



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

November 10, 2011

Via first class mail and electronic mail

Email: [jxs@vnf.com](mailto:jxs@vnf.com)

Jonathan D. Simon, Esq.  
Van Ness Feldman, PC  
1050 Thomas Jefferson Street, NW  
Washington, DC 20007

RE: MUR 6403  
Alaskans Standing Together

Dear Mr. Simon:

On October 28, 2011, the Federal Election Commission notified your clients, Alaskans Standing Together and Barbara Donatelli, in her official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on November 1, 2011, determined to exercise its prosecutorial discretion and dismiss the allegations that Alaskans Standing Together and Barbara Donatelli, in her official capacity as treasurer, violated 2 U.S.C. § 441c(a)(2), pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985). The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

If you have any questions, please contact Christine C. Gallagher, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Susan L. Lebeaux  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT: Alaskans Standing Together and Barbara Donatelli, MUR 6403**  
**in her official capacity as treasurer**

**I. BACKGROUND**

This matter was generated by a complaint filed with the Federal Election Commission by the Joe Millur for U.S. Senate campaign, by Linda Johnson, Member. See 2 U.S.C. § 437g(a)(1). Complainant alleges that Alaskans Standing Together and Barbara Donatelli, in her official capacity as treasurer ("AST"), a political action committee that has made independent expenditures regarding the 2010 U.S. Senate general election in Alaska, and its spokesperson, Jason Moore, knowingly and willfully violated 2 U.S.C. § 441c(a)(2) of the Federal Election Campaign Act of 1971, as amended ("the Act"), by soliciting and accepting \$805,000 in contributions from the Respondent corporations, which the Complainant alleges are government contractors.<sup>1</sup> Respondent AST generally denies the allegations in the complaint and maintains it had no knowledge that any of the Respondent corporations were government contractors based on its discussions with executives at the Respondent corporations, and based on its own knowledge and past experience. Therefore, AST claims it did not knowingly solicit contributions from government contractors. The complaint also alleges that AST is a "front group" for Alaska Senator Lisa Murkowski, and the Respondent corporations which made contributions to AST obtained federal contracts through "earmarks" from

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<sup>1</sup> The Respondent corporations are: Ahtna, Inc., Aleut Corporation, Arctic Slope Regional Corporation, Bering Straits Native Corporation, Bristol Bay Native Corporation, Calista Corporation, Chugach Alaska Corporation, Cook Inlet Region, Inc., Doyon, Limited, Koniag, Inc., NANA Regional Corporation, Inc., and Sealaska Corporation.

1 Senator Murkowski. AST also denies the allegations in the complaint that it had any  
2 connection with Senator Murkowski or her committee.

3 For the reasons more fully discussed below, the Commission has determined to  
4 exercise its prosecutorial discretion and dismiss the allegation that Alaskans Standing  
5 Together and Barbara Donatelli, in her official capacity as treasurer, violated 2 U.S.C.  
6 § 441c(a)(2). *Heckler v. Chaney*, 470 U.S. 821 (1985).

7 **II. FACTUAL AND LEGAL ANALYSIS**

8 **A. Factual Background**

9 AST, an independent-expenditure-only political committee, registered with the  
10 Commission on September 23, 2010. According to AST's Statement of Organization, it  
11 is a political action committee that supports/opposes more than one Federal candidate and  
12 is not a separate segregated fund or party committee. The Respondent corporations are  
13 known as Alaska Native Corporations ("ANCs") because they were formed pursuant to  
14 the Alaska Native Claims Settlement Act of 1971, a federal law that extinguished  
15 aboriginal claims within the State of Alaska. The Commission has opined that ANCs are  
16 not "organized by authority of any law of Congress" for purposes of 2 U.S.C. § 441b(a)'s  
17 prohibitions. *See* Advisory Opinion 1982-28 (Sealaska). Each Respondent ANC is a  
18 parent company that wholly owns a number of subsidiaries, some of which are federal  
19 government contractors.

20 **1. Summary of Complaint**

21 The complaint alleges that AST knowingly and willfully solicited and accepted  
22 \$805,000 in contributions from government contractors in violation of 2 U.S.C.

