



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of	)	
	)	MUR 7528
Yukon Kusko Political Action Committee and	)	
Margaret Pohjola, in her official capacity	)	
as treasurer; Calista Corporation;	)	
Yulista Holding, LLC; Jennine Jordan;	)	
Andrew Guy; Josh Herren	)	
	)	

**STATEMENT OF REASONS OF VICE CHAIR ALLEN DICKERSON AND  
COMMISSIONERS SEAN J. COOKSEY AND JAMES E. “TREY” TRAINOR, III**

The Complaint alleges that a solicitation sent by Yukon Kusko Political Action Committee (“Yukon Kusko”) violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by failing to include a statement required for separate segregated funds that recipients had a right to refuse to contribute without employer retribution.<sup>1</sup> The Respondents denied the allegations, asserting that Yukon Kusko did not need to include the statement because it is not a separate segregated fund. It is instead a nonconnected committee, registered with the Commission as such. The Complaint’s specific charges having been rebutted, and being in no position to adjudicate any other allegations, we voted to dismiss the matter.

**I. Background**

To explain this matter, it is necessary to understand the nature of the entities involved. Calista Corporation (“Calista”) is a corporate conglomerate based in Alaska.<sup>2</sup> It is the parent company of five holding-company subsidiaries, each of which has multiple operating-company subsidiaries in various industries.<sup>3</sup> One of its holding-company subsidiaries is Yulista Holding Corp. (“Yulista”).<sup>4</sup>

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<sup>1</sup> Complaint (Oct. 16, 2018), MUR 7528 (Yukon Kusko PAC, *et al.*).

<sup>2</sup> Response of Calista at 1–2 (June 26, 2019), MUR 7528 (Yukon Kusko PAC, *et al.*).

<sup>3</sup> First General Counsel’s Report at 4 (Aug. 30, 2019), MUR 7528 (Yukon Kusko PAC, *et al.*).

<sup>4</sup> *Id.*

But Calista is not a typical corporation. Rather, it is an Alaska Native Corporation (“ANC”) created under the federal Alaska Native Claims Settlement Act (“ANCSA”).<sup>5</sup> Unlike other parts of the United States, the federal government has never established a reservation system or similar land-trust system for Alaska Natives. Instead, in 1971, Congress passed ANCSA, under which the federal government transferred land ownership to twelve regional corporations that hold the land on behalf of Alaska Natives.<sup>6</sup> Under ANCSA, these Alaska Native Corporations are incorporated as for-profit businesses under Alaska law,<sup>7</sup> but they have a number of unusual legal features. For example, the issuance of ANC stock is largely limited to Alaska Natives that meet certain eligibility requirements,<sup>8</sup> and the stock generally may not be sold or otherwise alienated.<sup>9</sup> Indeed, consistent with the unique history of Alaska and the role of these regional corporations, ANCs are treated as Indian tribes under federal law for some purposes, but not others.<sup>10</sup> These features make ANCs like Calista unique among corporate organizations.

The final entity in this matter is Yukon Kusko, which registered with the Commission as a nonconnected political committee on August 6, 2018.<sup>11</sup> While not formally affiliated with Calista or Yulista, Yukon Kusko’s treasurer and a number of its board members are also executives for those corporations. According to its communications, its stated goal is to represent “stakeholders in the Calista region” and “to bring awareness to the public policy issues and challenges facing our businesses, employees, constituents and residents.”<sup>12</sup> In its first five months of operation in 2018, Yukon Kusko raised \$17,568 and made \$4,500 in contributions to other committees.<sup>13</sup> In the 2019-2020 election cycle, its total receipts were \$63,518, and it made \$21,100 in contributions.<sup>14</sup>

The Complainant is an employee of a Yulista operating subsidiary, Yulista Aviation, Inc.<sup>15</sup> On September 6, 2018, he received an email with a message from Yulista’s CEO, which in turn forwarded messages from Calista’s President/CEO and a Calista government-relations employee

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<sup>5</sup> Response of Calista at 1 (June 26, 2019), MUR 7529 (Yukon Kusko PAC, *et al.*). *See also* Alaska Native Claims Settlement Act, 43 U.S.C. § 1601, *et seq.*

<sup>6</sup> 43 U.S.C. § 1606. *See also Yellen v. Confederated Tribes of Chehalis Rsrv.*, 141 S. Ct. 2434, 2439 (2021) (describing the history of ANCSA).

<sup>7</sup> 43 U.S.C. § 1606(d).

<sup>8</sup> 43 U.S.C. § 1606(g). *See also* 43 U.S.C. § 1604.

<sup>9</sup> 43 U.S.C. § 1606(h)(1)(B).

<sup>10</sup> *See Confederated Tribes of Chehalis Rsrv.*, 141 S. Ct. at 2443 (holding that Alaska Native Corporations are Indian tribes for purposes of the Indian Self-Determination and Education Assistance Act even though they are not federally recognized as sovereign political entities).

<sup>11</sup> Response of Yukon Kusko at 1, MUR 7528 (Yukon Kusko PAC, *et al.*); *see also* Yukon Kusko PAC, Statement of Organization (Aug. 6, 2018).

