

2013 HOUSE POLITICAL SUBDIVISIONS

HB 1265

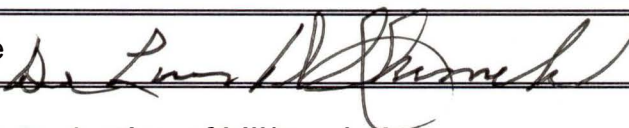
2013 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee Prairie Room, State Capitol

HB 1265
January 31, 2013
Job #18113

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the regulation of political signs by counties, cities, and townships.

Minutes:

Testimony #1, 2

Chairman N. Johnson: Opened the hearing on HB1265.

Rep. Ben Koppelman: (See testimony #1). 01:05-05:39

Rep. Klemin: Your testimony talks about court cases that have struck down ordinances that have square footage limitations on signs yet the three sections in your bill have square foot limitations on signs. Isn't that inconsistent?

Rep. Ben Koppelman: Yes that is true. Most of the sign limitations that were struck down in court cases were restrictions that were 32 sq. or less. I didn't come across any that were more than that. You could argue that there should be no limitation; however I do also recognize that some people's desire to have an aesthetically pleasing neighborhoods and to the extent that is reasonable that is where the 40 sq.ft. number came from I think some limitations maybe permissible. I was trying to get something that was palatable to everybody and still follow the intent of the constitution.

Rep. Klemin: This is a 4'x8' sign. That would be 40 sq.ft.

Rep. Ben Koppelman: It was 4' x 8' signs that are commonly used. Forty was just a round number shown. That can be amended to the committee's wishes.

Rep. Klemin: Private property would include commercial property, industrial property and residential property; all of those kinds of things. What about bill boards? Billboards are a lot bigger than 40 sq. ft. and they would be on private property most of the time. This would allow billboards to be prohibited?

Rep. Ben Koppelman: No bill boards are not in residential property. Keep in mind this language in this bill was may not must so political subdivisions can restrict in residential zones up to that to what is 40 sq.ft. and could be whatever. That is permissive language

for the political subdivision. In absence of them taking any action there would be no limitations on political signs that the state is making to the individual property owner.

Rep. Klemin: What about the time limits?

Rep. Ben Koppelman: It was to try to honor some people's wishes; legislatures and other people. If they are longer than 90 days they could be defined as permanent signing. Signs are usually stakes in the ground and then removed. Most political signs are not made up of a product is durable enough. In some court instances they made sure that some signs used were durable to the weather so you did not have litter and trash blowing away.

Rep. Klemin: Is the term political sign defined in this chapter. It is not defined in these sections.

Rep. Ben Koppelman: I am not aware if they are defined in statute or not.

Rep. Klemin: How would you define it?

Rep. Ben Koppelman: The intent of the bill was a sign was something that you could pick up and move.

Rep. Muscha: Was this a statewide issue? I have had no problem putting up a signs.

Rep. Ben Koppelman: It has occurred in multiple jurisdictions across the state. Usually in city settings. Legislative Council says you need to cover all the different political subdivisions.

Rep. Jim Kasper: I think HB 1265 is an extremely important bill. I think there is reference on political signs as pointed out in Section 24-17-02. The first section of the constitution is the first amendment: Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof or abridging the freedom of speech or the press or the right of the people peaceably to assemble and petition the government for a redress of grievances. Freedom of speech is key to this bill. Then we jump over the fourth amendment. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated. The right of people to be safe from peoples. To me that means if I put a sign in my yard I put it there on my own free will. No one should be able to come into my property and take my sign down. If it were a sign that graphically phonographic acts that is a different story. This bill is about the freedom to express your thoughts and positions in your own law and on your own private property. The tenth amendment is: the powers not delegated to the US by the constitution nor prohibited by it to the states are reserved to the states respectively or to the people. I think we need to preserve these rights as much as we can. This bill is about the freedom to express your thoughts and your positions on a sign on your own property. I hope the committee will give a favorable consideration.

Rep. Koppelman: You mentioned the freedom of speech and freedom of the press. Political speech was the holy grail of free speech. The idea of the founders have upheld is

really the key thing that freedom of speech was designed to make sure it protected. Any thoughts, comments or opinions on that?

Rep. Kasper: Our founders were persecuted and when they came to America they wanted to draft the constitution to protect the freedoms that they had lost earlier. They wanted to be sure the constitution did not have the government have the power, but wanted the people to keep these freedoms. Over the last 200 years we have seen a lot of government encroach on the freedoms of the people. It should not be easy for 5 or 6 people setting on a board to say you can't have that sign there.