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1 § 441c(a)(2) for the purpose of funding independent expenditures that supported Lisa  
2 Murkowski and opposed Joe Miller's candidacy in Alaska's 2010 U.S. Senate general  
3 election. Joe Miller won the Republican nomination for Alaska's 2010 Senate seat in the  
4 primary election, but lost the general election to incumbent Republican Senator Lisa  
5 Murkowski, who ran as a write-in candidate. The complaint alleges that AST is a "front  
6 group" for Senator Murkowski, and the Respondent corporations that made contributions  
7 to AST obtained federal contracts through "earmarks" from Senator Murkowski.

8 **2. Alaskans Standing Together's Response**  
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10 AST's response includes an affidavit from its President, William Anderson, Jr.,  
11 averring that at the time AST solicited the contributions, its communications with the  
12 chief executive officers and other officials of the ANCs were limited to discussions of  
13 contributions from them as parent companies, not from their wholly-owned subsidiaries.  
14 AST's response further maintains that it was not aware that any of the ANC parent  
15 companies were government contractors. Mr. Anderson further averred that based on his  
16 experience and familiarity with the operation of the ANCs, the parent companies do not  
17 themselves enter into contracts with the federal government; any federal contracting is  
18 done by legally-distinct subsidiary companies.

19 According to its disclosure reports filed with the Commission, and Mr.  
20 Anderson's affidavit, AST received the following contributions from the ANCs during  
21 the 2010 general election for U.S. Senate in Alaska:

Ahtna, Inc.	\$50,000	9/28/10
Aleut Corporation	\$20,000	10/19/10
Arctic Slope Regional Corporation	\$140,000 \$60,000	9/30/10 10/29/10

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Bering Straits Native Corporation	\$100,000	9/24/10
Calista Corporation	\$15,000 \$35,000	10/5/10 10/15/10
Chugach Alaska Corporation	\$100,000	9/27/10
Cook Inlet Region, Inc.	\$100,000	10/1/10
Doyon, Limited	\$100,000	9/28/10
Koniag, Inc.	\$100,000	9/28/10
NANA Regional Corporation	\$100,000	9/28/10
Sealaska Corporation	\$100,000	9/29/10

AST alleges that it solicited the contributions for the purposes of making independent expenditures. AST further maintains that after the complaint in this matter was filed, it confirmed with the ANCs that the contributing entities were not government contractors, and that they had sufficient revenue derived from subsidiaries that are not federal government contractors to make their contributions. AST also denies the allegations in the complaint that it had any connection with Senator Murkowski or her committee.

#### **B. Legal Analysis**

The Act and the Commission's regulations prohibit government contractors from making, directly or indirectly, any contribution or expenditure of money or other thing of value, or to promise expressly or impliedly to make any such contribution or expenditure to any political party, committee or candidate for public office or to any person for any

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1 political purpose. 2 U.S.C. § 441c(a)(1); 11 C.F.R. § 115.2(a) and (b).<sup>2</sup> A “federal  
2 contractor” is defined in terms of the substance of the contract and the source of funds for  
3 payment of performance of the contract. 2 U.S.C. § 441c; 11 C.F.R. § 115.1. With  
4 respect to the substance of the contract, it includes the rendering of personal services, the  
5 furnishing of materials, supplies, or equipment, or the selling of land or buildings.  
6 2 U.S.C. § 441c(a)(1); 11 C.F.R. § 115.1(a)(1); *see* Advisory Opinion 1984-53 (National  
7 Association of Realtors) (lessor of land to federal agency is also considered a government  
8 contractor). The prohibition applies if payment to the contractor is to be made in whole  
9 or in part from funds appropriated by Congress. 2 U.S.C. § 441c(a)(1);  
10 11 C.F.R. § 115.1(a)(2). The prohibition extends for the period of time between the  
11 earlier of the commencement of negotiations or when requests for proposals are sent out,  
12 and the later of the completion of performance or the termination of negotiations for such  
13 contract. 2 U.S.C. § 441c(a)(1); 11 C.F.R. § 115.1(b). The Act and the Commission’s  
14 regulations further prohibit any person from knowingly soliciting any contributions from  
15 government contractors who are in negotiations for a federal government contract or  
16 during the performance of their contract. 2 U.S.C. § 441c(a)(2) and 11 C.F.R. § 115.2(c).

