IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

HEATHER HEBDON, as Executive Director of the Alaska Public Offices Commission, Plaintiff, v. REPUBLICAN GOVERNORS ASS'N, A STRONGER ALASKA, ERIM CANLIGIL, in his capacities as Treasurer of A Stronger Alaska and as Chief Financial Officer of Republican Governors Ass'n, and DAVE REXRODE, in his capacities as Chair of A Stronger Alaska and Executive Director of Republican Governors Ass'n, Defendants.	)	Case No. 3AN-23-04188 CI

ORDER GRANTING PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT [#13] AND DENYING DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT [#19]

Heather Hebdon, acting as Executive Director of the Alaska Public Offices Commission, ("APOC") filed this action against the Defendants to enforce a subpoena that APOC issued requesting documents controlled by Defendants. The Court allowed the Republican Governors' Public Policy Committee ("RGPPC") to intervene in this case on a limited basis. On August 29, 2023, RGPPC moved to quash the subpoena. The Court held oral arguments and received an *amicus* brief from a third party. After

review of the arguments presented by the parties, the Court believes that a trial is not necessary and issues its final decision regarding enforcement of APOC's subpoenas.

I. Facts and Procedural History

APOC received a complaint for expedited review alleging that "A Stronger Alaska" (ASA), Republican Governors Association (RGA), the Governor or his campaign staff, and others violated state campaign finance laws. The complaint alleged ASA, with assistance from RGA, made expenditure(s) in coordination with Governor Dunleavy's campaign. This would be a violation of state law.[1] Under the statute governing APOC procedure, an expedited hearing was held. APOC did not believe the evidence provided was enough to prove the allegations were true, but believed that further review was necessary and remanded the complaint to be investigated on a normal timeline.

APOC's investigation is reviewing claims of coordinated campaign expenditures. Part of the allegations are that Erim Canligil, who acts as the treasurer for ASA and also acts as CFO for RGA, and Dave Rexrode, who was chair of the ASA and an executive director of RGA, were able to use their intersecting positions to violate campaign finance law in secret. In other words, ASA Defendants had the ability and motive to discuss possible expenditure with the Governor and members of his staff or campaign, who are also members of RGA and RGPPC, which would be in violation of AS

[1] See AS 15.13.400.

15.13.400. APOC is investigating whether collusion occurred between the Defendants while attending RGPPC events (which are a suborganization of RGA), and at least one staffer of the Governor, Tyson Gallagher.

Prior to the expedited hearing, none of the requested materials were provided to APOC by RGA or ASA. The Defendants stated materials would only be provided if a subpoena was issued. APOC staff petitioned the Commission to issue subpoenas based on the need for knowledge of Tyson Gallagher's attendance and any events at those meetings, information that APOC argues is crucial to evaluating the complaint. The Commission agreed, finding that "the underlying subpoena request could reasonably lead to the discovery of admissible evidence of coordination..." and issued the requested subpoenas against Defendants. However, Defendants refused to comply with the subpoenas and objected to the subpoenas. After review, the Commission upheld the subpoenas and ordered Defendants to comply or the Commission would take further action. This action followed.

Both sides have filed competing cross-motions for summary judgment. The Court has issued a separate ruling regarding materials challenged by RGPPC. The Court ruled that the materials were within the purview of APOC and found that the subpoenas them did not exceed APOC's jurisdiction. The Court also found that the nature of the materials requested regarding RGPPC had a bearing on the group's first amendment rights and that APOC's requests were subject to exacting scrutiny. Parts of APOC's

request were deemed sufficient and other materials did not meet the exacting scrutiny standard required by the Supreme Court and were quashed.

