

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 State of Alaska)
Department of Transportation &)
Public Facilities,)

Defendants.)

Case No. 3AN-18-08845 CI

TEMPORARY RESTRAINING ORDER

Before the court is the American Civil Liberties Union of Alaska's Motion for a Temporary Restraining Order and Preliminary Injunction. Oral argument on this motion was heard on September 6, 2018. At oral argument, the State of Alaska and Plaintiffs were able to reach agreement on some of the issues before the court. This temporary restraining order mainly focuses on those areas of agreement. The court continues to keep the remaining issues under advisement, and will issue a separate order on the remaining issues and the preliminary injunction soon.

FACTS AND PROCEDURAL BACKGROUND

This case concerns the constitutionality of Alaska's ban on outdoor advertising as applied to political campaign signs placed in the state's public right-of-ways, and within

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view of the public right-of-ways. The first plaintiff is the American Civil Liberties Union of Alaska (hereinafter “ACLU”), an Alaska nonprofit corporation that is categorized as a social welfare organization under section 501(c)(4) of the Internal Revenue Code.¹ Plaintiff Dunleavy for Alaska is an Independent Expenditure Group that advocates for the election of Mike Dunleavy for Governor of Alaska.² A major focus of the Dunleavy for Alaska group is a sign campaign.³ Plaintiff Eric Siebels is an Alaska citizen who has installed a 4’ x 8’ Dunleavy for Alaska sign on his property.⁴ He has heard of and witnessed the Department of Transportation’s crackdown on political signs near roadways, and is now fearful that the sign on his property will be targeted.⁵

Plaintiffs have filed suit against two defendants, the State of Alaska and Alaska’s Department of Transportation and Public Facilities.⁶ The suit challenges the Department of Transportation’s enforcement of Alaska Statute 19.25.075-180 as applied to campaign signs as an unconstitutional infringement on political speech in violation of the First Amendment of the United States Constitution and Article 1, Section 5 of the Alaska Constitution.⁷

¹ Compl. ¶ 1 (Aug. 23, 2018).

² Compl. ¶ 2.

³ Compl. ¶ 14.

⁴ Compl. ¶ 3, 9.

⁵ Compl. ¶ 10, 11, 12.

⁶ Compl. ¶ 4.

⁷ Compl. ¶ 30-34.

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The complaint also contains a facial challenge to AS 19.25.075-180.⁸ Alaska Statute 19.25.075-180 prohibits outdoor signs in order to preserve “Alaska’s uniqueness and its scenic beauty” and to protect public safety.⁹ Plaintiffs note that the statutes contain “a myriad of enumerated exceptions, effectively allowing many kinds of outdoor advertising but not temporary political signs.”¹⁰ The ACLU argues that by allowing many kinds of private and commercial outdoor advertising, while simultaneously barring temporary political signs, the statute “is an improper content-based restriction on speech and is unconstitutional on its face.”¹¹

On September 7, 2017 and again on July 10, 2018 the Department of Transportation and Public Facilities sent a letter to all registered candidates and independent groups sponsoring candidates.¹² The letter stated that unauthorized signs within the State’s public right-of-ways are prohibited and subject to removal without notification or compensation.¹³ The letter declares:

Unauthorized signs *on private or commercial property adjacent to* the State’s public right of ways are *prohibited* by AS 19.25.105 (a) and (c) if they are *either located within 660 feet of the nearest edge or legible from the main traveled way* of the State’s public right of way.

In accordance with 17 AAC 20.013 DOT&PF is authorized to require removal of the sign “at the expense of the owner of the land or the person who erected it” Notice of

⁸ Comp. ¶ 37-41.

⁹ AS 19.25.075(a), 19.25.075(b).

¹⁰ Compl. ¶ 38.

¹¹ Compl. ¶ 39.

¹² Heather Fair Aff. ¶ 17, 19 (Aug. 31, 2018).

¹³ Ex. B at 1.

violation and order to rectify will be sent to the property owner. . . .

