



Citizens for Constitutional Local Government, Inc.
supporting principles of democratic government



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Supplement to

The Foundations of Homeowners
Associations

and

The New America

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Preface

The following four Commentaries, taken from the [HOA Private Government](#) website, update the [Foundations eBook](#) with additional historical materials relating to the intent of the creators of the HOA model, and the motivations and rationale of the Community Associations Institute (CAI).

Timeline

- 1964 — ULI publishes *The Homes Association Handbook*, the HOA "bible"
- 1967 — U. CAL publishes Public Affairs Report critique of the Handbook.
- 1973 — CAI is formed to deal with HOA problems.
- 1978 — David Wolfe, a CAI founder, likes HOAs as government competitor.
- 1983 — *America II* is published, a view of the societal changes by HOAs.
- 1994 — *Privatopia*, the seminal critique of HOAs as private governments.
- 2000 — The ULI - CAI funded *Community Associations* view of HOAs.
- 2006 — *Establishing the New America* appears -- an advocate's recount of HOA foundations.

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A. Contemporaneous critique of the 1964 FHA-ULI homeowners association model

In 1967, just three years after the ULI publication of *The Homes Association Handbook*, Technical Bulletin #50¹ (which I have repeatedly designated as the “HOA bible”), a Univ. of Calif. Public Affairs Report criticized the concept or model of a homes association², as HOAs were called back then. The value in looking back is that after the passage of many years there has been the inescapable slow, but steady, erosion of the values and attitudes that once were. Looking back, we can see more clearly what was gained, and what was lost.

First, here’s a quote from what the editors of the 1994 book, *Common Interest Communities* (see n. 2, containing a reprint of the article) wrote:

“Scott raised doubts about the increasing use of mandatory homeowners’ associations . . . [they] weakened citizens’ connection with their local government; their exclusivity encouraged economic and racial segregation, thus weakening the fabric of American society; and the central role of the developer and the requirement of property ownership . . . weakened local democracy.”

Scott is concerned with the privatization of government by profit seeking developers who bypasses local government.

“Basic criticisms of the FHA-ULI homes association policy are . . . the assignment of open space, parks . . . bypasses local government [who are] custodians of such property. . . . Any significant inclusion of multiple dwellings appears to be discouraged by FHA policies, and lower-income brackets [renters, perhaps] are viewed as a likely source of special problems. Policies of *exclusiveness* [sic] are only thinly veiled as efforts to ‘maintain high standards’, or ‘insure property values’, or provide a ‘private community.’ [Note the inclusion of the mortgage entity].

“The automatic homes association and its binding covenant would be designed and *established by the developer* [sic] before a single house had been sold — that is why they are called ‘automatic.’ Yet anything so important as the life of a community as control of . . . shared facilities is sufficiently affected with public interest to justify a strong public role . . . when the community-to-be is without residents.

For the protection of its own interests, FHA-ULI urge *the developer to retain control* [sic] of each homes association [and] to exercise a strong benevolent paternalism [like a grandfatherly autocratic government] in determining the composition of the association’s leadership and influencing its policies. Surely alternative methods can be found for a more publicly responsible stewardship The 1964 ULI report [The Homes Association Handbook] recognizes some real difficulties in making these ‘*private governments*’ [sic] work effectively and responsibly.

“The legitimate desire for maximum financial stability and security of the housing developments — viewed as investments — [read as developer and FHA investments] appears to be given overriding importance that it may obscure other equally important goals [like democratic governance and remaining subject to the Constitution].”

In this 1967 article, Scott concludes with, “***Associations are not the final answer. We should not be satisfied – as FHA and the Urban Land Institute appear to have been — with the assumption that home association provides a final answer.***”

We should ask ourselves what has happened over the past 43 years since this 1967 report. Why weren’t corrective measures taken by state legislatures to recognize HOAs as indeed de facto governments, and that they must be made equivalent to a public entity? To what extent did the creation of the Community Associations Institute (CAI) in 1973, just 6 years after this the publication of this report, have on future developments? Many of

us who are interested in the facts can see how CAI influenced legislatures as they re-constituted themselves as a national lobbying organization in 1992 to oppose the voices of reform.