Rep. Klemin: I don't disagree when you were reading anything on the constitution, but this bill seems to put a lot of restrictions on their contrary to what you were talking about. Maybe we should amend this will to say a county may not impose any a restriction or prohibition on the placement of a political sign. Then all these time limits and private property and stuff come off.

Rep. Kasper: I think that would make the bill stronger.

Rep. M. Klein: Depending on what communities you are in they want these signs down the day before the election is held. So you are running all over the place the night before trying to get these signs down. Some of the communities will allow signs within so many feet of a polling place. I am wondering if that should be addressed in here.

Rep. Kasper: I think the Supreme Court ruled that was unconstitutional. I think that is now gone. So many feet away from a polling place is a dicey area because on one side is our freedom and the other side is undo emphasis or potential effect on a voter going into a polling place. I wonder if the court case that was just heard had any effect on that. I couldn't tell you how I feel about that.

Rep. Kretschmar: There is a law or statue on our books yet that prohibits elocutionary on Election Day. I live right down by the South Dakota border and if you listen to the South Dakota radio on Election Day you can hear all the political ads. Many people in our state do not have signs up and they do take them down. I think political subdivision would have some grip to make reasonable regulations on political signs. They couldn't really eliminate free speech for sure. Are you aware of any abuses of this?

Rep. Kasper: We had a difference of opinion in District 46 in the last campaign about free speech. The city of Fargo has a 40 to 60 page sign ordinance. We had attorneys look at it to determine what it really said. Our district chairman received a letter that some of our district signs had to be removed. So we had to remove the signs within 10 days so here we are today clarifying what our constitution says. I do believe political subdivisions should be able to have signs and that is their right, but not on my yard that is where I would like to draw the line and say my right to freedom of speech cannot be abridged.

Rep. Beadle: As we are getting to 4' x 10' or a 5' x 8' signs should the size of the signs be taken into consideration where it might hinder traffic flow due to visibility or whatever? Are there any limitations like that might affect private property that might be justifiable?

Rep. Kasper: You probably would have that happen in public property.

Rep. Beadle: The idea of 100' from a polling site. When we have early voting in our community the early voting takes place in one or two hotels within our community. If we make it where we cannot limit it on private property; some of these hotels are really big so if you're polling site is in a back ballroom would it be feasible that you could get permission from the owner of the property where you are canvassing entirely around that hotel to campaign? Could that be a potential problem that would need to be addressed to make sure the polling site areas are kept clean.

Rep. Kasper: My initial reaction is private property is private property and if the hotel have signs up on their property, I think the right of the property owner should be able to do that but the question then is should we restrict that persons property rights under the constitution compared to my lawn. I would like to air on the side of the rights of the property owner.

Rep. Hatlestad: Is that city or personnel property?

Rep. Kasper: In Fargo you have the sidewalk and then your lawn from the side of the sidewalk to your lawn that is yours, but the sidewalk to your side where the other green is that is the cities. The sidewalk is the cities as well.

Rep. Koppelman: A few years ago we had a bill to repeal the provision in ND law which was recently found unconstitutional by the court. The one that dealt with signs coming down before Election Day. The legislature at that time decided they should take them down before Election Day. Right or wrong we didn't repeal the law. In our area the signs came down right before election. I suspect maybe we will continue our ND tradition. Around polling places in other places they have signs up all around.

Rep. Kasper: I don't disagree; but if you want to go there do a delayed bill; leave this one alone.

Rep. Thoreson: Support of this bill. I think we do live in a different world now and in regards to this bill we have seen places in law that are a discrepancy in our case we had signed in one piece violated the law, but cut into three separate sections, did not. I Rep. Maragos: not certain what we are doing now is working. I think this does work to address the situation placing some uniformity on these signs and also allowing more political speech. We need more openness and more transparency, more debate whether we agree with or not. I think this bill would help foster that. I hope this committee gives this bill a favorable consideration.

Opposition:

Brad Wimmer, City of Fargo City Commissioner: (See testimony #2). 35:29 - 38:00

Rep. M. Klein: You say you have talked to business owners, sign companies and neighborhood residence. As you went through this how much neighborhood residence were involved?

Brad Wimmer: We had a chamber full. We meet for a year and a half and our commission room was full. Lots of pros and cons and we went through all kinds of topics and chapters. Residence versus the business. We ended up with some very large business signs that we are not very proud of. That slipped through the cracks and neighbors were mad because it was a historic neighborhood in Fargo.

Rep. Koppelman: I understand the pressures of being a city commissioner. If we look at the bill could read that we could not put any restrictions on signage. I realize it is bigger than you would like. It seems to be that the sponsors have gone and been measured in their approach. Wouldn't you rather have some reasonable restriction that probably wouldn't bruise anybody's free speech badly enough to raise to a court challenge instead of having it go to a court and they say you are violating the first amendment.

