

SB

8

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 28, 1983

SUBJECT: Political advertising
(CSSB 8)

TO: Senator Vic Fischer
Chairman, Senate State Affairs
Committee
Attn: David Dye, A.A.

FROM: Richard C. Folta *RCF*
Legislative Counsel

On further review of political advertising issues and the specific problem illustrated by the Palmer case, I felt that a complete change should be made in the format of the bill to avoid constitutional questions. The new language is specific and we had avoided the sticky definition problem of defining political advertising. If you have problems with this please call me at 465-2450.

RCF:ljb

Enclosure



Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • 1024 W. 6th Ave., Suite 204 C,
Anchorage, Alaska 99501
(907) 278-3654

Official Business

February 7, 1983

Norman Gorsuch, Attorney General
Department of Law
Pouch K
Juneau, Alaska 99811

Dear Mr. Gorsuch:

I would appreciate it if you would review the attached draft of CSSB 8 for potential conflict with the free speech provisions of the Alaska and U.S. Constitutions. I would also like to know how this proposed legislation meshes with existing statutory prohibitions (e.g. AS 39.25.178).

Would CSSB 8 prohibit political lapel pins in state buildings or affect peaceful demonstrations on the grounds of state buildings where signs are displayed or literature is distributed?

CSSB 8 is scheduled for hearing by the State Affairs Committee on Thursday, February 8, 1983. I would appreciate it very much if I could have your response before that hearing.

Best regards,

Senator Vic Fischer

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 4, 1983

SUBJECT: Prohibiting certain political activities
(CSSB 8)

TO: Senator Vic Fischer
Chairman, Senate State Affairs
Committee

FROM: Richard C. Folta 
Legislative Counsel

In order to discuss the constitutionality of the above referenced bill, it is useful to quickly discuss the pertinent cases on free speech. In Messerli v. State, 626 P.2d 81, the Court held that the Alaska Constitution protects free speech, in a "more explicit and direct manner" than the Federal Constitution. The Court has also declared the test for First Amendment cases to be whether the abridgment of free speech was justified by a compelling government interest. A number of federal cases have held that

Political activities may be restrained by legislation, when it serves in a necessary manner to foster and protect efficient and effective government . . . government agencies have right to preserve their harmonious operation by restricting such political activities of employees as directly threaten the administration in disruptions or loss of integrity.

In United Public Workers v. Mitchell, 91 L.Ed. 754, the Federal Court upheld the validity of the Hatch Act's restrictions on the political activities of federal employees, by saying:

"Evidently what Congress feared was the cumulative effect on employee morale of political activity by all employees who could be induced to participate actively. It does not seem to us to be an unconstitutional basis for legislation.

"Congress and the administrative agencies have authority over the discipline and efficiency of the public service. When actions of civil servants in the judgment of Congress menace the integrity and the competency of the service, legislation to forestall such danger and adequate to maintain its usefulness is required. The Hatch Act is the answer of Congress to this need. We cannot say with such a background that these restrictions are unconstitutional."

With this background we can discuss the SB 8 restrictions on state and other person's political activities in state offices. What is the compelling state interest here? I have assumed that it is the interest in maintaining the loyalty, efficiency, reliability and nonpartisanship of state and local government employees while they are working in state offices. It is an interest in maintaining an atmosphere conducive to carrying out state business free of unreasonable distractions in state offices during working hours. There should be little doubt that this is a proper state interest. The bill restrictions reasonably regulate the time, place and manner of expression of free speech. The Court would balance the First Amendment rights of employees and the equal basic right of the people of the state to a properly functioning state government. It is my opinion that the provisions of the bill are constitutional under this scrutiny and would be so declared by the Supreme Court.

Two changes should be made, however, in the restrictions. Under (a) (1), line 16, the word "wall" should be added after the word "exterior". This would allow public assembly and political activity on the steps of the Capitol Building, historically used for this purpose. Any disruption or blocking of access to the Capitol Building would be resolved in Title 11 proceedings. Also the words "during state office hours" should be added after the word "office" in line 24. This allows janitors, et cetera, to discuss politics at night cleaning state offices without danger of falling under these prohibitions. To make (b) consistent with (a), I have change "public employee" to "person".

Finally, there are the issues of statutes that are overbroad or vague. Overbroad means the statute includes both constitutionally protected conduct which the state can legitimately regulate. It is vague when it fails to give a person of ordinary intelligence fair notice that his

Senator Vic Fischer
Page 3
February 4, 1983

contemplated conduct is forbidden by statute and where it encourages arbitrary and erratic arrests and convictions. Marks v. City of Anchorage, 500 P.2d 644. In my opinion, I do not think the bill would fail under the two criteria above.

Provision (c) however does not effect the constitutionality of the bill one way or the other. It may be useful to provide for the state custodian to remove prohibited circulars, posters, signs, handbills, et cetera from state offices, since finding the person who posted or displayed the material originally is unlikely.

