

2026 WL 202043

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Supreme Court of Missouri,
en banc.

Colleen EIKMEIER and **William S. Love**,
Appellants,

v.

**GRANITE SPRINGS HOME OWNERS
ASSOCIATION, INC.**, a Missouri Not-For-Profit
Corp., Respondent.

No. SC 101152

Opinion issued January 23, 2026

Synopsis

Background: Homeowners brought action for declaratory judgment against **homeowners' association**, seeking declaration that covenant prohibiting installation of solar panels upon homeowners' lot or home violated statute providing that no deed restrictions, covenants, or similar binding agreements running with the land could limit or prohibit the installation of solar panels, as well as permanent injunction prohibiting association from enforcing covenant. Following a bench trial, the Circuit Court, Greene County, Daniel R. Wichmer, J., [2024 WL 6079045](#), found that statute only applied prospectively and entered judgment for association. Homeowners appealed, and the matter was transferred to the Supreme Court.

Holdings: The Supreme Court, [Ransom, J.](#), held that:

^[1] statute providing that no deed restrictions, covenants, or similar binding agreements running with the land may limit or prohibit the installation of solar panels encompasses covenants existing prior to the effective date of the statute;

^[2] application of statute prohibiting deed restrictions, covenants, or similar binding agreements from limiting or prohibiting the installation of solar panels to covenants existing prior to the effective date of the statute did not violate constitutional provisions prohibiting statutes from operating retrospectively or impairing contracts; and

^[3] rule prohibiting street-facing solar panels could not be applied against homeowners, as it would increase the cost

and decrease the efficiency of the solar panel system in violation of statute.

Reversed.

Procedural Posture(s): On Appeal; Motion for Declaratory Judgment; Motion to Strike.

West Headnotes (16)

[1] Declaratory Judgment 🔑 Scope and extent of review in general

In reviewing an action seeking a declaratory judgment or an injunction, the Supreme Court's review is the same as in any court-tried case: the judgment will be affirmed unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law.

[2] Appeal and Error 🔑 Construction, Interpretation, or Application of Law
Appeal and Error 🔑 Declarations of law

A claim that the circuit court erroneously declared or applied the law is reviewed de novo.

[3] Statutes 🔑 Language and Intent; Express Provisions
Statutes 🔑 Presumptions and inferences

Statutes are presumed to operate prospectively, and this presumption controls unless legislative intent that they be given retroactive operation clearly appears from express language of act or

by necessary or unavoidable implication.

[4] [Statutes](#)  [Retroactivity](#)
[Statutes](#)  [Power to enact; validity](#)

A statute is permitted to have “retroactive” operation in sense that it can look or act backward from its effective date, but it cannot be “retrospective” in its operation. [Mo. Const. art. 1, § 13.](#)

[5] [Statutes](#)  [Imposition of liabilities, penalties, duties, obligations, or disabilities](#)

A “retrospective statute,” like a retroactive one, operates backwards, but unlike a retroactive statute, it attaches new future legal consequences to an event that occurred before the statute was passed. [Mo. Const. art. 1, § 13.](#)

[6] [Statutes](#)  [Power to enact; validity](#)

A law is “retrospective in operation” if it takes away or impairs vested or substantial rights acquired under existing laws or imposes new obligations, duties, or disabilities with respect to past transactions; such retrospective operation is generally impermissible under the constitution. [Mo. Const. art. 1, § 13.](#)

[7] [Appeal and Error](#)  [Improper matter](#)

Supreme Court reviewing applicability of statute prohibiting deed and covenants from limiting installation of solar panels would grant **homeowners’ association’s** motion to strike homeowners’ reply brief references to online audio recordings of Senate proceedings and inclusion of an “Unofficial Transcript” of a portion of the proceedings, as such material was raised and included for the first time in the reply brief.

[More cases on this issue](#)

[8] [Appeal and Error](#)  [Reply briefs](#)

Common fairness precludes the Supreme Court from considering issues raised for the first time in a reply brief to which no response is authorized.

