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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.

Case No. 3AN-18-\_\_\_\_\_ CI

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF  
FOR THE VINDICATION OF CONSTITUTIONAL RIGHTS**

There is no right more fundamental to a democracy than the right of an individual citizen to express his or her personal political views without fear of sanction or censure by the government. In an ill-conceived “crackdown” on political signage, the Department of Transportation & Public Facilities (“Department of Transportation” or “DOT”) is flouting Alaskans’ constitutional rights and improperly regulating the content of citizen speech. Because DOT’s conduct has caused and will cause irreparable harm, this lawsuit seeks a temporary, preliminary, and permanent injunction to halt DOT from interfering with the right of Alaskans to engage in political speech through display of political signs on private property. Plaintiffs also request that the Court declare that Alaska’s sign statute,

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AS 19.25.075–.180, is unconstitutional as applied by DOT and is facially unconstitutional because it improperly regulates the content of citizen speech.

Plaintiffs American Civil Liberties Union of Alaska, Dunleavy for Alaska and Eric Siebels, for their Complaint, state and allege as follows:

### **PARTIES**

1. Plaintiff American Civil Liberties Union of Alaska (“ACLU of Alaska”) is an Alaska nonprofit corporation with its office in the Third Judicial District. The ACLU of Alaska is a social welfare organization under section 501(c)(4) of the Internal Revenue Code. It advocates politically throughout Alaska to educate Alaskans about their rights under the U.S. and Alaska Constitutions and to persuade elected and appointed officials to protect those fundamental guarantees. The ACLU of Alaska is the Alaska affiliate of the national American Civil Liberties Union. It has roughly 4,000 card-carrying members across Alaska who vigorously exercise their right to participate in electoral politics. ACLU of Alaska members have run for and held elective office, supported and worked on political campaigns, and urged fellow Alaskans to vote. The ACLU of Alaska itself has helped run and win ballot-measure campaigns. It was on the steering committees for the statewide Yes on 1: PFD Automatic Voter Registration initiative, which it won in November 2016, and the No on Prop 1: Fair Anchorage campaign, which it won in April 2018. The ACLU of Alaska sues on its own behalf and on behalf of its members.

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2. Plaintiff Dunleavy for Alaska is an Independent Expenditure Group that supports the election of Mike Dunleavy for Governor of Alaska through various activities within the Third Judicial District.

3. Plaintiff Eric Siebels is an Alaska citizen, a voter, and a resident of the Third Judicial District.

4. Defendant State of Alaska (“State”) is a sovereign entity organized in accordance with the laws of the United States. The Department of Transportation and Public Facilities is a subdivision of the executive branch of the State and is charged with, among other things, road and right-of-way maintenance.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over the subject matter of this action pursuant to AS 22.10.020.

6. Venue is proper in the Third Judicial District pursuant to Alaska Rule of Civil Procedure 3. Acts giving rise to this dispute are taking place within the Third Judicial District and Anchorage is the location that best serves the convenience of the parties and anticipated witnesses.

### **FACTS**

#### **ERIC SIEBELS’ CONSTITUTIONALLY PROTECTED POLITICAL SPEECH**

7. Eric Siebels is a longtime Alaska resident and registered voter.

8. In 2014, Mr. Siebels exercised his right to engage in political speech by constructing a 4’ x 8’ sign on his property in Palmer, Alaska. The sign advocated for

candidate Bill Walker for governor. Mr. Siebels went to considerable effort and expense to build an attractive sign, including by installing painted wood posts into the ground to support the sign. Mr. Siebels placed a United States and Alaska flag on each side of his sign, and hung flowers on each side of the sign. The sign reflected his political views, his exercise of speech, and his patriotism for Alaska and the United States of America. Here is a picture of Mr. Siebels' 2014 political sign, which was not cited, removed, or otherwise sanctioned by DOT in the 2014 election cycle:



9. In 2018, Mr. Siebels chose to install a new sign on his property. He had left the white sign posts and flags on his property since 2014. Based on his political views and opinions, he decided in this election cycle to support Mike Dunleavy for Alaska's governor. Mr. Siebels contacted the group Dunleavy for Alaska and requested a 4' x 8' sign for his property. Mr. Siebels installed the sign at the exact same location using the

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original sign base with painted wooden posts, Alaska and United States flags, and flower pots. Here is a picture of Mr. Siebels' 2018 sign:



10. In July 2018, Mr. Siebels learned that the Department of Transportation had announced a crackdown on political signs near roadways. He learned that DOT was threatening citizens with fines and criminal sanctions if they displayed political signs that were visible from a roadway.

