

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2364

2007 SENATE POLITICAL SUBDIVISIONS

SB 2364

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2364**

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **February 1, 2007**

Recorder Job Number: **2548**

Committee Clerk Signature

*Shirley Borg*

Minutes:

**Chairman Cook** called Senate Political Subdivisions to order. All members present.

**Chairman Cook** opened the hearing on SB 2364 relating to prohibited provisions in restrictive covenants and condominium project bylaws and regulations.

**Senator Dever**, District 32, Bismarck ND, introduced SB 2364. He was asked by a constituent to introduce this bill as he lives in a subdivision which the covenants prevent any signs on their property. During the last election he tried to put out a political sign and his neighbors said he could not do that. The intent of the covenant was meant to prevent the long term construction of bill board and commercial signs that would indeed detract from the subdivision, particularly along a busy highway. This bill asked that those signs be allowed on the property within sixty days before any primary, general, or special election. Senator Dever passed out some information. (See attachment #1)

**Senator Warner** asked if these subdivisions were condominium and would there be some cross over to our election law dealing with corporate support for political candidates.

**Senator Dever** answered that he was referring to a residential sub-division not a corporate ownership

**Senator Hacker** said that a sign would be of no value.

No further testimony in support, against or neutral on SB 2364.

**Chairman Cook** closed the hearing on SB 2364.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2364**

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **February 1, 2007** (Action)

Recorder Job Number: **2650**

Committee Clerk Signature

*Shirley Borg*

Minutes:

**Chairman Cook** called the committee to order. All present.

**Chairman Cook** asked the committee to go to SB 2364 and asked for questions and if they would like to take action.

**Senator Hacker** moved a Do Pass on SB 2364.

**Senator Anderson** seconded the motion,

Discussion:

**Senator Anderson** said he thinks covenants are basically for permanent signs. Normally people ask you to put up the sign.

**Senator Hacker** said this is for political signs and nothing else.

Vote: Yes 5 No 0 Absent 0

Carrier: **Senator Hacker**



**REPORT OF STANDING COMMITTEE (410)**  
February 2, 2007 12:58 p.m.

**Module No: SR-23-1976**  
**Carrier: Hacker**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2364: Political Subdivisions Committee (Sen. Cook, Chairman) recommends DO PASS (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2364 was placed on the Eleventh order on the calendar.**

2007 HOUSE POLITICAL SUBDIVISIONS

SB 2364



# 2007 HOUSE STANDING COMMITTEE MINUTES

## Bill No. SB 2364

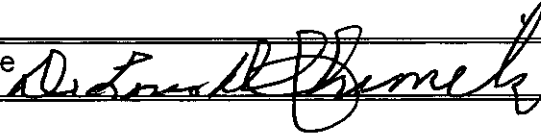
House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: March 2, 2007

Recorder Job Number: 4293

Committee Clerk Signature



Minutes:

**Chairman Herbel** opened the hearing on SB 2364.

**Senator Dever:** I introduced 2364 at the request of a citizen who wishes to remain anonymous. This citizen lives on acreage in a rural subdivision along a busy highway. The citizen intended to put a political sign on his property last fall and then one of his neighbors reminded him that the covenants of the subdivision said they could not put up any signs. It is the feeling of this citizen that what the covenants were intended to prevent the placement of commercial signs and bill boards, which would certainly understand able. In ND different jurisdictions place restrictions on the time that political signs can be up and the sizes of those signs. In Bismarck signs can be up no earlier than 45 days before an election and they can be no more than 16 sq.ft. deep if placed on residential property. These kinds of restrictions are appropriate and do not interfere with freedom of speech. Restrictive covenants that completely prohibit political signs could be construed to be in violation of the constituently right to freedom of speech. (see testimony #1)

**Rep. Lawrence Klemin:** The Bismarck city ordinance says they could put a political sign on their deck. It appears to be superseded by the statue that says 15 days.

**Senator Dever:** I guess my understanding would be a little different. I think the city would be able to put more restrictive covenants on the state law, but not less.

**Rep. Lawrence Klemin:** So could the city by rule prohibit political signs? the statute says you can not have the sign up within 60 days before an election how can the city come up and reduce that period of that time to 45 days?

