

## Testimony of Chuck Sheketoff

### Supporting HB 2582

February 10, 2015

My name is Chuck Sheketoff and I live in Silverton in a home on property within the bounds of a planned community and homeowners association (HOA), the Abiqua Heights Homeowners Association (Abiqua Heights). My wife and I purchased the home in 2008. I am a member of the HOA and a past board member and president.

I am here today to urge you to support HB 2582, a bill that adds fairness to decisions by HOAs on whether to allow signs.

The bill clarifies the law to address a problem that arose in Abiqua Heights that I am confident is a problem in other HOAs: people being denied the right to post signs otherwise allowed by their Covenants, Conditions and Restrictions (CC&Rs) based on content.

HB 2592 makes clear that it only applies to HOAs where the governing CC&Rs give the board discretion to allow signs not specifically allowed by the CC&Rs. If an HOA's CC&Rs prohibit signs and there is no discretion to allow exceptions, this bill does NOT require them to allow signs.

In those cases where an HOA has discretion, this bill says it must be exercised without regard to content. This is a fairness issue related to the HOA's exercise of discretion.

While the impetus for this bill was the refusal of my HOA to allow a temporary sign supporting a school bond vote, *Robertson* (293 Or 402, 649 P2d 569 (1982)) bars you from passing a law just authorizing election-related signs. Such a law would be unconstitutional.

Oregon courts routinely cite the *Robertson* case when a public law such as this violates Oregon's free expression provisions. *Robertson* says that Article I, section 8 "forecloses the enactment of any law written in terms directed to the substance of any 'opinion' or any 'subject' of communication, unless the scope of the restraint is wholly confined within some historical exception." By singling out election-related signs as some have proposed, the legislature would be enacting a "content-based" law.

Under this bill, HOAs who have discretion to allow signs may not outright ban the posting of any sign based on content, such as always saying "no" to election-related signs (whether they be signs that merely say "Vote" or say "Vote or Against for a Particular Candidate or Measure"). This bill would pass the *Robertson* test.

At Abiqua Heights our CC&Rs provide that certain real estate transaction signs are allowed and that we can have signs of any type if "approved by the Board." I am confident that other HOAs' CC&Rs provide discretion that is not being fairly implemented.

The bill makes clear that the HOA may impose reasonable restrictions on the number and size of signs or the time period during which signs may be displayed but may not prohibit display based on content. Telling people that they have other ways to express political views, such as putting signs in windows, when they don't like the content of your sign, would not be allowed.

#### Summary

HB 2582 clarifies that some HOA members have the right to have decisions on signs not be based on content. I urge you to support HB 2582.

Thank you for your consideration of this bill.