

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

November 12, 1975

Honorable Anne J. Bachrach
17 Meadowbrook Road
Brunswick, Maine 04011

Dear Representative Bachrach:

This is in response to your request for our views on the constitutionality of proposed bill 3 M.R.S.A. § 326. The purpose of the bill is to require legislative counsel and agents to disclose their identity and affiliation while participating in the legislative process. Section 2 of the bill requires a registered legislative counsel or agent to wear a tag listing his name and his status as agent or counsel while testifying before any legislative body or while physically present on the 3rd or 4th floor of the State House while the Legislature is in session. The proposed bill presents a significant constitutional question.

The First Amendment of the United States Constitution guarantees the right of individuals to speak freely and to petition their government. The proposed bill establishes disclosure requirements as a condition to the unfettered exercise of these rights. Although no case decides whether it is constitutional to require lobbyists to wear tags or other identification, the Supreme Court has issued opinions considering the extent to which regulation of First Amendment expression is permitted. On several occasions the Supreme Court has declared statutes unconstitutional because the disclosure of organizational affiliations they required was an unreasonable impediment to the exercise of First Amendment freedoms. Bates v. Little Rock, 361 U.S. 576; N.A.A.C.P. v. Alabama, 357 U.S. 449 (1958); Shelton v. Tucker, 364 U.S. 479 (1960); Talley v. California, 362 U.S. 60 (1960). In other cases statutes requiring disclosure of organizational affiliations have been upheld despite constitutional challenge because they legitimately protected a valid state interest. Bryant v. Zimmerman, 278 U.S. 63 (1928); United States v. Harriss, 347 U.S. 612 (1954); Communist Party v. Control Board, 367 U.S. 1 (1961). To decide whether the disclosure requirements of the proposed bill are constitutional, it is necessary to balance the seriousness of the impediments they create for the exercise of constitutional freedoms against the nature of the state interests which they protect and the actual protection they provide.

Honorable Anne J. Bachrach
Page 2
November 12, 1975

Disclosure requirements which affect the actual exercise of First Amendment freedoms are objectionable. Thus to require an individual to wear identification which discloses his affiliation or to require him to identify himself as he actually engages in the exercise of First Amendment rights is an impediment to his free expression. American Communications Ass'n. v. Douds, 339 U.S. 382 (1950); Talley v. California, 362 U.S. 60 (1960). The disclosure requirements of the proposed bill are of this nature. They require disclosure at the precise moment that the agent is petitioning his government in legislative session and in the offices of his Legislators. Therefore, we conclude that the disclosure requirements of the proposed bill create a substantial impediment to the unfettered exercise of the registered agents' First Amendment rights. On the other hand, it is appropriate for the Legislature to require counsel and agents to disclose their affiliations with special interest groups. The Supreme Court has determined that disclosure requirements protect a valid state interest by insuring that legislators are aware of the source of paid legislative advocacy. United States v. Harriss, 347 U.S. 612 (1954).

After balancing these competing interests, we conclude that the proposed bill is an unreasonable infringement of rights protected by the First Amendment because it does not increase the protection of the state interest already afforded by existing law. Thus the disclosure requirements of the proposed bill will not increase the information about registered agents or counsel available to legislators since they apply only to individuals who have already disclosed their affiliations by registration with the Secretary of State. 3 M.R.S.A. § 311. Since no further information would be gained by the disclosure requirements of the proposed bill, the substantial impediments it creates for the exercise of First Amendment freedoms are not justified.

Sincerely,

JOSEPH E. BRENNAN
Attorney General

EB

JEB:mfe