11. In early August 2018, Mr. Siebels began observing DOT's crackdown in effect. He saw that DOT had flagged political signs in his community, including near his property. Mr. Siebels also observed that DOT's crackdown was exclusively focused on political speech, and omitted any enforcement of other kinds of signs. As an example, Mr. Siebels observed that all political signs along a roadway in Palmer had been flagged by DOT with survey tape, whereas an adjacent sign advertising that vegetables were for sale one mile away was not flagged. Here are two pictures reflecting DOT's disparate



treatment of signs in the same location based, apparently, solely on the content of the speech contained thereon. The sign for candidate Goode contains DOT tape, whereas the sign for vegetables does not:



12. Mr. Siebels is now fearful that DOT will flag the political sign on his property, and that he must choose between exercising his right to free speech and risking possible fines and/or criminal sanction.

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## **DUNLEAVY FOR ALASKA’S EXERCISE OF CONSTITUTIONALLY PROTECTED FREE SPEECH**

13. Dunleavy for Alaska is an Independent Expenditure Group organized for the purpose of advocating that voters elect Mike Dunleavy for Alaska’s governor.

14. A major focus of the Dunleavy for Alaska group has been a sign campaign. The group has spent approximately \$50,000 to purchase, build, and distribute signs, and has developed a variety of different signs. Here are examples of the Dunleavy for Alaska signs:



15. The group’s signs have been very well received by voters. As an example, the group has received more than 100 requests for the signs in the past week. The group has distributed at least 1,000 yard signs to Alaska voters in over 100 different communities statewide.

16. The group’s directions to its volunteers and sign vendor has been to be install signs only on private property, and only with the property owner’s consent.

17. On July 10, 2018, the Department of Transportation sent a “courtesy notice” via email to the group. The notice threatened financial and criminal sanctions for posting political signs within view of roadways. A copy of that notice is attached as Exhibit 1.

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18. The group has built fifty 4' x 8' signs that it has presently stored in a warehouse.

Due to DOT's crackdown on political signs, the group is holding the signs until it has clarity on whether the signs may be lawfully displayed.

19. DOT has flagged and confiscated several Dunleavy for Alaska signs. On Friday, August 10, 2018, the group contacted DOT to recover its signs. DOT refused to allow the group to recover its signs that day, stating that it could try again on Monday, August 13, 2018. DOT has indicated that Dunleavy for Alaska will have to pay \$200 per sign to get them back. DOT also said that the signs were locked up and the group could not come to the yard to count how many signs had been confiscated.

**THE DEPARTMENT OF TRANSPORTATION'S SIGN CRACKDOWN IS AN IMPROPER, CONTENT-BASED RESTRICTION ON FREE SPEECH**

20. DOT's notice, Exhibit 1, was directed solely to political campaigns and candidates. DOT has made no effort to threaten others with civil or criminal penalties for placement of signs that may otherwise violate Alaska's statute. DOT claims that its conduct is justified by AS 19.25.105.

21. DOT is flagging political signs along roadways, but is not flagging other signs in the same locations, even when non-political signs are located closer to the roadway. On information and belief, DOT has confiscated only political signs, and has not confiscated any signs containing commercial or other forms of speech. DOT's content-based campaign belies any notion that it is primarily concerned about public safety.

22. DOT is flagging and confiscating political signs from private property, whether or not the signs present any actual public safety hazard.

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23. DOT has a “sign graveyard” in Alaska that exclusively contains signs conveying political speech. A photograph appearing in the online edition of the Anchorage Daily News on August 12, 2018 shows this sign graveyard:



#### **THE DEPARTMENT OF TRANSPORTATION’S SUDDEN CRACKDOWN ON POLITICAL SPEECH APPEARS TO BE POLITICALLY MOTIVATED**

24. Alaskan citizens have expressed political speech with temporary political signs in each election cycle for many decades. On information and belief, DOT has not previously had a campaign to confiscate a high volume of signs or to threaten citizens with civil and criminal sanctions for expressing political views on private property.