B. In 1978, CAI was concerned about HOAs as mini-governments

I've written several times³ on the utopian visions that had their role in the development of the planned community/HOA socio-political model of American society. Newly uncovered material, by me, sheds a brighter light on the idealism surrounding the promotion of the HOA model. The material comes from several new sources, all dealing with David B. Wolfe, president of Community Association Corporation (a property management firm)⁴ and member of the founding team that created CAI in 1973⁵. He is also the author of the joint ULI and CAI handbook, *Condominiums and Homeowner Associations That Work on Paper and Action* (ULI & CAI, 1978).

Richard Louv⁶ writes of Wolfe, '*David Wolfe, for one, holds to the original dream that these communities can bring people together rather than segment and restrict them.*' He quotes Wolfe, "*Not since the advent of the industrial revolution and its major society-impacting product, the automobile, has any event risen with so much potential for changing the American way of life*".⁷ However, McKenzie in *Privatopia* quotes Wolfe, '*The common interest community is fundamentally a creature of land economics, and of man's preference for owning his own territory. In an locale there is only so much land available for settlement. . . When this condensing or stacking takes place, the means of owning one's own territory must also be modified*'".⁸ This statement reflects the more practical, business, property manager view of HOAs.

With respect to political and governmental concerns, Louv continues with, "*Wolfe believed that 'These new communities have the potential of giving us our roles back, allowing people to live and work in a way reminiscent of the small towns of a century or more ago.'*"

And the direct loss of direct town hall, face to face democracy would be redressed, as

“Wolfe believes, by the minigovernments that govern these post industrial villages, these capitalistic communes. But adds Wolfe, ‘the reality is different from the utopian dream.’ And suggests we take a very close look at that reality, because in the near future, many of us aren’t going to much economic choice about whether or not we live in one of these America II communities.”⁹

As a side thought, it seems that a utopian ideology, even the planned community affordable housing ideology, must have conformity and adherence to its principles in order to survive, especially if it mandates a behavior pattern at odds with the greater society in which it finds itself. HOAs require adherence solely to the goal of maintaining property values with individual rights and freedoms secondary. It is obvious then that the HOA must have a disciplined following, “true believers”, in order for it to survive amidst a democratic society as we have here in America. In a mass merchandising promotion and selling effort, as occurred with HOAs, it would become more and more difficult to obtain the necessary and sufficient numbers of true believers for problem free communities.

This very important and practical issue — the status and recognition of HOAs as a government — “*remains a vexing issue for CAs*“, as Stabile writes in 2000,¹⁰ even today in 2010. Stabile sheds a bright light on this sensitive issue, referencing Wolfe’s 1978 handbook mentioned above.

“By the late 1970s, according to Wolfe, CAs had taken on many functions that resemble the provision of public goods much as local governments did. Whether this entitled them to the legal status of a government was open to debate within the CA

movement and in the courts. Wolfe then presented both sides of the debate over the definitions of CAs as governments. One legal opinion offered in support of construing CAs as a government noted that the Supreme Court had required constitutional procedures in a ‘company town’ and with ‘political parties’ [*Marsh v. Alabama*, 1946]; from this view CA actions were ‘public’ in a constitutional sense. At the same time CAs were corporations Wolfe concluded that a new definition of a CA as a government was needed to bring about Lewis Mumford’s¹¹ vision of a democracy.”¹²

“In some cases, courts interpreted CAs as a business, but ‘with regard to individual rights and obligations, the courts may hold associations to the standards of public government law’. Legal cases were forcing them to do more ‘These suggest that the consideration and adoption of resolutions, in the manner associated with traditional governmental and political processes have a place in CA government’.”¹³

Conclusion

While these materials introduce a clearer picture of the history of HOAs and CAI, the important question on the governance model needs a little more light shed on it. I will be reviewing the Wolfe handbook in detail on the question of HOA governance; what was discussed and what were the conclusions at the time, in 1978. In this way, we can ask ourselves what went wrong with our government institutions and agencies that allowed these private, authoritarian governments to flourish. And maybe shed more light on whether the developers of the HOA legal scheme were putting one over the American people in their pursuit for profits.

C. Competitive HOA private governments appealed to CAI founder

My reading of David B. Wolfe's (a CAI founder who is not an attorney), *Condominiums and Homeowners Associations That Work*¹⁴, was very disappointing with respect to his treatment of HOAs as mini-governments. Only the four-plus pages of Chapter 1, out of the 136-page, nine chapters, discuss the mini-government controversy. The remaining pages of this "handbook" are devoted to the paperwork to set up and operate an HOA: the CC&Rs, the bylaws and the Rules & Regulations, including sample forms. My attention, consequently, immediately turned to an attempt to understand the out-of-context purpose of Chapter 1, which was titled: "An Introductory Question", but was ignored throughout the remaining pages of the handbook.

