



# Fairbanks North Star Borough

ASSEMBLY BOARD OF ETHICS

## MEMORANDUM

To: FNSB Assembly  
From: Matt Cooper, <sup>MC</sup>Chair, Assembly Board of Ethics  
Date: June 19, 2024  
Re: Findings of Facts and Conclusions of Law  
Assembly Code of Ethics Complaint #BE-AMBLY-2024-01, filed February 20, 2024  
Complainant: Kristen Schupp  
Respondent: Barbara Haney

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As required by FNSB Code 6.20.140 the Assembly Board of Ethics respectfully submits its findings of facts and conclusions of law to the Fairbanks North Star Borough Assembly regarding Assembly Code of Ethics Complaint #BE-AMBLY-2024-01.

Attachment: Findings of Fact and Conclusions of Law

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FNSB Code 6.20.140 in part:

- C. If the board finds that a violation of the FNSBC 6.12.010 has been committed, it shall prepare and submit its findings of facts and conclusions of law to the Assembly.*
- D. The findings of fact and conclusions of law are final and conclusive.*
- E. The Assembly may not change, modify or otherwise alter the findings of fact and conclusions of law as submitted.*
- F. The Assembly shall impose a penalty on the public official in accordance with FNSBC 6.24.010.*





## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Fairbanks North Star Borough Assembly Board of Ethics having conducted a hearing on June 10, 2024, concerning the Ethics Complaint #BE:AMBL-2024-01 filed by Complainant Kristen Schupp, alleging that Assemblymember Barbara Haney violated FNSBC 6.12.010(O)(2), which says; "*O. Representation of Assembly Position. 2. A public official when making a public statement or otherwise taking a public position shall state they are expressing a personal opinion unless authorized to speak on behalf of the Assembly*" enters the following findings of fact and conclusions of law:

- (1) Barbara Haney sent a Letter to the Editor ("Letter") on February 16, 2024, that was subsequently published by the Fairbanks Daily News-Miner.
- (2) The Letter was sent from Ms. Haney's home, using her personal email address and was signed by Ms. Haney, not as an Assemblymember.
- (3) The Letter did not contain the statement that Ms. Haney was only expressing a personal opinion or otherwise specifically state that Ms. Haney was not speaking on behalf of the Assembly.
- (4) The Fairbanks Daily News-Miner, before printing the letter, added a notation at the end of the Letter identifying Ms. Haney as a member of the Fairbanks North Star Borough Assembly.
- (5) The Letter published by the Fairbanks Daily News-Miner on February 20, 2024, technically violates the language of FNSBC 6.12.010(O)(2) because it makes a public statement or otherwise takes a public position without stating that Ms. Haney is only expressing a personal opinion.
- (6) This code provision appears not to be well understood by assembly members as it has been historically and presumably unintentionally violated by many others. Accordingly, the Assembly Board of Ethics *recommends* that no penalty be imposed on Ms. Haney but that all current assemblymembers undergo additional training on this code provision as soon as possible but no later than three months from the date of these findings and conclusions. It further recommends that all future assembly members are trained specifically on this code provision during orientation. The Assembly Board of Ethics, however, recognizes that the Assembly, not the Board, determines the appropriate penalty and that the Assembly is in a better position to factually determine what Ms. Haney knew or should have known concerning the applicability of FNSBC 6.12.010(O)(2) to a Letter to the Editor given the training or other information provided to the current Assembly.



(7) With respect to the legal arguments raised by Ms. Haney in her Motion to Dismiss the Board finds as follows:

- a. Although elected officials have first amendment rights, the U.S. Supreme Court interprets and applies this right in light of “long settled and established practice.”<sup>1</sup>
- b. As recently noted by the U.S. Supreme Court in *Houston Community College System v. Wilson*, “[a]s early as colonial time”, the power of assemblies . . . to censure their members was “more or less assumed.”<sup>2</sup> This includes the power to censure members for “views they expressed and actions they took both within and without the legislature.”<sup>3</sup>
- c. A government cannot constitutionally compel an individual to endorse a “Government-mandated pledge or motto” such as reciting the Pledge of Allegiance or displaying the state motto “Live Free or Die” on their license plate.<sup>4</sup> These actions constitute constitutional violations because “the complaining speaker’s own message was affected by the speech it was forced to accommodate.”<sup>5</sup> In contrast, a law that instead merely compels a school to send scheduling emails for military recruiters if they sent emails for other recruiters “is simply not the same” and “trivializes the freedom protected” in compelled speech cases.<sup>6</sup>
- d. Incidental burdens on speech are constitutionally permissible “so long as the neutral regulation promotes a substantial government interest that would be achieved less effectively absent the regulation.”<sup>7</sup> Thus, no constitutional violation occurs when the government merely requires “the giving of truthful nonmisleading information” pursuant to a substantial governmental interest.<sup>8</sup> Accordingly, even when the Court still recognized a constitutional right to an abortion, it upheld state laws requiring physicians to inform their patient about the health risks of abortion and childbirth and the gestational age of the fetus.<sup>9</sup>

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<sup>1</sup> *Houston Community College System v. Wilson*, 142 S.Ct. 1253, 1259 (2022) quoting *The Pocket Veto Case*, 279 U.S. 655, 689 (1929). In *Houston*, the court reasoned that individuals who consent to be a candidate for public office put their character in issue with respect to their fitness and qualifications for the office.

<sup>2</sup> *Id.* citing in part Clarke, *Parliamentary Privilege in the American Colonies* 184 (1943). This includes, specifically, state and local legislative bodies. *Houston*, 142 S.Ct. at 1260.

<sup>3</sup> *Houston* 142 S.Ct. at 1259, citing in part D. Bowman & J. Bowman, Article I, Section 5: Congress’ Power to Expel—An Exercise in Self-Restraint, 29 Syracuse L.Rev. 1071, 1084-1085 (1978).

<sup>4</sup> *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943); *Wooley v. Maynard*, 430 U.S. 705, 717 (1977).

<sup>5</sup> *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 63 (2006).

<sup>6</sup> *Rumsfeld*, 547 U.S. at 62.

<sup>7</sup> *Rumsfeld*, 547 U.S. at 67.

<sup>8</sup> *Planned Parenthood of Se.Pa. v. Casey*, 505 U.S. 833, 882 (1992).

<sup>9</sup> *Id.*

- e. Here, the required speech does not force the expression of an idea the speaker disagrees with, compel a government mandated opinion, or otherwise manipulate or coerce public debate or opinion. In other words, it does not erode the "freedom of mind" that the compelled speech prohibition seeks to protect.
- f. The legal distinction between an official or private act, discussed in *Lindke v. Freed*,<sup>10</sup> applies only to the question of whether the official's act may be fairly attributable to the State for purposes of section 1983 liability, *e.g.* an allegation that a state actor deprived a citizen of a constitutional or statutory right under color of state law. Thus, it does not apply to or override a law requiring an elected official, in order to avoid any possible confusion by the public, to state that the opinion or position being expressed is the official's own.
- g. Accordingly, for the reasons stated above, requiring an elected official to inform the public (when true) that an expressed opinion is only their own does not violate an elected officials' First Amendment rights or otherwise unconstitutionally compel speech.

ENTERED on the 18<sup>th</sup> of June, 2024, by the Fairbanks North Star Borough Assembly Board of Ethics.



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Matt Cooper, Chair

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<sup>10</sup> 601 U.S. 187 (2024).