The owner or person placing the unauthorized sign is ***subject to removal expenses of at least \$50 per sign; fines of at least \$50 and as much as \$5,000 if convicted of a misdemeanor; and associated costs.***¹⁴

In addition to the letters sent to candidates and independent groups, the state has informational websites that advise Alaskans of the prohibition on placing outdoor signs within 660 feet of the state's public right of ways, and threaten the same \$50 to \$5,000 fines for those convicted of the misdemeanor of placing or maintaining unauthorized signs.¹⁵

On July 25, 2018, after giving notice to the candidates, political parties, and having issued a press release, the state flagged signs with survey tape that it intended to remove in the central region.¹⁶ Signs that presented an immediate safety hazard were removed immediately, and the remaining signs were removed the following Monday.¹⁷ Similar enforcement efforts were undertaken in August in the Mat-Su Borough, the Eagle River area, and the Kenai Peninsula.¹⁸

While the letters sent by the state and the state's websites state that political signs on private property within 660 feet of the state's public right-of-ways are prohibited and subject to removal and possible fines, the state maintains that it "has not and will not

¹⁴ Ex. B at 1 (emphasis in original).

¹⁵ Ex. E (Office of the Commissioner Press Release); Ex. C; Ex. A (Alaska Department of Transportation & Public Facilities Statewide Design & Engineering Services, Posting Political Signs in Alaska).

¹⁶ Danika Simpson-Golden Aff. ¶ 11, 12, 13 (Aug. 31, 2018).

¹⁷ *Id.* ¶ 19.

¹⁸ *Id.* ¶ 20.

remove political campaign signs from private property (unless the sign presents a clear safety issue).”¹⁹ An affidavit from the Property Management and Database Supervisor assigned to the Central Region of the Department of Transportation & Public Facilities testifies that:

At no point during these enforcement efforts did the ROW Agents under my supervision flag or remove any signs—political or otherwise—located outside highway rights-of-way. This is consistent with the longstanding policy within DOTPF’s Central Region to take no enforcement action with regard to small temporary political signs located on private property outside identified highway rights-of-way. As I understand it, that policy is based on court decisions holding that small temporary signs of a non-commercial nature are generally considered to be protected free speech.²⁰

On August 23, 2018, Plaintiffs filed a Motion for Temporary Restraining Order and Preliminary Injunction alleging that Alaska Statute 19.25.075 *et seq.* is unconstitutional as applied and on its face. The ACLU argues that AS 19.25.105 is unconstitutional on its face as an impermissible content-based restriction on speech.²¹ The motion seeks a temporary restraining order and an injunction enjoining the state’s enforcement of AS 19.25.75-180.²²

The State filed an opposition on August 31, 2018, and a corrected brief entitled State of Alaska’s Partial Opposition to Motion for Preliminary Injunction (Corrected) on September 4, 2018. The state contends that the 1965 Federal Highway Beautification Act

¹⁹ State of Alaska’s Partial Opp’n to Mot. for Prelim. Inj. (Corrected) at 3 (Sept. 4, 2018)(hereinafter “Opp.”).

²⁰ Danika Simpson-Golden Aff. ¶ 23.

²¹ Opp. at 17-18, 18-23.

²² Opp. at 24, 26-27.

conditions ten percent of a state's federal highway funds on the state's maintaining effective control over outdoor advertising signs located within 660 feet of the edge of the interstate or primary highways.²³ Alaska enacted laws regulating outdoor advertising to establish the effect control required by the Federal Highway Beautification Act.²⁴ Under Alaska's act, outdoor advertising means "any sign or display used to advertise, inform, or attract attention, regardless of content, subject matter, or viewpoint."²⁵ The state contends that without the controls provided by Alaska's Outdoor Advertising law, Alaska could lose over \$50 million per year in highway funds.²⁶

The state argues that Alaska's "ban on paid outdoor advertising outside of the right-of-way and its content-neutral ban on all advertising within the right-of-way are constitutional on their face and as applied. . . ."²⁷ The state asked for a narrowly tailored injunction and restraining order that would allow "small, temporary, political campaign signs no larger than 4' X 8' displayed on private property by owners or occupants of the property who have not been paid to display the signs."²⁸ The state submitted a proposed order that detailed the limits of its request.

The court heard oral argument on September 5, 2018. At oral argument both parties agreed to the state's proposed order with the notable exception that the ACLU

²³ Opp. at 4-5.

²⁴ Opp. at 5-6; AS 19.25.75 *et seq.*

²⁵ Opp. at 6.

²⁶ Opp. at 8.

²⁷ Opp. at 2.