17 When determining whether a committee has received, or that an entity has made,  
18 a contribution in violation of 2 U.S.C. § 441c, the Commission looks first to whether the  
19 entity met the statutory and regulatory definition of government contractor at the time the  
20 contribution was made. *See* MUR 6300 (Gen X Strategies); MUR 5666 (MZM); MUR  
21 5645 (Highmark); MUR 4901 (Rust Environmental); and MUR 4297 (Ortho

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<sup>2</sup> The entities alleged to be government contractors in MUR 6403 are all corporations; the constitutionality of 2 U.S.C. § 441c as applied to individuals is currently the subject of litigation. *See Wagner v. FEC*, No. 11-CV-1841 (D. D.C. filed Oct. 19, 2011).

1 Pharmaceutical). In the case of a parent company contributor, if it can demonstrate that it  
2 is, in fact, a separate and distinct legal entity from its government contractor subsidiaries,  
3 and that it had sufficient funds to make the contributions from non-subsidiary income,  
4 then the prohibition on contributions by government contractors would not extend to the  
5 parent company. *See* Advisory Opinion 2005-01 (Mississippi Band of Choctaw Indians)  
6 (the government contractor status of a tribal corporation, a distinct and separate legal  
7 entity from the tribe, does not prohibit the tribe from making contributions to federal  
8 candidates, political parties, and political committees as long as the tribe does not use  
9 revenues from tribal corporation to make contributions), *citing* Advisory Opinion 1999-  
10 32 (Tohono O'odham Nation) (the commercial activity of the Indian tribe's utility  
11 authority as a government contractor treated as separate from the tribe and its political  
12 activities).

13 Based on the available information, including affidavits from their corporate  
14 officers, it appears that Respondents Aleut Corporation, Bering Straits Native  
15 Corporation, Bristol Bay Native Corporation, Calista Corporation, Chugach Alaska  
16 Corporation, Cook Inlet Region, Inc., Doyon, Ltd., Koniag, Inc., and Sealaska  
17 Corporation have sufficiently demonstrated that as parent companies without contracts  
18 with the federal government, they are not government contractors, and therefore their  
19 contributions to AST were permissible. Although they each have subsidiaries that hold  
20 federal contracts, those subsidiaries are separate and distinct legal entities from them, and  
21 the parent companies have sufficiently demonstrated that they made their contributions to  
22 AST with revenue from sources other than the federal-contract-holding subsidiaries.  
23 Therefore, they are not government contractors as defined by the Act and the

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1 Commission's regulations.<sup>3</sup> 2 U.S.C. § 441c; 11 C.F.R. § 115.1; *see* AO 2005-01  
2 (Mississippi Band of Choctaw Indians) *citing* AO 1999-32 (Tohono O'odham Nation).  
3 Further, the parent company ANCs' contributions to AST do not violate the Act's  
4 prohibition on corporate contributions in connection with federal elections, 2 U.S.C.  
5 § 441b(a), because the contributions to AST, an independent-expenditure-only political  
6 action committee, were made for the purpose of making independent expenditures. *See*  
7 *Citizens United*, 130 S. Ct. at 913; AO 2010-11 (Commonsense Ten) at 3.

8 Respondents Arctic Slope, Ahtna, and NANA Regional each have a lease with the  
9 federal government to supply either office space or land to a federal agency. Arctic Slope  
10 leases office space to Transportation Security Administration ("TSA"), provides various  
11 services, supplies, and utilities under that lease agreement, and receives \$28,800 in direct  
12 payment from federal government a year. Ahtna also leases office space to the federal  
13 government, and provides services, supplies, and utilities under that lease agreement, at  
14 the rate of \$9,000 a year. NANA Regional leases land to the U.S. Federal Aviation  
15 Administration ("FAA") with rights including maintaining, making alternations to,  
16 attaching fixtures, and building structures or fixtures thereon, at the rate of \$400 a year  
17 for a term of 19 years. Based on the available information, the federal agencies make the  
18 rental payments to these ANCs with funds appropriated by Congress. *See* 11 C.F.R.  
19 § 115.1(a)(2).