[9] [Covenants](#)  [Buildings or other structures or improvements](#)

Statute providing that no deed restrictions, covenants, or similar binding agreements running with the land may limit or prohibit the installation of solar panels encompasses covenants existing prior to the effective date of the statute.

[10] [Statutes](#)  [Delay or postponement; future date](#)

The purpose for delaying a statute’s effective date is to give the public notice of the changes.

by the legislature.

[11] **Constitutional Law** → Real property in general
Covenants → Buildings or other structures or improvements

Application of statute prohibiting deed restrictions, covenants, or similar binding agreements from limiting or prohibiting the installation of solar panels to covenants existing prior to the effective date of the statute did not violate constitutional provisions prohibiting statutes from operating retrospectively or impairing contracts; although the statute resulted in some impairment of contracts, the statute served a significant and legitimate purpose, the statute was based on reasonable conditions and was appropriate to the public purpose justifying its adoption, and the statute balanced interests by empowering **homeowners' associations** to adopt reasonable rules regarding solar panels. *Mo. Const. art. 1, § 13*; *Mo. Ann. Stat. § 442.404.3*.

[More cases on this issue](#)

[12] **Constitutional Law** → Retroactivity in general
Statutes → Power to enact; validity

Limiting phrases “impairing the obligation of contracts” and “retrospective in its operation” in constitutional provision governing the effect of statutes are not mutually exclusive; they are analogous and certainly overlap. *Mo. Const. art. 1, § 13*.

[13] **Contracts** → Public Policy in General

Court will not recognize contractual provisions that are contrary to public policy as expressed

[14] **Covenants** → Nature and operation in general

Supreme Court views restrictive covenants as private contractual obligations.

[15] **Covenants** → Nature and operation in general

The right of one property owner to the protection of a restrictive covenant is a property right just as inviolable as is the right of another to the free and untrammelled use of his property when unrestricted.

[16] **Common Interest Communities** → Restrictions on unit owners

Homeowners' association rule prohibiting street-facing solar panels could not be applied against homeowners, as it would increase the cost and decrease the efficiency of the solar panel system in violation of statute; homeowners' original proposed layout produced 11,492 kWh annually, representing a 92-percent offset of their proposed utility usage, a similar system on the non-street-facing roof would reduce their production to 8,741 kWh, a 24-percent reduction, and to achieve a comparable output as the original plan, the system size would have to be increased by 32-percent and cost for the larger system would increase by nearly \$17,000. *Mo. Ann. Stat. § 442.404.3(2)*.

APPEAL FROM THE CIRCUIT COURT OF GREENE COUNTY, The Honorable Daniel R. Wichmer, Judge

Attorneys and Law Firms

The homeowners were represented by [Richard L. Schnake](#) and Lillian M. Sweeney of Neale & Newman LLP in Springfield, (417) 882-9090; and [James M. Owen](#) of Renew Missouri Advocates in Columbia, (417) 496-1924.

The association was represented by J. Craig Preston of O'Reilly & Preston LLC in Springfield, (417) 890-1555, and [Richard L. Rollings Jr.](#), an attorney in Camdenton, (573) 873-6060.

Opinion

[Robin Ransom](#), Judge

*1 [Colleen Eikmeier](#) and [William Love](#) (“homeowners”) purchased a lot in a subdivision subject to covenants banning solar panels. Shortly thereafter, the legislature enacted a statute proscribing any covenant from limiting or prohibiting installation of solar panels. The homeowners sought declaratory and injunctive relief, seeking a declaration, among other things, the covenants ran afoul of the statute. The circuit court denied the homeowners relief, finding the statute could not apply to preexisting covenants. This Court reverses the circuit court’s judgment and enters judgment in the homeowners’ favor.

Factual and Procedural Background

In 2003, the developer of [Granite Springs](#), a subdivision in Greene County, recorded its declaration of covenants, conditions, and restrictions applicable to the subdivision. The covenants were created “to preserve and enhance the value, desirability and attractiveness of the development and improvements constructed thereon.” One restriction provided: “No television, radio, citizens band, short wave or other antenna, nor any satellite dish greater than 18 [inches] in diameter, solar panel, clothesline or pole, or other unsightly projection shall be attached to the exterior of any residence or erected on any Lot.”

