIBUTIONS

Breakdown by Amount:

\$100 or Less (292 Contributions):	\$15,285.00
\$101 to \$1000 (51 Contributions):	\$22,815.00
\$1001 to \$50,000 (21 Contributions):	\$282,865.24
*Total All Other Contributions (364):	\$320,965.24
Plus Vendor Refunds:	\$586.78
Total:	\$321,552.02

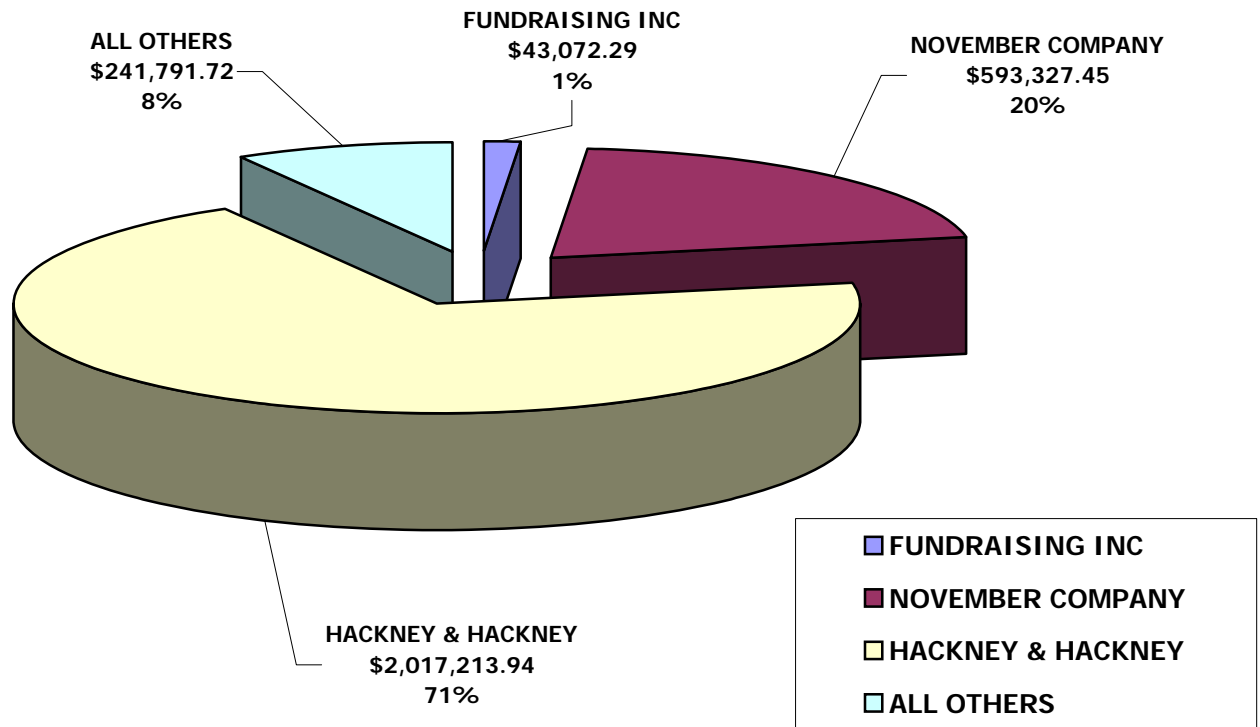
*The source of these contributions is categorized as follows:

Individuals (Approximately 349)
Businesses & Organizations (15)

SOURCE: APOC Campaign Disclosure Reports filed by AFCW

AMERICANS FOR JOB SECURITY	\$1,600,000.00
ROBERT GILLAM	\$855,000.00
RENEWABLE RESOURCES COALITION	\$150,000.00
ALL OTHER CONTRIBUTIONS	\$321,552.02
TOTAL INCOME:	<u>\$2,926,552.02</u>

AFCW TOTAL EXPENDITURES



SOURCE: APOC Campaign Disclosure reports filed by AFCW

FUNDRAISING INC	\$43,072.29
NOVEMBER COMPANY	\$593,327.45
HACKNEY & HACKNEY	\$2,017,213.94
ALL OTHERS	\$241,791.72
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TOTAL EXPENDITURES:	\$2,895,405.40

ANALYSIS

After completing as thorough an investigation as possible in the allotted time, Staff finds that the majority of the allegations are substantiated by the evidence. In addition, Staff found additional violations by the parties and violations by individuals not named as parties. The evidence supports a finding that Gillam, Hackney, Jameson and Dubke were operating as an unregistered group in violation of AS 15.13.040. Staff finds that Gillam failed to report all of his independent expenditures. Staff finds that Gillam failed to disclose that he was employing lobbyists. Complaints against Hackney, Jameson and Dubke are filed herewith. Because the complaints against these three are so intertwined with the other allegations, Staff recommends that the additional complaints be consolidated with the original complaint, and all go to hearing on June 15, 2009.

1. The Gillam Group

The major violation not alleged in the original complaint is that four of the key individuals—Gillam, Hackney, Dubke and Jameson—were operating as a group which should have registered and reported under AS 15.13. Staff will refer to this unregistered group as the “Gillam Group.”

AS 15.13.400(8)(B) defines a group 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...

2 AAC 50.290 further defines the types of activities that will make a combination of individuals into a group:

(a) Activities that make a combination of two or more individuals a "group" within the meaning given in AS 15.13.400 include raising, soliciting, collecting, or disbursing money or anything of value, and directing, coordinating, or controlling those activities, if those activities are performed, directed, coordinated, or controlled with the major purpose of securing or defeating

- (1) the election to public office of an individual or candidate; or
- (2) a ballot proposition.

The regulation further provides that an ongoing group that raises, solicits, collects or contributes \$500 in a calendar year must register and file reports with APOC. 2 AAC 50.290(d). Under these definitions, the Gillam Group was an ongoing group which was required to register and file reports with APOC.

The Gillam Group undisputedly contained two or more individuals. The two key individuals were Gillam and Hackney, but the evidence shows that Dubke and Jameson played significant enough roles to be considered part of the group. Gillam, Jameson, Hackney and Dubke are all individuals, not corporations or other entities.

The Gillam Group was organized for the principal purpose of influencing the outcome of one or more elections. From the very inception of the idea of seeking to place an initiative on the ballot to running the campaign, to doing the post-mortem analysis on why the effort failed, the Gillam Group's entire purpose was to influence the outcome of an election. The Gillam Group conceived of the idea of attempting to get the measure on the ballot in the first place and drafted the language for the ballot initiatives. The Alaska Division of Elections shows that Hackney was personally a sponsor of CW2 and CW3.

