



March 22, 2012

The Honorable Dennis Egan, Chair
The Honorable Joe Paskvan, Vice-Chair
Senate Labor & Commerce Committee
Alaska State Senate
State Capitol
Juneau, AK 99801

Via email: Senator_Dennis_Egan@legis.state.ak.us
Senator_Joe_Paskvan@legis.state.ak.us

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Re: SB 224: Union-Employee Privilege
ACLU Letter of Support

Dear Chair Egan & Vice-Chair Paskvan:

Thank you for the opportunity to provide this Letter in Support of Senate Bill 224.

The American Civil Liberties Union of Alaska (ACLU) represents thousands of members and activists throughout Alaska who seek to preserve and expand the individual freedoms and civil liberties guaranteed by the United States and Alaska Constitutions. **From that perspective, we wish to offer our statement of support for SB 224.**

Constitutional Values Served by the Bill

While we do not argue that SB 224 is required by the Alaska or federal Constitutions, we do note that the bill supports some of the important rights outlined by both constitutions.

The federal constitution prohibits passing any laws that would infringe “the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const., Amend. I. The Alaska Constitution prohibits any violation of the right “peaceably to assemble, and to petition the government.” Alaska Const., Art. I, Sec. VI.

Among many groups of people who may petition the government about their grievances are public employees who may wish to ask for changes in the terms of their employment or to complain about mistreatment. Contesting

unfair disciplinary treatment and communicating with a union representative are aspects of this right.

While confidentiality is not constitutionally required as to all communications relating to the right to seek redress of grievances, confidentiality can be an important element of promoting full and frank discussions of those grievances. The privilege as described in the bill will assist in promoting the rights of public employees to seek redress of grievances from the government, by ensuring that communications with union representatives will not be used against them later.

That the bill presents a qualified privilege which can be overcome “as required by the superior court following a hearing in camera” ensures that documents and communications that are appropriately disclosed in the interests of justice should be so disclosed. While the bill does not lay out the grounds by which the Superior Court should require disclosure, typical considerations by a court in such a circumstance include whether the information is available from another source, whether the party seeking the information has exhausted all other alternatives, whether the information sought is “highly relevant” or merely cumulative with other evidence, and whether the party seeking the information has a “compelling need” for it. *See, e.g., Newton v. National Broadcasting Co.*, 109 F.R.D. 522, 527 (D. Nev. 1985) (discussing how a qualified journalist privilege may be overcome).

The committee may wish to consider whether it wishes to give more specific guidance to any courts considering the privilege to decide how and when such a privilege should be overcome.

Conclusion

We hope that the Labor and Commerce Committee will pass SB 224.

Thank you again for letting us share our thoughts. Please feel free to contact the undersigned if you have any questions or wish additional information.

Sincerely,



Jeffrey Mittman
Executive Director
ACLU of Alaska

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