Brad Wimmer: We thought that is what we did. We thought 8' we were being very reasonable with that. We thought we had gone through this so we wouldn't get the court case. Eric Johnson, our city attorney spent a lot of time in that year and a half on this.

Rep. Kathy Hogan: I live in the neighborhood he is talking about and it was a large issue and the neighbor it was a very emotional issue and we have hundreds of people at hearings. The neighborhood did not want semi-trucks with political signs on them. I Rep. Maragos: concerned about the private property and the sign regulations for businesses because this says that we could put political signs on all our business. There are different regulations for business signage and private residence in the Fargo plan. What do you think would be some of the consequences on the business side?

Brad Wimmer: We have not dealt into those. This is new to us. If the Doublewood Inn is having an early election could they have a sign? Obviously I don't think Mt. Pleasure from the county would have the Doublewood doing early elections if they are putting signs out there. They probably wouldn't be the polling site next year. North Dakota has been pretty good with all of this. We have policed ourselves pretty well with much of our sign code. We just haven't done anything in Fargo for many years and felt it was time to make some adjustments.

Rep. W. Hanson: Do you know any legal precedence for the state to be assigning a uniform sign code?

Brad Wimmer: We had not found any in North Dakota specific. Obviously they have been several throughout the country.

Rep. W. Hanson: When Fargo voted on a sign ordinance did that include those kinds of signs that would be addressed within this bill if it was passed?

Brad Wimmer: Yes, we talked about these and we have addressed how many yard signs and that is ambiguous on our code.

Rep. W. Hanson: With it being a city election would this bill be considered an infringement on the state by something that was voted on by the city of Fargo?

Brad Wimmer: There is always a clash with home rule charter. We try to do these things by the city and like to let those stand.

Rep. Beadle: Is there any place in the City of Fargo where a 52' semi-trailer campaign sign would be allowed?

Brad Wimmer: That is a good question. I will find out for you. We battle with Newman signs all the time where they can put their billboards. They are down to a few sites in the city and we are trying to move them out of the city and out of the residential areas. They think it is an infringement on their first amendment rights. I will find out for you.

Rep. Koppelman: There is nothing in this bill that would allow that?

Brad Wimmer: It is mostly residential areas as I see it. Our big concern there is the 40 sq.ft.

Rep. Klemin: I have been in some cities where I see signs on flatbeds and they are carrying pretty big signs and they are driving around on public streets, it is not private property. Does your Fargo sign ordinance have anything to do with that?

Brad Wimmer: No, electronic signs is rather new. We have heard of these. They are on buses and different automobiles and I don't think that is addressed in our current sign code at this point.

Rep. Klemin: What if they put flashing lights on then?

Brad Wimmer: The parks have those signs. NDSU parks an athletic semi at the Fargo Dome advertising NDSU and athletics. We get a lot of these gray areas that we have to address.

Chairman N. Johnson: If you have a semi that has a political sign on it, but you don't allow semis in a residential area, but if it is a political sign is it now a semi in a residential area or is it a political sign in the residential area?

Connie Sprynczynatyk, ND League of Cities: We don't want to trample any body's first amendment rights. I have been reading Judge Hoganland's decision. When I ran for city commission in 1990 one of the first things we had to do was a sign restriction so many inches by so many inches. I think you had some great questions. From my 20 years on the commission room they care very much about the neighborhood that is impacted. Sign ordered are controversial. Bismarck right now says you are limited in residential to 16 ft. I don't know if 40' is reasonable amount in a neighborhood? Let's answer the questions before we pass the bill.

Rep. Koppelman: The bill says may not impose any probation on the placement of a political sign so that I assume deals with the setback issue. Don't you think it would be better to have something like this in code that says keep it reasonable and maybe nobody will sue over it?

Connie Sprynczynatyk: Is your questions asking me to choose the lesser of two evils? The judge's decision references that North Dakota is over restricted and not defensible under constitution have been in place since 1911. What is clear to me if there is an ordinance then it needs not to trample on free speech and it has to serve a governmental purpose and you need to be able to defend it.

Rep. Koppelman: One of the things it does say that in cases of public safety. It seems to me that that is probably a reasonable restriction. Hearing about all the recent concerns out there I think we are reaching critical mass like we did on signs on Election Day thing.

Connie Sprynczynatyk: I would think we should look at the number of days. We are looking at 90 days before and 30 days after. If it is a paper sign there will be an issue because they will not last 90 days without causing some debris. Right now Bismarck's ordinance says 16' and 45 days. I think you have raised some good questions.