In 2021, the homeowners purchased a lot in the subdivision and later constructed a residence. The covenant prohibiting solar panels was in effect, and the homeowners were aware of the restriction. They communicated with the subdivision’s [homeowners’ association](#) (“HOA”) in an attempt to change the covenant addressing solar panels. The HOA’s president responded that, while discussions about the topic had taken place, the restriction would remain.

The homeowners became aware of Senate Bill 820, legislation signed by the governor in June 2022, that they believed would prohibit a [homeowners’ association](#) from banning solar panels. The homeowners obtained a proposal from a company to install solar panels and presented that proposal to the HOA. In early 2023, the HOA responded with guidance. It would allow solar panels to be installed, but solar panels visible from the street would not be permitted. The homeowners obtained estimates for alternative solar installation designs. As explained in more detail later, to reach approximately the same production level with panels on non-street-facing portions of the roof, more panels were required with a higher upfront cost.

In August 2023, the homeowners filed a petition for declaratory judgment and injunctive relief. As relevant to this appeal, they sought a declaration that any of the subdivision’s restrictions limiting or prohibiting, or having the effect of limiting or prohibiting, the installation of solar panels on the rooftop of structures in the subdivision violated section 442.404.3.¹ The homeowners sought a further declaration that any portion of the HOA’s policy adversely affecting the cost or efficiency of solar devices was impermissible. The homeowners requested the circuit court declare they be permitted to proceed with the installation plans set forth in their proposal. After a hearing, the circuit court denied the homeowners a preliminary injunction. Following briefing and a second hearing, the circuit court entered judgment in the HOA’s favor. The circuit court found “retrospective application of the [new statute] results in an impairment of the contract between the HOA and its residents.” The circuit court determined the statute “is to be applied prospectively, [meaning affecting any newly-created subdivision \[homeowners’ association\] who file original \[covenants\] after January 1, 2023.](#)”

*2 The homeowners appeal.²

Standard of Review

^[1] ^[2]In reviewing an action seeking a declaratory judgment or an injunction, this Court’s review “is the same as in any court-tried case: the judgment will be affirmed unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law.” *Allsberry v. Flynn*, 628 S.W.3d 392, 395 (Mo. banc 2021). A claim the circuit court erroneously declared or applied the law is reviewed *de novo*. *Id.*

Analysis

The homeowners raise two points on appeal. First, they argue the circuit court erred in determining section 442.404.3 applies prospectively in the narrow manner found by the court. Second, they contend the circuit court erred in analyzing retrospectivity.

^[3] ^[4]“[S]tatutes are presumed to operate prospectively.” *Cedar Cnty. Comm’n v. Parson*, 661 S.W.3d 766, 774 (Mo. banc 2023). This presumption “controls unless the legislative intent that they be given retroactive operation clearly appears from the express language of the act or by necessary or unavoidable implication.” *Lincoln Credit Co. v. Peach*, 636 S.W.2d 31, 34 (Mo. banc 1982). A statute is permitted to have retroactive operation in the sense that it can “look[] or act[] backward from its effective date.” *Cedar Cnty. Comm’n*, 661 S.W.3d at 774 (quotation omitted). But, in Missouri, a law cannot be “retrospective in its operation.” Mo. Const. art. I, sec. 13.

^[5]The difference between “retroactive” and “retrospective” is muddled in caselaw. See *Mo. Real Estate Comm’n v. Rayford*, 307 S.W.3d 686, 690 (Mo. App. 2010) (noting “the terms are often misused by both bench and bar”). The confusion on the topic is no doubt exacerbated by the common understanding of the terms and Missouri’s somewhat unique constitutional provision explicitly barring retrospective laws.³ As one commentator stated:

A retroactive statute operates legally for a period of time that exists before the statute’s effective date. In effect, a retroactive statute changes pre-existing legal rules, statutory or common law, that were operative prior to the enactment of new legislation. The result is that the legal rules in existence before

the statute are either voided, affirmed, or modified by the new statute as of its effective date.