[Other 1, from: www.elections.alaska.gov/petitions/status.php]

Gillam paid the lawyers who drafted the initiatives. Jameson was deeply involved in the drafting. [Gillam Depo. 17:23] When Pebble Mine supporters filed suits to keep the initiatives off the ballot, the Gillam Group went to court to secure a place on the ballot. Although other individuals were named as plaintiffs in the lawsuits, Gillam personally paid the attorney who litigated on behalf of the plaintiffs. The Gillam Group controlled the course of litigation over the ballot

initiatives and made the decision to terminate the litigation over CW1 and focus on CW3. [Gillam Depo. 16:8 – 20: 3.]

These activities, occurring before any clean water initiative was even placed on the ballot, indicate that the Gillam Group had begun its campaign to influence the outcome of an election. By April of 2007, when Clean Water 1 was presented to the Lieutenant Governor, the Gillam Group had formed and was engaging in activities with the principal purpose of influencing the outcome of an election.

Even though the official sponsors of Clean Water 1 were Jack Hobson, Luki Akelkok and John Holman, it was Gillam and the Gillam Group that funded all the litigation over that initiative, [**Gillam Depo p. 20**] and made the decision to drop the appeal to the Alaska Supreme Court. [Doc. 54-56]

Shortly before the Lieutenant Governor determined that CW1 met the requirements to be placed on the August 26 ballot, the Gillam Group created AFCW.^[4] The Gillam Group's activities to influence the election began to accelerate. The Gillam Group solicited and collected almost every dollar that was spent in favor of the ballot initiative. AFCW was set up to be the nominal group that would register with APOC, but as the Gillam Group controlled nearly all of AFCW's income and expenditures, AFCW had no viable independence from the Gillam Group. Almost 90% of the \$2.9 million that went o AFCW came from Gillam personally, either directly, or through an intermediary organization.

Gillam told Jameson and Hackney on March 19, 2008 that he was contributing \$10,000 to AFCW. [RRC 151], and he made the contribution on March 25, according to his statement of contributions filed with APOC. On May 30 the board of directors of RRC—which included Jameson and Hackney—voted

^[4] On March 11, 2008, the lieutenant governor approved the measure for the August primary ballot. AFCW was incorporated three days later on March 14, according to the Alaska Division of Corporations. Six days later, on March 20, AFCW registered with APOC.

to give \$150,000 per month to AFCW, if they could raise that amount. [RRC 48.] On June 2, Gillam gave \$350,000 to RRC. [RG 40-41.] On June 4, as had been pre-arranged by the Gillam Group, RRC gave \$150,000 to AFCW. [AFCW 77.]

On June 19, Gillam gave \$1 million to AJS, and the very next day AJS gave \$750,000 to AFCW. On Friday, July 11, Gillam gave a contributed \$500,000 to AJS and, two business days later, on July 15 AJS gave \$450,000 to AFCW. On July 22, Gillam gave another \$500,000 to AJS, and predictably enough, AJS gave \$400,000 to AFCW on August 1.^[5] Finally, on August 6 Gillam gave \$250,000 directly to AFCW. Staff does not know what happened to the \$400,000 of Gillam's money that was given to AJS but was not forwarded on to AFCW.

Bearing in mind that Hackney was on the board of directors of RRC, AFCW and AJS, and Dubke, although at that time only a "consultant" to AJS had been the president and sole employee until March 2008, and was required to sign any check in excess of \$2,500, the conclusion is inescapable that the Gillam Group was collecting funds for AFCW. If more evidence of this activity were needed, it can be found in the fact that Dubke was kept informed by Gillam, and the banks involved, of every transfer from Gillam to AJS, and from AJS to AFCW as the transfers occurred. [AJS 117. AJS 149-155. RG 1-6.]

The Gillam Group did not simply solicit and collect the funds for the campaign, the Gillam Group directed, controlled and coordinated their expenditure. Just as nearly every dollar that came in to AFCW came from Gillam, nearly every dollar that went out went out through Hackney and Dubke. Of the \$2,895,405 in expenditures reported by AFCW, \$2,017,213 was paid to Hackney, according to AFCW's own disclosure reports filed with APOC. Hackney spent this money on behalf of the campaign with no oversight from the AFCW board or staff. He would simply produce advertisements, buy media time,

^[5] Respondents claim the timing of donations from Gillam to AJS and from AJS to AFCW was purely coincidental, and there was no understanding or coordination between Gillam, AJS and AFCW. This does not seem plausible. Further details regarding the sham nature of AJS are provided below.

do whatever else a political consultant does, and submit an invoice to AFCW. There was no pre-approval process, no budget laid out for him, and no strategy discussions within the organization. [Hackney Depo. 36:20 – 39:8, 45:4 – 48:10.] The only people Hackney consulted about the expenditures were Gillam, Jameson and Dubke. **[Doc ##]**. Likewise, a significant portion of AFCW's money was spent by Michael Dubke. AFCW expended \$593,327 on the November Company, a company solely owned by Michael Dubke.^[6] Likewise, there is no evidence that AFCW ever controlled or even monitored what Dubke and the November Company did with the money. Like Hackney, Dubke would spend as he saw fit, and then submit an invoice to AFCW for payment.

It was the Gillam Group, not AFCW, that made all decisions regarding expenditures of AFCW funds. There is no evidence that AFCW ever directed or controlled its own activities. Between them Hackney and Dubke expended nearly 90 percent of AFCW funds, and the only people they reported to were other members of the Gillam Group. Therefore the Gillam Group directly controlled and directed the expenditure of more than \$2.6 million.

There is a significant amount of additional evidence pointing to the fact that these four individuals, acting in concert, controlled the actions of RRC and AFCW. Although no particular item conclusively establishes this fact, taken all together, the evidence leads to the inescapable conclusion that Gillam, Hackney, Jameson and Dubke were acting in concert as group seeking to get the initiative on the ballot and get it passed, and that their loyalties and duties to this Gillam Group took precedence over their obligations to RRC, AFCW or any other formal organization.

^[6] It is worth noting that AJS and its one employee shared subleased office space with Michael Dubke and the November Company.

