

TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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MEMORANDUM

TO: Commission Members

FROM: Lynnisse Roehrich-Patrick 
Executive Director

DATE: 20 June 2012

SUBJECT: Commission Report to the House State and Local Government Subcommittee on House Bill 779 Requiring Reasonable Effort to Provide Police Presence for Political Canvassers

The House State and Local Subcommittee referred House Bill 779 by Representative Brown to the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) for study. The bill would have required local law enforcement to make every reasonable effort to provide a police presence for political canvassers, if requested. Staff concludes that the risk to campaign workers cannot be lessened through additional legislation and does not recommend any changes to present law but does recommend adoption of safety guidelines for door-to-door canvassing.

This report is submitted for your approval.

**Canvassing for Votes
Safety on the Campaign Trail
A Study of House Bill 779, Senate Bill 2035**

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Canvassing for Votes *Safety on the Campaign Trail*

Door-to-door campaigning is a time-honored American tradition. A 2010 incident affecting a campaign worker in Chattanooga, however, raised questions about safety for campaign volunteers, as well as questions about rights of property owners. In 2011, Representative Tommie Brown introduced legislation that would have required local law enforcement to make every reasonable effort to provide a police presence for political canvassers, if requested. The House State and Local Subcommittee referred the bill to the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) for study.

TACIR staff concluded that the risk to campaign workers cannot be lessened through additional legislation and does not recommend any changes to present law. In addition, local government officials indicate that providing police services to political canvassers would not be possible with existing resources. However, some law enforcement representatives indicate that communication is desirable, and that they don't mind knowing when canvassers volunteer in neighborhoods. Such awareness might help them address calls from residents, as well as from the canvassers. In addition, candidates or political organizations could suggest safety tips for campaigning in unfamiliar areas.

Proposed Legislation

House Bill 779 by Representative Tommie Brown and Senate Bill 2035 by Senator Ophelia Ford, as introduced, would have added a new section to Tennessee's election laws:¹

- (a) If a candidate for state or local public office as defined in § 2-10-102:
 - (1) Plans to conduct a door-to-door campaign within the district for which such official is seeking election,
 - (2) Desires to have law enforcement presence during the period when such door-to-door campaign is scheduled, and
 - (3) Notifies the local law enforcement department in writing at least ten (10) days prior to the date such door-to-door campaign is scheduled,

then the local law enforcement department shall make every reasonable effort to have a visible presence during the time such door-to-door campaign is conducted. The bill defines "presence" as patrol cars, walking patrols, or a combination of both. See appendix A for a copy of the bill. Rep. Brown presented House Bill 779 to the

¹ Tennessee Code Annotated, Title 2, Chapter 1, Part 1.

House State and Local Government Subcommittee on March 30, 2011. (Senator Ford did not move her bill.)

Incident Giving Rise to the Bill

This bill arose from an incident involving one of Rep. Brown's campaign workers. During a neighborhood canvassing activity, a homeowner met a campaign worker at the door with a gun and threatened to kill him. The campaign worker reacted calmly and was able to defuse the situation, but Rep. Brown expressed concern that such incidents might become more common in the future. She recommended that the bill be sent to TACIR for study, and the subcommittee agreed.

The incident that prompted this legislation does not seem to be a common occurrence, but similar events should be prevented in the future if possible. A resident apparently felt threatened and overreacted because of a previous experience. He did not have a "No Trespassing" sign posted. Even if officers had been aware of the canvass and had been in the neighborhood at the time of the incident, it is not clear that they would have made any difference. An officer possibly could have made the homeowner feel safer or helped defuse the situation.

