

CLAPP • PETERSON  
VAN FLEIN • TIEMESSEN • THORSNESS  
LLC

ANCHORAGE

Matthew K. Peterson  
Thomas V. Van Flein  
John B. Thorsness  
Linda J. Johnson  
Monique R. Renner  
Liam J. Moran, Of Counsel  
James D. Gilmore, Of Counsel  
Jonathan P. Hegna, Of Counsel

FAIRBANKS

John J. Tiemessen  
Lisa C. Hamby  
Marcus R. Clapp, ret.

**THE GOVERNOR'S ATTORNEY CONDEMNS THE  
BRANCHFLOWER REPORT AS MISLEADING AND WRONG ON  
THE LAW**

This investigation started because Monegan claimed he was "fired" for supposedly not firing a dangerous cop. Branchflower now concludes that was a false allegation and instead he noted that there were legitimate reasons to remove Monegan as Commissioner. The Governor has been fully factually vindicated as we have maintained she would be. But the partisan nature of this investigation ineluctably compelled Branchflower and Sen. French to nevertheless smear the Governor by innuendo, and by presenting incorrect representations of what the law is.

Branchflower was given '100,000 reasons' to find "something"--so he came up with an alleged Ethics Act violation. He came up with a headline that the Governor "abused her power." He utterly failed to define that term. Every prior reported Ethics Act violation involved financial motives and financial "potential gain, or the avoidance of a potential loss." Attorney General Opinion 663-99-0232 (September 28, 1999) (observing that amounts of financial gain in the range of \$3,000.00 would be "substantial" and lesser amounts likely would not); Attorney General Opinion 663-87-0594 (July 10, 1987) (finding no conflict due to the lack of any relationship between the public officer's decision and "financial interest" in the "matter") and the case of Attorney General Renkes in 2005 who owned substantial amounts of stock in a company he was trying to assist through his role as Attorney General. **The common thread of all of these Ethics Act cases is money**--and the use of a government position to personally gain.

Here, there is no accusation, no finding and no facts that money or financial gain to the Governor was involved in the decision to replace Monegan. Further, the report concludes that the Governor had legitimate business reasons to remove Monegan. There can be no ethics violation under these circumstances.

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Mr. Branchflower has reached the astonishing conclusion that Governor Palin supposedly violated the Alaska Executive Branch Ethics Act by . . . failing to control her husband from talking to police officers. Branchflower is dead wrong on the law and demonstrates a complete lack of understanding of the Ethics Act. The Ethics Act addresses financial conflicts of interest. "The overriding purpose of the restrictions in the Ethics Act is to insure that public decisions are made on the basis of sound public policy, not private financial gain." *In the Matter of August 3, 2005 Ethics Complaint*, p. 9. There is no financial interest here, and none even mentioned by Branchflower.

Mr. Branchflower is not a judge. He is not on a jury. He is merely an "investigator," no different than a police officer who takes pictures of an accident scene. He has no lawful authority to make a finding that carries any legal weight. He cannot "convict" anyone--and his alleged effort to do so is highly improper. As the Branchflower report essentially concedes, and as Governor Palin has maintained for some time, only the Personnel Board can make a lawful determination whether the Governor violated the ethics act. Mr. Branchflower's "opinion" is simply that. Each member of the public can reach their own opinion with just as much legal impact.

To be clear: *there has been no official finding at all about Governor Palin's actions.* One man concluded that he was the investigator, the jury and the judge, all in one. Mr. Branchflower refused to allow the Governor to confront her accusers and cross examine them. He refused to allow her lawyer to attend witness depositions. He "investigated" in secret. These are fundamental aspects of due process he ignored.

Mr. Branchflower correctly concluded that the reassignment of Monegan "was a proper and lawful exercise of her constitutional and statutory authority to hire and fire executive branch department heads." Because the decision regarding Monegan was "proper and lawful" nothing relating to this action can be deemed unethical. One cannot on the one hand act properly and lawfully and then be condemned for an ethics act violation.

Mr. Branchflower concludes the Governor abused her power and condemns the Governor for essentially not ordering her husband to stop talking about Trooper Wooten. By so doing, Mr. Branchflower single-handedly violated Mr. Palin's First Amendment rights to free speech. Mr. Palin is free to tell anyone he wants, from the Commissioner to the man on the street, about his concerns about Trooper Wooten. As a government contractor, Mr. Branchflower is mandated by law to respect a citizen's constitutional rights. He cannot impose, or seek to impose, legal liability for someone's lawful exercise of free speech. Mr. Palin can petition his government for redress--and he did so. He sought to remedy an injustice and sought to change a corrupt system that protects violent cops. It

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is shocking that anyone would seek to impose legal liability for expressing one's view and exercising one's right to petition the government.

Mr. Branchflower is simply wrong. It is not an ethics violation to fail to instruct your husband not to talk about Trooper Wooten. "[T]he Ethics Act distinguishes between minor and inconsequential conflicts of interest, which do not violate the Act, and material and substantial conflicts of interest, which do" *In the Matter of August 3, 2005 Ethics Complaint*, p. 2. Not asking your husband to stop talking about Trooper Wooten can only be deemed "minor and inconsequential" under any definition of that term.

