

H.B. 16 opposition testimony of Michael O'Neill

Chair Ray, Vice Chair Fisher, Ranking Member Brent, and members of the General Government Committee:

Thank you for letting me speak about HB 16. My name is Mike O'Neill, and I'm a retired lawyer from Lewis Center.

As you know, H.B. 16 proposes to void existing HOA rules as they apply to political yard signs. I'm speaking in opposition to H.B. 16 because it unnecessarily interferes with local control, encourages people to not honor their commitments, gives HOAs a lot of headaches, and overlooks less intrusive options.

At its core, an HOA is a neighborhood-wide agreement to abide by common rules. Given that "no yard sign" rules are common, my takeaway is that that the restriction is popular. But neighborhoods aren't stuck with their current restrictions. If the neighborhood decides it wants to change a particular restriction, the HOA law lets it do that.

H.B. 16 supplants the neighborhood's choice with a decision made by the state, reducing local control. In addition, the bill lets some homeowners avoid honoring their commitments, at the expense of the other homeowners they contracted with. I've never bought a house that I was perfectly happy with, but it never occurred to me to ask the General Assembly to solve my problem for me. If a person doesn't like their HOA's "no sign rule," they should talk to their neighbors and try to get the rule changed.

H.B. 16 also gives HOAs a lot of headaches.

- If the HOA likes things as they currently stand, H.B. 16 does allow the HOA to adopt "reasonable restrictions" regarding political yard signs. But this approach puts the burden on the HOA to adopt these new rules. For smaller HOAs, this is prohibitively expensive. When my HOA talked to an attorney a couple of years ago about updating our bylaws, we were told that an off-the-shelf, not tailored, set of bylaws would cost about \$2,500. My HOA's annual budget is about \$17,000, with about \$15,000 of that going to landscaping. That leaves \$2,000 for everything else, less than the cost of an off-the-shelf product. Please leave the cost of change on HOAs that actually want a change.
- Not only is adopting new rules costly, it also brings unneeded headaches to the HOA Boards. We are in a charged political climate, and it only takes one person to make the entire decision-making process acrimonious. The bill pushes HOA Boards into fights. And, given the high majority needed to amend rules, the cost of adopting rules, and the likely controversy, the option of reinserting rules may be available only in theory.
- If new rules get adopted, the HOA Board will have to enforce the new rules and mediate the disagreements between homeowners. Boards are comprised of volunteers, not lawyers or professional mediators. This bill asks a lot of them.
- Related to that, H.B. 16 does not define what a "political yard sign" is. Would a sign showing a rainbow, a confederate flag, or an upside-down U.S. flag be political? Is the bill limited to placards or would it also apply to flags or inflatable lawn decorations or projections on the side of a house? The lack of a definition begs for disputes.

- The “no restrictions” window described in R.C. 5301.072(A)(5)(c)(i) is problematic. It says “No such covenant ... shall ... [p]rohibit the display of political yard signs in the thirty days preceding the next election to be held in the territory in which the property is located.” The problem is that this provision does not tie the subject of the political yard sign to the election. Could a homeowner display a controversial sign unrelated to anything to be voted on in the upcoming election? Is this a protected sign? This ambiguity will create unneeded headaches for HOAs. (And, an aside, the window does not include the day of the election itself.)
- It also is unclear how this bill would apply to condominiums. I thought that yards in condominiums typically were common areas, not owned by a particular homeowner.

Finally, there are less intrusive alternatives. Attached to my testimony are examples of what I am talking about.

- The GA could help prospective homeowners find out about what they are buying in terms whether the house is in an HOA, what the dues are, and what the restrictions are. There is an existing residential real estate disclosure form that could easily be expanded to include this.
- The GA could reduce the majority needed to revise the deed restrictions and bylaws as they apply to political yard signs. Currently, the majority is 75% unless the bylaws say otherwise. You could reduce that to make it easier for HOAs to make the change, but does not burden HOAs not wishing to make a change.
- The GA could carve out a safe harbor setting out the minimum of what you want to allow. Local HOAs could be more permissive. This approach creates a baseline that doesn’t burden every HOA in the state, although it still interferes with local control and existing contracts.

In conclusion, an HOA “no yard sign” rule is a bright line standard that is easy to apply and helps keep neighborhoods more peaceful. Thank you for allowing me to speak. I’d be happy to answer any questions.

Less intrusive alternatives, examples

Reducing the threshold to amend restrictions to allow political signs

R.C. 5312.05 (A)(1) Unless otherwise specified in ~~division~~ divisions (A)(2) and (C) of this section or the declaration or bylaws, the owners may amend the declaration and bylaws by the consent of seventy-five per cent of the owners, either in writing or in a meeting called for that purpose.

(2) If a deed restriction or bylaw prohibits the placement of sign on an owner's property, the owners may amend the declaration or bylaw to revise the restriction to permit the placement of political yard signs by the consent of sixty per cent of the owners, either in writing or in a meeting called for that purpose.

(3) No amendment to the declaration or bylaws is effective until filed in the office of the county recorder.

Sample revision of the real property disclosure form (limited to HOAs for brevity)

R.C. 5302.30(D) (3) Not later than ninety days after the effective date of this amendment, the director shall revise the disclosure form to include information by which the transferor discloses both of the following:

(a) Whether the property is part of a planned community, as defined in section 5312.01 of the Revised Code;

(b) If the property is part of a planned community, the assessments on the property, on an annualized basis, and contact information for the secretary of the board of directors of the planned community;

Sec. 5312.17. Upon request, the board of directors of an owners association shall provide to the requestor a copy of the association's bylaws and deed restrictions, and all amendments to those bylaws and deed restrictions. This requirement may be met by providing a physical copy of those documents, electronic copies of those documents, or internet links to copies of those documents that are available to the public via the office of the county recorder of the county in which the planned community resides.

Safe harbour for political signs:

Delete lines 45 through 66 and insert:

"(5) A political yard sign on property controlled by the person displaying the sign, if all of the following apply:

(a) Not more than one sign is displayed;

(b) The sign is displayed not earlier than thirty days prior to the day of an election and not later than the day of the election;

(c) The sign expresses support for or against an issue or candidate on the ballot in that area at that election;

(d) The sign is not greater than twelve inches by eighteen inches."

Proposed definition of “political yard sign”

Between lines 66 and 67, insert:

"(d) As used in division (A)(5) of this section, "political yard sign" means a placard supporting or opposing an issue that, or a candidate for office who, is on the ballot in the next election to be held in the territory."

Examples of controversial signs available on the internet

