

- SUBJECT:** Limiting homeowners' association restrictions on religious item display
- COMMITTEE:** Business and Industry — favorable, without amendment
- VOTE:** 7 ayes — Deshotel, England, Giddings, Keffer, Orr, Quintanilla, S. Turner
- 0 nays
- 4 absent — Elkins, Christian, Gattis, S. Miller
- WITNESSES:** For — (*Registered, but did not testify:* Yvonne Weber, Community Association Institute)
- Against — David Smith, Texas Neighborhoods Together
- On — Paul Colbert, Anti Defamation League
- BACKGROUND:** Property Code, ch. 202 governs restrictive covenants established and enforced by homeowners' associations. The chapter restricts homeowners' associations from adopting and enforcing certain types of restrictive covenants, including prohibitions on political signs.
- DIGEST:** HB 3025 would prohibit homeowners' associations from adopting or enforcing a restrictive covenant that prohibited an owner or resident from displaying or attaching to the entry of the owner's or resident's dwelling an item required to be displayed as a tenet of the resident's religion, including a mezuzah. The bill would not disallow the enforcement or adoption of a restrictive covenant that prohibited a religious item that threatened the public health or safety, violated a law, or contained language, graphics, or any display that would be offensive to an ordinary person. A homeowners' association could remove an item not protected by the bill.
- The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

SUPPORTERS  
SAY:

HB 3025 would protect the rights of residents and owners to display religious items required as part of a person's religion on the entrance of their homes from regulation by homeowners' associations. There is currently no statutory prohibition against adopting a restrictive covenant prohibiting the display of such items. This issue was brought to light recently when a homeowners' association adopted a rule banning residents from placing any displays or other objects on or around their front entrances. When a couple who recently moved into a home placed a small mezuzah, an encased parchment containing verses from the Torah, near their front entrance as part of a long-established religious mandate in the Jewish faith, they received notice from the homeowners' association that the mezuzah would have to be removed. The residents had to choose whether to remain in the home but be remiss in their faith or break their lease with the landlord. A suit filed in federal court on behalf of the residents was unsuccessful.

The restrictive covenants that some homeowners' associations adopt are of questionable constitutionality, but the body of law on the topic is complex, and challenging these covenants requires resources and time many homeowners do not have. A large grey area remains concerning the rights and privileges a homeowner may contractually surrender in the course of buying a home as part of a homeowners' association. Residents pursuing these issues in court often are not successful because the cases are difficult and because most restrictive covenants are facially constitutional — though some may be discriminatory in effect by having a disproportionate impact on one group of residents.

Future cases may shed more light on this grey area, but the best way to address the most conspicuous practices in some associations is to set in statute specific limits as to what associations may regulate. HB 3025 would accomplish this with respect to religious items placed in the entrance of a dwelling. The bill would be carefully tailored to apply only to the entrances of dwellings and would allow associations to regulate objects in certain instances, including those with content that would be offensive to the ordinary person. This language is found elsewhere in Property Code, ch. 202, with respect to political signs.

The exceptions provided in the bill would grant flexibility to the wide variety of homeowners' associations to customize internal regulations, while prohibiting those associations from obstructing the right to free exercise of religion through the placing of religious items in an entrance.

In addition, an amendment to the bill would add language restricting the size of items that could not be prohibited to 25 square inches and would more closely define “entrance” to include the actual front door and door frame of a dwelling. Protecting items up to a specified size would strike a balance between an association’s legitimate right to regulate obtrusive objects in common areas and residents’ right to practice their faith.

OPPONENTS  
SAY:

HB 3025 would establish statewide prohibitions against specific homeowners’ association actions that should be resolved locally. Property owners have a number of options available to resolve disputes. For instance, they could take up disputes through available channels established in the homeowners’ association bylaws or could ultimately elect to take action in court. Enacting a statewide law on the subject could have unintended consequences for the ability of homeowners’ associations to restrict the appearance and other aspects of common areas. Homeowners agree to an association’s bylaws upon purchasing or renting property, and it is their responsibility to consult applicable rules before taking residence in the member dwelling. Further, if owners do not agree with a specific covenant, they may seek election to the association and initiate changes to the rule. Amending state statutes to restrict associations from adopting certain covenants would set an unfortunate precedent and could cause more problems than it would address.

OTHER  
OPPONENTS  
SAY:

HB 3025 would not sufficiently protect the rights of residents in homeowners’ associations to freely exercise their religion within reason. While the bill notably would protect religious items in an entrance, it would not extend this protection to religious items placed elsewhere on the property. The bill would not protect, for instance, an item placed in a window or on a porch or other common area. The free exercise of religion is a basic constitutional right that should not be abridged without a compelling interest in limiting its practice. The aesthetic preferences of homeowners’ association board members do not constitute a strong, compelling interest and therefore these associations should not be able to prohibit the display of religious items in general, within reason.

HB 3025 contains two flaws that could render the bill constitutionally problematic. The provision that would allow homeowners’ associations to regulate “language, graphics, or any display that would be offensive to the ordinary person” is fatally vague and subjective, as the term “offensive” is subject to a broad range of interpretations. Allowing homeowners’ associations to interpret what constitutes an “offensive” religious display

would violate established constitutional principles. The second flaw involves the bill's citation of a mezuzah as an example of a religious item that would be protected. Specifically citing one religious item, even as an example of a protected item, could be problematic.

The bill also contains no limit on the size of the religious display that homeowners' associations could regulate. This would leave the possibility for a range of obtrusive items to be placed in the entrance of a dwelling. The bill should be amended to provide for a size limitation for protected religious objects.

**NOTES:**

Rep. Coleman plans to offer an amendment to the bill that would exclude from protected items an item or items with a cumulative size greater than 25 square inches or that was located in an area other than a doorframe immediately adjacent to an exterior dwelling door. The amendment also would provide that nothing in the bill could be construed to authorize material, color, or other alterations to the exterior of the residence, other than the protected item.