

EMERGENCY/EXPEDITED

December 4, 2023

To: Alaska Public Offices Commission
From: Alaskans for Better Elections, Inc., Complainant

Re: Complainant's Request to Expedite Consideration of APOC Complaint Against Alaskans for Honest Elections, Wellspring Ministries, Wellspring Fellowship of Alaska, Mikaela Emswiler, and Top Fundraising Solutions, LLC.

I. Introduction

Pursuant to AS 15.13.380(c), Complainant Alaskans for Better Elections, Inc. (“Complainant”) requests that the Commission expedite consideration of the attached APOC Complaint filed today for the purpose of enjoining Respondents Alaskans for Honest Elections (“AHE”), Wellspring Ministries (“WM”), Wellspring Fellowship of Alaska (“WF”), Mikaela Emswiler, and Top Fundraising Solutions, LLC (“TFS”; collectively, “Respondents”) from continuing to violate reporting, disclosure, and disclaimer requirements while they gather signatures for 22AKHE. Complainant seeks an order issuing an injunction halting Respondents’ activities until they have been required to immediately and accurately report with APOC, correct their prior reporting violations and pay all applicable civil penalties, and use an accurate “paid for by” disclaimer on communications.¹

¹ The Commission is authorized to issue emergency injunctive relief to halt illegal campaign activities and require immediate compliance with reporting and disclosure statutes pursuant to AS 15.13.380(d)(1).

The nature of Respondents’ blatant violations are covered at length in the accompanying complaint.² And given Respondents’ stated intent to complete gathering signatures for 22AKHE by December 15, 2023,³ as well as AHE’s intent to dissolve at the beginning of 2024,⁴ there is a substantial risk that these violations — if uncorrected — will mislead the public and cause material impacts on Alaska’s elections.

Essentially, if this complaint is not expedited, Respondents will have been allowed to conduct a nearly yearlong signature gathering drive — beginning to end — having *never complied* with the provisions of AS 15.13 at all. This is completely contrary to the legislature’s intent when it specifically amended the statutes to bring signature petition activities within the purview of APOC’s reporting regime.⁵

² See generally Expedited Complaint Against Alaskans for Honest Elections, Wellspring Ministries, Wellspring Fellowship of Alaska, Mikaela Emswiler, and Top Fundraising Solutions, LLC, for Numerous Violations of Campaign Finance Laws (AS 15.13) (Dec. 4, 2023) [hereinafter Expedited Complaint].

³ See Highlighted Transcript of Recorded Conversation between Mikaela Emswiler and Gregory Lee at 31-32 (Nov. 22, 2023) (Exhibit M to Expedited Complaint) [hereinafter Wellspring Tr.]; Second Screenshot from AHE’s Website (Exhibit AA to Affidavit of Samuel G. Gottstein (Dec. 4, 2023) [hereinafter Gottstein Aff.]); see also Highlighted Transcript of Recorded Telephone Conversation between Mikaela Emswiler and Gregory Lee at 2-3 (Nov. 14, 2023) (Exhibit L to Expedited Complaint) [hereinafter Telephone Tr.].

⁴ See Iris Samuels, “Alaska campaign finance watchdog delays decisions in group’s effort to repeal ranked choice voting,” Anchorage Daily News, at 4-5 (Nov. 29, 2023) (Exhibit P to Expedited Complaint).

⁵ See, e.g., Minutes for Hearing on HB 36 Before the H. Jud. Comm., 26th Leg., 1st Sess., from 8:46:48 – 8:55:07 (Apr. 6, 2009), <https://www.akleg.gov/basis/Meeting/Detail?Meeting=HJUD%202009-04-06%2008:00:00> (testimony of Sonia Christensen, Staff to Representative Kyle Johansen) (explaining that the proposed changes will “requir[e] bumping that disclosure deadline back to as soon as the initiative’s been filed”); Minutes for Hearing on HB 36 Before the H. Jud. Comm., 26th Leg., 1st Sess., from 2:32:34 – 2:39:23 (Apr. 6, 2009), [https://www.akleg.gov/basis/Meeting/Detail?Meeting=HJUD%202009-04-](https://www.akleg.gov/basis/Meeting/Detail?Meeting=HJUD%202009-04-06%2002:32:34)

