

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

3 ALASKA POLICY FORUM,

4 Appellant,

5 v.

6 ALASKA PUBLIC OFFICES
7 COMMISSION, et al.,

8 Appellees.

Case No. 3AN-21-07137CI

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10 **APPELLEE YES ON 2 FOR BETER ELECTIONS' OPPOSITION TO APPELLANT**
11 **ALASKA POLICY FORUM'S MOTION TO STAY ENFORCEMENT OF**
12 **JUDGMENT PENDING APPEAL**

13 Appellee Yes on 2 for Better Elections (“Yes on 2”) opposes Appellant Alaska
14 Policy Forum’s (“APF”) Motion to Stay Enforcement of Judgment Pending Appeal.¹
15 Contrary to APF’s assertion, the public interest in this instance tips strongly in favor
16 of financial disclosure, as is made clear by relevant campaign finance disclosure
17 statutes. And even if this court nevertheless decides to permit APF’s late request
18 for a stay pending appeal, a stay should only be permitted after a supersedeas bond
19 is posted in an amount which reflects the level of fine ordinarily associated with an
20 organization’s failure to disclose for such a substantial period of time. Because the
21 public has an interest in knowing who pays for campaign speech — which is strongly
22 evidenced by voters’ approval of Ballot Measure 2’s provisions strengthening those
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24 ¹ See generally Motion to Stay Enforcement of Judgment Pending Appeal
25 (Sept. 24, 2021) [hereinafter APF’s Motion].

1 disclosure requirements last November — this court should deny APF’s motion for a
2 stay pending appeal.

3 **I. FACTUAL BACKGROUND**

4 In September 2020, Appellee Alaska Public Offices Commission (“APOC”)
5 received a complaint from Yes on 2 alleging that APF had been communicating
6 against Ballot Measure 2 without complying with statutory financial disclosure
7 requirements since at least July 24, 2020. [SOA 1-12] And after an investigation into
8 Yes on 2’s allegations — [SOA 36-53] and a continuance at APF’s request — [SOA
9 180-185] APOC agreed with Yes on 2 that APF had not complied with multiple
10 statutory requirements. [SOA 253-262] Specifically, APOC found that APF failed to
11 “comply with the requirements to register before making expenditures, report
12 independent expenditures, and identify who paid for communications.”² [SOA 260-
13 261 (footnotes omitted)] APOC amended its order shortly thereafter, [SOA 268-277]
14 and ordered APF “to comply with these [three] requirements within 30 days” on
15 July 12, 2021. [SOA 276]

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18 APF did not comply with APOC’s 30-day disclosure deadline. Nor has APF
19 complied with APOC’s ordered disclosures as of this filing. And although APF timely
20 filed this appeal, APF did not seek a stay pending appeal at that time.³

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23 ² See AS 15.13.040(d); AS 15.13.050(a); AS 15.13.090; AS 15.13.140(b).

24 ³ See Cash Deposit on Appeal (Aug. 16, 2021); see *also* Notice of Appeal at 2
25 (Aug. 11, 2021).

1 APF now seeks a stay pending appeal, despite having triggered these
2 statutory financial disclosure requirements for at least the past 437 days, [SOA 3,
3 272] and despite being in violation of APOC’s July order requiring disclosure for the
4 past 53 days.⁴ [SOA 276]

5 **II. LEGAL FRAMEWORK**

6 Alaska Appellate Rule 603(a)(2)(A) — which APF acknowledges is the
7 operative rule this court should rely on when considering its motion⁵ — permits an
8 appellant to seek “a stay of proceedings to enforce the judgment by filing a
9 supersedeas bond.”⁶ Such a stay is only “effective when the supersedeas bond is
10 approved,”⁷ and this court has the discretion to set an appropriate supersedeas bond
11 amount.⁸ Additionally, Rule 603(a)(2)(A) explicitly gives courts the discretion to deny
12 a request for stay — even if a supersedeas bond is posted — if it does not align with
13 the public interest.⁹ And as the Alaska Supreme Court recently articulated, “even if
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17 ⁴ Appellee APOC has filed a non-opposition. See generally Notice of Non-
18 Opposition to Appellant’s Motion to Stay (Oct. 1, 2021).