- On Feb. 12, 2008, RRC president Jameson said that “we’re going to set up a new organization for the ballot initiatives called ‘Alaskans for Clean Water’.” [RRC 533. Emphasis added.]
- On Feb. 20, Hackney, Jameson, Gillam, Dubke and others discussed the nature of the campaign organization and how to identify itself in making campaign expenditures. Dubke suggested: “Paid for by Clean Water Alaska. A project of AWSP, Inc.” Hackney replied: “It can be Alaskans for Clean Water, a project of AWSP, Inc.” [RRC 569-570.]
- On March 10, RRC president Jameson, referring to an ad, said: “Looks okay to me, but if the Lt. Gov comes out in the next day or two and certifies our numbers then does the ad make RRC do an APOC filing?” [RRC 1902.]
- On March 18, Hackney told Gillam, Jameson and Dubke that the “initiatives will be on the ballot.” [RRC 630-631.]
- On March 18, Hackney, who was recruiting Robert Kaplan as campaign fundraiser, described the nature of RRC, RRF, AWSP and AFCW and said: “We set RRC up as C6 to veil contributors, so if we go forward I’ll have you discuss who’s given with RRC president Richard Jameson.” [Doc 1]
- On March 19, Gillam told Jameson: “I will match Brian’s [Kraft] with \$10,000 ... these monies should perhaps be given over to Art right away so he can begin the clean water media effort.” Gillam copied Hackney. [RG 151-152.]
- On March 28, Dubke was proposing a media strategy to Jameson, Hackney and Gillam – covering RRC, AFCW and the CWI. [NOV 9.]
- On March 30, Hackney suggested that he and Kaplan sign a fundraising contract covering AFCW, RRC and RRF – omitting Gillam’s lobbying organization AWSP. [Doc. 8.] Hackney and Kaplan went on to sign one contract. [RRC 119-127.]
- On May 26, Hackney wrote an e-mail to Kaplan, stating “He [Bob Gillam] tells me that Jameson – after a 45 minute conversation with Dubke – is

going to send me a letter tomorrow 'joining' AFCW and then Bob will write a check. By weeks end I will have some money to spend." [Doc. 73.]

Despite the fact there were several formal organizations created, these four individuals, acting in concert with one another pulled all the strings, collected and pooled all the money, and determined how that money should be spent on the campaign for ballot measure 4. Under 15.13.400 and 2 AAC 50.290 they were a "group."

2. RRC and AJS acting as Pass-throughs

Complainants allege that RRC and AJS acted as pass through organizations, and Gillam used these organizations to make illegal, anonymous contributions to the campaign. Staff finds that there is a preponderance of evidence to substantiate these allegations.

AS 15.13.074(b) states that a "person may not make a contribution anonymously, using a fictitious name, or using the name of another." Gillam's contributions that were funneled through RRC and AJS were either illegal anonymous contributions, illegal contributions in the name of another, or both. The evidence shows that these contributions were pre-arranged and coordinated, and that Gillam made contributions through RRC and AJS for the sole purpose of hiding the fact that he was the source of AFCW's funds.

In their response to the complaint, Respondents RRC, AFCW, and Gillam argue that AS 15.13.074 does not apply to ballot measure campaigns, because AS 15.13.065 states that

Except for reports required by AS 15.13.040 and 15.13.110 and except for the requirements of AS 15.13.1060 and 15.13.112-15.13.114, the provisions of AS 15.13.010-15.13.116 do not apply to limit the authority of a person to make contributions to influence the outcome of a ballot proposition.

Respondents misread the statute. Prohibiting anonymous contributions or those made in a fictitious name or the name of another does not limit a person's authority to make a contribution. In fact, there is no limit on the amount of money Gillam could have contributed directly to AFCW or the Ballot Measure 4 campaign. However, the sources of funds flowing into a ballot measure campaigns must still be disclosed. There would be no effective disclosure if the statute were read to allow unlimited anonymous contributions, unlimited contributions under a fictitious name or unlimited contributions in the name of another person. The Alaska Supreme Court has long recognized the need for voters to know where the money is coming from: "A ballot measure is often of great importance financially to its proponents, opponents, or both, and multi-million dollar advertising campaigns have been waged. In such circumstances the voter may wish to cast his ballot in accordance with his approval or disapproval, of the sources of financial support." *Messerli v. State*, 626 P.2d 81, 87 (Alaska 1981). The use of another organization to hide the true source of a contribution would violate the basic tenet that voters have a right to know where the money is coming from.

A. RRC as Pass through

The Gillam Group used RRC as a pass through to veil Gillam's contributions. Although RRC did in fact appear to have a legitimate mission and function apart from the ballot measure campaign—educating the public on the dangers of the Pebble Mine—and received some funds from sources other than Gillam, the members of the Gillam Group used RRC to funnel contributions to AFCW. RRC was specifically set up with the idea that it could be used to veil contributions. Hackney, who claims credit for thinking up RRC [Hackney Depo. 14:14-15.] stated in an email to Kaplan, "We set up RRC as a C6 to veil contributors." [Doc 1]. Even though RRC had no funds at the time, RRC's board of directors (including Hackney and Jameson) voted to give \$150,000 per month to AFCW. [RRC 52.] Jameson specifically noted that unless Gillam or someone else gave them money, they would be unable to contribute any to AFCW. On

June 2 Gillam did give \$350,000 to RRC. And on June 4 RRC gave \$150,000 to AFCW. This amounts to either an anonymous contribution by Gillam, or a contribution by Gillam in the name of the RRC.

Additional evidence that Gillam and the Gillam Group used RRC as mechanism to get money to AFCW without revealing the source of the funds includes:

- On March 19, 2008, Gillam told Jameson that he, Gillam, was donating \$10,000 to AFCW via RRC. [RRC 151.]
- On May 19, 2008, RRC had \$65,871 in the bank. In an e-mail, “Re: outreach – costs and money needs,” Jameson told Kaplan, “As you can see, unless Bob gives us \$100,000, or you raise it for us, we are not in any position to donate it to AFCW.” Jameson’s message also went to Hackney and Gillam himself. [Doc. 69.]
- On May 26, 2008, Hackney wrote: “He [Bob Gillam] tells me that Jameson – after a 45 minute conversation with Dubke – is going to send me a letter tomorrow ‘joining’ AFCW and then Bob will write a check. By weeks end I will have some money to spend.” [Doc. 73.]
- On May 30, 2008, Jameson presented a resolution to the RRC board which called for RRC to give \$150,000 to AFCW for each of the months June, July and August contingent upon RRC raising the money to do it.
- On June 2, 2008, Gillam gave \$350,000 to RRC. [RG 40.]
- On June 4, 2008, RRC gave \$150,000 to AFCW. [RRC 2, AFCW 77.]

B. AJS as Pass Through

Even more disturbing than the contributions going through RRC is the enormous amount of money that passed through AJS. More than half of the \$2.9 million dollars that AFCW received came from Gillam by way of AJS. AJS is nothing more than a sham entity created for the sole purpose of allowing people like Gillam to evade campaign disclosure laws. AJS has no purpose other than to cover various money trails all over the country.

