

BEFORE THE ALASKA PUBLIC OFFICES COMMISSION

ALASKA PUBLIC OFFICES COMMISSION,	)	
	)	
vs.	)	
	)	
RENEWABLE RESOURCES COALITION,	)	
INC., ALASKANS FOR CLEAN WATER,	)	OAH No. 09-231-APO
INC., ROBERT GILLAM, AMERICANS FOR	)	Agency No. 09-01-CD
JOB SECURITY, ARTHUR HACKNEY,	)	
MICHAEL DUBKE, and RICHARD	)	
JAMESON,	)	
	)	

**COMPLAINANT’S OPPOSITION TO  
SECOND PROPOSED CONSENT DECREE**

**I. INTRODUCTION**

The last time the Commission considered a consent decree in this case, Chair Hickerson concisely asked “What does the public gain out of this?” Once again, the answer is “nothing.” Just as with the first proposed agreement that this Commission rejected back in October, the new proposal does not require Respondents to admit to anything. Once again, Respondents promise not to do what they never admit was wrong in the first place. In return for their non-admission and promise not to do what they don’t admit they did, plus partial reimbursement of APOC’s costs, the new proposed agreement provides Respondents a complete dismissal without having to pay one penny in fines or penalties, or any acknowledgment that money laundering \$2 million in secret campaign contributions is wrong. Even more troubling, the new consent decree states as facts things which are provably false, and which directly contradict the Staff’s own thorough investigative report. How does it benefit the public to agree to a fake version of the

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facts? Also, in misstating the maximum possible penalty, both the Staff and Respondents appear to ignore the conclusions in the Staff's report and to under-count the number of provable violations.

Complainants respectfully submit that the Commission should reject the new proposed consent decree with Gillam, RRC and AFCW. While Complainants do not oppose a reasonable settlement of this matter, the language and terms proposed in the latest version do nothing to further the important public interest in the integrity of Alaska elections and to make sure sophisticated political players like Respondents acknowledge and follow the law. APOC's first concern must be maintaining the integrity of Alaska elections, not simply resolving conflicts to avoid the inconvenience of litigation. Words matter, and the words in this newly proposed consent decree are insufficient to deter future wrongdoing by these and other similarly-situated campaign contributors.

## **II. THIS MATTER SHOULD BE RESOLVED PUBLICLY, NOT WITH A BACKROOM DEAL**

The newly proposed consent decree was apparently hashed out in a private mediation session, paid for by Gillam, apparently with a mediator selected by Gillam. With all due respect to John Reese, his assigned role in this case was not to serve as a judicial officer or to look out for the public interest in clean elections. Rather, the job of any mediator is to close a deal. Gillam's counsel seems to be emphasizing Reese's former status as a judge, but what is significant is his current status – a paid mediator hand-picked and paid by Gillam to close a deal that allows Gillam and the others to walk away without paying a penny in fine or penalty.

More troubling is that it appears that non-parties were invited to participate in this secret mediation, but neither the Commissioners, the Complainants, nor the public were allowed to participate. Specifically, the general counsel for McKinley Capital, Mr. Gillam's private business, apparently participated in the secret mediation. McKinley Capital is not a party to this dispute. Why did McKinley's lawyer participate in the drafting and negotiation of this secret deal? It is our supposition that the language of this new proposed agreement, and particularly the absence of any civil fine or penalty, were important to McKinley Capital to avoid the perception that its principal had engaged in wrongdoing. Why should a powerful, moneyed interest like McKinley Capital, which is not a party to this dispute, get to participate in a secret mediation to negotiate the language of the consent decree? How do secret deals involving non-parties serve the public?

### **III. THE CONSENT DECREE IS FACTUALLY INCORRECT AND INCONSISTENT**

There is an inexplicable disconnect between the unequivocal facts established in the Staff's June 4, 2009 report and the factual representations contained in the new consent decree. The Staff report detailed a concerted, intentional conspiracy to conceal nearly \$2 million in Gillam's contributions from the Alaska electorate. The evidence in the record is clear, unequivocal, and damning. For example, take the following series of events:

- May 18, 2008, campaign fundraiser Robert Kaplan contacted Mr. Jameson of RRC and asked when RRC was going to transfer \$100,000 to the campaign. Kaplan also asked Jameson if RRC or Renewable Resources Foundation

("RRF") could purchase mailing lists for use by the campaign. [Doc # 000069-70]

- May 19, 2008, Mr. Jameson responds (with copy to Robert Gillam) that RRC has only \$65,871.23 in its account and will have to shut down unless more grant money comes through. Jameson writes 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 # 000069]
- May 26, 2008, Art Hackney (who was running the AFCW campaign) relays to Mr. Kaplan a conversation he had with Robert Gillam. Apparently, Mr. Jameson had consulted with Mike Dubke (Americans for Job Security) in a 45-minute phone call. After the call, Jameson decided he was going to send a letter having RRC "join" AFCW. Then "Bob will write a check." Hackney wrote that according to Mr. Gillam "By weeks end I should have some money to spend." [Doc # 000073]
- On June 2, 2008, RRC's deposit register indicates that Mr. Gillam donated \$350,000 to RRC. [Doc # 000099]
- On June 4, 2008, RRC writes a \$150,000 check to AFCW. [See AFCW's APOC disclosure, indicating contribution from RRC to AFCW on June 4, 2008]

Respondents' only apparent explanation for these events is that there was a "coincidence" and no intent to use RRC as a pass-through for Gillam's money. The content of Respondents' own communications belies this defense.