19 ⁵ APF’s Motion at 2-3; see also *Wise Mech. Contractors v. Bignell*, 626 P.2d
20 1085, 1087 n.2 (Alaska 1981) (“The granting of stays is now governed by Appellate
21 Rule 603.”).

22 ⁶ Alaska App. R. 603(a)(2)(A).

23 ⁷ *Id.*

24 ⁸ See Alaska App. R. 603(a)(2)(C) (“[T]he court may specify a [supersedeas
25 bond] amount . . . upon motion by any party to the appeal.”); see also Alaska App.
26 R. 204(d) (“Whenever in a civil case an appellant entitled thereto desires a stay on
appeal, the appellant may present to the superior court for its approval a
supersedeas bond which shall have such surety or sureties as the court requires.”).

⁹ Alaska App. R. 603(a)(2)(A) (“The filing of a supersedeas bond does not
prohibit the court from considering the public interest in deciding whether to impose

1 a party requesting [a stay] satisfies the requirements . . . , a court has the discretion
2 to deny the requested relief if granting it would imperil the public interest.”¹⁰

3 **III. ARGUMENT**

4 **A. The Public Interest Weighs Heavily Against Permitting A Stay**
5 **Pending Appeal.**

6 APF’s *only* public interest claim is that, because the public has a general
7 interest in upholding the First Amendment, the public’s interest *must* therefore align
8 with APF’s desire to keep the identities of their contributors secret.¹¹ But the public’s
9 interest is not the same as APF’s. Rather, the public has made it abundantly clear,
10 time and time again, that they have a strong interest in timely and accurate campaign
11 finance disclosures.

12 This court does not need to imagine what the public’s interest might be in this
13 case because Alaska’s campaign finance disclosure statutes paint a clear picture;
14 the public strongly favors timely and accurate financial disclosures for campaign
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18 or continue a stay on that portion of an administrative or district court judgment which
is not limited to monetary relief.”).

19 ¹⁰ *State v. Galvin*, 491 P.3d 325, 339 (Alaska 2021).

20 APF spends much of its brief going through the various standards for obtaining
21 a preliminary injunction. *See generally* APF’s Motion. But as the Alaska Supreme
22 Court made clear in *State v. Galvin*, “even if a party requesting [a stay] satisfies the
23 requirements . . . , a court [still] has the discretion to deny the requested relief if
24 granting it would imperil the public interest.” *Galvin*, 491 P.3d at 399. This means
that the only question this court will need to decide is if APF’s requested stay is in
the public interest or not, and if so, what supersedeas bond amount would be in the
public interest. *See* Alaska Civ. R. 603(a)(2)(A).

25 ¹¹ *See* APF’s Motion at 5.

1 activity.¹² Those statutes: (1) make financial disclosures available to the public;¹³
2 (2) require registration with APOC “before making an expenditure in support of or in
3 opposition to a ballot proposition;”¹⁴ (3) require the full reporting of expenditures and
4 contributions,¹⁵ and (4) mandate clear “paid for by” disclosures for all campaign
5 communications,¹⁶ including the explicit disclosure of top three contributors.¹⁷ Not
6 only that, but voters approved Ballot Measure 2 in November 2020 — the very ballot
7 measure APOC concluded APF campaigned against — which includes provisions
8 designed to combat “Dark Money” in Alaska politics.¹⁸ Indeed, the Alaska Supreme
9 Court recently noted that those provisions were designed to ensure “that voters have
10 adequate and accurate information about who is paying for campaign
11 communications to influence their vote.”¹⁹
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14 ¹² See *Alaska Right to Live Comm. v. Miles*, 441 F.3d 773, 777 (9th Cir. 2006)
15 (“Alaska has a long history of regulating political influence and campaign finance.”).