Rep. M. Klein: You heard about our friend Earl Ellis that owned the property right across from city hall that had this large sign so I think the city finally bought the property and the sign is down now.

Rep. Klemin: Could you just email that to us and we can get this to us.

Neutral: None

Hearing closed.

2013 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee Prairie Room, State Capitol

HB 1265
February 14, 2013
Job # 18989

Conference Committee.

Committee Clerk Signature



Minutes:

Chairman N. Johnson reopened the HB 1265. That is the one on political signs. My concern is that we are saying this is free speech and that we shouldn't regulate signs and the next thing they do is proceed to regulate signs. Then let's not regulate signs, but if the cities or local entities want to do it they can deal with it.

Rep. Koppelman: I disagree. The purpose of the bill is to put some perimeters in place. There are limits to every right including constitutional rights. What the bill seeks to remedy is local regulation that is too restrictive. That was made pretty clear in testimony that we had. The bill is trying to allow for local control, but to do so in a way that is reasonable and does not allow it to be so restrictive that it could be viewed as a threat to constitutional rights.

Do Pass Motion Made by Rep. Koppelman: Seconded by Rep. Toman:

Rep. Ben Hanson: I want to resist a do not pass motion. I did want to discuss testimony we heard from Commissioner Wimmer from Fargo. I asked Commissioner Wimmer is if this is trying to enhance freedom of speech I don't know why we would on a state level be infringing on what someone that worked on at the city level. I have been on a couple planning and zoning boards and sign codes are not made flippantly but made also with a large consensus of people from that town. I don't think it is our place to impose our will on what seems to me a municipal or county matter.

Rep. Beadle: My concern is that every court case that was brought in by the proponents of this bill referenced size restrictions impeding free speech. Here in this bill we are putting size restrictions so I have hesitation about the effect of that.

Rep. Kretschmar: Had this bill been amended?

Chairman N. Johnson: No

Rep. Koppelman: If it was the intent of the comments that were made to remove the size restrictions from the bill and support it I would certainly withdraw my motion for a do pass? My thinking is in most court cases on constitutional question usually the questions is reasonability and limitation. It is not an absolute right.

Rep. Hatlestad: My concern in the whole thing is no place does common sense apply. You don't need a 60' billboard. You could say a reasonable size and we will work on an agreement. I think we are stepping in muck.

Vote: 4 Yes 11 No 0 Absent Failed.

Do Not Pass Motion Made by Rep. Kathy Hogan: Seconded by Rep. J. Kelsh:

Vote: 11 Yes 4 No 0 Absent Carrier: Rep. Muscha:

Closed.

Date: 2-14-13
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1265**

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. K. Koppelman Seconded By Rep. N. Toman

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson		✓	Rep. Ben Hanson		✓
Vice Chairman Patrick Hatlestad		✓	Rep. Kathy Hogan		✓
Rep. Thomas Beadle		✓	Rep. Jerry Kelsh		✓
Rep. Matthew Klein		✓	Rep. Naomi Muscha		✓
Rep. Lawrence Klemin		✓			
Rep Kim Koppelman	✓				
Rep. William Kretschmar		✓			
Rep. Alex Looyen		✓			
Rep. Andrew Maragos	✓				
Rep. Lisa Meier	✓				
Rep. Nathan Toman	✓				

Total (Yes) 4 No 11

Absent 0

Floor Assignment _____

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

Failed

Date: 2-14-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1265

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep Hogan Seconded By Rep. J. Kelsh

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Ben Hanson	✓	
Vice Chairman Patrick Hatlestad	✓		Rep. Kathy Hogan	✓	
Rep. Thomas Beadle	✓		Rep. Jerry Kelsh	✓	
Rep. Matthew Klein	✓		Rep. Naomi Muscha	✓	
Rep. Lawrence Klemin	✓				
Rep Kim Koppelman		✓			
Rep. William Kretschmar	✓				
Rep. Alex Looyen	✓				
Rep. Andrew Maragos		✓			
Rep. Lisa Meier		✓			
Rep. Nathan Toman		✓			

Total (Yes) 11 No 4

Absent 0

Floor Assignment Rep. Muscha

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

REPORT OF STANDING COMMITTEE

HB 1265: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends **DO NOT PASS** (11 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1265 was placed on the Eleventh order on the calendar.

2013 TESTIMONY

HB 1265

#1

HB 1265

Madam Chair and members of the committee, for the record, I am Rep. Ben Koppelman, of District 16.

I am here in favor of HB 1265. HB 1265 is a bill designed to protect an individual's First Amendment * right to free speech which includes the ability to place a political sign on private property.

