

ACT 194

H.B. NO. 373

A Bill for an Act Relating to Political Speech.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature finds that during the 2002 primary and general elections, candidates learned that persons who leased or rented property and who wanted to support a political candidate were sometimes prohibited by their landlords or landowners from placing campaign signs at their residence.

These situations bring to light a conflict between two separate, yet equally important rights—the citizen’s need to reasonably exercise political speech, and the ability of landowners to use their property without unreasonable government intrusion.

The common law has long held that every owner of real property has the right to restrain the use of land by grantees within limits “to prevent its appropriation to purposes which will impair the value or diminish the pleasure of the enjoyment of the land” that is retained. Browder, Cunningham, and Smith, *Basic Property Law*, at 662, citing 11 Gray 359, 11 Mass. 359, 71 Am. Dec. 716-17. As such, the courts have held that a personal covenant or agreement restricting the use of land is valid and binding in equity on a purchaser taking an estate with notice.

However, there are limitations on this common law right. Covenants or agreements that restrict the use of land must be “exercised reasonably, with a due regard to public policy, and without creating any unlawful restraint of trade.” Browder, Cunningham, and Smith, *supra*, at 662 (emphasis added).

The legislature further finds that the foundation of democracy rests on the ability of citizens to participate in and express political speech. In Palko v. Connecticut, 302 U.S. 319, Justice Cardozo characterized protection of speech as a “fundamental” liberty in part because “our history, political and legal,” recognized “freedom of thought and speech” as “the indispensable condition of nearly every other form of freedom.”

Accordingly, the legislature believes that a citizen's need to reasonably exercise political speech must be protected as long as it does not unreasonably interfere with the landowner's ability to use their property.

The purpose of this part is to regulate the use of personal covenants and agreements under chapter 521, Hawaii Revised Statutes, so that a tenant may exercise political speech in a reasonable manner. Specifically, this part provides that in a rental agreement for a single family residence, a landlord shall not prohibit a tenant from erecting, maintaining, or displaying an otherwise legal sign or outdoor advertising device that urges voters to vote for or against any person or issue; provided that reasonable restrictions are permissible to comply with applicable building and housing laws affecting health and public safety.

SECTION 2. Section 521-52, Hawaii Revised Statutes, is amended to read as follows:

“§521-52 Tenant to use properly. (a) The tenant shall comply with all obligations or restrictions, whether denominated by the landlord as rules, or otherwise, concerning the tenant's use, occupancy, and maintenance of the tenant's dwelling unit, appurtenances thereto, and the premises of which the dwelling unit is a part, if:

- (1) Such obligations or restrictions are brought to the attention of the tenant at the time of the tenant's entry into the rental agreement; or
- (2) Such obligations or restrictions, if not so known by the tenant at the time of the tenant's entry into the rental agreement, are brought to the attention of the tenant and, if they work a substantial modification of the tenant's bargain under the rental agreement, are consented to in writing by the tenant.
- (b) No such obligation or restriction shall be enforceable against the tenant

unless:

- (1) It is for the purpose of promoting the convenience, safety, or welfare of the tenants of the property, or for the preservation of the landlord's property from abusive use, or for the fair distribution of services and facilities held out for the tenants generally;
- (2) It is reasonably related to the purpose for which it is established;
- (3) It applies to all tenants of the property in a fair manner; and
- (4) It is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply.

(c) In a rental agreement for a single family residence, a landlord shall not prohibit a tenant from erecting, maintaining, or displaying an otherwise legal sign or outdoor advertising device that urges voters to vote for or against any person or issue; provided that reasonable restrictions are permissible for purposes of complying with applicable building and housing laws affecting health and safety.

~~[(e)]~~ (d) If the dwelling unit is an apartment in a condominium property regime the tenant shall comply with the bylaws of the association of apartment owners and if the dwelling unit is an apartment in a cooperative housing corporation the tenant shall comply with the bylaws of the corporation.”

PART II

SECTION 3. The legislature finds that political speech, including the posting of signs in support of a candidate or issue, is a unique and important manner in which our citizens can participate in the democratic process. In Hawaii, however, a citizen's right to post political signs is restricted by law to a fifty-five day period

surrounding an election. The legislature is concerned that this short time frame may not give our residents ample time to make their viewpoints known, and thus limits their ability to participate in the electoral process.