Gregory J. DeMars, *Retrospectivity and Retroactivity of Civil Legislation Reconsidered*, 10 Ohio N.U. L. Rev. 253, 255 (1983) (footnote omitted). “A retrospective statute, like a retroactive one, operates backwards, but unlike a retroactive statute, it attaches new future legal consequences to an event that occurred before the statute was passed.” *Id.* at 256. This understanding comports with Missouri’s distinction between the two terms. *Graham Paper Co. v. Gehner*, 332 Mo. 155, 59 S.W.2d 49, 50 (Mo. banc 1933) (“A new or an amendment of an existing statute which reaches back and creates a new or different obligation, duty, or burden which did not exist before the new law itself became effective, or which makes the obligation or burden begin at a date earlier than the date of going into effect of the law itself, is retroactive in its operation and unconstitutional [i.e., retrospective]. A law is retroactive in its operation when it looks or acts backward from its effective date, and if it has the same effect as to past transactions or considerations as to future ones, then it is retrospective.”).

*3 ^[6]Despite inconsistent use of terminology, Missouri caselaw has been steadfast in holding “[a] law is retrospective in operation if it takes away or impairs vested or substantial rights acquired under existing laws or imposes new obligations, duties, or disabilities with respect to past transactions.” *Cedar Cnty. Comm’n*, 661 S.W.3d at 774 (emphasis and quotation omitted); see also *Dep’t of Soc. Servs. v. Villa Capri Homes, Inc.*, 684 S.W.2d 327, 332 (Mo. banc 1985) (“This constitutional ban against retrospective laws applies only when the statute takes away or impairs any existing vested right.”); *Squaw Creek Drainage Dist. No. 1 v. Turney*, 235 Mo. 80, 138 S.W. 12, 16 (Mo. 1911) (“A retrospective law is one which creates a new obligation, imposes a new duty, or attaches a new disability with respect to transactions or considerations already past. It must give to something already done a different effect from that which it had when it transpired.”). Such retrospective operation is generally impermissible under our constitution. Mo. Const. art. I, sec. 13.

The legislature intended section 442.404.3 to apply to new covenants and those covenants in existence prior to its effective date

In May 2022, SB No. 820, which repealed and reenacted section 442.404, was truly agreed to and finally passed. The reenacted version of section 442.404 added the following provisions to the statute:

(1) No deed restrictions, covenants, or similar binding agreements running with the land shall limit or prohibit, or have the effect of limiting or prohibiting, the installation of solar panels or solar collectors on the rooftop of any property or structure.

(2) A **homeowners' association** may adopt reasonable rules, subject to any applicable statutes or ordinances, regarding the placement of solar panels or solar collectors to the extent that those rules do not prevent the installation of the device, impair the functioning of the device, restrict the use of the device, or adversely affect the cost or efficiency of the device.

(3) The provisions of this subsection shall apply only with regard to rooftops that are owned, controlled, and maintained by the owner of the individual property or structure.

Section 442.404.3. The repeal and reenactment of section 442.404 became effective on January 1, 2023. 2022 Mo. Laws 1095. Statutes normally take effect 90 days after the end of the legislative session. [Mo. Const. art. III, sec. 29; section 1.130, RSMo 2016](#). Instead of having the statute become effective near the end of August 2022, the legislature delayed section 442.404's effective date until the start of the next year. Section 442.404 was the only provision of SB 820 with a delayed effective date.

^[7] ^[8]The homeowners argue the circuit court erred in finding the statute had only a narrow, prospective application. According to the homeowners, the necessary and unavoidable implication of the statute and its delayed effective date is that the legislature intended for the statute to apply "retroactively." The homeowners point to the legislature's use of a more than four-month delay before the statute became effective to argue "the [l]egislature intended for the statute to operate retroactively to prevent future enforcement of existing prohibitions on the installation of solar panels."⁴ According to the homeowners, the legislature, through other statutes, has expressed a public policy of encouraging the use of solar energy, and a delay in the effective date served to give **homeowners' associations** time to amend existing covenants, to remove prohibitions, and to adopt rules envisioned by section 442.404.3(2). The homeowners argue the circuit court's interpretation, which limited the statute to newly created **homeowners' associations** filing covenants after the effective date,

would apply the statute too sparingly and would be contrary to Missouri's public policy promoting the use of solar energy.