II. Relevant Law

"Alaska Civil Rule 56 provides for judgment to be granted to a party where 'there is no genuine issue as to any material fact' and 'the moving party is entitled to judgment as a matter of law.'"[2] The Supreme Court of Alaska reviews "grants of summary judgment *de novo*, drawing all factual inferences in favor of, and viewing the facts in the light most favorable to the non-prevailing party."[3] A material fact is "one upon which resolution of an issue turns."[4] The existence of a dispute over a material fact is determined using a reasonableness standard.[5]

One of Alaska's earliest cases involving Rule 56 illustrated the meaning of "genuine issue" by affirming a grant of summary judgment against a party who had pointed to no evidence supporting his own position; the Supreme Court of Alaska affirmed because "the hotel owner had not pointed to any evidence actually disputing the city comptroller's testimony."[6]

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[2] *Christensen v. Alaska Sales & Service, Inc.*, 335 P.3d 514, 517 (Alaska 2014) (quoting Alaska R. Civ. P. 56(c)).
[3] *Israel v. Department of Corrections*, 460 P.3d 777, 783 (Alaska 2020) (quoting *Leahy v. Conant*, 436 P.3d 1039, 1043 (Alaska 2019)).
[4] *Christensen v. Alaska Sales & Service, Inc.*, 335 P.3d 514, 519 (Alaska 2014) (citing *Sonneman v. State*, 962 P.2d 632, 635 (Alaska 1998)).
[5] *Punches v. McCarrey Glen Apartments, LLC*, 480 P.3d 612, 624 (Alaska 2021) (quoting *Christensen v. Alaska Sales & Service, Inc.*, 335 P.3d 514, 519).
[6] *Christensen v. Alaska Sales & Service, Inc.*, 335 P.3d 514, 517 (Alaska 2014) (citing *Gilbertson v. City of Fairbanks*, 368 P.2d 214, 214-17 (Alaska 1962)).

"Summary judgment does not require the non-moving party to prove factual issues according to the applicable evidentiary standard, and does not allow trial judges to predict how a reasonable jury would decide the case… weighing and evaluating evidence 'intrudes into the province of the jury.'"[7] Instead, Rule 56 only requires "a showing that a genuine issue of material fact exists to be litigated, and not a showing that a party will ultimately prevail at trial."[8]

Alaska's standard for summary judgment is a "lenient standard," which "serves the important function of preserving the right to have factual questions resolved by a trier of fact only after following the procedures of a trial."[9] "Alaska's traditional standard for summary judgment is more protective of this right than the federal standard."[10]

III. Discussion

Defendants have not contested the validity of the subpoenas or that the subpoenas were issued in error against precedent. Therefore, the Court is left to analyze the objections made by Defendants to resolve the competing motions for summary judgment.

A. The information is not in APOC's possession.

Defendants claim that the documents being requested were already discussed by organization officers when they were questioned by APOC staff. Defendant does not

[7] *Id.* at 519 (quoting *Moffat v. Brown*, 751 P.2d 939, 942-43 (Alaska 1988)).
[8] *Id.* (internal quotation marks omitted).
[9] *Id.* at 520 (citing *Shaffer v. Bellows*, 260 P.3d 1064, 1069 (Alaska 2011) and *DeNardo v. Bax*, 147 P.3d 672, 683-84 (Alaska 2006)).
[10] *Christensen v. Alaska Sales & Services, Inc.*, 335 P.3d 514, 521 (Alaska 2014).

contest that the actual materials and documents requested were not in possession of APOC, only that the information that may be discovered was provided in testimony.

The Court is unpersuaded by Defendants' claims that prior testimony is satisfactory and complies with subsequent specific subpoenas for materials, regardless of if it does or does not corroborate with Defendants' testimony. Defendants cite no authority and provide an interpretation of subpoenas and general discovery procedure that go against reason. Even if the subpoenas did request interrogatory-like responses, the subpoenas also requested specific documents. A claim that prior testimony about the information contained in such documents is the same as an actual document is simply without merit. Applying Defendants' logic, a subpoena for bank records in an investigation could be voided because a suspect testified that he did not launder money.