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<sup>3</sup> It appears that Koniag and Sealaska's receipt of public grants do not make them government contractors. The public grants that Koniag and Sealaska receive from the federal government appear to be outside of the definition of a federal contract as set forth by the Act and the Commission's regulations. 11 C.F.R. § 115.1(c); *see* AO 1993-12 (Mississippi Band of Choctaw Indians) (federal grant for public service activity, which does not directly benefit the U.S. Government, is not a "contract" as defined by 11 C.F.R. § 115.1; note that the part of the opinion's analysis concerning procurement contracts between tribal enterprises and the federal government is superseded by AO 1999-32 (Tohono O'odham Nation).



1 In AO 1984-53 (National Association of Realtors), the Commission concluded  
2 that a lessor of real property to the federal government would be covered by the  
3 prohibitions of 2 U.S.C. § 441c and, therefore, would be prohibited from making  
4 contributions to federal candidates and committees. 11 C.F.R. § 115.2. The Commission  
5 viewed the lease of real property as a contract for "selling any land or buildings" within  
6 the meaning of 2 U.S.C. § 441c and 11 C.F.R. § 115.1(a)(1)(iii) because a lease of real  
7 property creates an estate in the tenant for a term of years, in effect, representing the sale  
8 of an interest in land or buildings, with the rent as the purchase price, and creates a  
9 continuing relationship between the lessor and lessee supporting the application of the  
10 statutory prohibition to a lease agreement. See AO 1984-53. In addition, the  
11 Commission noted that lease agreements usually contain explicit contractual provisions  
12 regarding repairs, furnishing of utilities, and other matters, and that such provisions can  
13 be viewed as contracts for the rendition of personal services or for the furnishing of  
14 material, supplies, or equipment. *Id.*; 11 C.F.R. § 115.1(a)(1)(i) and (ii).

15 Arctic Slope's and Ahtna's office space lease agreements with the federal  
16 government not only lease the rental space, but include explicit provisions for these  
17 parent companies to make repairs, and provide utilities, supplies, and services, such as  
18 snow removal and janitorial services, to the federal agency renting the space. NANA  
19 Regional's lease agreement is for a term of 19 years, creating a continuing relationship  
20 between NANA and the federal agency for a significant length of time.

21 Given these facts, Arctic Slope, Ahtna, and NANA are government contractors

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1 within the meaning of the Act and the Commission's regulations.<sup>4</sup> See 2 U.S.C.  
2 § 441c(a)(1) and 11 C.F.R. § 115.1(a); see also AO 1984-53. As federal government  
3 contractors, Arctic Slope, Ahtna, and NANA Regional are prohibited from making  
4 contributions toward any "political party, committee or candidate for public office or to  
5 any person for any political purpose or use." 2 U.S.C. § 441c(a)(1).

6 AST knowingly solicited contributions from Arctic Slope, Ahtna, and NANA  
7 Regional, and therefore apparently violated 2 U.S.C. § 441c(a)(2). See *FEC v. John A.*  
8 *Dramesi for Congress Comm.*, 640 F. Supp. 985, 986-7 (D.N.J. 1986) ("a 'knowing'  
9 standard, as opposed to a 'knowing and willful' one, does not require knowledge that one  
10 is violating a law, but merely requires an intent to act.").

11 However, even though Arctic Slope, Ahtna, and NANA Regional appear to meet  
12 the definition of government contractors under the Act and the Commission's regulations,  
13 and AST apparently knowingly solicited them for contributions, given the unique facts in  
14 this matter, the Commission has determined to exercise its prosecutorial discretion and  
15 dismiss the allegations that AST solicited and accepted contributions from government  
16 contractors. *Heckler v. Chaney*, 470 U.S. 821 (1985). Arctic Slope, Ahtna, and NANA  
17 Regional do not ordinarily enter into contracts with the federal government, and the  
18 executive officers who made the decision to contribute to AST have averred they were  
19 not even aware of the existence of these lease arrangements until after the complaint was

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<sup>4</sup> Ahtna receives a federally-funded grant to oversee a survey near certain Alaska villages for the benefit of Alaskan Natives in the area, however, this grant appears to be outside of the definition of a federal contract as set forth by the Act and the Commission's regulations. 11 C.F.R. § 115.1(c); see AO 1993-12 (Mississippi Band of Choctaw Indians).