If I can be of further assistance, please let me know.

RCF:ljb

Enclosure

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SB 8 Date on Bill: _____
 Title: An Act Prohibiting Political Advertising on and in Buildings
 Sponsor: _____
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			0	0*	0	0		

b. Revenues:

Revenue			0	0*	0	0		
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2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

* If bill were to apply to existing leases as opposed to future leases, approximately 1 FTE, \$37.6 would be required to renegotiate over 400 leases

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor.

Prepared By: Bob Link - Acting Director *Bob Link* Phone: 465-2250
 Division: Administration, General Services and Supply Date: 2/22/83

Approved by Commissioner: *As Rudd* Date: 2/24/83
 Department: Administration

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/8/83

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



March 1, 1983

Norman Gorsuch
Attorney General
Department of Law
Pouch K

Dear Mr. Gorsuch:

I would appreciate if you would review the attached draft of CSSB 8 for potential conflict with the free speech provisions of the Alaska and U.S. constitutions.

I plan to move this bill from committee as soon as possible and would like to have your response at your earliest convenience.

Best regards,

Senator Vic Fischer

cc: Jim Baldwin

Introduced: 1/18/83
Referred: State Affairs

Draft CS

1 IN THE SENATE

BY V.FISCHER AND P.FISCHER

2

SENATE BILL NO. 8

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act prohibiting political advertising on and in
7 buildings owned and leased by the state."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 35.25 is amended by adding a new section to read:

10 Sec. 35.25.040. POLITICAL ADVERTISING PROHIBITED. (a) Politi-
11 cal signs and other political advertising may not be displayed on ~~or~~ ^{the}
12 ^{exterior of} in buildings that house state offices.

13 (b) Each state lease of office space shall contain a provision
14 prohibiting political signs and other political advertising on ^{the exterior} and ~~in~~ ^{of}
15 buildings leased by the state.

Proofed 2-4

Original Sponsors: V. Fischer and
P. Fischer

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR SENATE BILL NO. 8 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to campaign misconduct in buildings
7 owned and leased by the state or local government."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS ^{39.25}35.25 is amended by adding a new section to read:

10 Sec. ^{39.25-165}35.25-040. CAMPAIGN MISCONDUCT IN A STATE OR LOCAL GOVERN-
11 MENT BUILDING. (a) A person may not post or display a circular,
12 poster or sign designed to aid or defeat any candidate for nomination
13 or election to any state or local office, or designed to aid or defeat
14 any state or local ballot proposition or question.

15 (1) on the exterior wall of or in a building owned and
16 occupied by the state or local government;

17 (2) in a building or portion of a building leased by the
18 state or local government, including walls of common areas or on the
19 exterior walls of that building or portion of a building occupied or
20 leased by the state or local government.

21 (b) A person may not while in any state or local office during
22 working hours, attempt to persuade a person to vote for or against a
23 candidate, proposition, or question, or circulates cards, handbills,
24 or marked ballots, or posts political signs or posters relating to a
25 candidate at an election or any state or local ballot proposition or
26 question.

27 (c) This section shall not impair state or local government
28 employee contractual rights or be construed in a manner that would
29 abridge constitutional rights of state or local government employees.

Proofed 2-4

Original Sponsors: V. Fischer and
P. Fischer

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STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY


POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

January 28, 1983

SUBJECT: Political advertising
(CSSB 8)

TO: Senator Vic Fischer
Chairman, Senate State Affairs
Committee
Attn: David Dye, A.A.

FROM: Richard C. Folta 
Legislative Counsel

On further review of political advertising issues and the specific problem illustrated by the Palmer case, I felt that a complete change should be made in the format of the bill to avoid constitutional questions. The new language is specific and we had avoided the sticky definition problem of defining political advertising. If you have problems with this please call me at 465-2450.

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TO: Senator Vic Fischer
Chairman, Senate State Affairs
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Legislative Counsel

The enclosed bill, in my opinion, goes as far as constitutionally permissible in prohibiting political advertising in or outside of state offices.

The existing cases consider a prohibition overbroad that covers all the exterior of a private building, when the state leases only a portion of the structure.

The problem of building exterior advertising could be best handled in each individual lease, depending on the circumstances. I do not think we can justify an overriding state purpose on prohibiting advertising on all leased building exteriors.

I changed the words "election ballot proposition or question" to just "any election" since the former is not all inclusive.

RCF:ljb

Enclosure



Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • 1024 W. 6th Ave., Suite 204 C,
Anchorage, Alaska 99501
(907) 278-3654

Official Business

November 3, 1982

Billy Berrier
Legislative Legal Service
Pouch
Juneau, Alaska 99811

Dear Billy,

During the general election campaign, I received numerous complaints about political signs being posted on buildings housing state offices - specifically the Palmer police station.

