

Waco activists seek to fight abortions through deed restrictions

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Local abortion opponents are in the early stages of a new strategy based on using deed restrictions on private property as a way to limit access to the procedure.

Paperwork was filed in the McLennan County clerk's office in late June to establish a group known as the Pro-Life Property Owners' Association of Waco. The nonprofit group is somewhat akin to a typical homeowners' association.

But instead of setting up neighborhood rules, the group's purpose is to help property owners declare their land off-limits to abortion. They do that by signing legal documents that state the property can never be the site of abortions or abortion counseling, even by subsequent owners.



Carrie Norton, with her son, Danny, 14, sits on the front porch of her home near West. Norton and her husband have signed legal documents to place a restriction on their property that says it can never be used for abortion activities.
Rod Aydelotte / Waco Tribune-Herald

That might seem like a needle-in-a-haystack approach, said Dr. Ron Bryce, a Dallas-area physician who came up with the idea. But if enough people join the association, it could eventually deal a weighty blow to abortion providers by leaving them with few places where they could set up shop, he said.

"This is not a short-term project," Bryce said. "I'm thinking of 50 or 100 years from now."

Attorneys interviewed by the Tribune-Herald said the idea involves a number of interesting legal questions. While they said there are potential pitfalls, they didn't view the concept as fatally flawed.

Some people might question how property owners could outlaw abortions on their premises, because the procedure has been ruled constitutionally protected. The U.S. Supreme Court has ruled, for example, that deed restrictions based on race are illegal.

But the attorneys said a deed restriction against abortion would likely be viewed differently by the courts.

"This is saying the land can't be used in a particular way, not that the landowner can't ever get an abortion," said Julie Forrester, a professor at Southern Methodist University's Dedman School of Law.

The idea of using property restrictions as a "new front" in the abortion battle came to Bryce about five years ago while he was brainstorming strategies with

friends. He said he has been involved in the anti-abortion movement since the late 1980s, when he helped treat a baby who temporarily survived a botched abortion.

Bryce eventually hired lawyers to investigate whether the idea could pass legal muster. When they told him they thought the idea was legally sound, he said, he formed a nonprofit group called Pro-Life Properties of Texas.

For a few years, Bryce implemented the approach on a small scale by helping people file the necessary land restriction documents. But he eventually realized there was a flaw on the enforcement end, he said.

Government entities don't typically enforce deed restrictions. Instead, it's up to the person who set the stipulation to take action if a subsequent owner violates a condition placed on the land. Bryce worried about what would happen once the people who initiated the restriction either sold their property or died.

The solution Bryce came up with was forming a property owners' association. The idea is for those who restrict their land to join the group and then help enforce the restriction on land signed up by other participants.

Beginning locally

Eventually, Bryce wants to form an association in every county in Texas. But he decided to start with McLennan County because of the zeal of local abortion opponents, he said. Bryce has gotten to know local activists by participating in their weekly protests in front of a Planned Parenthood clinic here. Those gatherings are led by a group called Pro-Life Waco.



Ronnie Holmes, senior pastor of Church of the Open Door in Bellmead, has joined a new strategy by abortion opponents that seeks to reduce access to the procedure through the use of deed restrictions on private property.

Rod Aydelotte / Waco Tribune-Herald

In fact, it is the relationship Bryce has built with Pro-Life Waco that helped spark another part of his plan: Instead of just asking people to pay a fee that covers the cost of the legal work needed to restrict their property, the countywide associations could charge more and give part of the money to a local anti-abortion group.

In the Waco area, Bryce wants to give the extra money to Pro-Life Waco. He approached the group's board with the idea about four months ago.

Co-director John Pisciotta said the group enthusiastically supported the idea. While it's nice that the project will serve as a fundraiser, what is most important is it gives people another avenue to become involved in the anti-abortion movement, he said.

"Different people like to get involved in different ways," said Pisciotta, who has signed up his home property. "You just can't predict what someone will want to do. This is a different outlet . . . and it's an awareness thing. One of the things that is powerful is being willing to stand out to be counted."

So far, eight home properties and three church properties have been added to the association. The owners are either board members of Pro-Life Waco or members' friends, Pisciotta said.

Fees for the initial group of participants were covered by donations, Bryce said. Going forward, the fee will be \$300 to \$350 per property. Some subsidies may be available to people who want to participate but can't afford it, he said.

Bryce's goal is to get at least 100 local families signed up by the end of the year. He plans to have a promotional push here this fall, he said.

Carrie Norton and her husband, Jeff, have placed a restriction on their home, near the city of West.

Norton found out about the idea through her participation in the weekly protests. Alluding to an abortion she had in 1983, she often holds a sign that says, "I did. Please don't. Let us help."

"I just think it's such a great opportunity to first, fund Pro-Life Waco, and then just to make a statement," Norton said.

The Church of the Open Door in Bellmead has signed up its property, plus the property it uses to operate a halfway house for ex-convicts. In addition, Senior Pastor Ronnie Holmes and his wife have signed up their home.

"I know I cannot change the world overnight," Holmes said. "But if I can change a little part or set something in motion, that's a positive thing."

Potential problems

Baylor Law School associate professor Bridget Fuselier said the idea is intriguing. But the fact that the property owners' association is county-wide could potentially pose a problem, she said.

Part of the rationale for such associations having power to impose rules on member properties stems from the belief that the rules benefit a neighborhood or geographic area as a whole, Fuselier said. But if members' properties are nowhere near each other, the benefit is more difficult to articulate, she said.

"How is it going to benefit land across the county?" Fuselier said.

Forrester, from SMU, also said the involvement of a property owners' association could present legal hurdles. Typically, deed restrictions are simply a promise made between two parties — the person selling property and the person buying it. When an association is injected into the equation, it can trigger additional legal issues, she said.

Brooke Daves, a Waxahachie attorney whom Bryce hired to help with the project, said she is confident that the concept will hold up in court.

Legal precedent is virtually non-existent, though, Daves said. She said she is aware of only a few similar cases, such as a Catholic church in New York attaching a no-abortion provision when it sold property to a university.

"At the end of the day, I think people have a right to do whatever they want with their own property as long as it's not breaking the law," Daves said.

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