*4 The HOA argues the amended statute applies prospectively. According to the HOA, however, the circuit court misstated the specific operation of that prospective application. In the HOA's view, prospective operation of the statute prohibits any newly created prohibitions against solar panels or collectors, whether by new or existing subdivisions. The HOA argues no legislative intent to apply the statute to preexisting covenants should be drawn from the delayed effective date. The HOA supports the circuit court's finding that section 442.404.3 cannot invalidate restrictions prohibiting solar panels that were in existence prior to the statute's effective date.

^[9]This Court finds, based on the express language of the statute, the legislature intended broad applicability, extending to those covenants already in existence. Section 442.404.3(1) provides, "No deed restrictions, covenants, or similar binding agreements running with the land shall limit or prohibit, or have the effect of limiting or prohibiting, the installation of solar panels or solar collectors on the rooftop of any property or structure." The statute applies prospectively in the sense that, after January 1, 2023, certain prohibitions will not be enforceable. The statute does not operate retroactively by way of limiting prohibitions before the statute's effective date. The statute's prospective operation, however, will potentially affect prohibitions that existed before its effective date.

A deed restriction, covenant, or other binding agreement running with the land can "limit or prohibit" or "have the effect of limiting or prohibiting" solar panel installation regardless of when the restriction was adopted. In other words, the plain language of the statute serves to make the targeted restrictions ineffective going forward from the statute's effective date. There is no limitation to the effect of the statute based on when restrictions were adopted. See *Cedar Cnty. Comm'n*, 661 S.W.3d at 775 (holding a statutory amendment prohibiting counties from imposing standards on local agricultural operations that were "inconsistent with, in addition to, different from, or more stringent than" existing state law applied to preexisting ordinances because "[a]ny ordinance in conflict with the new limitation ... [was] void from and after the effective date of the ... amendment regardless of when the ordinance was adopted" (quotation omitted)). The legislature's dictate that *no* agreement can "limit or prohibit" or "have the effect of limiting or prohibiting" the installation of solar panels necessarily includes

preexisting agreements.

As the homeowners argued, Missouri’s public policy, as expressed by the legislature and voters, encourages the use of solar energy. Solar energy has long been recognized as a property right in this state. [Section 442.012.1, RSMo 2016](#). More recent enactments have further highlighted the need for alternative energy resources, such as solar power. In 2007, the legislature enacted the Net Metering and Easy Connection Act, which encourages the use of renewable energy resources, including solar energy, by requiring electric suppliers to make net metering available and permit customers to interconnect their solar systems to the electric grid. [Section 386.890, RSMo 2016](#). The Missouri Clean Energy Initiative, adopted via the initiative process in 2008, “mandated that 15 percent of the electricity produced by Missouri investor-owned utilities come from renewable energy sources by the year 2021, with 2 percent of that coming from solar photovoltaics.” *Babb v. Mo. Pub. Serv. Comm’n*, 414 S.W.3d 64, 67 (Mo. App. 2013). Missouri’s “Renewable Energy Standard” provides for solar rebates for certain customers of electrical corporations. [Section 393.1030.3, RSMo 2016](#). The Court further notes the legislature attempted to exempt “[s]olar energy systems not held for resale” from taxation for state, county, or local purposes, but this was found to be unconstitutional in *Johnson v. Springfield Solar 1, LLC*, 648 S.W.3d 101 (Mo. banc 2022). Section 442.404.3, broadly applied, aligns with prior statutes promoting the use of solar energy.