Reaction to Proposed Legislation

TACIR staff contacted representatives of both the Tennessee Sheriffs' Association and the Tennessee Association of Chiefs of Police. Officials of both organizations stated that the proposed legislation could not be implemented within existing staff resources and that it could be burdensome given the number of federal, state, and local elected offices. When staff asked whether the candidates' campaigns could pay for the police presence, law enforcement officials expressed concerns about possible conflicts of interest since they, too, are elected officials or are employed by elected officials. The police chiefs also were concerned that providing a police presence for a candidate could be mistakenly perceived as an endorsement. The spokesperson for the sheriffs' association, however, indicated that officers can sometimes pay attention to specific situations through regular patrol activity if they are aware that canvassing is occurring. Whether a specific police presence would have made any difference in the situation that prompted this study is not clear.

The fiscal note produced by staff of the Fiscal Review Committee deemed its effect on state and local government finances "not significant" based on assumptions that

- local law enforcement agencies, upon timely request by a candidate, will redirect existing patrols to the area where a door-to-door campaign is being conducted; and
- any additional cost to local law enforcement agencies resulting from redirection of existing patrols will be assessed to the candidate requesting such services.

Contrary to the fiscal note's assumptions, comments by a county mayor and a sheriff indicate that there could be a fiscal impact on local government. In addition, one law enforcement representative indicated an unwillingness to assess candidates for police services because of potential criticism if candidates were not treated the same.

Current Law

Various laws relate to political canvassing, though police representatives indicate no law specifically addresses campaign worker safety. What rights and protections pertain to canvassers? Likewise, what rights and protections pertain to property owners? Staff reviewed relevant state law on campaigns, solicitation, homeowner rights, and self-defense, as well as the proposed legislation.

Laws Pertaining to Canvassing

Local governments may adopt rules and regulations governing door-to-door solicitations but generally must differentiate between commercial solicitors and political or religious solicitors.² In *Watchtower Bible and Tract Society v. Village of Stratton*,³ the U.S. Supreme Court held that political and religious canvassers could not be required to register with the mayor and obtain a permit prior to engaging in door-to-door solicitations. The Court ruled that such requirements would violate canvassers' First Amendment rights, including free speech.

Canvassers may enter private property as long as "No Trespassing" signs are not visible. State law specifies that a person commits criminal trespass if the person enters or remains on property, or any portion of property, without the consent of the owner. Posting "No Trespassing" signs is considered a visible warning of lack of consent.⁴

Laws Pertaining to Defense of Self and Property

Tennessee's criminal code defines reckless endangerment and spells out when protection of property or self-defense might be a defense against charges of that nature. A person "who recklessly engages in conduct that places or may place another person in imminent danger of death or serious bodily injury" commits the offense of reckless endangerment. If he or she does so with a deadly weapon, that offense is a Class E felony.⁵ Class E felonies are punishable by imprisonment for one to six years and a fine of up to \$3,000.⁶ Numerous cases make clear that reckless

² For more information, see the legal opinion by Hemsley, Sidney. 2008. City's solicitation ordinance. University of Tennessee Municipal Technical Advisory Service. <http://www.mtas.utk.edu/KnowledgeBase.nsf/2efb230af01fb972852569d1007223c2/7727676621994467852573fc00564902?OpenDocument&Highlight=0,Solicitation> (accessed May 7, 2012).

³ 536 U.S. 150 (2002).

⁴ Tennessee Code Annotated, § 39-14-405.

⁵ Tennessee Code Annotated, § 39-13-103.

⁶ Tennessee Code Annotated, § 40-35-111.

endangerment occurs even when the victim does not suffer the threatened harm,⁷ but for the threat of bodily harm to be imminent, the person must be placed in a reasonable probability of danger as opposed to a mere possibility of it.⁸

There are situations in which a person may be justified in threatening to use deadly force, but protection of property is not one of them. While there is no duty to retreat from a threat of unlawful force against a person, there is no right to use deadly force solely to protect against trespass or unlawful interference with property. In either case, the person seeking to justify the use of force to defend himself or his property must otherwise be acting lawfully.