The Ombudsman's office looked into the complaint and found that the building in question was privately owned and the posting of such signs could not be prevented by the state.

I would like a bill prepared for pre-filing that would prohibit this kind of thing from happening again. Basically, I want the state to require that leasing contracts for state office space include a prohibition against posting political signs on the property.

How best to achieve this, I leave to you. Should you feel a statute is not the best way to address this issue, I'd appreciate an alternative suggestion. My goal is to prevent a situation where an Alaskan, forced to do business with the state, such as to obtain a drivers license or make a complaint to the troopers, is not required to walk under, around or through a political advertisement.

Thanks, and best regards.

A handwritten signature in cursive script, appearing to read "Vic".

Senator Vic Fischer

VF/gb

Date Received _____

Bill Number _____ Title _____

Fiscal Note - Date Requested _____ Of Whom _____

Position Paper - Date Requested _____ Of Whom _____

Contact People

People Who Expressed Interest

Follow-up

POSITION PAPER
Senate Bill 8
March 1, 1983

It is important to the Executive Branch's image as a non-political body that it not be perceived to be a proponent of a particular political viewpoint. To this end, State employees are prohibited from indicating their political views on their person during working hours or any time at their work space. It would also seem appropriate that there be no expression of political viewpoint on facilities occupied by the State. That is the apparent purpose of Senate Bill 8.

I have worked with State leases for over six years and do not recall any complaints in this area. However, if a bill is passed to prevent political advertising on State-occupied facilities I would prefer it apply to future leases. That would avoid the necessity of renegotiating over 400 existing leases.

If the bill is passed with no retroactivity it will not significantly impact the operations of the Department of Administration.



Robert Link, Acting Director



Lisa Rudd, Commissioner

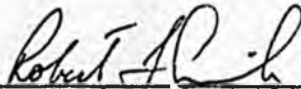
RL/je
5/0301-03/GSS1

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Robert Link, Acting Director



Lisa Rudd, Commissioner

RL/je
5/0301-03/GSS1

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 16, 1983

Honorable Vic Fischer
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 8 -- Political Advertising
Prohibition

Dear Senator Fischer:

We have briefly reviewed Senate Bill No. 8, a bill relating to political advertising on buildings owned or leased by the state. While our preliminary research has not disclosed a case which directly addresses the issue, we believe that a state may prohibit the posting of advertising on the exterior of state-owned buildings used for governmental purposes. Indeed, it is eminently within the scope of the "public purpose" doctrine, Alaska Const., art. IX, sec. 6, to prohibit the use of the exterior of public buildings for advertising purposes. In this regard, what limited restriction on the political activities of state employees which may be implicated by such a prohibition would almost certainly be viewed as reasonable and appropriate. See generally Annot., 28 A.L.R.3d 717 (1969) (Public Employees -- Political Activity).

SB 8, however, interjects two additional considerations, and in doing so, poses substantial constitutional questions. First, SB 8 restricts not all advertising, but only "political advertising." While the state may impose reasonable restriction on the "time, place, and manner" of speech activities, regulation may not be based on content alone. Alaska Gay Coalition v. Sullivan, 578 P.2d 951, 78 Alaska 178 (1978). In a related vein, it would pose an arguable violation of due process to enforce a vague prohibition on speech activities. See Marks v. City of Anchorage, 500 P.2d 644, 651 (Alaska 1972).

Second, SB 8 extends the prohibition to instances where the state leases office space. The difficulty, here, is that any prohibition affects the rights of the lessor, and, in instances where the state tenancy is not exclusive, other private tenants as well. "Because of the 'chilling effect' that overbroad laws have on the exercise of constitutional rights, . . . broad prophylactic rules are suspect and 'precision of regulation must be the touchstone. . . .'" Marks v. City of Anchorage, 500 P.2d at 647, quoting N.A.A.C.P. v. Button, 371 U.S. 415, 433 (1963). Consequently, where the state is not an exclusive, or at least substantial, tenant, it is questionable whether a court would en-

Honorable Vic Fischer
Alaska State Senate

March 16, 1983
Page 2

force a leasehold provision which prohibits advertising on the exterior of the building.

If we can be of further assistance on this matter, please feel free to contact us.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: *Jonathan B. Rubini*
Jonathan B. Rubini
Assistant Attorney General

JBR:md

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 16, 1983

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Alaska State Senate
Pouch V
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Honorable Vic Fischer
Alaska State Senate

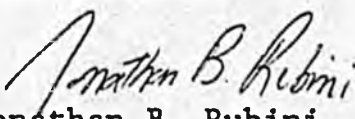
March 16, 1983
Page 2

force a leasehold provision which prohibits advertising on the exterior of the building.

If we can be of further assistance on this matter, please feel free to contact us.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Jonathan B. Rubini
Assistant Attorney General

JBR:md