Additionally, in a prior still-pending related proceeding (23-01-CD), the Commission has indicated that it will take six (6) months from when that earlier complaint was filed — until January 5, 2024 — before the Commission issues a final order.⁶ The public cannot afford to wait another six months for resolution of these new (and ongoing) allegations while Respondents continue to flout the reporting requirements.

Respondents have shown an utter disregard for the requirements of AS 15.13. Not even the possibility of six-figure civil penalties in 23-01-CD has deterred Respondents.⁷ And given the impending deadline for AHE to submit gathered signatures for 22AKHE to the lieutenant governor, and the overwhelming evidence showing that Respondents are not reporting the significant support 22AKHE has received from WM and/or WF (collectively “Wellspring”), this case must be expedited.

[06%2013:00:00](#) (testimony of Jason Brune, Executive Director, Resource Development Council for Alaska, Inc.) (advocating for increased disclosure for proposed initiatives, testifying that groups should “be required to disclose the source of their funding during the signature-gathering phase of the initiative process,” and stating that HB 36 “would prevent intentional muddying of the waters”); Minutes for Hearing on HB 36 Before the H. Fin. Comm., 26th Leg., 2nd Sess., from 3:41:32 – 3:48:11 (Feb. 8, 2010), <https://www.akleg.gov/basis/Meeting/Detail?Meeting=HFIN%202010-02-08%2013:30:00> (testimony of Representative Kyle Johansen, the sponsor of HB 36) (explaining that “the intent of the bill is about the disclosure of money spent to change state statute,” because “the people of Alaska have [a] right to know who is spending money and how much”).

⁶ See Order re: Final Order Timing for 23-01-CD (Nov. 27, 2023) (Exhibit D to Expedited Complaint).

⁷ See Attachment B to Alaskans for Better Elections’ Pre-Hearing Brief for 23-01-CD (Nov. 2, 2023) (Exhibit C to Expedited Complaint).

II. Factual Background

Because this Request to Expedite is filed concurrently with the complaint, and to avoid repetition, Complainant hereby incorporates the facts and evidence from that filing as if fully laid out herein.⁸

To summarize: Respondents have completely misled the Commission in APOC complaint 23-01-CD by hiding the (ongoing) support that Wellspring has provided to AHE. In doing so, AHE, Wellspring, and Ms. Emswiler are all in violation of multiple registration and reporting requirements. In fact, Respondents have perjured themselves in sworn statements to APOC claiming that Wellspring is not involved with 22AKHE, statements which have now been proven false.

The deadline for AHE to turn in signatures for 22AKHE is quickly approaching. Ms. Emswiler has indicated that signatures should be returned to her for tabulation by December 15, 2023;⁹ AHE is also asking for petition booklets to be returned by December 15, 2023.¹⁰ The deadline for submitting signatures to the lieutenant governor so that 22AKHE may be placed on the ballot in 2024 is January 15, 2024.¹¹ Accordingly, the

⁸ See generally Expedited Complaint.

⁹ See Wellspring Tr. at 31-32 (Exhibit M to Expedited Complaint); see also Telephone Tr. at 2-3 (Exhibit L to Expedited Complaint).

¹⁰ See Second Screenshot from AHE's Website (Exhibit AA to Gottstein Aff.).

¹¹ See Telephone Tr. at 3 (Exhibit L to Expedited Complaint); Wellspring Tr. at 31 (Exhibit M to Expedited Complaint). This is because the next legislative session is set to begin on Tuesday, January 16, 2024.

normal statutory deadlines cannot provide a remedy prior to these harms becoming irreversible.¹²

III. Argument

Alaska Statute 15.13.380(c) outlines three factors that APOC must consider when determining whether to expedite a complaint.¹³ All three of those factors make it clear that expedited consideration is appropriate in this case given AHE's impending deadline, Respondents' repeated disregard to follow the law absent an order by the Commission, and the strength of the evidence.