**Senator Dever:** This is the way I would read it. This says a subdivision can't restrict it within 60 days, but I don't know if that would preclude the city from doing that. My neighbors don't get upset with me because there are condominiums across the street from my place and some of them have said our agreement doesn't allow that. Then the other party put up some signs and they had the sign in the yard and apparently one of the neighbors complained and then they moved the sign up under their window. The last election they just put them out in the yard and no body complained.

**Rep. Kim Koppelman:** The way I read this is it says a covenant can't restrict you to not having a sign for sixty days. Now the city ordinance restricts you only have it for 45 days so it supersedes that.

**Senator Dever:** So if I understand you right you agree with me?

**Rep. Kim Koppelman:** Right. Is that what counsel told you?

**Senator Dever:** We did not have that conservation specifically, but that was my understanding. I think reasonable restrictions are appropriate, but if the city of Bismarck enacted an ordinance that said no political signs what so ever, I think we would have a constituently problem.

**Rep. Lee Kaldor:** Can we have a situation where the condominium owned the property and you could have property where the land around the building would be owned by all the owners of the condominium or association. Would this prevent the association from closing them?

For instance if I lived on the 18<sup>th</sup> floor of the condominium and I wanted to put a political sign out on front of the building, could they restrict me with this provision?

**Senator Dever:** I think you are right that that would be common area. I think the owner of the building is reflecting his views when there are signs up.

**Rep. Kim Koppelman:** I think it says the owner's property. I don't think property held in common would apply.

**Rep. Lawrence Klemin:** Development can have sign restrictions in them. This is the type of covenant for commercial use and they can have these restrictions. What could happen if the owner of the building wanted to put up a political sign?

**Senator Dever:** I think we just need a reasonable definition. This citizen was reluctant to bring this forward because he is a resident of a subdivision where there are three lots not yet sold and they are owned by a pretty significant democrat and he is concerned if he puts them signs up they might be over powered by the other ones.

Opposition: None

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. SB 2364

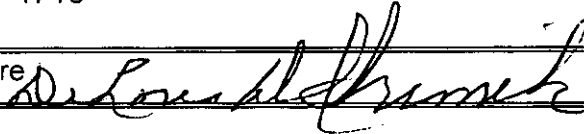
House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: March 8, 2007

Recorder Job Number: 4716

Committee Clerk Signature



Minutes:

**Chairman Herbel** reopened the hearing on SB 2364.

**Do Pass Motion Made By Rep. Louis Pinkerton Seconded By Rep. Kim Koppelman**

**Discussion: None**

**Vote: 13 Yes 0 No 1 Absent Carrier: Rep. Louis**

**Pinkerton**

**Hearing closed.**

Date: 3-8-07  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2364

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do PASS

Motion Made By Rep. Pinkerton Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Rep. Gil Herbel-Chairman	✓		Rep. Kari Conrad	✓	
Rep. Dwight Wrangham-V. Chair	✓		Rep. Chris Griffin	✓	
Rep. Donald Dietrich	✓		Rep. Lee Kaldor	✓	
Rep. Patrick Hatlestad	✓		Rep. Louis Pinkerton	✓	
Rep. Nancy Johnson	✓		Rep. Steve Zaiser	✓	
Rep. Lawrence Klemin	✓				
Rep. Kim Koppelman	✓				
Rep. William Kretschmar	✓				
Rep. Vonnie Pietsch	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Pinkerton

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
March 8, 2007 3:43 p.m.

**Module No: HR-44-4792**  
**Carrier: Pinkerton**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2364: Political Subdivisions Committee (Rep. Herbel, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2364 was placed on the Fourteenth order on the calendar.**

2007 TESTIMONY

SB 2364

Here's some research regarding what other states of done re: political yard signs.