<sup>12</sup> Complaint at Ex. 2 (Nov. 29, 2018), MUR 7528 (Yukon Kusko PAC, *et al.*).

<sup>13</sup> 2017-2018 Financial Summary, Yukon Kusko Political Action Committee Inc., *available at* <https://www.fec.gov/data/committee/C00684506/?cycle=2018>.

<sup>14</sup> 2019-2020 Financial Summary, Yukon Kusko Political Action Committee Inc., *available at* <https://www.fec.gov/data/committee/C00684506/?cycle=2020>.

<sup>15</sup> Complaint at 1, Ex. 4 (Nov. 29, 2018), MUR 7528 (Yukon Kusko PAC, *et al.*).

describing Yukon Kusko and soliciting contributions.<sup>16</sup> The message did not include any statement informing employees that they may refuse to contribute without reprisal, and consequently, the employee filed this Complaint with the Commission. The Complaint alleges that Calista and Yulista failed to include the required disclaimer for corporate solicitations to employees for contributions to a separate segregated fund.<sup>17</sup>

The Respondents deny the allegation and claim that the Complainant has made a category error by seeking to apply a rule for separate segregated funds to Yukon Kusko. Because Yukon Kusko is registered as a nonconnected committee—not a separate segregated fund—Respondents argue they are not subject to the disclaimer rule.<sup>18</sup> For the reasons provided below, we largely agree with the Respondents.

## II. Legal Analysis

In general, it is illegal for corporations to make expenditures or contributions in connection with federal elections.<sup>19</sup> Corporations are permitted, however, to engage in political activity through “the establishment, administration, and solicitation of contributions to a separate segregated fund.”<sup>20</sup> The operation of a separate segregated fund comes with several requirements. For example, it is unlawful “for any person soliciting an employee for a contribution to such [separate segregated] fund to fail to inform such employee, at the time of such solicitation, of his right to refuse to so contribute without any reprisal.”<sup>21</sup> These requirements do not apply to other types of political committees.

Resolving the Complaint’s explicit allegation is straightforward. It claims that Calista, Yulista, and Yukon Kusko violated the provision requiring separate segregated funds to include an employee-refusal disclaimer on solicitations. The Respondents argue that the requirement does not apply to them because they are not a separate segregated fund, but instead a nonconnected political committee, and Commission records reflect that is true. To our mind, that resolves the Complaint’s specific allegation, and the matter should be dismissed as a result.

In its First General Counsel’s Report, however, the Office of the General Counsel (“OGC”) sought to expand the case significantly.<sup>22</sup> OGC does not dispute that nonconnected committees do not need to include a statement of the right to refuse. Rather, it claims that, notwithstanding Yukon Kusko’s registration as a nonconnected committee, it *should* be a separate segregated fund.<sup>23</sup> OGC

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<sup>16</sup> Complaint at Ex. 1 (Nov. 29, 2018), MUR 7528 (Yukon Kusko PAC, *et al.*).

<sup>17</sup> Complaint at 1, (Nov. 29, 2018), MUR 7528 (Yukon Kusko PAC, *et al.*); 52 U.S.C. § 30118(b)(3)(c); 11 C.F.R. § 114.5(a)(4).

<sup>18</sup> *E.g.*, Response of Yukon Kusko at 1–2 (Dec. 20, 2018), MUR 7528 (Yukon Kusko PAC, *et al.*).

<sup>19</sup> 52 U.S.C. § 30118(a). *But see Citizens United v. FEC*, 558 U.S. 310 (2010) (holding the prohibition on independent expenditures by corporations to be unconstitutional).

<sup>20</sup> 52 U.S.C. § 30118(b)(2).

<sup>21</sup> 52 U.S.C. § 30118(b)(3)(c); *see also* 11 C.F.R. § 114.5(a)(4).

<sup>22</sup> First General Counsel’s Report at 8–14 (Aug. 30, 2019), MUR 7528 (Yukon Kusko, *et al.*).

<sup>23</sup> *Id.*

recommended that the Commission find reason to believe that Yukon Kusko failed to report Calista as a connected organization, failed to include Calista’s full name in its committee name, impermissibly solicited people outside of its restricted class, and failed to include required language regarding reprisal—all steps that would be required only if Yukon Kusko were a separate segregated fund.<sup>24</sup> OGC reached these recommendations by noting the overlap in officers between Yukon Kusko, Calista, and Yulista, as well as Yukon Kusko’s failure to report any expenditures associated with its solicitations, such as email list rentals or the use of corporate resources.<sup>25</sup> OGC also relied on the fact that the solicitation messages began with “Dear Employees” or “Dear Calista Employees.”<sup>26</sup>

