

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 DENYING IN PART AND
GRANTING IN PART RGPPC'S MOTION TO QUASH [#11]

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 granted 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 issues its findings below.

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 campaign staff, and others violated state campaign finance laws. The complaint alleged ASA, with assistance from RGA and others, 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. Specifically, 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 15.13.400. APOC is investigating whether collusion occurred between the

¹ See AS 15.13.400.

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. APOC argues that this information 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 case followed.

II. Discussion

RGPPC has intervened in this case in order to ask the Court to quash one of the APOC subpoenas which requests:

Documents identifying the date of each Republican Governors Public Policy Committee (RGPPC) meeting/events since February 24, 2021, and, if any were provided, the agenda and written materials provided to the attendees of each meeting/event for each event. Documents identifying the list of attendees of each meeting/event for which Tyson Gallagher attended.

and

Documents identifying the format of RGPPC meetings/events and the topics discussed.

RGPPC cites several grounds for their request. RGPPC claims that their materials cannot be obtained because they are not a party under the jurisdiction of APOC. Additionally, they argue that the materials sought would violate their members' First Amendment right to association. APOC contests these assertions, claiming that the extrajudicial defense asserted is not supported by law and that APOC's requests meet the qualifications needed to have it enforced. The Court addresses these arguments in turn.

A. Jurisdiction

RGPPC claims they are not subject to APOC's jurisdiction because they are a D.C. based entity that operates in the sphere of government policy, not political campaigns. Therefore, the organization lies outside the statutory authority of APOC. RGPPC claims that even if their documents are under the possession or control² of a party that is subject to APOC's jurisdiction, jurisdiction is required over RGPPC.

APOC was established under AS 15.13.010 et seq. APOC's duties include developing rules and guidelines for parties to follow the states election campaign laws, receive election campaign reports and make them available to the public, and to

² Although not expressly stated, the Court assumes the information was obtained by Defendants in a legitimate manner.

“examine, investigate, and compare all reports, statements, and actions required by this chapter.”³ APOC also has the power to issue subpoenas, administer oaths, hold hearings, and conduct investigations to accomplish the duties that have been assigned to it.⁴

The Court rejects RGPPC’s argument to quash the subpoenas on jurisdictional grounds. RGPPC cites no precedent to support their argument, and the Court has found no precedent to bar a subpoena from being enforced when the individual subpoenaed is within the jurisdictional powers of the issuer. RGPPC’s request would create a restriction that the courts and legislature have never recognized. Neither *NAACP*⁵ nor the other cases cited by RGPPC purport to say that a party’s documents may not be subpoenaed through a third parties if the third party is subject to the issuer’s jurisdiction.⁶ RGPPC’s ability and interest in protecting any materials are secured by having standing to question the validity of the subpoena. The Court in this case does not believe expanding the protections are necessary to ensure that privacy and that a person’s due process is protected.

Additionally, the Court is not convinced that even if such a restriction exists, RGPPC would have *carte blanche* immunity from APOC’s jurisdiction if those members and their materials were being used to violate election laws which clearly fall under

³ See AS 15.13.030.

⁴ AS 15.13.045.

⁵ See *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958).

⁶ The third party in this case being the named Defendants.

APOC's jurisdiction. APOC's statute does not limit its investigation if it ever happens that an involved subject group or person is not devoted to political campaigns. Therefore, the Court does not believe APOC's subpoena has exceeded its authority and jurisdiction.

RGPPC goes on to state that the third-party subpoenas are required by law to meet a higher burden. While the Court does not necessarily agree that a higher burden is required due to the subpoena of RGPPC documents, the Court has reviewed the subpoenas and finds that the APOC has demonstrated a sufficient need for the requested information and has tailored their requests accordingly.

B. Freedom of Association

The Court next reviews RGPPC's argument that disclosure of some or all of the requested materials violates RGPPC's members' Constitutional right of freedom of association. "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech."⁷ The Court agrees with RGPPC that the materials sought by APOC's subpoena fall into such a category.

⁷ *NAACP*, 357 U.S. at 460.