Wolfe's opening comment on government reflects the impact of HOAs on the American scene:

The Community association is coming more and more to resemble a new, more local form of government. As such, it has the potential of noticeably altering the structure of American life.

He quotes Lewis Mumford (a utopian community idealist) faultfinding of the Constitution: "*The greatest defect of the United States Constitution was its failure . . . to make this democratic local unit [the New England town meeting] the basic cell of our whole system of government.*" A sort of a "bottoms-up" approach of individual small communities independently doing their "thing". Perhaps his quote of a 1978 mayor's comment sheds some light on Wolfe's motive: "*traditional local government is finding, for the first time, a major competitor in the delivery of public services.*"

It seems, from a reading of this chapter, that Wolfe, as the owner of a property management firm, was taken with the thought replacing and “out-doing” local municipal governments, at least in the services arena. Wolfe raises the question of constitutional requirements and protections by quoting Wayne Hyatt’s (1975) reference to *Marsh v. Alabama’s* [iii](#) “company town” decision (1946): [that] “*makes compelling the conclusion that the association’s action’s are ‘public’ in a constitutional sense.*” However, he refutes this view and makes his pitch that maybe, you know, HOAs are governments, but a special private, corporate form of government to be treated differently from public government, evening acknowledging the social contract theory of governance. Wolfe grabs onto this social contract theory and argues that that’s just what HOAs are all about:

Through a formal compact, diverse owners of properties within a defined area [read, 'a territory'] assure protection of each other’s interests by reciprocal obligations imposed upon and subscribed to by all owners.

This quote ignores the background of HOA formation and consent, which is not at all a group of informed buyers, themselves, defining the “compact” to which they will be bound. The buyers in the real world are not the utopian true believers as suggested by the quote. And, apparently, Wolfe, and CAI, sees this compact as one purely in terms of services, and not in terms of usurping bona fide functions of government — legislative and judicial due process under the Constitution.

This is the chief failing of CAI’s arguments, then and now, that HOAs are not governments, but maybe, entities that require special treatment because they are corporate, not constitutional, “animals”. It ignores questions of the Constitution as the supreme law of the land, and implies, falsely, that the HOA will abide by the constitutional requirements as pertaining to public entities, with its restrictions on government and protection of member-citizen Foundations Supp.

rights. This appeal for “special treatment” and the fact that HOAs are private contracts permit the HOA to escape constitutional obligations, and explains why homeowners have for these 46 years been attempting to restore lost freedoms and liberties.

The reader should ask himself, “Is this the real motivation behind the rejection of the Constitution?” What is the purpose of the national social contract, the Constitution, if local groups can draw up their own “formal social compacts” and claim separation from constitutional obligations and responsibilities? Did the Founding Fathers intend that private contractual obligations permit secession from the Union?

See also,

[In 1978, CAI was concerned about HOAs as mini-governments.](#)

[Government is defined by a “social contract”; HOAs by the new social contract, the CC&Rs.](#)

D. Why haven't the 1983 HOA problems of America II been resolved?

Robert Louv is a journalist and contributing editor for several magazines. His book began as an assignment for the San Diego Union where his job was to cover long-range political and social trends. He writes,¹⁵

My emphasis is on the America II social agenda: the growing privatization of public services America II is an examination and critique of underlying values and social issues, especially those that threaten traditional democratic values.

The America we know is dying, but a second America is rising from the body of the first. This second nation [is] America II. America II is the shopping mall, condominiums and large, planned communities, private police forces and sophisticated residential security systems.

This new nation of mini-governments populating the landscape that he calls *America II*, I simply call the *New America* of HOA-land. A nation that continues to be encouraged, supported and defended by a certain element of our society, whom I classified as neo-Americans to distinguish from neo-conservatives and neo-fascists.

As an educated observer of the scene, Louv notes that, “*In a single decade, condominiums and planned communities have given rise to an enormous number of private minigovernments*” [sic]. And makes an astonishing announcement: “*These minigovernments now outnumber all the other elected local governments (cities, towns counties).*” My research, from 2005

census data and CAI estimates, shows just under 19% of the population now live under the regulation of these mini-governments.

