

Valley

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.

Case No. 3AN-18-08845 CI

FILED
STATE OF ALASKA
THIRD DISTRICT
2018 AUG 27 PM 4:23
CLERK OF THE TRIAL COURTS
BY DEPUTY CLERK

RESPONSE TO STATE'S NOTICE OF OPPOSITION

The State asserts that Plaintiffs' concerns about enforcement of AS 19.25.075 *et seq.* against signs on private property are unfounded because "the State has not removed any political signs from private property during at least the current election season."¹ But the State itself sent out the notices advising Plaintiffs that these signs were illegal and that violators could be subject to substantial fines and criminal prosecution.² And the State's threat of enforcement is already chilling protected speech. Plaintiff Dunleavy for Alaska, and likely others, have refrained from distributing and placing signs on private property for fear of State retribution.³ Having specifically threatened Plaintiffs with prosecution, the

¹ State's Notice of Opposition at p. 5.

² See Exhibit 2 to Motion for Temporary Restraining Order and Preliminary Injunction.

³ See Affidavit of T. Gales at ¶ 10, submitted with Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction.

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State cannot reasonably contend that Plaintiffs' concerns are unfounded.

The State also asserts that an order enjoining enforcement of AS 19.25.075, *et seq.* will leave it powerless to protect motorists from signs in the public right-of-way that present safety hazards. Plaintiffs have no interest whatsoever in interfering with the Department of Transportation's (DOT) ability maintain road safety or its authority to remove signs of any kind that create an imminent hazard for motorists. But the State does not need to rely on AS 19.25 to remedy such safety concerns. DOT has general highway maintenance and safety authority under AS 44.42.020 and its implementing regulations. Enjoining enforcement of AS 19.25 will not impede that authority or prevent DOT from taking any measures reasonably necessary to protect the travelling public. DOT will retain that authority under AS 44.42.020.

Moreover, the State has already conceded that public safety concerns were not the motivating factor for the vast majority of the signs it has flagged or confiscated under AS 19.25.075 *et seq.*⁴ Accordingly, this Court can fashion temporary injunctive relief that both preserves DOT's ability to protect public safety while at the same time protecting the First Amendment rights of Alaskan citizens.

At a minimum, this Court should issue an order temporarily restraining the State from enforcing AS 19.25.075 *et seq.* to the extent the statute purports to prohibit Alaskan citizens from placing signs on private property outside of the public right-of-way. Despite

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⁴ See Motion for Temporary Restraining Order and Preliminary Injunction at p. 10.

the State's explicit threat to enforce this prohibition,⁵ it now apparently concedes that the threat was hollow. A temporary restraining order is nevertheless warranted to assure Alaskans that they cannot be prosecuted for engaging in protected political speech.

Further, to prevent the State from unfairly targeting political speech, the Court should restrain enforcement of AS 19.25.075 *et seq.* except to the extent that enforcement serves legitimate public safety interests. So long as that the State can provide a reasoned and content-neutral justification for removing signs in the interest of public safety, Alaskans' First Amendment rights will be adequately safeguarded and the State's ability to maintain road safety will be unimpeded.

For all of the foregoing reasons, all unconstitutional applications of Alaska's sign ban statute should be immediately enjoined.⁶

⁵ See Exhibit 2 to Motion for Temporary Restraining Order and Preliminary Injunction.

⁶ None of the State's other arguments provide a basis for denying temporary relief. The State complains that Eric Siebels might not have standing and that Plaintiffs did not contemporaneously serve process on the State. Whether Mr. Siebels has standing is irrelevant for purposes of the present motion because the remaining plaintiffs, the ACLU of Alaska and Dunleavy for Alaska, clearly have standing. And a temporary restraining order does not require formal service. To the contrary, Civil Rule 65(b) specifically contemplates that such an order may be granted without any notice to the opposing party. The State complains that Plaintiffs' efforts to give the state informal notice were made to a "line attorney" after the courts closed. The "line attorney" was Max Garner, the Assistant Attorney General within the Department of Law that represents the Department of Transportation. And the informal service appears to have been effective since the State was able to respond within 24 hours. Finally, the State's complaint about formal service is without merit. Service on the state under Civil Rule 4 requires certified mailing of the summons and complaint to Juneau. Plaintiffs completed that mailing as soon as practicable after the clerk issued the summons late in the afternoon on Thursday, August 23rd. Finally, contrary to the State's blithe assertion, the "urgency" here is the blatant and ongoing infringement of the United States and Alaska Constitutions. Plaintiffs would have sought an immediate restraining order without notice to the State regardless of when the complaint was filed.

DATED at Anchorage, Alaska this 27th day of August, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on 27th day of August, 2018, a true and correct copy of the foregoing document to be served by email and U.S. mail, postage prepaid, on the following:

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