AJS claims that it is a legitimate 501(c)(6) trade organization that represents the interests of its members, and that it is “one of the largest job preservationist grass roots lobbying organizations in the United States.” AJS also claims that once a member makes a donation, that member has no control over how the money is spent. However, these claims simply are not believable for a variety of reasons. First, is the timing of the Gillam contributions to AJS and the AJS contributions to AFCW. As described above, Gillam gave \$1 million dollars to AJS, and the very next day AJS made its first contribution to AFCW, in the amount of \$750,000. Three weeks later Gillam gives \$500,000 to AJS, and two business days later AJS makes its second contribution to AFCW, in the amount of \$450,000. Less than two weeks after that Gillam gives another \$500,000 to AJS, and a few days later AJS makes its third contribution to AFCW, in the amount of \$400,000. The only time AJS made a contribution to AFCW, or otherwise engaged in the Pebble Mine or Ballot Measure 4 campaign was immediately after receiving an even larger contribution from Gillam.

The second reason the AJS claims are completely implausible is the overlapping roles of all the people involved. Until he came to Alaska to work on the campaign in March 2008, Michael Dubke was the president and sole employee of AJS. Even after that he was a paid consultant to AJS. [AJS 2.] At the time of the AJS contributions to AFCW, Dubke countersigned any check from AJS greater than \$2,500. [Dubke depo. 23:11 – 24:9.] Dubke was also kept informed of all the money transfers both to and from AJS, as they were happening. [AJS 153-155.] Art Hackney was on the board of directors of AJS, the board of directors of RRC, and the board of directors of AFCW, though he later left the RRC board to run the AFCW campaign. Hackney controlled the spending of the vast majority of AFCW money. AFCW’s own APOC disclosures show that most of the AFCW money that Hackney did not spend, was spent by The November Company, which is wholly owned by Michael Dubke. [Dubke

Depo 7:11-17.] AJS currently subleases from, and shares office space Dubke and the November Company. [Dubke Depo 9:6-18.]

In his deposition, Hackney claimed that he had no idea AJS would be making any donations to AFCW, that it was simply a happy coincidence. “Once there was money in there and I knew Bob had given,” Hackney said of Gillam’s \$1 million “membership” payment to AJS, “I certainly said, I don’t know what you’re going to do with it, but Alaskans for Clean Water would be the best place to accomplish.” Hackney told Stephen DeMaura, the president and lone employee of AJS, that AFCW would be a good place to give the money. [Hackney Depo. 58:1-25.]

Third is the fact that AJS has no real organization. AJS has exactly one employee. This one employee was Dubke until April 1, 2008, and is now Stephen DeMaura. [Dubke Depo. 9:23 – 10:4.] AJS claims that “over the years it has raised and spent nearly \$60 million on issue advocacy and grass roots lobbying that are consistent with its charter cause.” [AJS response to complaint, p.1] Dubke described the AJS goal as being “to promote a vibrant and healthy American economy.” [Dubke Depo. 14:1-4] This is a rather broad and vague description. Yet to determine how best to spend its millions to save jobs, AJS relies on its one employee. There is no oversight from the directors. There is no research committee, no advisory committee, no formal process or procedures. There is just one employee who spends the money how he feels like it. [Dubke Depo. 16:11 – 18:3.]

Moreover, there is an inherent contradiction in AJS’ stated mission and the notion that it independently determines where to spend its funds, not its members. A major reason for AJS’ existence is to allow its members to participate in political activities without fear of reprisal. [Dubke Depo. 20:3 – 22:7. See also AJS answer to complaint, p. 4.] One would hardly expect reprisals for “promoting a vibrant and healthy American economy.” There are

very few people in this country who would argue that a healthy economy is bad. To meaningfully participate in political activities, AJS members must have some idea how their membership money will be spent beforehand. If an individual feared retaliation for supporting a particular cause, and wanted to support that cause, donating to AJS would be an extremely poor way of doing that, unless the member had some knowledge or assurance that the money contributed to AJS would be used to promote that particular cause.

Finally there is evidence that Gillam knew his contributions to AJS would be transferred to AFCW, and there is evidence that he considered his contributions to AJS to be contributions to AFCW. Gillam testified at his deposition that he joined AJS at a time when he had serious medical issues and feared that he might die. It was his dying wish to protect Bristol Bay, and therefore he gave \$2 million dollars to AJS. Gillam stated in his deposition that “I thought there was a chance I was not going to make it, and I wanted to – I wanted to see to it that the effort, the anti-Pebble effort, continued if at all possible. And, I had – I hoped that AJS would continue that effort, even if I didn’t.” [Gillam Depo. 65:3-14.]

It simply does not make sense that he would make such a contribution without some assurance that his money would end up back in Alaska, with a group supporting Ballot Measure 4. Moreover, when confronted with the claim that FRI was entitled to a commission on the contributions from AJS to AFCW, Gillam responded, “We specifically excluded funds that I contributed which includes monies to Americans for Job Security...and other monies I contributed otherwise.” [Doc 129]

The Alaska Supreme Court has recognized that the public has the right to know where the money is coming from in an election campaign. “The effective functioning of our democratic form of government is premised on an informed electorate. When citizens vote on the basis of misinformation, or a lack of

relevant information, the decision-making process on which our government ultimately rests suffer to that extent.” *Messerli*. 626 P.2d at 81 (Alaska 1981). When the American Medical Association speaks out on tort reform, the public understands that it is a group of doctors speaking, and interprets the statements accordingly. When the National Trial Lawyers Association speaks out on the same issue, the public understands that it is a group of lawyers speaking, and assesses the credibility of their statements accordingly. When AFCW, funded by Gillam’s money passed through opaque organizations like AJS or RRC, speaks out, the public goes either uninformed or misinformed, and the decision-making process on which our government rests suffers.

Based on the above information, staff finds that the following allegations are substantiated based on a preponderance of the evidence:

- Allegation No. 2: RRC violated AS 15.13.074 by acting as a “pass through” for Gillam to make secret contributions to AFCW.
- Allegation No. 12: AFCW violated AS 15.13.114 and 2 AAC 50.258 by receiving and accepting contributions from RRC and AJS which it knew were made in violation of Alaska law because the funds were in fact contributed by Robert Gillam using the names of RRC and AJS.
- Allegation No. 15: AJS violated AS 15.13.074 by acting as a “pass through” and allowing Robert Gillam to use AJS’s name to make secret contributions to AFCW.
- Allegation No. 16: AJS violated AS 15.13.040 and/or AS 15.13.140 by failing to disclose its expenditures related to the ballot initiative campaign that it coordinated with RRC and AFCW.
- Allegation No. 17: Gillam made prohibited contributions in violation of AS 15.13.074 and 2 AAC 50.258 by using the names of others to contribute secret funds to AFCW. Complainants allege that Gillam made nearly \$2 million in secret contributions by funneling his money through RRC and AJS.