²⁸ Opp. at 2.

wanted the order to allow small campaign signs in the state's public right-of-ways as well.

AREAS OF AGREEMENT

The parties have demonstrated agreement as to some of the issues before the court based on the applicable case law and constitutional analysis. The court orders the following:

1. **Small, Temporary, Political Campaign Signs:** This order specifically addresses the issue of small, temporary, political campaign signs no larger than 4' X 8' displayed on private property by the owners or occupants of that property who have not been paid to display the signs.
2. **Signs that Pose a Safety Concern:** Nothing in this order shall be construed to prevent the State of Alaska and the Department of Transportation & Public Facilities from removing a sign of any size that poses a safety concern to the public, or dealing with unsafe signs in their usual manner, regardless of the content of the sign, or whether it is located on private property.
3. **Signs Outside of the State's Right-of-Ways:** The State of Alaska and the State of Alaska Department of Transportation & Public Facilities are ordered to allow the display of small, temporary, political campaign signs on private property, even those that are otherwise subject to Alaska's Outdoor Advertising Law's

prohibition on advertising within 660 feet of the State's highway right-of-ways.

These signs are limited to those described in ¶ 1 above.

4. **Signs Within the State's Right-of-Ways:** The State of Alaska and the State of Alaska Department of Transportation & Public Facilities are ordered to treat unauthorized commercial signs and political campaign signs equally. Enforcement of AS 19.25.105 within the state's right-of-ways shall be done without regard to the content of the sign. In other words, this order leaves AS 19.25.75-180 intact. The state is ordered to enforce its ban on outdoor advertising equally on both unauthorized commercial signs and political campaign signs located within the state's protected right-of-ways.
5. **Prohibition on Paid Off-Premises Outdoor Advertising:** The state of Alaska's prohibition on paid, off-premises, outdoor advertising remains intact. This order shall not be construed to allow paid, off-premises, outdoor advertising that violates AS 19.25.75-180.
6. **Signs on Private Property:** The State of Alaska and the State of Alaska Department of Transportation & Public Facilities shall continue their practice of not removing small, temporary, political campaign signs from private property in violation of the Constitution. An exception may be made if the sign in question poses a legitimate safety hazard.

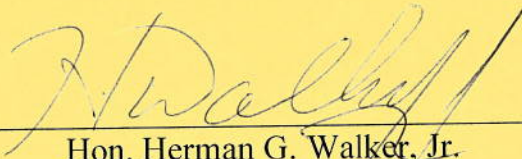
7. **Publicization of this Order:** In order to verify that the public is aware that its right to display small, temporary, political campaign signs on their private property will not be interfered with, the State of Alaska and the State of Alaska Department of Transportation & Public Facilities shall publicize this order. These efforts to publicize this order must be done within three business days of the distribution of this order. In particular, the State of Alaska and the Department shall cease threatening the public with fines or fees for displaying small, temporary, campaign signs on private property outside the state's right-of-ways as described in ¶ 1. The State and the Department will make reasonable efforts to make the public aware that they are free to exercise their constitutionally protected right to political speech by displaying small, temporary, campaign signs. The State and Department shall:

- a. **Revise and Update Campaign Sign Webpages:** The State of Alaska and the State of Alaska Department of Transportation & Public Facilities shall revise and update their campaign sign webpages to reflect this order.
- b. **Email Updated Guidance:** The State of Alaska and the State of Alaska Department of Transportation & Public Facilities shall email updated guidance to all current candidates and campaigns registered with the Alaska Public Offices Commission.

c. **Press Release:** The State of Alaska and the State of Alaska Department of Transportation & Public Facilities shall issue a press release discussing the updated guidance for political signs within and outside of the state's right-of-ways, as provided in this order.

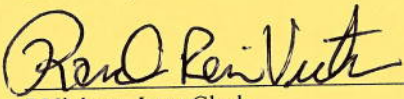
The court will keep the remaining issues under advisement, and will issue a separate order on the remaining issues and the preliminary injunction soon.

ORDERED this 10th day of September, 2018 at Anchorage, Alaska.


Hon. Herman G. Walker, Jr.
Superior Court Judge

I certify that on 9-10-18
a copy of the above was emailed to each of
the following at their addresses of record:

Decker, J	Scully, P
Singer, M	Garner, M
Schechter, M	Macsalka, M


RVickers, Law Clerk

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