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

AMERICAN CIVIL LIBERTIES UNION)
OF ALASKA, DUNLEAVY FOR)
ALASKA, AND ERIC SIEBELS,)

Plaintiffs,)

v.)

STATE OF ALASKA, and the STATE OF)
ALASKA DEPARTMENT OF)
TRANSPORTATION & PUBLIC)
FACILITIES,)

Defendants.)

FILED
STATE OF ALASKA
THIRD DISTRICT
2018 AUG 24 AM 11:42
CLERK OF THE TRIAL COURTS
BY _____
DEPUTY CLERK

Case No. 3AN-18-08845 CI

**NOTICE OF OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION**

The State of Alaska and the State of Alaska Department of Transportation & Public Facilities (“State”), by and through the Office of the Attorney General, provides the Court with notice of its opposition and respectfully requests the Court deny the Plaintiffs’ motion for a temporary restraining order. The State intends to file a detailed opposition to the motion for a temporary restraining order and preliminary injunction. We respectfully request that the Court schedule a status conference to address both the temporary restraining order request and a briefing schedule for the preliminary injunction motion.

Plaintiffs American Civil Liberties Union of Alaska, Dunleavy for Alaska, and Eric Siebels ask this Court to grant sweeping emergency ex-parte relief blocking all enforcement of a longstanding state law without any reasonable time for the State to respond. Plaintiffs’ requested TRO would even bar DOT&PF from removing signs from

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NOT LINKED
TO MOTION
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the public right-of-way that create a hazard for motorists.¹ Although Plaintiffs urge that they have made efforts to provide notice to the State, the Plaintiffs did not “contemporaneously serve[]” the State as alleged in their Affidavit of Counsel. The Plaintiffs’ materials were emailed to DOTPF officials and a line attorney after the court was closed at 5:51 p.m. and 6:04 p.m. last night, Thursday, August 23. Any current urgency was created by Plaintiffs who were made aware of the State’s potential enforcement actions at least as early as July 10 of this year, if not earlier.²

Yet even in the few short hours the State has had to review the Plaintiffs voluminous filing, the State has discovered glaring defects in the Plaintiffs’ filings. First, Eric Siebels alleges that he “is fearful that DOT will flag the political sign on [his] property” and that he risks fine or criminal sanction. Mr. Siebels’ concerns are unfounded because his property is not subject to the State statutes and regulations at issue in the Complaint and Motion for TRO. As Plaintiffs specifically acknowledge, AS 19.25.105 applies only to a specific list of roads, i.e. interstate, primary, or secondary highways. The roads abutting Mr. Siebels’ property are not on the list of roads subject to enforcement.³

¹ Memo. in Support of Motion for Temporary Restraining Order.

² Complaint at ¶¶ 10, 17.

³ Memo. in Support of Motion for Temporary Restraining Order at 2-4. Plaintiffs did not provide location information for Mr. Siebels’ property, either in their filings or directly to counsel for the State, to allow the State to undertake reasonable investigation. Using the Matanuska-Susitna Borough’s online property records and commonly available internet mapping websites, counsel for the State identified Mr. Siebels’ property and confirmed that it was the location of the “Dunleavy” sign shown in his affidavit and the Plaintiffs’ other filings. The State can quickly demonstrate to the Court that Mr. Siebels’ property is not subject to the sign statutes per the adopted road list, Exh. 1 to Plaintiffs’ Memo.

Accordingly, Mr. Siebels is not harmed by the State statutes in question, his concerns are not supported in law or fact, and he may not have standing to challenge the statutes.

Second, the Plaintiffs allege based on three photos that the State is discriminating between political campaigns and between commercial and political speech.⁴ But these pictures do not demonstrate any such discrimination and certainly not on a widespread level that would support enjoining the State from all enforcement of the sign statutes, including removal of safety hazards from public rights of way. Indeed, on information and belief, the picture below shows that the State does indeed enforce the sign statutes against commercial interests and the Plaintiffs' political opponents:⁵

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⁴ Memo. in Support of Motion for Temporary Restraining Order at 7-10.

⁵ On information and belief, this photograph was taken by DOT&PF staff on or about July 24, 2018 and represents signs removed by DOT&PF from rights-of-way subject to the State statutes at issue.



The pictures provided by Mr. Siebels allegedly showing discrimination between commercial and political speech in the right of way do not identify a location or where the edge of the right of way is. And neither Mr. Siebels' photos or affidavit provide sufficient information to exclude reasonable non-discriminatory reasons for why the commercial sign would be untagged in the right-of-way where the political signs were tagged. For example, a small portable, apparently unaffixed commercial sign may have been placed after DOT&PF employees flagged the political signs. This Court should not halt enforcement of the State's sign statutes everywhere based on such testimony, particularly from a witness who may lack standing and improperly identified to this Court that his own property was subject to the sign statutes when it was not.

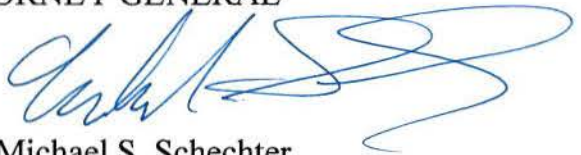
Finally, on information and belief, the State has not removed any political signs from private property during at least the current election season. Indeed, the worry voiced by the Plaintiffs regarding placing additional signs on private property potentially subject to the sign statutes appears unfounded given the proliferation of signs visible from state highways, including many supporting candidate Dunleavy.

The requested temporary restraining order is overbroad and the request is not supported by reasonable facts. The Court should not restrain the State from enforcing its validly enacted law before the State has had a reasonable chance to fully brief the issues raised in Plaintiffs' filings. Accordingly, the State respectfully requests that a temporary restraining order be denied and that an expedited briefing schedule be set for prompt review of the Plaintiffs' motion for preliminary injunction.

DATED August 24, 2018.

JAHNA LINDEMUTH
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By:



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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2018, true and correct copies of the *Notice of Opposition to Motion for Temporary Restraining Order and Preliminary Injunction*, and this *Certificate of Service* were served via U.S. mail on the following:

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