3. RRC should have registered as a group.

The complaint alleges that RRC violated 15.13.040(b) by failing to register as a group and report accordingly. AS 15.13.040(b) requires each group to register with APOC and to file a report of its expenditures and contributions. As explained above, a group is defined as 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. Additionally, 2 AAC 50.352 states that:

c) A corporation, company, partnership, firm, association, organization, business trust, labor union, or publicly funded entity may report its contributions and expenditures under [AS 15.13.040](#) (d) and (e) as an individual if

(1) all contributions and expenditures to influence the outcome of a ballot measure election are made from the organization's general day-to-day operating account; and

(2) the organization does not assess, collect, pool, or solicit money or anything of value for the purpose of influencing a ballot measure election.

(d) A corporation, company, partnership, firm, association, organization, business trust, labor union, or publicly funded entity that does not meet the requirements in (c) of this section must register and report as a group.

Respondents maintain that RRC was organized for the principal purpose of education and advocacy supporting Alaska's hunters and fisherman, and cannot be considered a group. (Response to Complaint, p. 27). Respondents also argue that to the extent that 2 AAC 50.352 requires RRC to register and report as a group, it contradicts the statutory definition of a group, and the regulation is therefore invalid. RRC does not make an argument that they actually complied with 2 AAC 50.352.

It is a fundamental tenet of administrative law that an agency must follow its own regulations, that a hearing officer or other administrative fact finder does not have the authority to declare a regulation invalid. The validity of 2 AAC 50.352 is not a matter which should be addressed here. Were the commission inclined to ponder this issue, however, it is clear that the regulation is a valid exercise of administrative authority. The regulation provides a standard for when a pre-existing organization becomes a group for reporting purposes. If there were no such standard, there would be a gaping hole in the disclosure law. Any pre-existing organization—a business organization, a for-profit corporation, an LLC, a trust, even a shell corporation with no real existence or purpose could become thoroughly and totally engaged in electoral politics without ever being subject to reporting requirements if they could claim that they were originally organized for some other purpose. The only way the law makes sense is if there is a standard imposed as to when a pre-existing entity becomes a group for reporting purposes.

Under 2 AAC 50.352 RRC should have registered and reported as a group. RRC did assess, collect, pool, and solicit money for the purpose of influencing the election on ballot measure 4. RRC acted in concert with AFCW and the Gillam Group to collect and pool money for the campaign. As detailed above, RRC allowed itself to be used as a pass through to funnel money from Gillam to AFCW. RRC, through Jameson, also actively solicited, collected and pooled money to be used in the ballot measure campaign.

RRC also collected and pooled money by entering into a contract, along with Art Hackney, Hackney & Hackney, AFCW, and the Renewable Resources Foundations, with the California Corporation, Fund Raising, Inc. (“FRI”) for FRI to “raise money for various election, public education, lobbying or other efforts in opposition to the ‘Pebble Mine’ project in Alaska.” Hackney signed this contract on behalf of all the Alaska entities, and the contract does not differentiate between the fund raising goals of the different organizations. [R 620-27]

Although an addendum was later proposed that would erect a firewall between the various entities so that RRC would not be raising funds for the election, this addendum was never executed. [Response to complaint, attachment C. Hackney Depo. 52:1– 53:6.] Respondents claim that the “actual intent of the contract” was to raise money for AFCW for its campaign-related activities and to separately raise money for RRC for its educational activities...” [Response p. 3-4.] This is belied by the actual language of the contract and the fact that an addendum to that effect was never executed. Respondents also blame Kaplan for somehow forcing them into this contract. “Kaplan demanded a single contract with both entities or he would not enter into an agreement with either.” When faced with a contract that RRC knew would have required them to report as a group, the options were for RRC to report as a group, or not sign the contract. Signing it, then blaming Kaplan for making them sign it does not relieve RRC of its obligation to report as a group. And, although Kaplan did not raise as much money as RRC, AFCW and the Gillam Group would have hoped, he did in fact raise money for them. Because RRC was a party to the contract under which Kaplan was raising funds for the ballot initiative campaign, RRC was collecting money to influence the ballot measure.

Additionally, the evidence indicates that RRC specifically raised money to give to AFCW. On May 18, Kaplan wrote Jameson that “Art has indicated that he’s been waiting a transfer of the first \$100,000 from RRC to the campaign.” Jameson responded that RRC only had \$65,871.21 in the bank, and that “unless Bob gives us \$100,000 or you raise it for us, we are not in any position to donate it to AFCW.” [Doc 69.] This indicates that Jameson and RRC were attempting to collect money, from Gillam or elsewhere, for the specific purpose of transferring it to AFCW to be used in the campaign. On May 26, Hackney wrote that Gillam had told him that “Jameson – after a 45 minute conversation with Dubke – is going to send me a letter tomorrow ‘joining’ AFCW and then Bob will write a check. By weeks end I will have some money to spend.” [Doc 73.] Only two

days after that, RRC board voted to contribute \$150,000 per month to AFCW. [RRC 48.] In the final days before the election, Jameson, as RRC president, sent out e-mails and newsletters urging the recipients to vote yes on 4. [RRC 1127, RRC 1224, RRC 1951-1952, RRC 2586.]

Because RRC did assess, collect, solicit and pool money for the ballot measure campaign, RRC was required under 2 AAC 50.352 to register and report as a group. RRC did not do so, and Staff finds that Allegation No. 1 is substantiated.

4. RRC failed to disclose expenditures related to ballot initiative campaign.

Complainants allege that RRC violated AS 15.13.1040 and AS 15.13.140 by failing to disclose various expenditures and activities related to the ballot measure campaign. If the Commission agrees with staff that RRC was required to register and report as a group under 2 AAC 50.352, these allegations will be moot, as RRC would be required to report all its contributions and expenditures. If the commission decides otherwise, RRC was still required to disclose its independent expenditures under AS 15.13.140(b). There is significant evidence that RRC made such expenditures, and did not disclose them as required.

A. RRC failed to disclose its e-mail and Web site advocacy.

Complainants allege that RRC engaged in e-mail and Web site advocacy on behalf of the ballot measure and did not file the appropriate reports. Staff agrees, based on the following evidence:

- On March 14, 2008, the day that AFCW incorporated, Jameson told Hackney he was trying “to sanitize our website of initiative advocacy.” [RRC 1705.]
- On March 27, 2008, Jameson, Hackney and Dubke make plans for the CWI Web site and e-mails, among other matters. [RRC 2261-2265.]