The law provides: "Only **substantial and material conflicts** violate the Ethics Act. If the public officer's interest in a matter is insignificant, or if the public officer's action or influence would have an insignificant or conjectural effect on the matter, the public officer's actions do not violate the Ethics Act." *In the Matter of August 3, 2005 Ethics Complaint*, p. 4. Branchflower concluded that Monegan was lawfully reassigned. **That finding completely exonerates the Governor under the Ethics Act.** With regard to "insignificance," there are two ways a personal or financial interest in a matter could be insignificant: (1) being small in size and (2) having little relation to "the matter" at issue." *In the Matter of August 3, 2005 Ethics Complaint*, p. 4. Here, Branchflower determined that the Governor's personal interest, if any, in Wooten, had little or no role in Monegan's reassignment. Under the law that applies to this case, that finding compels a complete exoneration of the Governor.

Mr. Branchflower failed to follow the standards for independent counsel who investigate Ethics Act complaints: "Independent Counsel must carefully balance the obligation to enforce the Act with the need to evaluate complaints in a manner that does not unnecessarily interfere with ongoing government business." *In the Matter of August 3, 2005 Ethics Complaint*, p. 2. Here, no such balance was even attempted.

Branchflower failed to note that Monegan has changed his "story" about why he was reassigned on multiple occasions. The credibility of the complainant is relevant. It is notable that Branchflower failed to address the inconsistencies and ever changing story Monegan told.

Mr. Branchflower, and Sen. French, failed to comply with the Ethics Act standards as they were required by law not "to use the Act as a political or strategic tool to attack policy decisions with which they disagree, but which are not unethical. This is especially so at the highest levels of government. If not ministered carefully, the Ethics Act could create a system that harms the public by distracting government officials from their

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public duties in order to respond to complaints and investigations." *In the Matter of August 3, 2005 Ethics Complaint*, p. 3. Here, Sen. French disagreed with the Governor's budget policies and her efforts to control spending, much to the anger of the PSEA, Sen. French's financial supporter. Sen. French used public money and the pretext of the Ethics Act to attack this Governor and her "policy decisions" --which is contrary to the purpose and intent of the Ethics Act.

Branchflower falsely, and outrageously, diminishes the level of apprehension the Palins and Heaths have due to Wooten's violence and threats. Branchflower was never tased by Wooten, was never threatened with death by a "f----- lead bullet"; never had his teenage daughter verbally assaulted by Wooten, and was never bullied and intimidated by Wooten. For Branchflower to claim the Palins have no objective apprehension of Wooten is false, misleading and just plain misguided. He is in no position to judge how the Palins subjectively felt about Wooten.

Branchflower incorrectly claims that the witness statements are "confidential." For those witnesses who testified or provided a statement pursuant to a judiciary committee subpoena, that subpoena required public testimony. It is a sham to hide this evidence from the public. The state personnel laws do not require these statements and interrogatories to be confidential. This was a public investigation, using public money.

Was there an "abuse of power"? Maybe. Sen. French and Sen. Green may have abused their government power by using public money to pursue a personal vendetta against the Governor, and then agreeing to pursue the PSEA attack against an administration that would not cave in to outrageous union demands.

Relative to Trooper Wooten, there has been a gross abuse of power. He was allowed to commit probable child abuse by tasing a young boy and was never charged with assault or child abuse. He was found to have been drinking and driving in a marked police vehicle . . . and was never criminally charged. These are text book examples of abuse of power as it imposes a double standard, one for the public, and one for troopers.

Branchflower makes an incorrect assumption that Governor Palin 'must have known' who Todd Palin was talking with. There is no evidence to support this assumption. Several of the Legislative Council members, including Rep. Stolz and Rep. Wilson, stated the report was in part based on conjecture and speculation for just this reason.

The facts that are actually set forth in the Branchflower report confirm that the Governor acted ethically, and consistent with her principles of smaller, more efficient

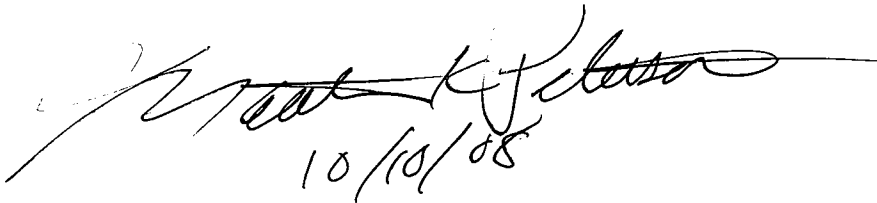
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government. Monegan failed to abide by those principles and instead sought to carry the water for the PSEA union. The report confirms Monegan's obduracy and his rightful removal as a commissioner.

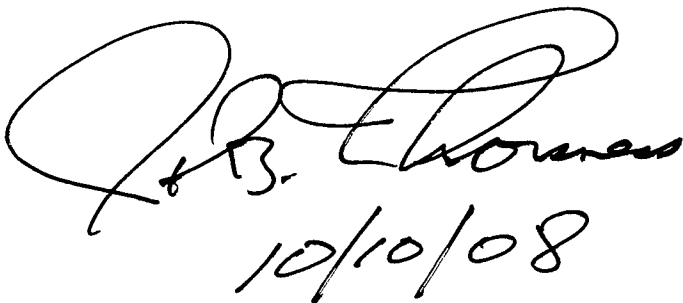
Put bluntly, Branchflower completely misapplied the Ethics Act and has instead sought to create a headline to smear the Governor.



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