

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS

February 9, 2012

1:08 p.m.

MEMBERS PRESENT

Representative Dan Saddler, Co-Chair
Representative Steve Thompson, Co-Chair
Representative Carl Gatto, Vice Chair
Representative Alan Austerman
Representative Bob Lynn
Representative Sharon Cissna
Representative Bob Miller

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Bill Thomas, Jr.

COMMITTEE CALENDAR

HOUSE BILL NO. 281

"An Act establishing March 30 of each year as Welcome Home Vietnam Veterans Day."

- MOVED HB 281 OUT OF COMMITTEE

HOUSE BILL NO. 234

"An Act relating to picketing or protests at a funeral."

- MOVED HB 234 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 281

SHORT TITLE: WELCOME HOME VIETNAM VETERANS DAY

SPONSOR(S): REPRESENTATIVE(S) THOMAS

01/17/12	(H)	READ THE FIRST TIME - REFERRALS
01/17/12	(H)	MLV
02/09/12	(H)	MLV AT 1:00 PM CAPITOL 120

BILL: HB 234

SHORT TITLE: PICKETING AND PROTESTS AT FUNERALS
SPONSOR(s): REPRESENTATIVE(s) THOMAS

04/09/11 (H) READ THE FIRST TIME - REFERRALS
04/09/11 (H) MLV, JUD
02/09/12 (H) MLV AT 1:00 PM CAPITOL 120

WITNESS REGISTER

AARON SCHROEDER, Staff
Representative Bill Thomas, Jr.
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced HB 281 on behalf of Representative Thomas, prime sponsor.

REPRESENTATIVE BILL THOMAS, JR.
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Speaking as the prime sponsor, provided testimony and answered questions during the hearing on HB 281.

DOUG GARDNER, Director
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 234.

JEFFREY MITTMAN, Executive Director
American Civil Liberties Union of Alaska (ACLU of Alaska)
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 234 and answered questions.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Answered a question during the hearing on HB 234.

ACTION NARRATIVE

[1:08:49 PM](#)

CO-CHAIR STEVE THOMPSON called the House Special Committee on Military and Veterans' Affairs meeting to order at 1:08 p.m. Representatives Thompson, Saddler, Miller, Cissna, Lynn, and Gatto were present at the call to order. Representative Austerman arrived as the meeting was in progress. Representative Thomas was also present.

HB 281-WELCOME HOME VIETNAM VETERANS DAY

[1:09:44 PM](#)

CO-CHAIR THOMPSON announced that the first order of business would be HOUSE BILL NO. 281, "An Act establishing March 30 of each year as Welcome Home Vietnam Veterans Day."

[1:09:54 PM](#)

AARON SCHROEDER, Staff, Representative Bill Thomas, Jr., Alaska State Legislature, introduced HB 281 on behalf of Representative Thomas, prime sponsor. Mr. Schroeder informed the committee that last year - on the 30th anniversary of the withdrawal of U.S. combat and combat support units from Vietnam - the U.S. Senate designated March 30 as Welcome Home Vietnam Veterans Day. House Bill 281 proposes that March 30 of each year would be designated as Welcome Home Vietnam Veterans Day, to be observed by suitable observances and exercises by civic groups and the invited public. Mr. Schroeder added that the bill does not call for a state holiday.

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REPRESENTATIVE LYNN said he was in Vietnam on ceasefire day, March 30, 1973, and he will remember it for a long, long time.

CO-CHAIR SADDLER asked what kinds of observances and activities would be appropriate on this day.

MR. SCHROEDER suggested that groups such as the Veterans of Foreign Wars (VFW) would hold services, and that organizations of younger troops would also want to acknowledge the services of Vietnam vets to the veterans' communities.

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CO-CHAIR SADDLER encouraged observers to be happy and upbeat when recognizing this day.

CO-CHAIR THOMPSON opened public testimony.

