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Subject: [CAIrelease] New Jersey Supreme Court Sides with Associations, 07/26/2007

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FOR IMMEDIATE RELEASE

New Jersey Supreme Court Sides with Associations

ALEXANDRIA, VA, JULY 26, 2007â€”Reversing a February 2006 appeals court decision, the New Jersey Supreme Court ruled unanimously today that the Twin Rivers Community Association did not violate the state's constitutional guarantees of free expression by placing "reasonable" restrictions on residents posting yard signs, using the community room and having access to the association's newsletter.

The landmark ruling in *Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Association* affirms the right of New Jersey homeowners to govern their own communities and properties as private organizations. The court said the state should not substitute its judgment for the reasonable rules adopted by the homeowners in community associations and confirms that associations are businesses and not governments.

Finding the association's "minor restrictions" neither unreasonable nor oppressive, the court concluded that Twin Rivers' policies "do not violate the free speech and right of assembly clauses of the New Jersey Constitution."

"We are pleased that the court has disallowed intrusive government interference in the rights of private homeowners," said Ronald L. Perl, president of Community Associations Institute (CAI), a national membership organization dedicated to fostering vibrant, competent, harmonious common-interest communities. "With this decision, homeowners can continue to govern their own communities by mutual consent and continue to enjoy the self-determination and quality of life they have come to enjoy."

Perl added, "While this decision is a clear victory for American homeowners who rely on reasonable association controls to protect their property values and quality of life, it's not likely to be well received by a small minority of homeowners who have individual issues with their associations."

The case against the association was brought by a small group of the 10,000

residents who live in Twin Rivers. A trial court ruled in favor of the association, but that decision was reversed by an appeals court, setting up the state Supreme Court review.

The decision does not alter the power of an association board, which remains limited to the authority it derives from its charter and bylaws, which residents can vote to change.

Community associations are private entities and historically not subject to the same constitutional standards as government. Although this distinction is supported by decades of case law and the practicalities of common-interest housing, the earlier appeals court ruling had the potential to blur this line.

Twin Rivers is a planned community consisting of privately owned condominiums, townhouses, single-family homes, apartments and commercial buildings. The association allows residents to post yard signs, submit articles to the community newsletter and have access to association facilities, but places some limited controls on these activities.

"This is a wise and thoughtful decision on behalf of all New Jersey homeowners," said CAI Chief Executive Officer Thomas M. Skiba. "The decision affirms almost four decades of legislative history and case law, not only in New Jersey but around the country. The decision clearly defines associations as businesses and respects the private, contractual agreements among homeowners who share the same expectations of home ownership."

The court essentially affirmed the contractual principles on which community association governance rests—that homeowners enter into a voluntary contractual agreement when they purchase a home in a community association. In doing so, they take advantage of the services and amenities provided by that community and they agree to abide by the rules established by the association's governing board. These rules are designed to maintain community standards, protect property values and serve the best interests of the community as a whole.

While acknowledging that association residents are protected by constitutional freedoms, the court emphasized that the community, as a private entity, has a legitimate right and need to establish community-wide rules. In doing so, the court recognized that reasonable "time, place and manner" restrictions can be applied to constitutionally protected speech. In other words, residents in New Jersey community associations not only have the right to express themselves, but also the freedom to establish reasonable rules governing that expression. For instance, residents can put up yard signs, but the association has the right to limit the size and placement of such signs, as well restrict how long they can remain.

The court pointed out that community association homeowners do enjoy other protections, including the business judgment rule that protects residents from arbitrary decision-making. The long-accepted rule provides that courts will not substitute their judgment for decisions of directors and officers if their actions are within their legal authority as defined by an association's governing documents or applicable law and unless those actions are fraudulent, self-dealing or unconscionable.

"This important decision aside, we encourage community association leaders to conduct their business in an atmosphere of candid communication and constructive dialogue," said Skiba. "There is no substitute for the open exchange of ideas and information, and there is no better way to promote harmony, effective leadership, responsible citizenship and a true sense of community."

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Selected quotations from the July 26 New Jersey Supreme Court decision:

"Thus, we find the nature, purposes, and primary use of Twin Rivers's property is for private purposes and does not favor a finding that the Association's rules and regulations violated plaintiffs' constitutional rights."

"Essentially, we must look to the fairness of the restrictions imposed by the Association in relation to plaintiffs' free speech rights. ... We find that the plaintiffs' expressional activities are not unreasonably restricted. As the (Twin Rivers) Association points out, the relationship between it and the homeowners is a contractual one, formalized in reasonable covenants that appear in all deeds."

"...Twin Rivers is a private, residential community whose residents have contractually agreed to abide by the common rules and regulations of the Association. The mutual benefit and reciprocal nature of those rules and regulations, and their enforcement, is essential to the fundamental nature of the communal living arrangement that Twin Rivers residents enjoy. We further conclude that this factor does not weigh in favor of finding that the Association's rules and regulations violated plaintiffs' constitutional rights."

"We find that the minor restrictions on plaintiffs' expressional activities are not unreasonable or oppressive, and the Association is not acting as a municipality."

"Consequently, we conclude that in balancing plaintiffs' expressional rights against the Association's private property interest, the Association's policies do not violate the free speech and right of assembly clauses of the New Jersey Constitution."

"We recognize the concerns of plaintiffs that bear on the extent and exercise of their constitutional rights in this and other similar common interest communities. At a minimum, any restrictions on the exercise of those rights must be reasonable as to time, place, and manner. Our holding does not suggest, however, that residents of a homeowners' association may never successfully seek constitutional redress against a governing association that unreasonably infringes their free speech rights."

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