- On April 18, 2008, then-RRC executive director Danny Consenstein asked his executive assistant Heather Brown to provide e-mail lists to Kaplan for fundraising. [Doc. 21.]
- On April 21, 2008, Consenstein said RRC bought an e-mail list of 7,500 names from the Alaska Democratic Party in December 2007 and he asked Hackney and Jameson: “Any thoughts about how and when to use it for the Clean Water campaign or RRC, or both?” [RRC 2279.]
- On May 21, 2008, Kaplan told a Hackney staffer that he was using various lists for soliciting funds, including a Democratic Party list purchased by RRC. [AFCW 170-171.]
- On April 28, 2008, Kaplan prepared a solicitation using an RRC master list, and Jameson cautioned Hackney to remove the name of RRC’s non-profit contact at their funding agency, the Moore Foundation. [RRC 1827-1828.]
- On August 7, 2008, RRC staffer Heather Brown, faced with an invitation and temptation to use RRC to promote participation in an online poll, said “...but we get in trouble with APOC by ‘promoting’ the initiative. That’s why I’m leery...” [RRC 1706.]
- On August 8, 2008, Hackney told Gillam and Jameson that he was sending out an “e-mail blast to 100,000 people” about the film Red Gold, which RRC and AFCW were using to generate support for the CWI. [RRC 2547.]
- On Aug. 21, 2008, Jameson sent a mass e-mail to an RRC urging, “VOTE YES ON 4 on August 26!” He signed the message as RRC president. [Doc. 115-116, RRC 2586.]
- On August 22, 2008, Jameson sent an RRC Newsletter to the regular RRC distribution list urging recipients to vote yes on 4. [Doc. 117-118.]
- On August 25, 2008, Jameson sent out the weekly RRC Newsletter urging the newsletter recipients: “VOTE YES ON PROPOSITION 4.” [Doc. 119-120.]

RRC was engaged in Web site and e-mail promotions from the day AFCW came into existence on March 14, 2008 right up to Election Day. From start to finish, RRC used opportunities for advocacy via the Internet. The cost of e-mail is difficult to specify, but it is significant enough that AS 15.13.090 requires a "Paid for by" identifier on communications, including electronic communications under 2 AAC 50.306.

RRC admits to what it refers to as a failure to report in the amount of \$9.75. [Response p. 37-8] The true cost was considerably more. There was at least one significant cost incurred by RRC when it purchased a political party's e-mail list and then provided it AFCW. This purchase was at least a reportable in-kind contribution from RRC to AFCW. This purchase was at least a reportable in-kind contribution from RRC to AFCW. It was a fundraising tool for Kaplan. RRC also bore the cost of some campaign-related Web sites and e-mail advocacy, including the use of its staff. It must also be pointed out that Jameson owns Alaska Internet Marketing, Inc., which provided services to both RRC and AFCW. Jameson's company did receive some payments from both RRC and AFCW, but e-mail lists, including purchased lists, were provided to the campaign without cost, and Jameson himself sent out advocacy messages.

Although the costs involved here may pale in comparison to the millions of dollars sloshing around from Gillam through AJS and RRC to AFCW, these are reportable expenditures, and should have been reported.

B. RRC failed to disclose the wages and expenses of employees.

Staff finds that there is substantial evidence supporting this allegation. Notably Dr. Bruce Switzer, who was under contract as a consultant to RRC was working on behalf of the ballot initiative. RRC and Switzer entered into a consulting agreement dated February 25, 2008. [RRC 1606-1611]. Under this agreement Switzer was to "educate the public with regard to the Pebble Mine and the pending Clean Water Initiatives." Switzer's expenses were paid by RRC as shown by a Hackney & Hackney invoice #2208 on April 28, 2008. [Hackney

3]. This was in addition to services under the agreement paid by RRC via Hackney, invoice # 2225, dated May 7, 2008, in the amount of \$5,500. [Hackney 8.] Complainants presented evidence that Switzer was advocating on behalf of the ballot initiative, not just educating the public with regard to Pebble Mine. On April 29, 2008, Switzer, Jameson and other RRC representatives worked on Clean Water Initiative FAQs. [RRC 2108-2110.]

Later on May 5, 2008, Switzer seemed to realize the problems his agreement with RRC could cause. He sent the agreement to Hackney stating, "Attached is the agreement I have with RRC. It is ongoing until terminated by either party. I would prefer if it were with you." [AFCW 46.]

On June 18, 2008, Switzer, appearing on Community Forum broadcast by KSKA radio, said: "Renewable Resources picks up my hotel and airfare and that's it." [Complaint exhibits 9-10. The full interview is available online at: www.kska.org/2008/06/18/community-forum-why-stop-pebble-mine/] Switzer invoiced Hackney for his expenses and fees, and Hackney paid Switzer or his company Bird Dog LLC. [Hackney 3 and 8, RG 113, AFCW 18-28.]

C. RRC failed to disclose the cost of event booths where it engaged in ballot initiative advocacy.

- On April 4, 2008, Jameson cautioned against using the RRC booth for advocacy at the Great Alaskan Sportsman's Show, April 3-6. [RRC 1818.]
- RRC's booth displayed a sign that read, from top to bottom, "CLEAN WATER INITIATIVE. RENEWABLE RESOURCES COALITION. WE NEED YOUR VOTE." [Photo, Other]
- Fundraiser Kaplan served as a self-described "barker" at the RRC booth despite a contractual mandate to be raising money for AFCW as well as RRC. [Kaplan April 7.]
- On June 26, 2008, members of the Gillam group began a series of exchanges about a state fair booth, staffing, supplies, planning,

campaigning and how to handle the arrangement. The exchanges involving Gillam, Hackney, Jameson and others continued through the start of the fair, which opened five days before the election. [RRC 2237. RRC 1878. RRC 1682. RRC 1696-1697. RRC 1880-1881. RRC 1143. RRC 1127.]

RRC acknowledges that it failed to report a nominal amount for AFCW campaign-related expenses, calculated at \$51.61. As the fair approached and began, the communications show considerable confusion among RRC and AFCW staff, Gillam's role, and who was managing supplies, salaries, costs, donated space and accounting for it all. This unruly arrangement culminated with a dozen campaigners descending on the fair grounds and then getting ejected for their campaign activities. And now RRC has brought order to its accounting despite the absence of financial reporting on these events in AFCW disclosure statements.

APOC records of independent expenses by Gillam for Ballot Measure 4 by Gillam show he paid \$21,800 to George Jacko for fair staff and signers on August 27, 2008. Other arrangements for Ballot Measure 4 were made by RRC staff. [RRC 2237, RRC 1696-1697.] RRC told AFCW that “[w]e are donating the space to you and will not need to be reimbursed.” [RRC 1878.] RRC in their response minimized the role of the Clean Water Initiative and AFCW despite evidence to the contrary. [RRC 1143, RRC 1127.]