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REPRESENTATIVE BILL THOMAS, JR., Alaska State Legislature, prime sponsor of HB 281, stated he is one of 2,500,000 soldiers who served in-country during the Vietnam War, including Representative Lynn, Representative Gruenberg, and the late Representative Richard Foster. He noted that of the 58,272 soldiers who died in the war many were young; in fact, 25,000 of those who died were 20 years old or younger and 57 soldiers from Alaska were killed in action. Representative Thomas said the bill is not just to honor those who served in-country, but is for all of the veterans in all branches of the services who served during the time period from 1964 to 1973. He related a few of his experiences during that time and reminded the committee of the suffering of surviving family members and that of returning soldiers who are afflicted with post-traumatic stress syndrome. He recalled the day he returned to the U.S. in 1968: There were wire screens on the windows of the buses and the back door was welded shut because of the protesters surrounding Travis Air Force Base, and there were more protesters at the Presidio. He was very upset and angry on what should have been the happiest day of his life. Representative Thomas noted that "the attitude is a little different" for veterans returning now. In addition, he opined the military from any war should be buried with honors, with no protesting allowed, and assured the committee that others feel just as strongly.

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REPRESENTATIVE CISSNA observed that Alaska has the highest number of veterans per capita in the nation. She asked how many veterans in Alaska are veterans of the Vietnam War.

REPRESENTATIVE THOMAS said he was unsure, but in his home village 1 percent of the population was serving in Vietnam at one time. The percentage of Vietnam-era veterans in Hoonah is approximately 40 percent. The percentages in Native communities are very high because many of the residents were drafted.

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REPRESENTATIVE CISSNA said the nation has changed in its understanding of the Vietnam War and many veterans sacrificed their lives or their quality of life; in fact, as veterans age

they have much greater needs. She expressed her understanding that Alaskans - especially rural Alaskans - have played a bigger role in the U.S. military than the residents of other states.

[1:25:02 PM](#)

REPRESENTATIVE THOMAS agreed. His family includes many veterans of the Army and the National Guard, and they are very patriotic. Veterans are treated with respect now, but when he came home he threw his medals and uniform in the trash. Now, however, he said he is very proud and celebrates with other veterans.

CO-CHAIR THOMPSON said he and others offer to pay for troops' meals.

REPRESENTATIVE THOMAS said when he encounters service members in airports he welcomes them home.

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REPRESENTATIVE LYNN noted there is a tradition among Vietnam veterans to welcome troops home now. He shared some of his experiences while serving in the military, and expressed his strong support for the bill.

REPRESENTATIVE THOMAS agreed.

[1:30:00 PM](#)

CO-CHAIR SADDLER asked whether the country has changed enough so that this type of bill will not be necessary for those who return from other conflicts.

REPRESENTATIVE THOMAS said each conflict is different and deserves its own honor.

CO-CHAIR THOMPSON determined that no one else wished to testify.

[1:31:49 PM](#)

CO-CHAIR SADDLER moved to report HB 281, identified as Version 27-LS0791\M, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, HB 281 was reported from the House Special Committee on Military and Veterans' Affairs.

[1:32:50 PM](#)

The committee took an at-ease from 1:32 p.m. to 1:35 p.m.

[1:35:54 PM](#)

HB 234-PICKETING AND PROTESTS AT FUNERALS

[1:36:05 PM](#)

CO-CHAIR THOMPSON announced that the final order of business would be HOUSE BILL NO. 234, "An Act relating to picketing or protests at a funeral."

[1:36:12 PM](#)

AARON SCHROEDER, staff, Representative Bill Thomas, Jr., Alaska State Legislature, introduced HB 234 on behalf of Representative Thomas, prime sponsor. Mr. Schroeder said since 1998 funeral picketing has gained popularity with groups hoping to publicize their political agenda. Currently the state does not have guidelines for such cases, and HB 234 would bring Alaska in line with 46 other states by setting guidelines for a 150-foot buffer from the boundary of a church, cemetery, or funeral home one hour before, during, and one hour after a funeral service. Further, members attending the funeral are members of a captive audience that warrant protection. In the case of a protest, families are expected to conduct themselves in a certain manner, and the sponsors of the bill expect the same of protestors.

REPRESENTATIVE LYNN said he supports the bill. However, he questioned the choice of the distance of 150 feet when federal law banning protests at national cemeteries sets the distance from 150 feet to 300 feet. Other legislation indicates a buffer zone ranging from 150 feet to 1,500 feet.