16 ¹³ See AS 15.13.030.

17 ¹⁴ AS 15.13.050(a).

18 ¹⁵ AS 15.13.040(d).

19 ¹⁶ AS 15.13.090(a).

20 ¹⁷ AS 15.13.090(d).

21 ¹⁸ See AS 15.13.040(r) (requiring the reporting of campaign contributions of
22 \$2,000 or more to an independent expenditure group within 24 hours);
23 AS 15.13.090(g) (mandating the explicit disclosure of whether a majority of a
24 campaign group’s funding originates from outside Alaska in all communications);
25 AS 15.13.400(19) (requiring the identification of the “true source” of a campaign
26 contribution); AS 15.13.400(5) (defining “dark money”).

27 ¹⁹ *Meyer v. Alaskans for Better Elections*, 465 P.3d 477, 499 (Alaska 2020);
28 see also Alaska’s Better Elections Initiative, Section 1, subsection (3) (“The people
29 of Alaska have the right to know in a timely manner the source, quantity, timing,
30 and nature of resources used to influence candidate elections in Alaska. This right

1 This court cannot ignore the public's interest in having access to timely and
2 accurate financial disclosures.²⁰ And since APF's only argument to the contrary
3 relates to its own First Amendment rights, this court should not be swayed by its
4 argument that the public's position is somehow perfectly aligned with APF's.²¹ There
5 is no public interest in keeping the financial backers of a campaign secret. This court
6 should therefore deny APF's request for a stay.²²

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8 **B. Alternatively, This Court Should Permit A Stay Pending Appeal
Only After A Supersedeas Bond Is Posted.**

9 Yes on 2 firmly believes that this court can and should rely on the public's
10 interest in requiring timely and accurate campaign finance disclosures to deny APF's

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12 requires the prompt, accessible, comprehensible, and public disclosure of the true
13 and original sources of funds used to influence these elections, and is essential to
14 the rights of free speech, assembly, and petition guaranteed by the First
Amendment to the United States Constitution and shall be construed broadly.”).

15 ²⁰ APF argues that because the election is over, there is no longer a need for
16 disclosure. APF's Motion at 6. Were that true, Alaska's campaign finance statutes
17 would not have a five-year statute of limitations. AS 15.13.380(b). Furthermore,
18 there is no reason why APF should be exempt from the same financial disclosure
19 rules that applied to all other entities just because they have violated the relevant
20 statutes well past the date of the election.

21 ²¹ This court similarly need not give weight to Appellee APOC's decision to
22 non-oppose APF's motion; the *government's* stated interest in litigation may not
23 necessarily be the same as the *public's*. See *Galvin*, 491 P.3d at 341 (Maassen,
24 J., dissenting) (cautioning courts not to “define[] the public interest too narrowly and
25 give[] too much credence to the [State]'s largely conclusory” public interest claims).

26 ²² APF claims that denying a stay “could” moot this appeal because they would
have no choice but to comply with the law. See APF's Motion at 5. But this is
simply not true. APF can continue to ignore Alaska's campaign disclosure statutes;
this, in fact, is what they have already done during the pendency of this appeal. If
this court properly denies APF's request for a stay, APF would then simply need to
weigh that against the possible future imposition of daily fines from APOC. See
AS 15.13.390.

1 request for a stay. But if this court decides that APF should nevertheless have the
2 opportunity to post a supersedeas bond, Yes on 2 disagrees with APF's request that
3 they should not have to post *any* supersedeas bond amount at all.