First, Respondents' actions "could materially affect the outcome of . . . [an] impending event."¹⁴ Generally, the Commission is to consider granting expedited relief if a Respondent's actions "could materially affect the outcome of an election."¹⁵ But AS 15.13.380(c) explicitly contemplates that some enforcement actions could "affect the outcome of [an] other [type of] impending event."¹⁶ And the "impending event" in this

¹² See AS 15.13.380.

¹³ AS 15.13.380(c) ("In deciding whether to expedite consideration, the commission shall consider factors as [(1)] whether the alleged violation, if not immediately restrained, could materially affect the outcome of an election or other impending event; [(2)] whether the alleged violation could cause irreparable harm that penalties could not adequately remedy; and [(3)] whether there is reasonable cause to believe that a violation has occurred or will occur.").

¹⁴ See *id.*

¹⁵ See *id.*

¹⁶ See *id.*

case is clear: AHE’s deadlines to submit enough qualifying signatures to the lieutenant governor so that 22AKHE can be placed on the ballot next year.¹⁷

Whether a ballot initiative qualifies for placement on the ballot or not is certainly related to elections. And given the legislature’s recent statutory amendments placing signature petition drives under AS.15.13, it is clear that this is precisely the type of “other impending event” that AS 15.13.380(c) recognizes could justify expedited relief.

The first APOC complaint filed against Respondents (23-01-CD) was filed on July 5, 2023.¹⁸ The Commission has indicated that it does not intend to issue a written order until six months later.¹⁹ We are days and weeks — and certainly not six months — away from the end of AHE’s signature petition drive and subsequent dissolution of the group.²⁰ The public simply does not have the luxury of time for the Commission to consider this complaint on a non-expedited basis.

Second, civil “penalties could not adequately remedy” Respondents’ violations, and the violations “could cause irreparable harm.”²¹ We know that civil penalties will not deter Respondents; despite facing maximum fines totaling hundreds of thousands of dollars

¹⁷ See Telephone Tr. at 3 (Exhibit L to Expedited Complaint); Wellspring Tr. at 31 (Exhibit M to Expedited Complaint).

¹⁸ See generally APOC Complaint 23-01-CD (July 5, 2023).

¹⁹ See Order re: Final Order Timing for 23-01-CD (Nov. 27, 2023) (Exhibit D to Expedited Complaint).

²⁰ See Wellspring Tr. at 31-32 (Exhibit M to Expedited Complaint); Second Screenshot from AHE’s Website (Exhibit AA to Gottstein Aff.); Iris Samuels, “Alaska campaign finance watchdog delays decisions in group’s effort to repeal ranked choice voting,” Anchorage Daily News, at 4-5 (Exhibit P to Expedited Complaint).

²¹ AS 15.13.380(c).

in 23-01-CD,²² Respondents are *still* refusing to comply with Alaska’s reporting requirements. In fact, Respondents have either lied to the Commission about Wellspring’s involvement, or Respondents have decided that Wellspring should get involved and that they would intentionally defy the legal requirements anyway. Simply put, penalties alone will not stop their behavior and will not provide the public with necessary information while the signature drive is still ongoing.

Moreover, the impact of Respondents’ actions are irreparable and dwarf any possible civil penalties. If AHE turns in enough signatures to qualify 22AKHE for the ballot, no amount of civil penalties will remedy the violations. AHE has publicly stated that it intends to dissolve after submitting signatures.²³ And even though Respondents are *over ten months* into their signature drive for 22AKHE, the public *still* has no idea who is actually supporting AHE’s efforts. The public has a strong interest in knowing who is trying to petition them for their signature in support of a ballot initiative.²⁴

²² See Attachment B to Alaskans for Better Elections’ Pre-Hearing Brief for 23-01-CD (Nov. 2, 2023) (Exhibit C to Expedited Complaint).