25. This year, opponents of Governor Walker, including Dunleavy for Alaska, have advanced sign campaigns that are more elaborate and sophisticated than in years past.

26. Governor Walker trails in the polls. As of late June, his campaign’s pollster, Patinkin Research Strategies, announced that he was in second place with 28% to

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Dunleavy's 36% and Begich's 22%,<sup>1</sup> while the poll commissioned by the Alaska AFL-CIO showed Walker and Begich both tied in last place at 28%, to Dunleavy's 32%.<sup>2</sup>

27. On July 5, 2018, the Walker campaign made a large purchase of bus advertising in the Municipality of Anchorage. Bus signs are exempt from AS 19.25.105.

28. Five days later, DOT announced its crackdown on political signs.

29. According to published news accounts, DOT has not confiscated a single sign from the Walker campaign. DOT has confiscated signs for both of Walker's political opponents, Mike Dunleavy and Mark Begich.

**COUNT I**  
**VIOLATION OF FIRST AMENDMENT OF THE UNITED STATES**  
**CONSTITUTION AND ARTICLE 1, SECTION 5 OF THE ALASKA**  
**CONSTITUTION: "AS-APPLIED" CHALLENGE TO DOT'S**  
**ENFORCEMENT OF AS 19.25.075 –.180**

30. Freedom of speech is protected by the First Amendment to the United States Constitution and by Article 1, Section 5 of the Alaska Constitution. Political speech is a special category of free speech that is entitled to heightened protection, as there is no right more fundamental in a democracy than the right of a citizen to express his or her political views without fear of censure or sanction by the government.

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<sup>1</sup> See Patinkin Research Strategies: *Walker-Mallott In 2nd Place In Governor's Race; Begich-Call Trail In Third* (July 6, 2018), available at <https://www.walkermallottforalaska.com/polling/2018/7/5/walker-mallott-in-2nd-place-in-governors-race-begich-call-trail-in-third>.

<sup>2</sup> See Matt Buxton, *Walker, Begich Tied For Second Close Behind Dunleavy In Latest Poll Commissioned By AFL-CIO*, MIDNIGHTSUNAK.COM (July 9, 2018), available at <http://midnightsunak.com/2018/07/09/walker-begich-tied-for-second-far-behind-dunleavy-in-latest-poll-commissioned-by-afl-cio/>.

31. The First Amendment broadly protects the “freedom of expression upon public questions.” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964).

32. The Alaska Constitution protects free speech at least as broadly as the U.S. Constitution and in a more explicit and direct manner. *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 198 (Alaska 2007).

33. The First Amendment and the Alaska Constitution prohibit the government from enacting content-based restrictions on speech, particularly without a compelling government interest.

34. Because DOT has focused its crackdown solely on political speech, while ignoring other signs within view of state roadways, it cannot credibly contend that its actions are based on a compelling government interest. DOT cannot credibly contend that the sign on the right in the below photograph presents a risk to public safety while the sign on the left does not, and so its actions are in fact an improper attempt by government to regulate free speech:

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35. Plaintiffs are entitled to an immediate injunction to halt DOT's infringement of constitutionally protected political speech.

36. Plaintiffs are entitled to a declaratory judgment establishing that DOT's regulation of political speech is a violation of the United States and Alaska Constitutions.

**COUNT II:**  
**VIOLATION OF FIRST AMENDMENT OF THE UNITED STATES**  
**CONSTITUTION AND ARTICLE 1, SECTION 5 OF THE ALASKA**  
**CONSTITUTION: FACIAL CHALLENGE TO AS 19.25.075-.180.**

37. Alaska Statute AS 19.25.075 -.180 purports to restrict outdoor signage in order to preserve Alaska's scenery and protect public safety.

38. The statute contains a myriad of enumerated exceptions, effectively allowing many kinds of outdoor advertising but not temporary political signs.

39. By effectively allowing many kinds of private and commercial outdoor advertising, while at the same time barring temporary political signage, AS 19.25.075-.180

is an improper content-based restriction on speech and is unconstitutional on its face. *See City of Ladue v. Gilleo*, 512 U.S. 43 (1994), *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015).