Speaking of this new concept in housing, which Louv calls “*capitalist communes, an inheritor of utopian thinking*”, economist and Progressive Movement leader, Robert Ely¹⁶ “*described it . . . as representing ideas alien to democracy: ‘It is not the American ideal. It is benevolent, well-wishing feudalism, which desires the happiness of the people, but in such a way as to please the authorities.’*”

While Louv writes that “*These communities bring built-in social structure and private minigovernments*”, buyers did accept the promotional brochures pushing the buying of “a lifestyle”. As one interviewed homeowner said, the HOA “*harkens back to the old values of small town America; the idea of local control, of knowing your neighbors*“, and “*We’re not really involved*”. Then there’s the justification that is still with us today: “*Community Associations are here to protect our interests, not let the community deteriorate. That’s not regulation; it’s common sense.*” And there’s the HOA sales director speaking of their “mavericks”: “*Some of these people are against what everyone else is for. They get in all kinds of arguments about architectural control.*” Sounds familiar, don’t they?

But, what happened to the dreams, the idealistic promises of a better, more democratic America? The answer lies in the rationalization, that still exists today, “it’s the people.” “If only they would follow the rules” and attend those CAI “educators”, now turned lobbyists, educational training seminars. These seminars are sponsored in many areas by local governments and several states’ have hired CAI for manager and director training programs. If only!

Other issues of governmental control and regimentation were either ignored or dismissed by the believers. At the time of Foundations Supp.

publication of *America II* in 1983, some 19 years had past since the 1964 publication of the homeowner association “bible”, *The Homes Association Handbook*. Three years later the Handbook was critiqued by researchers at the University of California in a Public Affairs Report. Louv’s 27 year-old time capsule shows us that the problems with the HOA model are still with us, and that they were still occurring 10 years after the creation of CAI to solve these problems through education. Either CAI is incompetent, or the problems are endemic to the HOA model, and reflect basic flaws with authoritarian homeowner association governance.

An authoritarian form of government is contrary to the expectations of Americans who have lived all their lives under a democratic government that places the rights and liberties first and foremost. Louv agrees:

Perhaps the most distinctive characteristic of these communities is that they are controlled by private, democratic governments (community associations) that wield the kind of control over people’s personal lives and tastes that, heretofore, most Americans would never have accepted from any government.

Indeed, the control often reaches into intimate details of resident’s lives in ways that may be infringing on constitutional rights. [p.128]. We need to start asking some serious questions about how this new level of government affects democracy and freedom.

It is not the amenities, the landscaping, or the closeness of homes placed on smaller lots that have been the serious causes of discontent and dissatisfaction with planned communities. It has, and still remains, the oppressive, authoritarian HOA government

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based on corporate law rather than on constitutional law that is the “root of all evil.” I believe the failure to solve the problems with HOA living, from the very inception of HOAs to today, is a systemic defect in the HOA legal, social, and political basis, and, as the past 44 years attest, are insolvable.

There are existing alternatives to the governance of planned communities that do not permit these HOAs, currently operating as “independent principalities”, to secede from the Union; and still retain the local community privacy of amenities and community “ordinances.”

E. US Advisory Comm. 1989 HOA report ignored

In my continuing historical research to uncover any pattern of activity by pro-HOA supporters that would help to explain today's HOA environment and culture, I now came across a 1989 U.S. Advisory Commission¹⁷ report for public officials.¹⁸ It uses a question and answer format, raising some of the very same constitutional and legal issues still being raised today. The reader must wonder why the answers have been ignored all these years, and who was responsible.

I've excerpted a few of the 54 questions, and answers contained in this report. But first, an introductory statement is worth highlighting: *"These private organizations, created through covenants on residential real estate, are exercising some functions similar to local governments and are a significant factor in the privatization of local public services."*

7. Why did the number of RCAs grow so rapidly?

When RCAs are significantly self-financing, local governments find their tax base expanded, potentially without comparable expansion in the demand for those public services the RCA provides itself.

8. What role does local government play in creating RCAs?

The role of local government in creating RCAs occurs through the land use planning, zoning, subdivision, and permit processes. Local governments authorize the building of residential subdivisions, including RCA communities.