B. *Res judicata* is not applicable.

For a third time, Defendants assert the defense that the subpoena and complaint violate the legal principle of *res judicata*. This defense fails, as *res judicata* cannot be applied in this current instance for a finding of any claim preclusion.

Res judicata, also known as claim preclusion, is a doctrine that seeks to establish finality.[11] Issue preclusion is often a rule used to prevent court shopping, reduce inconsistent decisions, prevent undue cost, and possible harassment.[12] It waives not only subsequent identical claims but claims that could have been raised that are related

[11] See *Drickersen v. Drickersen*, 546 P.2d 162, 169 (Alaska 1976).
[12] *Montana v. United States*, 440 U.S. 147, 154, 99 S. Ct. 970, 974 (1979)

to the same transaction or act.[13] Additionally, a plaintiff who has been given a judgment is still precluded from additional action regardless of if the plaintiff lacked additional information, or that the judgment turned out to be inadequate.[14]

Res judicata can be applied to a judgment when "a final judgment on the merits" has been issued from a court of competent jurisdiction that involves the same action and parties.[15] The finality requirement logically should be based on the "finality what was intended by the first decision and what the logical consequences of that decision are."[16] It is a "general commonsense point that such conclusive carry-over effect should not be accorded a judgment which is considered merely tentative in the very action in which it was rendered."[17]

The Court focuses solely on the finality element of claim preclusion in this decision. Defendants state that because they requested that the hearing would be a final hearing, it must be so. Whether the Committee during the hearing believed the matter to possibly be a final hearing does not change the fact that the Committee decided to only issue a tentative ruling. Plaintiff pointed to several instances in which tentative

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[13] See *White v. State*, 14P.3d 956, 959 (Alaska 2000).
[14] See *Plumber v. University of Alaska Anchorage*, 936 P.2d 163, 167 (Alaska 1997)(citing Restatement (Second) of Judgments § 25, cmt. c (1982)).
[15] *See Robinson v. Alaska Hous. Fin. Corp.*, 442 P.3d 763, 770 (Alaska 2019).
[16] *EFCO Corp. v. U.W. Marx, Inc.*, 124 F.3d 394, 398 (2d Cir. 1997).
[17] Restatement 2d § 13, cmt. a. See also *Clay v. United States*, 537 U.S. 522, 527 (2003) ("final for appellate review and claim preclusion purposes when the district court disassociates itself from the case, leaving nothing to be done at the court of first instance save execution of the judgment."); *Pruitt v. Dep't of Pub. Safety, Div. of Motor Vehicles*, 825 P.2d 887, 891 (Alaska 1992) ("finality is lacking if an issue of law or fact essential to the adjudication of the claim has been reserved for future determination.").

judgments are issued. Doing so is within the discretion of the Committee under the powers granted to it by the legislature.[18]

Res judicata requires conclusive findings and a final order. While Defendants may very well be correct that the hearing could have decided the procedure on the merits, the mere opportunity for a matter to be fully adjudicated is not sufficient to establish that a final decision has been made. The Committee has not issued a final decision and explicitly reserved judgment pending a further investigation in accordance with state law.[19] Therefore, Defendants' *res judicata* defense is inapposite.

C. No violation of due process rights has occurred.

Defendants claim that the Complaint itself and subpoenas of Plaintiff violate their due process rights because they conflict with issue preclusion. However, as the Court stated above the elements for *res judicata*/issue preclusion have not been met. Therefore, any allegation of violation of due process based on such breach fails.

D. AS 15.13.380(d) Is Not Unconstitutional

Defendants claim that AS 15.13.380(d) is unconstitutional and must be voided. Defendants claim that the statute violates the Due Process Clause of the Alaska Constitution and, as applied, violates Defendants' substantive due process rights and that the statutes meaning is being incorrectly interpreted by APOC.

[18] See AS 15.13.380 (d).
[19] Id.