*5 ¹¹⁰Drawing on Missouri’s policy support of solar energy, the homeowners argue the four-month delay before the statute’s enactment could not have served any purpose other than to permit **homeowners’ associations** to (1) remove covenants limiting or prohibiting the installation of solar panels and/or (2) adopt the rules envisioned by section 442.404.3(2). This Court agrees. “The purpose for delaying a statute’s effective date is to give the public notice of the changes.” *Levinson v. City of Kan. City*, 43 S.W.3d 312, 316 (Mo. App. 2001). Effective January 1, 2023, covenants and similar restrictions could no longer “limit or prohibit, or have the effect of limiting or prohibiting, the installation of solar panels or solar collectors.” Section 442.404.3(1). Regardless of whether a **homeowners’ association** removed covenants barring solar panels, a process that would be controlled by the governing documents of the **homeowners’ associations**, those covenants could no longer be enforced. The delayed effective date provided notice to permit a **homeowners’ association** to adopt reasonable rules as set forth in section 442.404.3(2), as the HOA originally did here, to retain some level of

control once the statute was effective.

The HOA posits the delay could have served to permit **homeowners’ associations** to consider whether they wished to continue existing prohibitions or, if they lacked prohibitions, to adopt prohibitions before the effective date. In other words, per the HOA, the four-month period could have been used to further entrench prohibitions against solar. This rationale runs contrary not only to the statute’s ultimate goal but also to a history of support of solar energy in the state. This Court does not support an interpretation of the statute that would have permitted a hypothetical **homeowners’ association** to adopt covenants barring solar panels in the period between when the legislation was agreed to and the effective date of the statute. The statute’s reach encompasses covenants existing prior to the effective date of the statute.

Applying section 442.404.3 to pre-existing covenants does not violate article I, section 13

¹¹¹Finding the legislature intended for section 442.404.3 to apply, after January 1, 2023, to both new covenants and those covenants in effect prior to that date does not resolve the separate issue of whether the statute is retrospective in operation. The homeowners argue the amended statute does not offend [article I, section 13 of the Missouri Constitution](#). The HOA contends that constitutional provision prohibits applying the amended statute to preexisting covenants. This dispute is resolved by determining whether the statute “takes away or impairs vested or substantial rights acquired under existing laws or imposes new obligations, duties, or disabilities with respect to past transactions.” *Cedar Cnty. Comm’n*, 661 S.W.3d at 774 (quotation omitted). The homeowners argue neither prong is met.

¹¹²The circuit court found, and the HOA advances, that restrictive covenants are contracts and the lot owners in a subdivision have a vested and substantial contractual right in those covenants. Ironically, the HOA advances this argument when the HOA itself presented “compromise” guidelines to the homeowners explicitly permitting installation of solar panels in contravention of the recorded covenants. The HOA’s argument focuses on the first avenue by which a statute may be retrospective and encompasses a disability with respect to a past transaction. Moreover, this argument implicates another aspect of [article I, section 13](#), the contract clause—“[t]hat no ... law impairing the obligation of contracts ... can be enacted.” “These limiting phrases ‘impairing the obligation of contracts’ and ‘retrospective in its operation’ are not mutually exclusive. They are said to be ‘analogous’ and certainly overlap.” *Hoyne v. Prudential*

Sav. & Loan Ass'n, 711 S.W.2d 899, 902 (Mo. App. 1986) (quoting *State ex rel. Jones v. Nolte*, 350 Mo. 271, 165 S.W.2d 632, 638 (Mo. banc 1942)). This overlap is undeniable when any purported vested or substantial right **springs** solely from a private contract. For this reason, drawing on caselaw addressing the contract clause is instructive.

*6 ^[13]According to the HOA, the laws that existed when the covenants were adopted permitted the HOA to prohibit solar panels and further permitted enforcement of that prohibition. The HOA contends applying section 442.404.3 to its covenant barring solar panels would impair the contractual agreement between lot owners in the subdivision. The HOA equates this to the impairment of a vested or substantial right. Under this perspective, a private contractual agreement could override any subsequent legislative determination that certain contractual provisions are contrary to public policy and should not be enforced. This cannot be so. “[T]he Court will not recognize contractual provisions that are contrary to the public policy of Missouri as expressed by the legislature.” *First Nat’l Ins. Co. of Am. v. Clark*, 899 S.W.2d 520, 521 (Mo. banc 1995).