10. Why have RCAs been called "shadow governments" and "invisible kingdoms"?

RCAs are private organizations that resemble local governments [emphasis added]. Indeed, they assume some functions similar to those also provided by local governments, including service provision and land use and other regulation. The RCA is responsible for enforcing its rules and regulations. Dues and fees resemble taxes, in that payment is involuntary. The organization is governed by an elected board.

11. How are RCAs different from local government?¹⁹

RCAs are private organizations managing private property. . . . RCAs are not subject to all of the constitutional and statutory restraints imposed on public organizations. [emphasis added]. Because RCAs are private, they usually are not subject to election, public meeting, and public access laws. RCA voting procedures generally do not operate on the basis of one resident, one vote. Instead, votes often are apportioned only to owners and may be weighted to reflect the square footage of each owner's unit. RCAs also do not have the "police power" of local government for rules enforcement and must rely on civil court powers.

12. What is the geographic relationship between RCAs and local governments?

RCAs exist within existing governmental boundaries. . . . However, RCAs are organizationally separate from municipal and county governments. . . . Furthermore, life inside and outside of RCA communities can represent two

different worlds [emphasis added] in terms of service levels, citizenship and governance, and financial responsibilities and property rights.

15. Should local officials consider whether to allow territorial RCAs?

One basic issue in authorizing territorial RCAs is whether local officials are willing to permit the construction of private facilities that may not meet public design standards. . . .

Another question revolves around citizenship and community feeling. RCA members are citizens of the local governmental jurisdiction and members of a private community organization. This may mean that RCA members will identify more closely with their RCA community than with the local government jurisdiction [emphasis added].

[See [Terravita HOA vote reflects “my HOA can do no wrong”](#)].

18. If local officials decide not to allow territorial RCAs, what are their options?

There are at least three public alternatives to RCAs [emphasis added] in addition to accepting dedication of such common properties as streets and parks. They are forming a special district, forming a special taxing area, and creating a municipal government.

19. How have special districts been formed in place of RCAs?

One type of special district mechanism is used frequently in Texas, where municipal utility districts (MUDS) may be established by a developer for unincorporated property if the adjoining

municipality decides not to annex it. . . . county budgets, but creates an additional local government in the area. This special government, though, would be subject to laws governing the conduct of public business - such as elections and open meetings - that do not always apply to RCAs.

20. How have special taxing areas been used in place of RCAs?

Special tax districts have been used in Florida, Arizona, California, Colorado, Vermont, Pennsylvania, and Connecticut.

. . . .
To bring citizen involvement to special taxing areas, an officially recognized "neighborhood advisory council" or some such body could be established with a formal relationship to the governing body of the local government. The council would help the local government determine how to spend the funds generated by the special taxing area for the benefit of that area. This mechanism would keep many of the functions that an RCA might perform in the public arena, subject to public procedures.

[See [A proposal for the "Muni-zation" of HOAs; Stop developers from granting private government charters](#)].

21. How have RCAs formed municipal governments?

A third alternative is for the RCA to form a municipal government.

24. What are the disadvantages of RCAs. How can they affect local governments?

The primary disadvantage is that RCA communities typically restrict property rights. These restrictions

can be intrusive, at times, imposing significant limitations on lifestyles, limits that are not present in most non-RCA communities.

There is considerable evidence that many people do not understand these limitations when they purchase or rent a home in such a community. They may become aware of covenant restrictions only when they violate them.

Another potential disadvantage is that homeowners in RCAs are financially interdependent to a greater extent than homeowners in non-RCA communities. Because the owners are responsible collectively for the management and maintenance of the RCA, each homeowner is partially dependent on the financial capacity of the others to ensure that common costs are met. When a significant proportion of the owners cannot afford to maintain services and facilities, the overall financial capacity of the organization is reduced. This is particularly a problem when other homeowners cannot or will not take up the additional financial burden.

The report also references other documents uncovered in my research: *The Homes Association Handbook*²⁰, David Wolfe's *Condominium and Homeowner Associations that Work*²¹, *Common Interest Communities*; and the writings of well recognized personalities such as, Wayne Hyatt, Gary Poliakoff²², Susan French (co-editor of the Restatement), and Katherine Rosenberry and Curtis Sproul (CAI members). Evan McKenzie and Robert Dilger are not mentioned: McKenzie's book²³ was published in 1994, and although Dilger did participate in other works prior to this report, he is not mentioned, nor his 1992 book, *Political Neighborhoods*²⁴).