The Court begins review under the presumption that the Legislature's actions are proper and valid.[20] The challenging party must demonstrate that "no rational basis for the challenged legislation exists."[21] AS 15.13.380(d) states:

> (d) If the commission expedites consideration, the commission shall hold a hearing on the complaint within two days after granting expedited consideration. Not later than one day after affording the respondent notice and an opportunity to be heard, the commission shall
>
> > (1) enter an emergency order requiring the violation to be ceased or to be remedied and assess civil penalties under AS 15.13.390 if the commission finds that the respondent has engaged in or is about to engage in an act or practice that constitutes or will constitute a violation of this chapter or a regulation adopted under this chapter;
> > (2) enter an emergency order dismissing the complaint if the commission finds that the respondent has not or is not about to engage in an act or practice that constitutes or will constitute a violation of this chapter or a regulation adopted under this chapter; or
> > (3) remand the complaint to the executive director of the commission for consideration by the commission on a regular rather than an expedited basis.

The plain meaning of this statute leaves the reader to conclude that APOC may take three possible actions after an expedited hearing. APOC can: (1) find that a violation has occurred or is about to occur in violation of AS 15.13.100 *et seq.* and issue an emergency order; (2) find that the allegations in the complaint are not in violation of Chapter 13 and dismiss the complaint; or (3) remand the case for further findings on a regular basis.

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[20] *Burke v. Criterion General, Inc.*, 499 P.3d 319, 327 (Alaska 2021).
[21] Id.

Defendants argue that APOC is only permitted to do one and only one of these three actions. They claim that in this case, APOC violated state law by acting under options (2) and (3). The Court does not disagree with the assertion that the statute likely only permits APOC to choose only one option. However, Defendants' assertion that APOC found that both no violation occurred and to also remand is incorrect. It is clear and direct on the face of APOC's Order that they have decided to remand the complaint for regular review rather than on an expedited basis. APOC's final written finding is what the Court must review to determine APOC's intent and findings. Additionally, a finding that a complainant has failed to prove their case is not identical to a finding that the respondent "has not or is not about to engage in an act or practice" in violation of chapter 13.[22]

Defendants also believe that this statutory framework is a violation of due process because it requires multiple hearings. However, this adjudicative process is not uncommon and is seen as a valid method in many instances where time may be of the essence.[23]

Lastly, Defendants argue that when a statute as read is unique, it must be incorrect and re-interpreted by the Court. This assertion goes against all reason and would require an absurd violation of the separation of powers. Statutory interpretation

[22] AS § 15.13.380(d).

[23] By way of example, requests for *ex parte* orders, preliminary injunctions, interim orders for custody or other civil matters, all contemplate the possibility of multiple hearings.

may be under the purview of the judiciary but statutory drafting are steps that the Court is not entitled to take.[24]

IV. Conclusion

Plaintiff's *Motion for Summary Judgement* is GRANTED.

Defendant's Cross-Motion for Summary Judgment is DENIED.

Defendants must comply with the subpoenas in accordance with this and any other findings by the Court within 15 days of this Order, unless otherwise agreed by the parties.

Based on this ruling, the Court does not intend to set trial dates. If the parties need any additional court time, they should file a request indicating the reason for the hearing and how much time will be needed.

SO ORDERED this 25th day of January, 2024, at Anchorage Alaska.

UNA S. GANDBHR
Superior Court Judge

I certify that on 1/25/24
a copy of the above was mailed/emailed to
each of the following at their address
of record:

Eschenbach / Michalski / Stone / Kendall
R. Davis, Judicial Assistant Stacin / Richards

[24] *Res. Dev. Council for Alaska, Inc. v. Vote Yes for Alaska's Fair Share*, 494 P.3d 541, 548 (Alaska 2021) (ruling that redrafting or refusal to follow the reasonable interpretation of an enacted statute by the judiciary would violate the constitutional separation of powers.). See also: *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 192 (Alaska 2007).