Our interest is to make sure that any restrictive covenants placed on ANY residential developments (and not just property governed by a Homeowners' Association) allows reasonable display of political yard signs or displays in the weeks preceding primary or general elections. Many states have passed state codes dealing with this (but often just address Homeowners' Associations--so we'd like to see broader language extending it to any residential development):

**Arizona.** In 2004, the Arizona State Legislature amended existing legislation to protect homeowners' and condominium residents' right to fly flags. The revised statutes (33-1261 and 33-1808) allow for residents to fly flags that are consistent in size with dimensions noted in the federal flag code (P.L. 94-344; 90 Stat. 810; 4 U.S. Code sections 4-10). Arizona homeowners' associations may not prohibit the installation of a flagpole, but may dictate its height and placement. The revised statute 33-1808, which concerns homeowners in planned communities, **also secured the right to post political signs.** Signs may be displayed unless regulated by the association. All sign prohibitions must be consistent with and not exceed restrictions in local sign ordinances. **Political signs may never be prohibited 45 days before or 7 days after an election.**

**California.** On Sept. 12, 2003, now-former California Gov. Gray Davis signed a bill, AB 1525, permitting residents of common-interest developments (neighborhoods, planned communities, apartments, et al.) to display signs and flags. The bill prohibits associations from forbidding such displays and their placement unless they are found to be hazardous to community health and safety, or in violation of local, state, or federal codes. An association may stipulate the size or material with which a display is made, but such regulations must be consistent with local ordinances.

**Washington.** Here's a link to a bill in Washington that pertained directly to Homeowners' Associations: <http://www.leg.wa.gov/pub/billinfo/2005-06/Pdf/Bills/Session%20Law%202005/6064-S.SL.pdf>. It reads:

RCW 64.38.034

Political yard signs -- Governing documents.

(1) The governing documents may not prohibit the outdoor display of political yard signs by an owner or resident on the owner's or resident's property before any primary or general election. The governing documents may include reasonable rules and regulations regarding the placement and manner of display of political yard signs.

(2) This section applies retroactively to any governing documents in effect on July 24, 2005. Any provision in a governing document in effect on July 24, 2005, that is inconsistent with this section is void and unenforceable.



## Virginia Housing Commission: Common Interest Communities Work Group

9/12/2006 - Comments submitted by Chris Casey - info@freemontclair.us

### The Facts

According to the Community Associations Institute, *more than 500,000 Virginian's live under Property Owner's Associations in the Commonwealth of Virginia, and five out of six new communities developed are association managed.*

According to 2000 Census Figures, the population of my community of Montclair was 15,728. If Montclair was included in a list of Virginia counties and towns ranked by population, it would rank 90<sup>th</sup>. Montclair's population in 2000 was larger than 30 Virginia Counties and larger than the cities of Martinsville, Williamsburg and Falls Church.

Individuals who purchase in association governed communities understand that they must accept living under the community guidelines.

- If I need to paint my house, they may limit my color choices
- If I need to put on a new roof, they may specify an approved shingle type
- And if I need to put out a sign, such as a 'For Sale' sign, or a 'Welcome Home' sign, they allow it with specific restrictions.

ONLY political campaign signs are singled out for an absolute prohibition. WHY?

### The Law

The Supreme Court has stated that political signs are protected speech

#### **CITY OF LADUE et al. v. GILLES - 1994**

Justice Stevens wrote:

*A special respect for individual liberty in the home has long been part of this Nation's culture and law and has a special resonance when the government seeks to constrain a person's ability to speak there. The decision reached here does not leave Ladue powerless to address the ills that may be associated with residential signs. In addition, residents' self interest in maintaining their own property values and preventing "visual clutter" in their yards and neighborhoods diminishes the danger of an "unlimited" proliferation of signs.*

### **The Constitution of Virginia**

#### **Section 12. Freedom of speech and of the press; right peaceably to assemble, and to petition. \_\_**

That the freedoms of speech and of the press are among the great bulwarks of liberty, and can never be restrained except by despotic governments; that any citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; that the General Assembly shall not pass any law abridging the freedom of speech or of the press, nor the right of the people peaceably to assemble, and to petition the government for the redress of grievances.

#### **Section 14. Government should be uniform. \_\_**

That the people have a right to uniform government; and, therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof.