4 Because this appeal does not concern a monetary judgment, this court has
5 the discretion to set a supersedeas bond amount.²³ And Yes on 2 suggests that this
6 court mirror APOC's fine schedule when setting any supersedeas bond amount.²⁴

7 APOC concluded that APF violated three of Alaska's campaign disclosure
8 requirements. [SOA 260-261, 275-276] As of this filing, APF has been out of
9 compliance with these requirements for approximately 437 days, and each of these
10 three violations have a maximum \$50 per day penalty.²⁵ Furthermore, given the
11 enacted changes to AS 15.13.390, APF could face much steeper penalties for
12 defying APOC's July order; some of the maximum penalties can now be as high as
13 \$1,000 per day.²⁶

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15 Given this existing penalty framework, Yes on 2 suggests that — if this court
16 determines that APF could obtain a stay by posting a supersedeas bond — the
17 amount of that supersedeas bond should equal the amount in fines that APF has so
18 far avoided. As of this filing, APF's failure to comply with Alaska's campaign finance
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²³ See Alaska App. R. 204(d), 603(a)(2)(A).

23 ²⁴ AS 15.13.390.

24 ²⁵ See former AS 15.13.390 (2020).

25 ²⁶ See AS 15.13.390(a)(2).

1 statutes since July 2020 should equate to a maximum fine of \$65,550,²⁷ and APF's
2 recent decision to ignore APOC's July 2021 order should equate to an additional
3 maximum fine of \$53,000.²⁸ Setting supersedeas bond amount to reflect both of
4 these numbers, or \$118,550 as of this filing, would most closely align with the public's
5 statutorily-defined interest in imposing penalties to organizations — like APF here —
6 who fail to comply with Alaska's campaign finance disclosure requirements.

7 **IV. CONCLUSION**

8 The public does not have an interest in keeping the identity of APF's
9 contributors secret. APF made a choice to speak out against Ballot Measure 2 last
10 year, and they are not above Alaska's campaign finance disclosure laws. Because
11 the public continues to have an interest in knowing who contributed to APF's
12 campaign against Ballot Measure 2, this court should deny APF's request for a stay
13 under Alaska Appellate Rule 603(a)(2)(A). Alternatively, this court should require
14 the posting of a supersedeas bond of approximately \$118,550 to reflect the amount
15 in fines Alaska's statutes would ordinarily require APF to face for failing to follow the
16 law.
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20 ²⁷ This assumes three \$50 per day penalties for 437 days.

21 ²⁸ The current version of AS 15.13.390 was enacted through Ballot Measure 2,
22 and became effective at the end of February 2021. In addition to the three
23 penalties noted by APOC in its July 2021 order, APF now appears to also in
24 violation of AS 15.13.040(r) — which requires the disclosure of the “true source” of
25 its donors — and boasts a \$1,000 per day penalty. AS 15.13.390(a)(2). This
\$53,000 amount does not reflect the 53-day period that APF has so far failed to
comply with APOC's July 2021 order, which totals \$7,950, because it is already
included in Yes on 2's prior calculation.

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CASHION GILMORE & LINDEMUTH
Attorneys for Yes on 2 for Better Elections

s/ Scott M. Kendall

DATE: October 4, 2021

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via email on October 4, 2021 on the following:

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By: s/Jennifer Witaschek

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

ALASKA POLICY FORUM,
Appellant,

v.

ALASKA PUBLIC OFFICES
COMMISSION, et al.,

Appellees.

Case No. 3AN-21-07137CI

**[PROPOSED] ORDER DENYING APPELLANT ALASKA POLICY FORUM'S
MOTION TO STAY ENFORCEMENT OF JUDGMENT PENDING APPEAL**

This court, having considered Appellant Alaska Policy Forum's Motion to Stay Enforcement of Judgment Pending Appeal, Appellee Yes on 2 for Better Election's Opposition, and any reply thereto, hereby DENIES the motion. This court finds that the public's interest in timely and accurate campaign finance disclosures:

- [outweighs Appellant's interest in a stay pending appeal.]
- [requires Appellant to post a supersedeas bond in the amount of \$_____ before a stay is imposed.]

IT IS SO ORDERED.

DATED: _____

Hon. Gregory A. Miller
SUPERIOR COURT JUDGE