

"Occupy" your own home: A victory for free speech in New Jersey

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Wasim Khan of Parsippany was ordered by the Mazdabrook Commons Homeowners' Association to remove campaign signs from the window and door of his townhouse when he was running for council in Parsippany in 2005. Last month, the state Supreme Court ruled that the association violated his free-speech rights and said he could post signs in his own home.

By Frank Askin

To most Americans, their home is their castle. And what they do on their own property is protected by the U.S. Constitution from undue government interference.

For example, when the city of Ladue, Mo., prohibited the posting of political signs in a homeowner's window, the U.S. Supreme Court said, "Nothing doing."

But for the 62 million Americans who live under privately governed homeowners associations, the rules are different. Such homeowners are governed not only by the ordinances of their local municipality, but also by rules and regulations enacted by their association governors.

And in most states, those private governments can do no — or little — wrong. Being private, such communities are

beyond the protection of the Constitution.

Of the 314,000 such communities in the United States, the overwhelming majority have restrictive covenants in their master deeds that sharply limit the free speech rights of residents in ways which no public government could. For example, unless you live in California, which has a state statute providing otherwise, you are almost certainly prohibited from placing a political sign in the window of your home, just as were the citizens of Ladue until the Supreme Court ruled otherwise.

Now, the New Jersey Supreme Court has stepped in to provide some relief, at least for residents of this state — and maybe offer the road to reform in other states, as well.

In a case involving the Mazdabrook Commons community in Parsippany, the state's high court ruled that such a prohibition on political signs in a homeowner's window violated the state constitution.

New Jersey has long been a leader in providing more protections for free speech than federal law does. Since 1980, it has been the law of New Jersey that certain private entities had to allow the exercise of free speech on their premises by people who were invited there.

In 1995, the state Supreme Court ruled that regional shopping malls had become the new town squares and could not prohibit visitors from petitioning and leafleting on the property, subject to reasonable regulations to protect the mall's economic interests.

In its latest expansion of free speech rights under the state Constitution, the court held that the Mazdabrook board of governors could not stop township council candidate Wasim Kahn from placing his campaign posters in the window of his home.

In so doing, the court brushed aside the association's objection that, in purchasing his home, Khan knew or should have known that the master deed and bylaws of the community forbade posting signs without the board's approval.

The opinion by Chief Justice Stuart Rabner held that "fundamental constitutional rights (may not) be properly waived by including language in the midst of a more than 50-page, single-spaced document." Referring to cases dealing with waiver of rights in other contexts, the opinion said "that cannot constitute a knowing, intelligent, voluntary waiver of constitutional rights."

In balancing the interest of the homeowner against the right of the association to protect a uniform aesthetic look to the community and uphold property values, the court held the balance clearly weighed in favor of free speech.

Because of the unique role of signs on one's own property, the court held it was of no significance that, unlike many similar communities, Mazdabrook had no prohibition on residents' communicating with their neighbors by knocking on doors or leaving literature there.

A sign on a homeowner's property is "a venerable means of communication that is both unique and important," as well as "a cheap and convenient form of communication," according to the opinion. In addition, they "connect the message directly to the speaker and thus add to the words on display."

For those 99 percenters who can't get out of the house, this is a great opportunity to join the "Occupy" movement. They can shout their political preferences from their own windows.

At least in New Jersey.

More to come?

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