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MR. SCHROEDER explained that there are two parts to the federal law; one part sets a 300-foot buffer around the boundary of a cemetery, and the second part sets a 150-foot buffer around the funeral procession as it travels along a route. In order to make the "captive audience" argument, "there has to be a certain amount of pressure there, they have to be close to make that legal argument."

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REPRESENTATIVE LYNN expressed his belief that the bill does not include a public street or roadway - where the funeral procession goes from the mortuary to the cemetery - and said "depending on where the lot is, it could be a long drive from the entrance of the cemetery to the gravesite." He asked whether the road could be inside the cemetery.

MR. SCHROEDER explained that the 150-foot distance applies to the boundary of the funeral home, cemetery, or church. In further response to Representative Lynn, he said "the perimeter, correct."

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REPRESENTATIVE LYNN asked for an estimate of the distance, and opined "that's pretty close if I'm grieving for a loved one, and some clown is over there."

MR. SCHROEDER suggested that if the committee is interested in extending the buffer zone it may seek advice from the director of Legislative Legal and Research Services, Legislative Affairs Agency.

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CO-CHAIR SADDLER referred to page 3, lines 18 and 19 of the bill and read the definition of picketing:

, engaged in by a person, that disrupt or are undertaken to disturb a funeral.

CO-CHAIR SADDLER cautioned that could include "some element of what someone's state of mind or intent is," and the person may claim he or she is not trying to disturb a funeral. He explained further that some groups that engage in protests at funerals may not be seeking to disturb the funeral, but to get attention and publicity. This language in the bill may allow them to enter the buffer zone.

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MR. SCHROEDER clarified that the drafter of the bill inserted this language in order to help law enforcement determine what picketing means. He deferred to Mr. Gardner for further response.

[1:43:28 PM](#)

DOUG GARDNER, Director, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), restated Co-Chair Saddler's concern about mental state: whether a person may argue that they were not trying to disrupt the funeral itself. He advised that when the legislature is drafting statutes that affect First Amendment rights, it must look to other cases to provide appropriate language. In 2008, the Phelps-Roper v. Strickland case specifically provided for this section in the proposed bill, in that it described other protest activities meant to disrupt or disturb a funeral or burial service. Thus, HB 234 does not restrict all activities, and the mental state of a person is addressed on page 2, lines 30 and 31, which read:

(8) the person knowingly engages in picketing with reckless disregard that the picketing occurs

MR. GARDNER continued to explain that "knowingly engages in" demonstrates mental state and the "reckless disregard" is with respect to the disruption to the funeral. Further, in order for the state to establish a significant state interest, the state has to have an interest in protecting from certain types of conduct, and the statute would restrict disruption, even though the disruption could be considered a positive statement or a negative one by different parties. He said, "The statute attempts to draw a narrow, narrow border around the types of activities that are being regulated, [and] in doing so, to comply with the First Amendment requirements that this not be overly broad."

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CO-CHAIR SADDLER surmised the existing language has been upheld by the U.S. Supreme Court.

MR. GARDNER pointed out that the U.S. Supreme Court has not dealt with a state criminal statute regulating picketing at funerals. However, the U.S. Court of Appeals for the Sixth and Eighth Circuits are split on this issue, thus the language has passed constitutional muster, and the definition was included in the proposed bill.

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CO-CHAIR SADDLER asked whether "reckless" presumes activity within the geographic 150-foot limit and during the

chronological limits of one hour before and one hour after, so - outside of those parameters - reckless activities are allowed.

MR. GARDNER confirmed that the statute only attempts to regulate time, place, and manner. However, other laws or ordinances may be applicable to behavior outside the reach of the statute.

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CO-CHAIR SADDLER asked for guidelines as to the "numerical outside limits" of buffer zones that would be upheld by the courts.

MR. GARDNER recalled 300-foot buffer zones "received a considerable amount of scrutiny;" however, that distance seemed too far for some small Alaska communities and 150 feet was deemed appropriate.

REPRESENTATIVE LYNN asked whether egregious or insulting signs are disruptive.