F. Critique of the NJ Supreme Court Twin Rivers HOA opinion on free speech and mini-governments

Last year, the NJ Supreme Court ruled on the free speech issues presented in a homeowners' suit against the Twin Rivers HOA²⁵. This month, law professors Paula A. Franzese and Steven Siegel addressed the court's opinion in their joint Rutgers Law Journal article²⁶ and their concerns regarding the legal constitutional status and public policy toward homeowners associations. Important legal doctrines, laws, arguments, issues and concepts are explored in this important article. This commentary presents certain issues raised by the authors in their article.

Citing the Court's opinion,

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.²⁷

the authors argue

[T]he Court's resolution places it . . . providing a framework for a new constitutional approach to free speech in the context of homeowners associations, while also making clear that traditional private law concepts remain fully applicable to homeowners associations. . . . [T]he Court's opinion reveals that the Court did indeed announce the framework of a new constitutional approach to CICs [common interest communities] . . .²⁸

The Court held that a homeowners association's regulations are not subject *exclusively* to the private law doctrines of contract and property. Rather, aggrieved residents may also seek constitutional redress. The *Twin Rivers* decision is not a model of clarity.²⁹

[T]hat determination [the rejection of the Coalition case precedent] could be understood to mean that an aggrieved homeowner's sole remedy against an association's speech-infringing regulations lies *exclusively* in the private-law doctrines of contract and property.³⁰

The New Jersey Coalition precedent spoke of a "historical path of free speech", moving from parks, squares, the "commons", to downtown business districts and shopping malls. The authors raise the issue, "*Similarly, in Twin Rivers, the relevant constitutional question was whether the 'historical path of free speech' has moved from public municipalities to private homeowners associations.*"³¹

Furthermore, the Court equated "residential" with inherently "private"- a determination made without explanation, and one that is inconsistent with the long held notion that streets held open to the public serve a vitally important function in connection with the rights of free expression and assembly.³²

[H]omeowners associations are the inheritors of the realm of open public discourse that once was exclusively undertaken in town halls and on public streets. Today, that discourse often occurs in private "community centers" and on streets that are open to the and maintained by the public with taxpayer dollars, yet nominally under the ownership of homeowners associations.³³

The Court's opinion seems to adhere to the common law "standard reference", the Restatement of Property, which supports the deference to private property law over constitutional law, "*The question whether a servitude unreasonably burdens a fundamental constitutional right is determined as a matter of property law, and not constitutional law*"³⁴." Here we have a definite statement that the US Constitution is not the supreme law of the land, that it shares authority with private property law advanced by the real estate special interest, and apparently agreed to by the NJ Supreme Court. **Welcome to New America!**

The authors feel that the constitutional question was not satisfactorily delineated.

[T]he Twin Rivers decision is unsatisfactory in many respects, because it lacks clarity and a firm underpinning in settled constitutional doctrine. The Court's failure to anchor its decision in established constitutional doctrine is particularly unfortunate, because there is substantial precedent available and adaptable to the homeowners association paradigm [legal concept or model].³⁵

Furthermore, the authors also raise the question of the proper standard of judicial review. Simply stated, based on certain factors, the burden that the government must meet to restrict a constitutional right can be any legitimate government interest to a narrowly tailored and strictly defined government necessity that has no alternatives but to restrict the constitutional right. Which applies to private government HOA restrictions? It appears the Court rejected traditional constitutional doctrine for some vague new standard.

For example, under settled First Amendment doctrine, government regulation of speech in traditional public forums is **subject to heightened**

judicial scrutiny. In that context, government may enforce such reasonable time, place, and manner restrictions only if the restrictions are content-neutral, are **narrowly tailored** to serve a **significant government interest** and leave open ample alternative channels of communication. [emphasis added].³⁶

The necessary implication is that the Court in *Twin Rivers* determined that homeowners associations play an important role in the civic life of New Jersey, and thereby **warrant a new standard a constitutional standard that reflects the special status of associations.** The Court left for another day the delineation of that standard. [emphasis added].³⁷

Now, no matter how one feels about homeowners associations, it cannot be argued that the acceptance and preference of homeowners associations by homebuyers, government officials, the courts, and by the various state legislatures is creating a **New America** inconsistent and contrary to the America of our Founding Fathers. For more reading on *Establishing the New America of independent HOA principalities* see [PVTGOV](#).

