

SUBJECT: Restricting municipal regulation of political signs.

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 6 ayes — Talton, Van Arsdale, Menendez, Bailey, Hunter, Wong
0 nays
1 absent — Edwards

WITNESSES: For — None
Against — Susan Horton, Texas Municipal League

BACKGROUND: Chapter 216 of the Local Government Code authorizes municipalities to regulate signs, and the Legislature can determine the manner in which local governments exercise this authority. According to Section 216.002, Subchapter A, a sign is defined to include any outdoor structure, display, plaque, billboard or other object designed to advertise or inform.

DIGEST: HB 212 would bar a municipality from prohibiting the placement of a political sign on private property. A municipality could not require approval, a permit, or a fee before an individual placed a political sign on private property, nor could it restrict political signs to a size smaller than that allowed for commercial, personal, or other non-political signs.

HB 212 would apply to campaign and other primarily political signs, whether temporary or permanent. The bill would not, however, apply to temporary political signs on billboards or other spaces on which non-political advertising also is sold.

HB 212 would not apply to property such as an easement or right of way that is used for a public purpose.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

HB 212 would take the simple yet important step of codifying important First Amendment rights in statute. Although the courts consistently have found that a municipality cannot treat commercial speech more favorably than political speech, several cities continue to impose unreasonable restraints on political signs. These restrictions have been regularly invalidated in court, and HB 212 would ensure that citizens do not have to rely on costly and time-consuming litigation to exercise their rights.

HB 212 would mandate that municipalities not discriminate against signs based on their content. Appropriately, it would eliminate restrictions placed on political signs that exceed those placed on commercial signs.

The courts have found that aesthetic considerations are not grounds for the restriction of political speech. Many municipal ordinances flout this finding by suggesting that because political signs are unsightly or bothersome, they may be prohibited.

Several municipalities have sought improperly to stifle political speech through burdensome requirements that citizens must fulfill prior to their placement of signs. HB 212 would prevent municipalities from forcing citizens to pay unreasonable fees, produce detailed landscape plans, or complete unnecessary paperwork before political signs are approved.

This legislation is needed because citizens affected by municipal restrictions often lack the resources to challenge the restrictions in court. While court challenges to unconstitutional regulation of political signs generally are successful, municipalities should not be permitted to enact illegal ordinances in the first place.

This narrowly-tailored legislation seeks moderate resolution of a controversial issue. HB 212 addresses neither the contentious issue of a local government's right to restrict signs on an easement or right-of-way, nor the rights of homeowners' associations to set their own community standards for signs.

**OPPONENTS
SAY:**

By drawing an arbitrary distinction between political and non-political signs, HB 212 would usurp a municipality's ability to regulate temporary signs for legitimate safety and aesthetic reasons. Most city ordinances do not target political signs in particular, but rather all temporary signs that may blow over

or obstruct the line-of-sight. While municipalities often regulate commercial temporary signs more strictly than permanent signs, this bill would not allow similar distinctions to be made between permanent and temporary political signs. It would create a new category of regulation based on content, while a municipality's primary concern may rests with a sign's temporary nature.

While a municipality might reasonably allow a business such as a restaurant to erect a large, permanent sign on its property, a similarly large temporary sign might pose legitimate safety or aesthetic concerns. HB 212 would override legitimate city regulations and allow the large temporary sign as long as it always carried a primarily political message.

While unreasonable restraints on political speech are patently unconstitutional, some ordinances restricting the size of temporary signs have been upheld in court. A municipality that allows political speech in the form of temporary campaign signs should not be stripped of its right reasonably to restrict the size of a political sign.

Because the courts have done an effective job of distinguishing between permissible and unconstitutional regulation, HB 212 is unnecessary. If some municipalities are currently ignoring case law prohibiting unreasonable regulation of political signs, there is no reason to believe that they will respect a redundant statute.

OTHER
OPPONENTS
SAY:

This bill also should eliminate similar restrictions on political signs by homeowners' associations. Homeowner's associations often violate the rights of their members by enacting restrictions on political speech through regulation of campaign signs, and this bill would allow those restrictions to go unchallenged.

HB 212 also should prevent local governments from restricting political signs in an easement or right-of-way. In the last election, some cities aggressively removed political signs in their jurisdictions, effectively restricting free speech under the justification of scenic beautification. HB 212 should address all unfair restrictions on political signs.

NOTES:

The companion bill, SB 103 by Wentworth, was filed on March 7 and has not

yet been referred to committee.