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MR. GARDNER opined that the bill as drafted would hold that language on signs and picketing would fit in the definition of disrupting a funeral. The concept of the bill is to allow attendees to have a funeral in peace without interference from people on either side of an issue, and signs "would fit within the statute."

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REPRESENTATIVE LYNN asked whether there is a criminal equivalent to suing for emotional distress.

MR. GARDNER said emotional distress is a civil matter not addressed by criminal law.

REPRESENTATIVE CISSNA agreed with Representative Lynn on the horror of those who abuse the grieving, but expressed her concern for the loss of constitutional rights. She noted that there may be activities in a community that are "very loud or very bold," and asked for a way to judge the distance of the buffer zone.

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CO-CHAIR THOMPSON stated that 150 feet is one-half of the length of a football field.

MR. GARDNER, in response to Representative Cissna's question about how loud noise would be at the 150-foot distance, said he did not know what "a decision-maker would conclude is disruptive." For example, someone could be using a "giant bullhorn mounted on the top of a car" or talking in a normal voice.

REPRESENTATIVE CISSNA pointed out that respect is the important issue and urged the consideration of reasonable definitions.

REPRESENTATIVE GATTO gave the example of a person attempting to speak at a funeral and being prevented by others who are making noise. He asked which party holds the First Amendment right to be heard. In response to Mr. Gardner's request for clarification, he asked, "When am I allowed to exercise my free speech, unhindered by their free speech?"

MR. GARDNER said, "... the remedy for speech that you don't like is speech of your own ... but I don't know how to answer that question in the context of this bill."

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REPRESENTATIVE GATTO surmised the 150-foot distance is a sufficient buffer that will protect a speaker's free speech until the noise level and the size of the signs are increased. In that case the 150-foot buffer becomes meaningless, and the quandary is, "When are [the original speaker's] rights violated, that's clear to anyone else?"

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MR. GARDNER explained that these are classic First Amendment questions about how to tailor a statute to serve the interests of the government and yet leave channels of communication that are protected by the First Amendment. The balance for the protection of First Amendment rights is found in the history of court decisions, and for the proposed bill the range of distance fell between 300 feet and 150 feet.

REPRESENTATIVE MILLER said he strongly supports the intent of the bill, but asked whether this is really a problem in Alaska.

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MR. SCHROEDER responded that he was not aware of any protests in the state.

REPRESENTATIVE LYNN observed that there are a lot of prospective laws in Alaska.

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CO-CHAIR THOMPSON opened public testimony.

[2:04:59 PM](#)

JEFFREY MITTMAN, Executive Director, American Civil Liberties Union of Alaska (ACLU of Alaska), stated that ACLU of Alaska and he support the intent of the bill which is to allow individuals who are grieving to do so in a respectful manner. Also, he and ACLU of Alaska do not support the "incredibly offensive" protests of the members of the Westboro, Kansas, Baptist Church. He informed the committee that ACLU of Alaska has a mandate to protect constitutional freedoms enjoyed by Americans, yet the protection of constitutional rights is not always easy or pleasant, as in the case of its defense of the rights of Nazis in the 1960s. Unfortunately, although the proposed bill attempts to move in the right direction, his organization believes there are infirmities such as the definition of picketing as protest activities. He advised that a court will define a protest as "actions which express disrespect or disapproval," and this puts the bill in the realm of "noncontent neutral legislation." Mr. Mittman reminded the committee that the U.S. Court of Appeals Eighth Circuit disapproved similar legislation and the Sixth Circuit approved; however, the U.S. Supreme Court has clearly indicated its disapproval of a case regarding the intentional infliction of emotional distress. Mr. Mittman opined the language in HB 234 broadly defines the areas protected as churches, mortuaries, funerals, and cemeteries, and in Anchorage the bill would not be found content-neutral in time, place, and manner restriction. He offered to work with the bill drafter and the committee to remedy the bill.

[2:08:49 PM](#)

CO-CHAIR SADDLER asked for the distance between a protester and a funeral event that would be supported by the courts.

MR. MITTMAN stated that the issue must be broken into two aspects and analyzed separately: the action of a silent sign holder may be offensive, but is not disruptive of the funeral; the action of one far away may "pierce the walls of the church" with sound and successfully disrupt the conduct of the funeral. He said distance may not be the best way to determine the constitutional issues because the courts will protect the rights of one to conduct a ceremony, but will not protect an individual from hurtful behavior in a public place.