## Virginia Law

### **§ 15.2-109. Regulations on political campaign signs.**

No locality shall have the authority to prohibit the display of political campaign signs on private property if the signs are in compliance with zoning and right-of-way restrictions applicable to temporary nonpolitical signs, if the signs have been posted with the permission of the owner. The provisions of this section shall supersede the provisions of any local ordinance or regulation in conflict with this section. This section shall have no effect upon the regulations of the Virginia Department of Transportation.

**Where federal and state law are both absolutely specific and clear in their efforts to protect this right, what compelling reason do POAs have to justify their need to strip it completely?**

It IS the Public Policy of the Commonwealth to protect the free speech rights of the citizens of the Commonwealth. The General Assembly of Virginia has a legitimate public purpose in seeking to return to citizens of Virginia, any free speech rights denied to them as a condition of buying a home.

### **The Need**

This legislation provides a reasonable solution between two extreme positions

One extreme would be for complete freedom to display political signs of any size, number and duration on their private property. I do not advocate for this position in the context of a POA governed community.

The other extreme is for the complete and total prohibition of political signs on private property. This is the current rule in my POA.

A reasonable middle ground does exist, that protects the free speech rights of individuals, and recognizes the desire of POA's to protect the appearance of their communities. That middle ground is to allow for the display of political signs on private property, with reasonable limits imposed on the number, size, and duration that they can be displayed.

It is because of the overreaching guidelines of Property Owners Associations that PROHIBIT homeowners from exercising the right to display a sign, that many states have passed laws to specifically protect it. **In the last three years, at least six states have passed laws similar to SB 621 (AZ, CA, CO, NC, TX, WA)** — Expand to include Real Estate Developments Restrictive Covenants

**Washington State** on Constitutionality of Retroactive Legislation

*Both the state and federal Constitutions provide that no state can pass a law impairing the obligation of contracts. A contract is impaired if the statute alters its terms, imposes new conditions, or lessens its value. Even if a contract is substantially impaired, it may not be unconstitutional if it was reasonable and necessary to achieve a legitimate public purpose. A court will compare the level of impairment with the public purpose advanced by the law.*  
**Washington State Senate Bill Report – SB6064**

In February of 2006, **The Appellate Division of the Superior Court of New Jersey** found that the rights guaranteed by the state's Constitution do extend into private communities. The Judicial Panel's Unanimous opinion in the case of *Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Association* stated:

"Any person is free to accept Twin Rivers's invitation to purchase or rent property in that community; that choice cannot be at the expense of relinquishing what the New Jersey Constitution confers. Moreover, even where there has been no invitation to the public, our jurisprudence clearly allows access to private property to exercise constitutionally guaranteed rights. Twin Rivers is in New Jersey. The rights guarantees of our State Constitution apply in that community as in every other in the State."

"The manner and extent to which functions undertaken by community associations have supplanted the role that only towns or villages once played in our polity mirrors the manner and extent to which regional shopping centers have become the functional equivalents of downtown business districts."

"...even if Twin Rivers is viewed solely as private property, the TRHA (Twin Rivers Homeowner's Association) can be required to allow free speech and other expressive exercises, as broadly guaranteed in the New Jersey Constitution even as to non-governmental actors, when the public interest weighs more heavily in the balance than the private property rights involved."

### **This Legislation**

There is a very important distinction between these two bills. HB878, which was actively opposed by the Community Associations Institute (CAI), would invalidate any existing prohibitions against the display of a political sign by a POA. While SB621, which was not opposed by CAI, essentially states that you cannot prohibit political signs, unless you prohibit political signs.'

The argument against HB878 is that it would be an unconstitutional retroactive change to an existing contract. But as pointed out above, other states have had to deal with this similar dilemma, and found that the violation of the free speech rights of their citizens outweighed concerns for any harm that such a change would cause to a contract.

#### **HB878**

Provides that, notwithstanding any provision in a declaration, no declaration or association's rules and regulations or architectural guidelines shall restrict or prohibit the display by a lot owner on his lot of a candidate sign or a sign that advertises the support or defeat of any question submitted to the voters in accordance with state election law.

#### **SB621**

Provides that, except as otherwise expressed in the declaration, no declaration or association's rules and regulations or architectural guidelines shall restrict or prohibit the display by a lot owner on his lot of a candidate sign or a sign that advertises the support or defeat of any question submitted to the voters in accordance with state election law.