²³ See Iris Samuels, “Alaska campaign finance watchdog delays decisions in group’s effort to repeal ranked choice voting,” Anchorage Daily News, at 4-5 (Exhibit P to Expedited Complaint).

²⁴ See *Messerli v. State*, 626 P.2d 81, 87 (Alaska 1980) (“The need for an informed electorate applies with full force to ballot issues. Such issues are often complex and difficult to understand. Proper evaluation of the arguments made on either side can often be assisted by knowing who is backing each position. . . . In such circumstances the voter may wish to cast his ballot in accordance with his approval, or disapproval, of the sources of financial support.” (footnotes and citations omitted)); see also *id.* at 85 (“[I]n ballot proposition contests, the message is often the contributor’s own.”); *id.* at 86 (“The effective functioning of our democratic form of government is premised on an informed electorate.”).

Finally, there is strong evidence showing that “a violation has occurred or will occur.”²⁵ Multiple audio recordings and eyewitness testimony confirm that Respondents are working out of Wellspring to gather signatures for 22AKHE and enter data from returned booklets to see where to focus their final signature-gathering efforts.²⁶ Complainant has additional solid evidence showing that Respondents have not complied with APOC’s reporting requirements for numerous other activities.

Complainant has a simple request to the Commission: Order Respondents to halt their signature petition activities until they accurately report to APOC (including correction of prior false reports), include proper disclaimers, and pay all applicable penalties. In other words, Respondents simply need to follow APOC’s requirements before continuing to engage in an activity that requires reporting: gathering signatures for 22AKHE.

Once Respondents have complied with these requirements, the need for injunctive relief vanishes. Respondents could have prevented all of this by taking one of many opportunities to simply follow the law. But the Commission must require Respondents to do so, and enjoin their signature drive until they comply. Indeed, the Commission has previously enjoined similar (but less egregious) behavior, requiring compliance within three business days.²⁷

²⁵ AS 15.13.380(c).

²⁶ *See generally* Telephone Tr. (Exhibit L); Wellspring Tr. (Exhibit M); Affidavit of Gregory Lee (Nov. 30, 2023).

²⁷ *See* Emergency Order, APOC Case No. 20-06-CD (Oct. 8, 2020) (Exhibit HH).

IV. Conclusion

Because Alaskan voters are even now being duped into giving their personal information to individuals known to repeatedly break the law, and because the deadline to qualify a ballot measure for the 2024 election is mere weeks away, Complainants respectfully request that the Commission expedite consideration of the disturbing allegations in this Complaint.

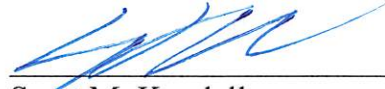
It is unfortunate that Complainants have been forced into the role of continually monitoring Respondents' activities for compliance. But given Respondents dozens of violations — both past and ongoing — it is evident that Respondents will continue to willfully conceal their activities to the detriment of the public. Respondents' flagrant disregard for the law and the impending deadline for them to complete their signature petition drive justify expedited consideration of this matter. And we are asking the Commission to halt all signature gathering activity until the Commission receives accurate reports about Respondents' efforts to gather signatures for 22AKHE, pay all applicable penalties, and include proper disclaimers on all communications.

If APOC does not act on this complaint in an expedited manner, it is clear that Respondents will have conducted their entire signature petition drive (over the course of nearly a year) without ever complying with the law. The Commission should grant Complainants' request to expedite this Complaint.

CASHION GILMORE & LINDEMUTH
Attorneys for Complainant, Alaskans for Better
Elections, Inc.

DATE: December 4, 2023

By:



Scott M. Kendall
Alaska Bar No. 0405019
Samuel G. Gottstein
Alaska Bar No. 1511099