In 2021, The United States Supreme Court confirmed that the standard in First Amendment disclosure cases is “exacting scrutiny”.⁸ Exacting scrutiny in compelled disclosure cases require that there be “a substantial relation between the disclosure requirement and a sufficiently important governmental interest.”⁹ The government’s means must also be narrowly tailored to achieve the government’s interests, but does not require the adoption of the “least restrictive means” that strict scrutiny requires.¹⁰ This level of judicial scrutiny in cases involving freedom of association applies whether that association relates to political or other matters.¹¹

Applying the lens of exacting scrutiny to the situation before the Court, the Court finds that the government - APOC - has demonstrated that there is a “substantial relation” between the subpoenaed information as to the the list of attendees and APOC’s current investigation. As APOC noted the importance of open and transparent knowledge of contributions and actions by promising or elected government officials is an important function. Since *Citizens United v. FEC*¹² the government’s legitimacy and interest in drafting restrictive election finance law has been clear. It held that the government may only target quid pro quo corruption.¹³ This resulted in the Alaska

⁸ *Id.* at 2383.

⁹ *Id.* (quoting *Doe v. Reed*, 561 U.S. 186, 196 (2010)).

¹⁰ *Id.*

¹¹ *Americans for Prosperity Foundation v. Bonta* 141 S. Ct. 2373, 2382 (2021)(citing *NAACP v. Alabama*, 357 U.S. 449, 462, (1958) (“it is immaterial” to the level of scrutiny “whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters.”)

¹² 558 U.S. 310 (2010).

¹³ *See Citizens United* (2010).

Supreme Court finding independent expenditure limits unconstitutional, because “independent expenditures are not prearranged or coordinated with a campaign, which ‘alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate.’”¹⁴

The prearranged and coordinated expenditures are the very things that APOC is currently investigating, that RGPPC events and members were used to make coordinated expenditures. With the purpose clearly indicated by APOC, the Court finds that this information is required to achieve a “sufficiently important government interest”

The subpoena also requests information directly tied to a specific individual, Tyson Gallagher. Again, the Court finds that the requested information is not only narrowly tailored, but is likely the least restrictive request under the circumstances. APOC is not broadly requesting similar information from all attendees, or an unlimited amount of information about Mr. Gallagher.

APOC has also requested disclosures of “[d]ocuments identifying the date of each Republican Governors Public Policy Committee (RGPPC) meeting/events since February 24, 2021, and, if any were provided, the agenda and written materials provided to the attendees of each meeting/event for each event” as well as “[d]ocuments identifying the format of RGPPC meetings/events and the topics discussed.” These

¹⁴ *Alaska Pub. Offices Comm'n v. Patrick*, 494 P.3d 53, 57 (Alaska 2021), *cert denied*, 211 L. Ed. 2d 486, (2022), (quoting *Citizens United* at 357).

requests may satisfy general subpoena due process requirements, but the Court finds that these particular requests are too broad and do not rise to the requirements of exacting scrutiny. While APOC is not required to take the least restrictive manner of compelling information, “a substantial relation to an important interest is not enough to save a disclosure regime that is insufficiently tailored.”¹⁵ Although exacting scrutiny does not is not determined based on the prejudicial effect disclosures may have on RGPPC, the Court does recognize those effects. Disclosing such broad swaths of documents significantly increases the likelihood that free speech of the members will be stifled.¹⁶ This concern leads the Court to find that as currently written, this request is a violation of RGPPC members’ rights of association and unenforceable.

III. Conclusion

RGPPC’s motion to quash the subpoena is denied in part and granted in part. The subpoena requests for “Documents identifying the list of attendees of each meeting/event for which Tyson Gallagher attended” stands. The request to quash the remaining requests in the subpoena is granted. APOC is not prejudiced from seeking the materials through additional subpoenas after appropriately tailored modifications and RGPPC may petition the Court again if so.

¹⁵ *Americans for Prosperity Foundation*, at 2384 (referencing *Shelton v. Tucker*, 364 U. S. 479 (1960)).

¹⁶ *Id.* at 2384-2385.

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



UNA S. GANDBHIR
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:

Q Eidberg / Michaletz / Stone / Kendall
R. Davis, Judicial Assistant Pacini / Richards