There are several factual assertions in the newly proposed consent decree that are false and defy logic. For example, on Page 4 of the consent decree, it says "AJS independently made the decision to contribute funds to AFCW." The evidence establishes just the opposite, including the statements by Gillam when he refused to pay Mr. Kaplan's commission on the AJS donations, explaining: "I appreciate your position but we specifically excluded funds that I contributed *which includes monies to*

*Americans for Job Security ... and other monies I contributed otherwise.* bob.” [Doc # 000129]

Indeed, while the consent decree claims on Page 4 that the AJS donations were made independently by AJS, on Page 13 Mr. Gillam agrees that he will file a Form 15-5 to report contributions made by him of the amounts previously reported by AJS. There is an obvious conflict between the stated facts and the proposed remedy. If AJS had truly acted independently, then it would be inappropriate for Gillam to claim this donation as his own in an APOC reporting document. Respectfully, it does not serve the public to approve a consent decree that advances a fictional or inconsistent recitation of facts.

The consent decree also represents that Respondents have cooperated fully with this investigation. Even a casual observer of these proceedings would beg to differ. Respondents have repeatedly lied to the Commission, claiming falsely for example that RRC’s funding from the Moore Foundation was at imminent risk if the case was not heard on an expedited basis. Or there was the time when Gillam was too sick to attend a deposition and then made a miraculous recovery when the ALJ ruled that the case would not proceed until Gillam made himself available. During the course of depositions in this case, the ALJ frequently had to be telephoned to resolve disputes, and Respondents have filed a barrage of pleadings, most of which have been summarily denied by the ALJ. If this is “cooperation,” we would hate to see obstreperous conduct.

#### **IV. PROBLEMS WITH THE PROPOSED CONSENT DECREE**

These are the major problems with the newly proposed consent decree:

- The June 4, 2009 Staff Report details an intentional conspiracy by sophisticated parties to launder campaign funds, rising potentially to the level of criminal conduct. Yet the consent decree contains no fine or penalty, and no admission of wrongdoing.
- The consent decree requires only a partial repayment of approximately 30-50% of APOC's expenses to investigate, and does not delineate which Respondent will pay what amount. So in a case that is all about Gillam's secret payments, it looks like the settlement will be resolved with one last secret payment.
- The "facts" stated in the consent decree are not supported by the evidence, and are inconsistent with the remedies proposed in the consent decree.

#### **V. BOTH RESPONDENTS AND STAFF APPEAR TO UNDER-COUNT THE VIOLATIONS AND MAXIMUM PENALTIES**

In their submissions to the Commission, both the Staff and Respondents appear to underestimate the maximum penalty. For example, Gillam made four secret payments, totaling nearly \$2 million, yet he claims that these constitute only two violations. It is Complainants' understanding of the applicable laws and APOC's past practices that each secret or unreported campaign contribution is a separate violation and accrues its own penalty. Likewise, RRC engaged in a full-scale ballot initiative campaign for several months, yet Staff and Respondents suggest that this should accrue only one penalty, as opposed to a separate penalty for each campaign donation or expenditure that went unreported, and each campaign report that RRC failed to timely and correctly file.

#### **VI. WHAT TERMS SHOULD A CONSENT DECREE INCLUDE?**

Complainants do not oppose a reasonable settlement of this case. Complainants respectfully submit that a proper consent decree should, however, include these three key components, all of which are missing from the current proposal:

- An admission of wrongdoing;
- Payment of a fine or penalty in an amount sufficient to deter future misconduct;
- Repayment of all or most of APOC's \$200,000 in expenses incurred to investigate and prosecute this matter.

Given the seriousness of the intentional violations in this case, and the strength of the evidence contained in the June 4, 2009 Staff report, APOC cannot serve the public interest and protect the integrity of Alaska's elections by agreeing to the current proposed consent decree.

DATED at Anchorage, Alaska this 1st day of February, 2010.

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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing was served upon the following via:

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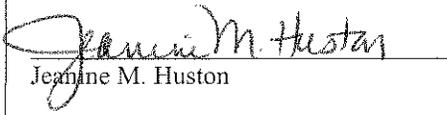
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