For several reasons, we rejected OGC’s efforts to widen the purview of the matter, make these additional reason-to-believe findings, and launch an investigation. First, OGC effectively changed the allegation against the Respondents without providing notice of, or an opportunity to respond to, the charges OGC was actually considering. There is nothing on the face of the Complaint that would give Respondents clear notice that their status as a nonconnected PAC is in question, let alone lay out the facts and circumstances cited by OGC in their report. “It is not respondents’ obligation to defend themselves against every hypothetical charge that OGC might assert against them outside of a complaint.”<sup>27</sup> Since these allegations were not placed before Respondents, the Commission does not have the benefit of their side of the story to know whether there are alternative explanations beyond OGC’s speculation, and the issues are therefore not properly before the Commission.<sup>28</sup>

We further declined to support OGC’s recommendations because of the significant legal uncertainty related to these Respondents—a reality that OGC does not even acknowledge. At no point in the First General Counsel’s Report does OGC note that Calista is an Alaska Native Corporation, let alone analyze how the unique nature of ANCs might affect its recommendations or provide an alternative understanding of the facts or law.<sup>29</sup> As the Supreme Court as noted, “The ‘simple truth’ ... is that ‘Alaska is often the exception, not the rule.’”<sup>30</sup> This concerning lack of relevant legal context in OGC’s report belies significant ambiguity about how the Act and our regulations apply to these unique entities. The Commission has little experience with ANCs, and it has never opined on whether or how ANCs may fit into the legal rules governing separate

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<sup>24</sup> *Id.* at 17.

<sup>25</sup> *Id.* at 8–14.

<sup>26</sup> *Id.* at 12.

<sup>27</sup> Statement of Reasons of Vice Chair Dickerson and Commissioners Cooksey and Trainor at 5 (Sept. 21, 2021), MUR 7220 (Make America Great Again PAC, *et al.*).

<sup>28</sup> Statement of Reasons of Commissioner Goodman at 4 (Mar. 29, 2016), MUR 6775 (Ready for Hillary PAC, *et al.*); *see also* Statement of Reasons of Vice Chairman Petersen and Commissioners Hunter and McGahn at 1–2, 13–14 (July 1, 2009), MUR 5835 (Quest Communications, Inc./DCCC) (discussing the concerns that arise when respondents in enforcement matters are not provided an opportunity to respond to allegations raised by OGC before the Commission votes on whether to find reason to believe).

<sup>29</sup> First General Counsel’s Report at 3–4 (Aug. 30, 2019), MUR 7528 (Yukon Kusko PAC, *et al.*).

<sup>30</sup> *Confederated Tribes of Chehalis Rsrv.*, 141 S. Ct. at 2438 (quoting *Sturgeon v. Frost*, 577 U.S. 424, 440 (2016)).


segregated funds.<sup>31</sup> In the absence of any relevant precedent or legal analysis on the issue, and without sufficient information present in this matter, the Commission is not able to competently address these significant legal issues, and a discretionary dismissal is appropriate.<sup>32</sup>

Finally, dismissal was called for in order to preserve agency resources and prioritize other enforcement cases. Disclosure reports suggest that Yukon Kusko PAC's fundraising and expenditures are modest, and any potential penalty to be assessed is likely also small. When compared to the cost of an investigation, the Commission is better suited by focusing on other cases in its remaining enforcement backlog.<sup>33</sup> Assessing the facts available at this time, then, we voted to dismiss the allegations under *Heckler v. Chaney*.<sup>34</sup>

  
 Allen Dickerson  
 Vice Chair

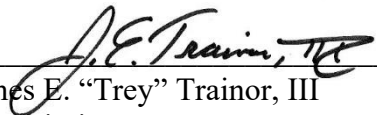
November 1, 2021

Date

  
 Sean J. Cooksey  
 Commissioner

November 1, 2021

Date

  
 James E. "Trey" Trainor, III  
 Commissioner

November 1, 2021

Date

<sup>31</sup> The Commission has addressed matters with an ANC respondent or party only two times in its history. Neither provides useful guidance to this matter. *See* MUR 6403 (Artic Slope Regional Corporation) (dismissing allegations that an ANC was a government contractor subject to the 52 USC § 30119); Advisory Op. 1982-28 (Sealaska) (concluding that an ANC was not a corporation organized under federal law, reversing a previous advisory opinion).

<sup>32</sup> *See* Statement of Reasons of Chairman Petersen and Commissioners Hunter and Goodman at 2–3 (April 1, 2016), MURs 6485,6487,6488,6711, and 6930 (W Spann LLC, *et al.*) (dismissing as a matter of prosecutorial discretion because the issue was one of first impression and raised concerns of due process, fair notice, and the First Amendment); Statement of Reasons of Vice Chair Dickerson and Commissioners Cooksey and Trainor at 3 (April 16, 2021), MUR 7284 (AB PAC, *et al.*) (“[T]he Commission should tread lightly in pursuing enforcement actions in the face of questionable legal theories.”).

<sup>33</sup> *See* Statement of Reasons of Vice Chair Hunter and Commissioners Goodman and Petersen at 8 (Feb. 28, 2017), MUR 6958 (McCaskill) (voting to dismiss a matter in light of the small amount of activity at issue relative to the cost of investigation).

<sup>34</sup> *See* Certification (Sept. 28, 2021), MUR 7528 (Yukon Kusko PAC, *et al.*); *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).