The chaotic events surrounding RRC-AFCW-Gillam arrangements at the fair are emblematic of the difficulties RRC had in accounting for campaign activities in which it was a part.

D. RRC failed to Disclose Advertising Expenses

Complainants allege that RRC failed to report certain advertisements, including

- A television spot in which Switzer states that the Clean Water Initiative is designed to protect drinking water and salmon spawning habitat, and that with the exception of Pebble Mine, the measure would have no impact on mining operations in Alaska [Complaint, Ex. 5];
- A print advertisement quoting Switzer saying, “I’ve listened to the opponents of the Clean Water Initiative... The arguments they have advanced are rubbish... The Clean Water Initiative will not stop mining in Alaska.” [Complaint Ex. 6.];
- A radio advertisement saying that “the clean water initiative will have no effect on Red Dog Mine, but if Red Dog, the number one polluter in America were to be placed in Bristol Bay, it would be an environmental disaster.” [Complaint, Ex. 8]

Respondents do not dispute placing these advertisements, or failing to report them, but rather argue that because these advertisement ran “prior to the campaign period,” the allegations are unfounded. [Response, p. 38]. According to Respondents these advertisements ran in January, February and March 2008. [Response p. 25]

Respondents claim there is no specific “campaign period” for their express advocacy for a ballot measure and disclosure. In 2007, RRC and the Gillam Group were attempting to place an initiative on the ballot. The Clean Water 3 application was presented to the Lieutenant Governor in October 2007 and signed petition books were submitted in January 2008. Of the three proposed initiatives this is the one that became Ballot Measure 4 in the August 26, 2008 primary. But even during the petitioning process, RRC expected an initiative to be on the ballot at an upcoming election. That’s why RRC promoted Clean Water initiatives through advertising. Under AS 15.13.110(e), a group formed to sponsor an initiative must report to APOC 30 days after its first filing with the Lieutenant Governor the proposed language for an initiative along with

signatures of 100 supporters of the proposed initiative. This alone contemplates that such period of advocacy begins with this filing.

These advertisements were therefore, express advocacy, and independent expenditures which should have been reported under AS 15.13.140.

E. RRC failed to disclose the costs of posters and publicity materials.

Complainants allege that RRC failed to report the costs for poster and publicity materials it produced to advocate for the ballot initiative. Complainants did not provide evidence of these unreported expenditures, and APOC Staff has not found sufficient evidence to substantiate this allegation.

F. RRC failed to disclose mailers that it sent to Alaskans, as well as for support it provided for mailers sent by Alaskans for Clean Water.

The Complaint alleges that RRC failed to report non-monetary contributions as required by AS 15.13.040 and/or 15.13.140. RRC states that providing a membership or mailing list is not a contribution and relies on APOC advisory opinion AO-08-02-CD for support.

On Monday August 25, 2008, Jameson e-mailed RRC with the message that included among other exhortations to "VOTE YES FOR FISH ON PROPOSITION #4." See RRC-01224. In addition on or about April 17, 2008 a request was made of RRC to provide a Democratic email list, Sportsman Show list, and an RRC contributor list to Robert Kaplan, who was fundraising for Alaskans for Clean Water to support the Initiatives. See RRC 2277-02278 and RRC 02298-02299. FRI was provided various email and mailing lists from RRC for use by AFCW in fundraising by FRI. See email dated May 29, 2008 from Robert Kaplan consisting of substantial number of names. On April 18, 2008 RRC provided their master list of all their top contacts. See Complaint Doc

000021. On April 29, 2008 RRC provided a list of 1,600 names and addresses. See Kaplan email dated April 29, 2008. These lists were provided to Kaplan for use by AFCW. None of the expenses associated with these lists are reported by RRC or AFCW. Respondents in their initial response state that the sharing of mailing lists is not reportable. This is only correct if the groups are affiliated. This is not the case with RRC and AFCW. The use of these lists by AFCW or their fundraiser is reportable. Each of these lists had a commercial value but none was reported.

5. The Complaint alleges that AFCW violated AS 15.13.114 and 2 AAC 50.258 by receiving and accepting contributions from RRC and AJS which it knew were made in violation of Alaska law because the funds were in fact contributed by Robert Gillam using the names of RRC and AJS.

This is related to Analysis paragraph #2 and #17. The Complainants state that AFCW violated AS 15.13.114 and 2 AAC 50.258 by receiving and keeping prohibited contributions. The Complaint specifically alleges that AFCW accepted funds that had been knowingly passed through an entity by an individual thereby violating AS 15.13.114 and 2 AAC 50.258. AS 15.13.065 does not allow an individual to make anonymous or hidden contributions. AS 15.13.114 requires that a group that discovers that a contribution is prohibited immediately return the contribution to the contributor. Funds that originally came from Robert Gillam are alleged to have merely passed through RRC. Evidence that RRC passed through funds is shown by an email by Art Hackney who stated that he ran AFCW. Hackney was aware that the pass through was going to take place and that AFCW “would have funds by the end of the week.” See Complaint Document 69 and related discussion at paragraph #2.

6. AFCW received and kept prohibited contributions.

Complainants allege that AFCW knew that RRC and AJS were being used as an improper pass-through by Gillam, and accepted the contributions anyway. This allegation is derivative of the others, and depends upon whether RRC and AJS were being used as an improper pass-through as discussed in Analysis paragraphs #2 above and #15 below.

7. AFCW violated AS 15.13.040(b) by failing to report all monetary and in-kind contributions.

The Complaint alleges that AFCW failed to report monetary and in-kind contributions from Gillam in violation of 15.13.040(b), including Gillam's payment of a \$30,000 invoice from FRI; Gillam's payment of magazine advertising expenses in *On Target* and *Fly Fish America*. Gillam paid a \$5,000 advertising debt for AFCW incurred July 28, 2008. [RRC 1320.] AFCW reported the \$5,000 as an expense on its campaign disclosure statement.

Respondents claim that the magazine advertisements made on behalf of RRC are protected by the APOC advisory opinion. However, AO-08-02-CD does not mention these particular advertisements. The fact that the \$5,000 expense was reported by AFCW as an expense undercuts the Respondents' claims that it was a debt of RRC and thus not reportable. Gillam also paid directly for advertisements in two magazines, according to the Complainants.

In an e-mails from Hackney to a magazine publisher on June 19, 2008, Hackney stated: "Beginning in our next few issues Bob's Anti-Pebble mine group is going to run 2 page spread ads in both of our titles, On Target (Shooting title) & Fly Fish America: Bob is going to 'pay for it' all the ad insertions." [Doc. 103.] The same day Gillam wrote, "The election is in August of 08 ...I asked Art Hackney, our media genius to get with you today and get the spread done ... I will pay for it.." [Doc.106.] In another e-mail about magazine advertising on June 19, 2008, Hackney wrote that "Bob has 'instructed' me to do the whole nine

yards and for [magazine publisher Bill] Battles to bill HIM directly.” [Doc.89.]
These e-mails show that advertising related to the Ballot Measure 4 election was intended to be paid for by Gillam.