1 filed.<sup>5</sup> None of the three companies sought the leases in question. Rather, all three  
2 companies were approached by federal agencies to lease certain office space and land  
3 space only because the government had no other options in the area, and it appears that  
4 the lease arrangements primarily benefit the public, especially NANA Regional's lease  
5 for the FAA beacon.<sup>6</sup> Moreover, the amounts paid by the federal government for the  
6 lease agreements are relatively small taking into consideration these ANC's other income  
7 and assets.<sup>7</sup> While Arctic Slope's lease arrangement is the most lucrative, at a rate of  
8 \$28,800 a year, this amount represented only 0.0015% of Arctic Slope's gross revenue  
9 for 2009.<sup>8</sup>

10 William Anderson averred that although the ANCs were parents of subsidiaries  
11 that hold contracts with the federal government, it was AST's understanding, based on  
12 Mr. Anderson's knowledge and experience, and communications with the executive  
13 officers of the ANCs at the time it solicited contributions, that the parent companies  
14 themselves were not the entities that entered into the federal contracts, but were separate  
15 legal entities, and that each ANC had revenue from sources other than its government  
16 contractor subsidiaries to make the contributions. After receiving the complaint, AST  
17 confirmed its understanding with the ANCs. Most of the ANCs that contributed to AST  
18 were not government contractors as defined by the Act and the Commission's

<sup>5</sup> Arctic Slope Response at 2-3; Kristin Mellinger Affidavit at ¶¶ 6,7; Clay Contrades Affidavit at ¶¶ 2,4. Ahtna and NANA Joint Response at 3-5; Roy Tansy, Jr., Affidavit at ¶¶ 4,5; Marie N. Greene Affidavit at ¶¶ 3,4; and David Fehrenbach Affidavit at ¶ 4.

<sup>6</sup> Arctic Slope Response at 2-3; Kristin Mellinger Affidavit at ¶ 7; Clay Contrades Affidavit at ¶¶ 2, 4. Ahtna and NANA Joint Response at 3-5; Jeffrey Nelson Affidavit at ¶ 3; Kathryn Martin Affidavit at ¶¶ 5, 6.

<sup>7</sup> Arctic Slope Response at 3; Kristin Mellinger Affidavit at ¶ 7. Ahtna and NANA Response at 3-5; Jeffrey Nelson Affidavit at ¶ 4; Kevin Thomas Affidavit at ¶¶ 3,4; David Fehrenbach Affidavit at ¶¶ 7,8.

<sup>8</sup> Arctic Slope Response at 3; Kristin Mellinger Affidavit at ¶ 7.

1 regulations, and there is no available information indicating that AST knew that Arctic  
2 Slope, Ahtna, or NANA Regional had lease agreements with the federal government, or  
3 that these ANCs advised AST of their existence at the time the contributions were made.

4       There is no available information to support the complaint's general allegations  
5 that AST is a "front group" for Senator Murkowski or that the Respondent ANCs'  
6 contracts were the result of "earmarks" from her. Further, the screenshot of AST's  
7 "About Us" page from its website, which Complainant attaches to the complaint,  
8 specifically states AST "is not affiliated in any way with the Lisa Murkowski Campaign."  
9 According to the disclosure reports the Murkowski Committee filed with the  
10 Commission, that committee did not receive any contributions from AST. Moreover,  
11 there is no available information indicating that AST's expenditures in connection with  
12 the 2010 general election for Alaska's Senate seat were coordinated with Senator  
13 Murkowski or her committee.

14       Therefore, the Commission has determined to exercise its prosecutorial discretion  
15 and dismiss the allegation that Alaskans Standing Together and Barbara Donatelli, in her  
16 official capacity as treasurer, violated 2 U.S.C. § 441c(a)(2). *Heckler v. Chaney*, 470  
17 U.S. 821 (1985).

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