Notes

¹ For an analysis, see [*The Foundations of Homeowners Associations and the New America*](#), “Part I, The Mass Merchandising of Planned Communities”, George K. Staropoli, 2006.

² “*The homes association: Will ‘private government’ serve the public interest?*”, Stanley Scott, Public Affairs Report, Bulletin of the Institute of the Governmental Studies, Univ of Calif., Berkely, Vol. 8, No. 1 (1967). Reprinted in *Common interest communities: Private governments and the public interest*, Stephen E. Barton and Carol Silverman. eds, Institute of Governmental Studies Press, Berkeley, CA, 1994.

³ . See Establishing the New America of independent HOA principalities, p. 78, 138; *The Foundations of Homeowners Associations and the New America*, p. 90.

⁴ *America II: The Book That Captures Americans in the Act of Creating the Future*, Richard Louv (Penguin Books, 1983), p. 90.

⁵ *Privatopia: Homeowners Associations and the Rise of Residential Private Government*, Dr. Evan McKenzie (Yale University Press, 1994) p. 112.

⁶ Supra n.2, p.137.

⁷ Supra n.2, p. 90.

⁸ Supra n. 3, p.84.

⁹ Supra n.2, p. 92.

¹⁰ *Community Associations: The Emergence and Acceptance of a Quiet Innovation in Housing*, Donald R. Stabile (Greenwood Press, 2000), p.167.

¹¹ Lewis Mumford followed early utopian community promoters, such as Ebenezer Howard’s vision of “garden cities” and “privatized street associations” under restrictive covenants. In 1928 Mumford, part of the Regional Planning Association of America, developed the Radburn, NJ planned community. The Radburn government was an HOA based on the city manager model. See Supra n.5, p.8-9.

¹² Supra n.8, p.164.

¹³ Supra n.8, p. 166-67.

¹⁴ *Condominiums and Homeowner Associations That Work on Paper and Action*, David B. Wolfe (ULI & CAI, 1978).

¹⁵ *America II: The Book That Captures Americans in the Act of Creating the Future*, Richard Louv, Penguin Books, 1983.

¹⁶ Richard Theodore Ely (13 April 1854 – 4 October 1943) was an American economist, author, and leader of the progressive Movement who called for more government intervention in order to reform the injustices of capitalism. (Wikipedia).

¹⁷ The Advisory Commission on Intergovernmental Relations (ACIR) is a permanent, independent, bipartisan agency that was established under Public Law 86-380 in 1959 to study and consider the federal government's intergovernmental relationships and the nation's intergovernmental machination.

¹⁸ *Residential Community Associations Questions and Answers for Public Officials*, ACIR, M-166, July 1989,

(<http://www.library.unt.edu/gpo/acir/Reports/information/M-166.pdf>).

¹⁹ See Part III, "American Political Governments", in [*The Foundations of Homeowners Associations and the New America*](#).

²⁰ See a critique in Part I, Id.

²¹ See [Competitive HOA private governments appealed to CAI founder](#).

²² See [Book review of CAI attorney's "New Neighborhoods"](#).

²³ *Privatopia: Homeowner Associations and the Rise of Residential Private Government*, Evan

McKenzie (Yale Univ. Press 1994).

²⁴ *Neighborhood Politics: Residential Community Associations in American Governance*, Robert Jay Dilger, New York Univ. Press, 1992.

²⁵ *Comm. for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n*, 929 A.2d 1060 (N.J. 2007).

²⁶ *The Twin Rivers Case: Of Homeowners Associations, Free Speech Rights and Privatized Mini-Governments*, Paula A. Franzese and Steven Siegel, 5 RUTGERS J.L. & PUB. POL'Y 630 (2008). Part of the issue on *Homeowner Associations: Problems and Solutions*.

²⁷ Id., 743.

²⁸ Id., 733.

²⁹ Id., 742.

³⁰ Id., 746.

³¹ Id., 739.

³² Id., 744.

³³ Id., 751.

³⁴ *Restatement Third, Property: Servitudes*, § 3.1 Validity of Servitudes: General Rule, comment h, p.359.

³⁵ *Supra* n. 26, 750.

³⁶ *Supra* n. 26, 748.

³⁷ *Supra* n. 26, 750.