Across the state there are ordinances regulating the placement of signs which include political signs. In many cases the policing of such ordinances was not consistent and was only reactionary to complaints. This resulted in inconsistent enforcement. These ordinances range from limiting the placement of signs on public property, placement of signs on private property, time limitations, and size limitations.

This bill is intended to provide maximum freedom of political speech and expression, while allowing some reasonable limitations in residential areas. The size specification in the verbiage of this bill was designed to protect commonly used sign sizes, but by no means is a "magic number" which cannot be amended. The importance of this bill is to ensure consistent protection of political free speech rights across the state.

This bill is not designed to limit the authority of housing development covenants because they are governed by voluntary contractual agreements which are signed when the home is purchased or built.

Although I have not been able to identify any N.D. Supreme Court cases dealing directly with this issue, I did find various court ruling by the U.S. Supreme Court, U.S. District and Circuit Courts, and Various State Supreme and District Courts where the First Amendment of the U.S. Constitution was referenced.

These lead me to believe that it is clear that limiting the placement of political signage on private property by its owner is a limitation of political free speech. In *Connick v. Myers*(1983), the U.S Supreme Court said "Speech on public issues occupies the highest rung of the hierarchy of the First Amendment values, and is entitled to special protection." In *City of Ladue v. Gilleo* (1994), they went on to say, "Signs, often placed on lawns or in windows...play an important part in political campaigns...residential signs have long been an important and distinct medium of expression." Clearly, both from the historic perspective of our Founders and according to court rulings, at the core of the First Amendment of the U.S. Constitution is political free speech.

Limitations on the size of a political sign and the duration of time that they may be displayed on private property has come under fire in many court cases. Examples from Ohio, Texas, and Florida have struck down ordinances that limit the size and duration. One example: In *City of Hudson v. Arshinkoff* (Ohio App. 9 Dist. 2005), The court struck down the prohibition of an eight square foot sign size because it limited the rights of candidates and property owners to express their message. In this case, the court said "square footage limitation affects speech," and that "Speech is burdened by the fact that the square footage limitation prevents homeowners from expressing support for as many candidates as they desire."

There were instances where court rulings allowed for restrictions on private property, but they generally were limited to public safety if the city 'demonstrated a burden on traffic or safety. The ordinances also could not restrict the ability to place a sign on private property through setbacks unless the fore-mentioned burden was satisfied. Limitations on sign size and quantity by cities should not be allowed to overly restrict on the basis of aesthetics alone.

Another topic that was widely challenged was the enforcement of sign ordinances in relation to political signage. It was questioned whether or not a sign could be removed from private property if a property owner was found in violation of a sign ordinance. In cases where a provision of a sign ordinance had not been consistently enforced since its inception, the provision was struck down.

In summation, I am asking this committee to provide guidance to political subdivisions ensuring that sign ordinances can exercise reasonable control, but cannot overly restrict the placement of political signage and by extension freedom of speech. I ask for a Do-Pass on HB 1265.

#2

Testimony Presented on HB 1265 to the
House Political Subdivisions Committee
Prairie Room
Nancy Johnson, Chair

by

Brad Wimmer, City Commissioner
City of Fargo

January 31, 2013

Ms. Chairman and Members of the Committee:

I am here to speak on behalf of the Fargo City Commission in opposition to HB 1265, which would exempt political signs from rules adopted by political subdivisions. The City of Fargo opposes the bill for several reasons.

First, decisions on sign rules are best left to local governments. Fargo recently spent over a year rewriting its sign code. The process included city commissioners, business owners, sign companies, and neighborhood residents. Fargo adopted a code that takes into consideration the concerns of both neighborhood residents and businesses. If there are problems, they can be addressed locally.

Second, a 40 square foot sign is too large for a single family neighborhood. The proposed bill would allow multiple 40 square foot temporary signs, attached to unsightly trailers, with loud neon colors, to sit in the front yard of single family homes for up to four months at a time. Would you want this next door to your house? (Fargo limits individual signs in single family neighborhoods to 8 square feet, and allows multiple signs totaling 64 square feet. This allows for 8-10 real estate size signs for each house. Fargo allows signs of up to 64 square feet in apartment zoning districts, and signs even larger in commercial districts.)

Third, signs should not be allowed close to corners where they will block the view of motorists. Fargo has zoning rules that prohibit signs or other obstructions immediately adjacent to driveways and other streets. Signs, fences, and landscaping cannot be within 25 to 30 feet of the curb adjacent to driveways and on street corners. Obstructions in the "sight triangle" contribute to car crashes. Because this is an issue of public safety, all signs should have to follow these rules.