This Court finds persuasive the consideration of a Wisconsin statute authorizing group homes in residential neighborhoods in the face of contrary restrictive covenants. *Overlook Farms Home Ass’n v. Alt. Living Servs.*, 143 Wis.2d 485, 422 N.W.2d 131, 132 (Wis. Ct. App. 1988). The statute at issue voided restrictive covenants prohibiting use of property for community living arrangements. *Id.* at 133. Addressing the argument that the statute impaired prior contracts among landowners, the court found, under the circumstances, the contract clause in the state’s constitution yielded to the legislature’s police power. *Id.* at 136; see also *Manigault v. Springs*, 199 U.S. 473, 480, 26 S.Ct. 127, 50 L.Ed. 274 (1905) (“It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the state from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected.”). Although there was substantial impairment of the contract, a significant and legitimate purpose was served by the legislation, and the statute was “based upon reasonable conditions and [was] appropriate to the public purpose justifying its adoption.” *Overlook Farms*, 422 N.W.2d at 134-36; see also *Energy Reserves Grp. v. Kan. Power & Light Co.*, 459 U.S. 400, 410-13, 103 S.Ct. 697, 74 L.Ed.2d 569 (1983) (explaining the standard for balancing the protection of the federal constitution’s contract clause

against a state’s interest in exercising its police power).⁵

^[14] ^[15]Section 442.404.3 results in some impairment of contract. This Court views restrictive covenants as private contractual obligations. *Trs. of Clayton Terrace Subdivision v. 6 Clayton Terrace, LLC*, 585 S.W.3d 269, 280 (Mo. banc 2019). “[T]he right of one property owner to the protection of a restrictive covenant is a property right just as inviolable as is the right of another to the free and untrammelled use of his property when unrestricted” *Id.* (quotation omitted). The covenants applicable to those owning lots in **Granite Springs** prohibited solar panels in one of 28 paragraphs addressing specific restrictions on improvements. Under the new statute, one aspect of that restriction is no longer enforceable.

Assuming the impairment of contract was substantial, the statute serves a significant and legitimate purpose. As explained above, Missouri’s past legislative enactments have shown evolving support for solar energy, presumably based on the environmental and economic benefits thereof and the benefit to the general public from widespread adoption of the technology. Section 442.404.3 removes a noteworthy impediment to the potential advancement of the use of solar energy. In accord with other statutes supporting solar energy, section 442.404.3 serves a significant and legitimate purpose.

*7 Finally, the statute is based upon reasonable conditions and is appropriate to the public purpose justifying its adoption. Section 442.404.3 did not remove oversight from **homeowners’ associations** and their legitimate interest in harmonizing improvements within subdivisions. The statute removes the ability to impose merely one prohibition. Even in removing that prohibition, section 442.404.3(2) specifically empowers **homeowners’ associations** to adopt reasonable rules regarding solar panels but with the caveat that those rules cannot “prevent the installation of the device, impair the functioning of the device, restrict the use of the device, or adversely affect the cost or efficiency of the device.” That balancing protects the interests of all.

Following the methodology of *Overlook Farms* and *Energy Reserves*, section 442.404.3 does not conflict with our constitutional provision prohibiting a law “impairing the obligation of contracts” or being “retrospective in its operation.” A contrary holding would prevent the legislature from exercising its police powers in response to changing societal needs.

The HOA’s rule, applied to the homeowners, adversely

affects cost or efficiency

The sole remaining issue in this case is whether the HOA's rule prohibiting street-facing solar panels can be enforced against the homeowners. Pursuant to section 442.404.3(2),

[a] homeowners' association may adopt reasonable rules, subject to any applicable statutes or ordinances, regarding the placement of solar panels or solar collectors to the extent that those rules do not prevent the installation of the device, impair the functioning of the device, restrict the use of the device, or adversely affect the cost or efficiency of the device.