Under Tennessee's "no duty to retreat" law,⁹ a person who is in a place where he or she has a right to be and is not engaged in unlawful activity may threaten and use force against another person *when and to the degree that* he or she *reasonably* believes the force threatened or used is necessary to protect against the other's use or attempted use of unlawful force. (Emphasis added.) The test of reasonable belief requires that

1. the person reasonably believes he or she is threatened with imminent loss of life or serious bodily injury,
2. the danger creating that belief is real or honestly believed to be real at the time, and
3. that belief is founded on reasonable grounds.¹⁰

The use of force under Tennessee's protection of property statute is, of course, more limited. Deadly force is never justified solely to protect property. A person in lawful possession of real or personal property may threaten and use non-deadly force against another person when and to the degree that he or she reasonably believes the force is necessary to prevent or end that person's trespass or unlawful interference. The prohibition against using deadly force to protect property is explicit in the law.¹¹

Other Options: Training

Several people opined that it would not be appropriate for state government to provide guidelines or training for political canvassers because of potential legal liability, but they thought that political parties or candidates could. Staff at the Republican and Democratic headquarters indicated that they presently do not have any such guidelines. TACIR staff gleaned some examples of safety guidelines for

⁷ State v. Baggett, 836 S.W.2d 593, (Tenn. Crim. App. 1992); State v. Ramsey, 903 S.W.2d 709, (Tenn. Crim. App. 1995).

⁸ State v. Payne, 7 S.W.3d 25, (Tenn. 1999).

⁹ Tennessee Code Annotated, § 39-11-611(b)(1).

¹⁰ See Sentencing Commission Comments to subsection (a) (now subsection (b)(1)) of Tennessee Code Annotated, § 39-11-611.

¹¹ Tennessee Code Annotated, § 39-11-614.

canvassers from other organizations, including the U.S. Census Bureau, National Conference of State Legislatures, and the University of Tennessee Municipal Technical Advisory Service. A brief, general safety training session for canvassers by candidates or parties might be helpful. A sampling of canvassing safety tips is compiled in Appendix B.

Appendix A

House Bill 779/Senate Bill 2035

SENATE BILL 2035
By Ford

HOUSE BILL 779

By Brown

AN ACT to amend Tennessee Code Annotated, Title 2,
relative to election campaigns.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 2, Chapter 1, Part 1, is amended by adding the following language as a new section as follows:

2-1-119.

(a) **If a candidate for state or local public office as defined in § 2-10-102:**

(1) Plans to conduct a door-to-door campaign within the district for which such official is seeking election;

(2) Desires to have law enforcement presence during the period when such door-to-door campaign is scheduled; and

(3) Notifies the local law enforcement department in writing at least ten (10) days prior to the date such door-to-door campaign is scheduled,

then the local law enforcement department shall make every reasonable effort to have a visible presence during the time such door-to-door campaign is conducted.

(b) The presence may be by patrol cars or walking patrols or a combination of both in the discretion of the local law enforcement department.

(c) As used in this section "local law enforcement department" means the police department if the door-to-door campaign is within a municipality and the sheriff's office if the door-to-door campaign is within the county outside an incorporated municipality.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

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Appendix B

Examples of Safety Guidelines for Door-to-Door Canvassers¹²

1. Ask volunteers to meet at a central location before the canvass is scheduled to provide guidelines and time for questions.
2. Wear clothing or badges that clearly identify your purpose. Carry identification and be prepared to identify yourself.
3. Canvass neighborhoods with others. Do not go out alone.
4. Canvass in the daylight.
5. Wear comfortable walking shoes.
6. Carry a cell phone.
7. Do not enter property with “No Trespassing” or “Beware of Dog” signs.
8. Be brief and thank the voter for his or her time.
9. Stay calm; speak gently, slowly, and clearly. Avoid arguing with voters.
10. Avoid body language that may be misinterpreted, such as hands on hips or folded arms. Avoid any physical contact.
11. If the voter seems uninterested or annoyed, do not stay.

¹² A compilation from organizations such as the U.S. Census Bureau, National Conference of State Legislatures, and the University of Tennessee Municipal Technical Advisory Service.