40. AS 19.25.075–.180 is also unconstitutional because it: operates to chill or suppress the exercise of First Amendment freedoms by reason of vague terms and overbroad coverage; invites selective enforcement; and prohibits a substantial amount of protected speech. *See Nevada Comm’n on Ethics v. Carrigan*, 564 U.S. 117, 131 (2011) (Kennedy, J. Concurring); *United States v. Williams*, 553 U.S. 285, 292 (2008); *City of Ladue v. Gilleo*, 512 U.S. 43 (1994); *Trask v. Ketchikan Gateway Borough*, 253 P.3d 616, 621 (Alaska 2011).

41. Plaintiffs are entitled to declaratory and injunctive relief to immediately enjoin enforcement of AS 19.25.075–.180 and to declare that the statute violates the right to freedom of speech as protected by the United States and Alaska Constitutions.

### **PRAYER FOR RELIEF**

Plaintiffs pray for the following relief:

1. An immediate temporary restraining order and preliminary injunction to halt DOT’s crackdown on political speech;
2. For a declaratory judgment that AS 19.25.075–.180 is unconstitutional on its face and/or as applied by DOT;
3. For a determination that plaintiffs are constitutional claimants and are entitled to recover their full reasonable attorney’s fees and costs under Alaska law; and
4. For such other relief as this Court deems just and appropriate.

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DATED at Anchorage, Alaska this 23<sup>rd</sup> day of August, 2018.

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THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

Department of Transportation and  
Public Facilities

STATEWIDE RIGHT OF WAY  
Design & Construction Standards Section  
Division of Design & Engineering Services  
3132 Channel Drive  
P.O. Box 112500  
Juneau, Alaska 99811-2500  
907.465.6954  
dot.alaska.gov

September 7, 2017

Dear Candidate or Sponsor,

With campaign season underway the Department of Transportation and Public Facilities (DOT&PF) wishes to respectfully inform and remind all candidates and ballot initiative sponsors of State and Federal laws regarding advertising **both within and along** the State's public right of ways. In response to 23 U.S.C. § 131, the Highway Beautification Act of 1965, and 23 CFR § 750 the State of Alaska historically adopted statutes and regulations to ensure public safety and federal regulatory compliance.

1. Unauthorized signs **within** the State's public right of ways are **prohibited** by AS 19.25.105 (d) and 17 AAC 20.012.

DOT&PF may remove these unauthorized signs and vehicles displaying signs **without notification or compensation**.

2. 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 violation and order to rectify will be sent to the property owner. Notice may also be sent to the campaign, company, or service advertised.

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.**

We understand advertising is an important undertaking and expensive investment for all. We also realize that campaigns and volunteers may simply not realize the prohibitions regarding advertising in and along the State's public right of ways. Though the extent of the public right of ways are not always easily visible on the ground the laws prohibit all unauthorized signs legible from the traveled way. We ask you to please review the additional information available at <http://dot.alaska.gov/campaignsigns/> and contact the appropriate State Right-of-Way Office shown on the enclosed map if you require assistance related to specific right of ways.

- Central Region Right of Way, Anchorage 907.269.0700
- Northern Region Right of Way, Fairbanks 907.451.5407
- SouthCoast Region Right of Way, Juneau 907.465.4444

We look forward to assisting you.

Cordially,

Heather Fair  
Statewide Right Of Way Chief

Enclosure

*"Keep Alaska Moving through service and infrastructure."*



# DOT&PF New Regional Boundaries: Northern, Central, Southeast

## ALASKA

DOT&PF REGIONS  
NEW REGIONAL BOUNDARIES  
JULY 2015

Prepared By The  
ALASKA DEPARTMENT OF TRANSPORTATION  
AND PUBLIC FACILITIES  
DIVISION OF INFORMATION SYSTEM & SERVICES

In Cooperation With  
U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

DOT&PF Maintenance Station

City or Town Center

Roads

DOT&PF Region Boundary

Central Region

Southcoast Region

Northern Region

• Yellow

• Blue

• Green

• Orange

• Red

0 100 200 Miles

0 100 200 Kilometers

Source: Alaska Department of Transportation and Public Facilities, Division of Information System & Services