The HOA's covenants provide for an architectural committee to exercise its best judgment to see that all improvements ... and alterations on the Properties conform and harmonize with the existing surroundings and structures. The Architectural Committee shall also be entitled to declare, publish and require detailed development and construction standards, specifications, procedures and requirements for ... any other improvements

The HOA president testified the HOA created the rule requiring solar panels to be non-street-facing. While the covenant barring solar panels cannot be enforced, the amended statute expressly contemplates reasonable rules regarding the placement of solar panels. There is no requirement of any formal recording in this type of HOA rulemaking.

The circuit court's judgment focused on the statute's temporal application, but the court found the homeowners presented evidence that placing panels on non-street facing portions of their roof would increase the cost and decrease the efficiency of the system. The circuit court noted the HOA offered no evidence to rebut the homeowners' evidence.

^{16]}The record supports the circuit court's finding that following the HOA's rule would increase the cost and decrease the efficiency of the system. The homeowners presented evidence that, by following the HOA's guidance prohibiting street-facing solar panels, the cost or

efficiency of their system would be impaired. The homeowners' original proposed layout produced 11,492 kWh annually, representing a 92-percent offset of their proposed utility usage. A similar system on the non-street-facing roof would reduce their production to 8,741 kWh, a 24-percent reduction. To achieve a comparable output as the original plan, the system size would have to be increased by 32-percent. From a cost perspective, the additional upfront system cost the homeowners would incur would be nearly \$17,000 for the larger system.⁶ The HOA did not counter or challenge this evidence. The HOA's rule prohibiting placement of solar panels on street-facing portions of the homeowners' roof adversely affects cost or efficiency and cannot be enforced.

Conclusion

*8 The circuit court erred in finding section 442.404.3 applies solely to newly created homeowners' associations filing covenants after the statute's effective date. Section 442.404.3 applies to all covenants, including those in existence before the statute's effective date. Consequently, it applies to the covenant the homeowners challenged. Pursuant to Rule 84.14, this Court enters judgment in the homeowners' favor. The HOA's restriction prohibiting solar panels cannot be enforced. Moreover, the HOA's rule prohibiting placement of solar panels on street-facing rooflines has been shown to adversely affect the cost or efficiency of the device. That rule cannot be enforced against the homeowners.

All concur.

All Citations

--- S.W.3d ----, 2026 WL 202043

Footnotes

¹ All statutory references are to RSMo Supp. 2022, unless otherwise noted.

- ² After an opinion by the court of appeals, this Court granted transfer. [Mo. Const. art. V, sec. 10](#).
- ³ “Only a handful of state constitutions ... prohibit the passage of laws that are retrospective in their operation.” [State v. Honeycutt, 421 S.W.3d 410, 414 \(Mo. banc 2013\)](#), *abrogated on other grounds by* [State v. Harris, 675 S.W.3d 202 \(Mo. banc 2023\)](#).
- ⁴ The homeowners’ reply brief, for the first time in this case, references online audio recordings of Senate proceedings to support their position regarding legislative intent as to the delay in the statute’s effective date. The homeowners further provided an “Unofficial Transcript” of a portion of the proceedings in the appendix to their reply brief. The HOA filed a motion to strike the material. “Common fairness precludes this [C]ourt from considering issues raised for the first time in a reply brief to which no response is authorized.” [United Postal Sav. Ass’n v. Norbob Enters., Inc., 792 S.W.2d 898, 901 \(Mo. App. 1990\)](#). This Court sustains the motion to strike.
- ⁵ The analysis from [Energy Reserves](#) was also used to uphold a California statute that voided prior restrictive covenants preventing a property from being used as a family day care. [Barrett v. Dawson, 61 Cal.App.4th 1048, 71 Cal. Rptr. 2d 899, 902-04 \(1998\)](#).
- ⁶ The HOA informed the homeowners in early 2023 that its “rule allows panels on a substantial number of other roof locations, all of which offer similar cost and functionality.” This conclusion was not borne out by the evidence.