The legislature further finds that the restrictive time frame for posting political signs may violate our residents' right to freedom of speech and expression contained both in the state and federal constitutions. Federal court decisions from other jurisdictions make clear that political speech enjoys the highest form of protection under the federal constitution. Moreover, the state attorney general has issued a formal opinion that the provision of the Hawaii Revised Statutes that places durational limits on the posting of political signs is unconstitutional (Attorney General Opinion Letter 96-04). The legislature believes that the right of our citizens to post political signs and to participate in the democratic process should not be restricted to merely forty-five days prior to and ten days following an election.

SECTION 4. Section 445-112, Hawaii Revised Statutes, is amended to read as follows:

“§445-112 Where and when permitted. No person shall erect, maintain, or use a billboard or display any outdoor advertising device, except as provided in this section:

- (1) The display of official notices and signs, posted by order of any court or public office, or posted by any public officer in the performance of a public duty, or posted by any person required to do so by any law or rule having the force of law[-];
- (2) Any outdoor advertising device announcing a meeting or series of meetings is not prohibited by this section if displayed on the premises where the meeting or series of meetings will be or is being held. Meeting, as used in this section, includes all meetings regardless of whether open to the public or conducted for profit and includes but is not limited to sports events, conventions, fairs, rallies, plays, lectures, concerts, motion pictures, dances, and religious services[-];
- (3) Any outdoor advertising device indicating that the building or premises on which it is displayed is the residence, office, or place of business, commercial or otherwise, of any individual, partnership, joint venture, association, club, or corporation, and stating the nature of the business[-];
- (4) Any outdoor advertising device that advertises property or services that may be bought, rented, sold, or otherwise traded in on the premises or in the building on which the outdoor advertising device is displayed[-];
- (5) The offering for sale of merchandise bearing incidental advertising, including books, magazines, and newspapers, in any store, newsstand, vending machine, rack, or other place where such merchandise is regularly sold[-];
- (6) Any outdoor advertising device offering any land, building, or part of a building for sale or rent, if displayed on the property so offered or on the building of which part is so offered[-];
- (7) Any outdoor advertising device carried by persons or placed upon vehicles used for the transportation of persons or goods[-];
- (8) Any outdoor advertising device warning the public of dangerous conditions that they may encounter in nearby sections of streets, roads, paths, public places, power lines, gas and water mains, or other public utilities[-];
- (9) Signs serving no commercial purpose that indicate places of natural beauty, or of historical or cultural interest and that are made according

- to designs approved by the department of business, economic development, and tourism[-];
- (10) Any outdoor advertising device or billboard erected, placed, or maintained upon a state office building, if erected, placed, or maintained by authority of a state agency, department, or officer for the sole purpose of announcing cultural or educational events within the State, and if the design and location thereof has been approved by the department of business, economic development, and tourism[-];
 - (11) Signs urging voters to vote for or against any person or issue, ~~[if erected not more than forty five days before, and removed not less than ten days after, the election in which the person is a candidate or in which the issue is to be voted upon.]~~ may be erected, maintained, and used, except where contrary to or prohibited by law;
 - (12) Signs stating that a residence that is offered for sale, lease, or rent is open for inspection at the actual time the sign is displayed and showing the route to the residence; provided that the sign contains no words or designs other than the words "Open House", the address of the residence, the name of the person or agency responsible for the sale, and an arrow or other directional symbol and is removed during such time as the residence is not open for inspection[-];
 - (13) The erection, maintenance, and use of billboards if the billboard is used solely for outdoor advertising devices not prohibited by this section[-];
 - (14) The continued display and maintenance of outdoor advertising devices actually displayed on July 8, 1965, in accordance with all laws and ordinances immediately theretofore in effect[-];
 - (15) The continued maintenance of any billboard actually maintained on July 8, 1965, and the display thereon of the same or new advertising devices, all in accordance with all laws and ordinances in effect immediately prior to July 9, 1965[-];
 - (16) Any outdoor advertising device displayed with the authorization of the University of Hawaii on any scoreboard of any stadium owned by the university. An outdoor advertising device displayed under this paragraph shall be on the front of the scoreboard and face the interior of the stadium[-];
 - (17) Any temporary outdoor advertising device attached to or supported by the structure of any stadium owned by the University of Hawaii, located within and facing the interior of the stadium, and authorized to be displayed by the university. For the purpose of this paragraph, "temporary" means displayed for a short period before the official start of organized athletic competition, during the organized athletic competition, and for a short period after the official end of the organized athletic competition; and
 - (18) Any outdoor advertising device displayed with the authorization of the stadium authority on any scoreboard of any stadium operated by the stadium authority. An outdoor advertising device displayed under this paragraph shall be on the front of the scoreboard and face the interior of the stadium."

PART III

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.
(Approved June 18, 2003.)