Respondents claim that the \$30,000 payment paid by Gillam to FRI was on behalf of RRC, not AFCW. But the FRI contract is with AFCW, RRC, RRF, all listed as “the client.” And RRC was relying on Kaplan to raise funds for RRC because the RRC Board of Directors had pledged to AFCW to the tune of \$450,000 at the rate of \$150,000 per month in the three months before the election. Gillam’s \$30,000 payment to FRI on May 29, 2008 was not disclosed even though Kaplan was being paid to raise money for AFCW as well as RRC. This amounted, in part or in whole, to an unreported indirect or in-kind contribution by Gillam to AFCW in violation of AS 15.13.040 reporting requirements. The failure by Gillam and RRC to report the payment to FRI as Kaplan was raising money for AFCW is particularly noteworthy in light of Gillam assessment in an August 15, 2008 e-mail that “Kaplan raised a lot of money for AFCW.” [RG 522.]

Gillam failed to timely disclose \$585,000 in contributions to AFCW on APOC Form 15-5 that was due September 15, 2008. Although this contribution was properly reported by AFCW, Gillam was required to file his own statement of contributions just as any contributor of \$500 or more. The fact that AFCW correctly reported those contributions does relieve Gillam of his legal obligation to disclose his campaign contributions of \$500 or greater. APOC has no record that Gillam reported these contributions. APOC fax log records for September 2008 show no fax received from the fax number used on three previous faxed filings by Gillam. [Other: APOC fax logs and corresponding APOC 15-5 Statements for April 24, 2008, May 1, 2008 and August 6, 2008.]

CONCLUSION & SUMMARY

The Commission staff has the burden to prove violations by a preponderance of the evidence. As described above, APOC staff finds that the evidence shows that Gillam, Hackney, Dubke and Jameson were acting as a group that should have registered and reported with APOC pursuant to AS 15.13.040. This Gillam Group did not register and report its contributions and expenditures. There is also a preponderance of evidence to show that Gillam, the Gillam Group, AJS, RRC and AFCW all violated the laws prohibiting the making and receiving of anonymous contributions or contributions in the name of another. There is also a preponderance of evidence to show that RRC should have registered as a group, because it was soliciting, collecting and pooling funds for the Ballot Measure 4 campaign. Finally, there is a preponderance of evidence to show that, even if RRC is not considered a group, it failed to report numerous expenditures to support passage of Ballot Measure 4.

With regard to the 18 separate allegations made by Complainants APOC staff finds as follows:

1. RRC did violate AS 15.13.040(b) by failing to register and report as a group. Because RRC assessed, collected, pooled and solicited money for the purpose of influencing the ballot measure campaign, 2 AAC 50.352 required RRC to register and report as a group.
2. RRC did violate AS 15.13.074 by acting as a pass through organization for Robert Gillam to make undisclosed contributions to AFCW. These contributions were either anonymous contributions, or contributions made in the name of another.
3. RRC did violate AS 15.13.040 and AS 15.13.140 by failing to disclose the expenditures related to the campaign that it coordinated with AFCW and AJS.
4. RRC did violate AS 15.13.040 and AS 15.13.140 by failing to report its website and email advocacy campaign.

5. RRC did violate AS 15.13.040 and AS 15.13.140 by failing to report at least one radio advertisement that advocated for the ballot measure campaign.
6. RRC did violate AS 15.13.040 and AS 15.13.140 by failing to report at least one television advertisement that advocated for the ballot measure campaign.
7. RRC did violate AS 15.13.040 and AS 15.13.140 by failing to report at least one newspaper advertisement that advocated for the ballot measure campaign.
8. RRC did violate AS 15.13.040 and AS 15.13.140 by failing to disclose wages and expenses for Dr. Switzer.
9. RRC did violate AS 15.13.040 and AS 15.13.140 by failing to disclose the cost of event booths where it engaged in ballot initiative advocacy.
10. Staff did not find evidence that RRC violated AS 15.13.040 and AS 15.13.140 by failing to disclose the cost of posters and publicity material.
11. RRC did violate AS 15.13.040 and AS 15.13.140 by failing to disclose mailers that it sent, as well as the support it provided for mailers sent by AFCW.
12. AFCW did violate AS 15.13.114 and 2 AAC 50.258 by receiving and accepting contributions from RRC and AJS that it knew were made in violation of Alaska law.
13. AFCW did violate AS 15.13.040(b) by failing to report as contributions various campaign expenses that were paid directly by Robert Gillam for the benefit of AFCW.
14. AFCW did violate AS 15.13.040(b) by failing to report all monetary and in-kind contributions.
15. AJS did violate AS 15.13.074 by acting as a pass through and allowing Gillam to make unreported to AFCW.
16. AJS did violate AS 15.13.040 and/or AS 15.13.140 by failing to disclose its expenditures related to the ballot initiative campaign that it coordinated with RRC and AFCW.

17. Robert Gillam did violate AS 15.13.074 and 2 AAC 50.258 by using the names of others to make unreported contributions to AFCW.

18. Gillam did violate AS 15.13.040 and 15.13.140 by making anonymous expenditures and paying vendors directly for AFCW campaign expenditures.

Additionally, staff finds that Gillam made undisclosed lobbying expenditures by using Alaska Wild Salmon Protection Inc. and that Gillam failed to report all of his independent expenditures on the ballot measure campaign.

Staff recommends that the Commission join the new complaints against Art Hackney, Michael Dubke and Richard Jameson be consolidated with the existing case because the allegations are based on the same sets of facts and involve the same people.

Finally, Staff suggests that the Commission consider referring this case to the Attorney General under 2 AAC 50.476(b)(2) to investigate whether violations of AS 15.56 have occurred.

PENALTY

Staff recommends that the four members of the Gillam Group – Robert Gillam, Art Hackney, Michael Dubke and Richard Jameson – be assessed the maximum penalty for failing to register and report as a group.

Staff recommends that AFCW, AJS, RRC and Gillam be assessed the maximum penalty for making and accepting anonymous contributions, and making and accepting contributions in the name of another.

Staff recommends that RRC be assessed the maximum civil penalty for failing to report campaign expenditures for Ballot Measure 4 and expenses

incurred on behalf of AFCW. These expenses include fair booths, mailing lists, e-mail and Web activity, and expenses for contractors, such as Switzer and Kaplan.

The exact amounts of the penalties will depend on when the Gillam Group was formed and on dates when the various violations occurred.