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MR. MITTMAN, in response to Representative Lynn, said an offensive sign can be avoided or fleeting, so the courts have determined that it is protected. However, the same message repeated in a manner to disrupt a ceremony, is not protected.

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REPRESENTATIVE LYNN expressed his belief that an offensive sign is disruptive by its nature.

MR. MITTMAN agreed that the point can be argued, but the U.S. Supreme Court said this was constitutionally protected.

[2:13:06 PM](#)

CO-CHAIR THOMPSON observed that the penalty created by the bill is that of a misdemeanor of disorderly conduct, which is the same as 36 other states. However, several states direct that the second offense is a felony, and Indiana and Michigan classify the first offense as a felony. He inquired as to Alaska's penalties for misdemeanor crimes of disorderly conduct.

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ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law, advised that the penalty for disorderly conduct is a maximum of 10 days in jail and a \$300 fine.

CO-CHAIR SADDLER asked if the bill is passed as drafted, on what grounds it may be challenged.

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MS. CARPENETI said a challenge may arise if someone were prosecuted for violation of the statute.

MR. GARDNER stated that a challenge may be close to the issues previously raised by ACLU of Alaska in its written memorandum found in the committee packet. Although the statute would be litigated on the particular facts of the situation, the legal issues that would come up are outlined in the memorandum. He agreed with Mr. Mittman that the outcome would be up to the Alaska Supreme Court and whether it is persuaded by the Sixth Circuit, or the Eighth Circuit, appellate courts. As to the second question, Mr. Gardner said the weakness of all picketing cases is the balance between the protection of free speech and the protection of the interests of people to be free from interference, while they are a captive audience. The cases regarding people in the position of a captive audience have divided the courts, and he opined this could be debated before the Alaska Supreme Court on whether the captive audience description should be extended to funeral protests. Precedent on the captive audience cases has been focused on protest activities in the home or in abortion clinics, and the final answer is unknown.

CO-CHAIR THOMPSON determined there was no further public testimony.

[2:19:29 PM](#)

REPRESENTATIVE LYNN offered a conceptual amendment to change "150 feet" to "300 feet" anywhere it appears in HB 234.

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REPRESENTATIVE CISSNA objected for the purpose of discussion.

REPRESENTATIVE CISSNA said her concern is that it specifies more space than is needed.

REPRESENTATIVE GATTO expressed his concern that changes to the bill will increase the chance of legal challenges later on.

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REPRESENTATIVE AUSTERMAN asked for the sponsor's opinion on the change to 300 feet.

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MR. SCHROEDER advised the sponsor agrees with Representative Gatto.

CO-CHAIR SADDLER agreed with the intent of the amendment, but without a firm answer from legal counsel, would not support the amendment.

REPRESENTATIVE CISSNA maintained her objection.

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A roll call vote was taken. Representative Lynn voted in favor of the conceptual amendment. Representatives Miller, Gatto, Austerman, Cissna, Saddler, and Thompson voted against it. Therefore, the conceptual amendment failed by a vote of 1-6.

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REPRESENTATIVE MILLER proposed a situation in which a terrorist is being buried with much ceremony in his town, and suggested he may want to protest. With the passage of HB 234, he cautioned that he may lose his right to protest. Representative Miller said he was not sure if the bill could withstand a challenge.

CO-CHAIR THOMPSON pointed out that a legal protest could take place.

[2:26:33 PM](#)

REPRESENTATIVE LYNN stressed that the bill protects those who are grieving, and they are innocent of any wrongdoing, no matter what were the actions of the deceased.

CO-CHAIR SADDLER condemned the activities of the Westboro Baptist Church and commended the committee's willingness to study constitutional implications, and its efforts to pass defensible law. He said he would support the bill.

REPRESENTATIVE LYNN moved to report HB 234, Version 27-LS0627\B, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 234 was reported out of the House Special Committee on Military and Veterans' Affairs.

[2:28:33 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Military and Veterans' Affairs meeting was adjourned at 2:28 p.m.