## **Debunking Some Myths About Political Signs**

**Premise:** Signs of ANY type have a negative impact on the aesthetics of our community.

**Fact:** Certain types of signs, such as a 'For Sale' or 'For Rent', or a 'Yard Sale' or 'Happy Birthday' are permitted under particular circumstances.

**Fact:** Only political signs are specifically prohibited under ANY circumstance.

**Premise:** Political yard signs have a negative impact on property values.

**Fact:** As a homeowner myself, I shared our common desire for high property values, but that's all it is, a desire, not a right. And what evidence is there that political signs have ANY impact on property values? Or any greater impact than other types of signs? Does a neighbor's American Flag or yellow ribbon around their tree have a negative impact on property values? I believe the contrary is true. I believe that like these symbols, the display of political campaign signs reflect positively on a community in which they are displayed. Such a community is an active, involved, and civic-minded one.

Voting... deepens community involvement. Studies indicate that voters are more active in community affairs than non-voters are. And recent evidence suggests that the act of voting itself encourages volunteering and other forms of good citizenship.

*The Vanishing Voter by Thomas Patterson*

### **What if a majority of Montclarions support the continuation of the prohibition?**

The might of a majority does not always make them right. Our history is full of examples unjust laws and efforts by a majority to deny rights of a minority. Jim Crow laws intended to suppress voting by minorities, or restrictive covenants that prohibited members of a particular race, religion, or nationality from living in a community are examples are just a few examples of majorities attacking the rights of a minority. The desire of a majority of Montclarions for a sign-free aesthetic ideal, should not outweigh the free speech rights and participation in our political process by a minority.

## Relevant Quotes

**Thomas Jefferson** (2nd Gov, 3rd President)

I would rather be exposed to the inconveniences attending too much liberty than to those attending too small a degree of it.

*Letter to Archibald Stuart (1791)*

**James Madison** (4th President, Father of the Constitution)

"There are more instances of the abridgement of the freedom of the people by the gradual and silent encroachment of those in power, than by violent and sudden usurpation."

**George Washington**

For if Men are to be precluded from offering their Sentiments on a matter, which may involve the most serious and alarming consequences, that can invite the consideration of Mankind, reason is of no use to us; the freedom of Speech may be taken away, and, dumb and silent we may be led, like sheep, to the Slaughter.

Address to the officers of the army

*Newburgh, New York – March 15, 1783*

**George Mason** (Virginia Declaration of Rights)

Article 14

That the people have a right to uniform government; and therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof.

Testimony on SB 2364  
House Political Subdivisions  
Senator Dick Dever

Mr. Chairman, members of the committee, for the record I am Dick Dever, Senator from District 32 in Bismarck.

I introduced SB 2364 at the request of a citizen who prefers to remain anonymous for reasons that I think you and I would agree are appropriate. This citizen lives on acreage in a rural subdivision along a busy highway.

This citizen intended to put a political sign on his property last fall. One of his neighbors reminded him that the covenants of the subdivision said they could not put up any signs.

It is the feeling of the citizen that the covenants were intended to prevent the placement of commercial signs and billboards, which would certainly be understandable.

In North Dakota, different jurisdictions place restrictions on the time that political signs can be up and sizes. In Bismarck, signs can be up no earlier than 45 days before an election. They can be no more than 16 square feet if placed on residential property. These kinds of restrictions are appropriate and do not interfere with Freedom of Speech.

Restrictive covenants that completely prohibit political signs could be construed to be in violation of the constitutional right to Freedom of Speech.

I am including with my testimony, information on the same issue from other states. I would encourage you to review that information and support this bill. I would be happy to respond to any questions. Thank you.

Here's some research regarding what other states of done re: political yard signs.

Our interest is to make sure that any restrictive covenants placed on ANY residential developments (and not just property governed by a Homeowners' Association) allows reasonable display of political yard signs or displays in the weeks preceding primary or general elections. Many states have passed state codes dealing with this (but often just address Homeowners' Associations--so we'd like to see broader language extending it to any residential development):

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