

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

September 5, 2019

Opinion No. 19-13

Homeowners' Association Restrictions on Political Canvassing

Question

May homeowners' associations prohibit political canvassing in their community consistent with the First Amendment?

Opinion

Yes. Political canvassing is an expressive activity protected by the First Amendment, but the First Amendment prohibits only state action that abridges speech or expression. Homeowners' associations are private entities, not state actors, and are not subject to the First Amendment. Thus, private homeowners' associations may prohibit or otherwise restrict political canvassing without implicating the First Amendment.

ANALYSIS

Political canvassing is an expressive activity that is protected by the First Amendment. *See Watchtower Bible & Tract Soc'y v. Village of Stratton*, 536 U.S. 150, 167-69 (2002) (holding unconstitutional under the First Amendment a municipal ordinance that prohibited canvassing for any "cause" without a permit); *Ohio Citizen Action v. City of Englewood*, 671 F.3d 564, 570-80 (6th Cir. 2012) (holding unconstitutional under the First Amendment a city's ban on canvassing after six p.m.). Governmental restrictions on political canvassing are therefore subject to constitutional scrutiny and, if content-neutral, must be narrowly tailored to serve a significant government interest. *See Ohio Citizen Action*, 671 F.3d at 571.

The First Amendment does not prevent private restrictions on speech, however. The First Amendment applies to the States through the Fourteenth Amendment, which provides, in part, that "[n]o state shall . . . deprive any person of life, liberty, or property without due process of law." U.S. Const. amend. XIV, § 1. "[T]he principle has become firmly embedded in our constitutional law that the action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States." *Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982) (quoting *Shelley v. Kraemer*, 334 U.S. 1, 13 (1948)). The First and Fourteenth Amendments thus "erect[] no shield against merely private conduct, however discriminatory or wrongful." *Id.* (quoting *Shelley*, 334 U.S. at 13).

Accordingly, homeowners' associations, like other private entities, are not covered—or restricted—by the First Amendment. They may enact their preferred policies about political canvassing or solicitation without constitutional scrutiny. Such restrictions would only implicate the First Amendment if there were "such a 'close nexus between the State and the challenged

action’ that seemingly private behavior ‘may fairly be treated as that of the State itself.’” *Brentwood Academy v. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 295 (2001) (quoting *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 351 (1974)).

Even if the First Amendment does not apply, homeowners’ associations remain subject to state and local laws. In the Tennessee Freedom of Speech Act, the legislature prohibited homeowners’ associations from restricting the display of campaign signs and posters, although a homeowners’ association may adopt reasonable rules about the placement and size of such signs. *See* Tenn. Code Ann. § 2-7-143(b)(2) (“A homeowners’ association shall not, by covenant, condition, restriction, or rule, prohibit the display of political or campaign posters or signs placed on private property by the owner of the property or any lawful resident of a residence on the property.”).

The Tennessee Freedom of Speech Act does not, however, place any restrictions on homeowners’ associations with respect to political canvassing. Nor do other statutes limit the authority of homeowners’ associations to prohibit or otherwise restrict political canvassing.

In sum, private homeowners’ associations may prohibit or otherwise restrict political canvassing without implicating the First Amendment or the Tennessee Freedom of Speech Act.

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