



### open email letter

March 25, 2010

Mayor Scruggs,

Please accept my apologies in advance for this lengthy email, but many things regarding HOAs must be said and brought into the sunlight. Things not mentioned or discussed by the Leadership Centre or The HOA Academy.

Your email of March 21st to the Senators on behalf of certain constituents, those living in HOAs, in opposition to HB2153 are commendable. However, in no uncertain terms you are indeed advocating on behalf of these constituents, and others, who represent a "faction" as the term was used by the Founding Fathers, or a segment of the population.

I believe you are mistaken in several of the statements and justifications for your defense of HOAs, which reflects the biased information available to the public, the media and government officials, but not the whole truth that has been kept under wraps — except by homeowner rights advocates as Melissa Hill, others and myself. This information is available for those seeking the truth, rather than in defending private governments that deprive homeowners of their rights, privileges and immunities under the US and Arizona constitutions, as citizens of the State of Arizona. Please see reference provided at the end of this email.

Allow me to comment on your statements:

*1. "actions HOA's will no longer be empowered to regulate safe usage of those streets . . . . people who have purchased homes with understanding that there would be control of safety and welfare."*

I thought that the regulation of public streets was under the legitimate authority and powers of the City of Glendale, and any unsafe streets are the responsibility of the City of Glendale. The fact that citizens are held bound to a private agreement does not grant the HOA the legitimate right and authority to regulate the usage of public streets. There are mechanisms to deal with seeking variances of ordinances by neighborhoods, which you, and other pro-HOA supporters, feel does not apply to these private governments. You know, as if the HOAs have seceded from the City and are independent principalities.

As to the "*understanding that there would be control of safety and welfare*", it does not warrant turning a blind eye to the HOA control of public streets. These buyers are mistaken, or have been misled by those special interests, that the HOA rules supreme. Their safety and welfare is the legitimate obligation of the City of Glendale! Unless, of course, you are arguing for the recognition of HOAs as a legitimate political form of local government. Are you?

2. *"HB2153 interferes with neighborhood peace and quality in 91 cities and towns . . . ."*

This definitely sounds like broad-based advocacy for HOAs, and not a voice for your constituents.

3. *"a 'one size fits all' legislative action."*

This is a “puzzlement.” The law of the land speaks of the equal application of the law unless a justifiable category can be identified, and one in which there is a legitimate government interest to create special laws. And, that the government action is not just a convenience, but also a necessity since there are no other alternatives available. Well, there are other alternatives available to all citizens of Glendale: filing for variances from city ordinances. Please remember that it was the Glendale planning board that approved these alleged unsafe streets, and continues to approve these unsafe streets without instituting parking restrictions. No, the granting of broad regulatory powers to a private organization is unconstitutional!

4. *"All members of HOA's purchased their property with clear understanding of the Codes, Covenants and Restrictions that regulate residence in the HOA's."*

This use of "all" is argumentative and does not explain objections by residents of HOAs to the regulation of public streets by a private organization, of "banana republic" due process, etc. My experience shows that many homeowners are shocked at the invasion of the privacy of their homes by the HOA, and, contrary to sanctity of individual private property rights, that their rights can be trampled upon by a vote of their neighbors, without their consent.

As to "clear understanding", you must be joking. Every day, in all states, the meanings of these covenants are being interpreted and construed — clarified and extended — by the courts against the rights of the individual in favor of the HOA. Laws that were written under the strong influence of the national pro-HOA, business trade group, CAI. Furthermore, many of the provisions are unconscionable, against public policy and unconstitutional, but are defended, as you argue in your letter, by a self-proclaimed right that the CC&R "contract" is untouchable. That this contractual right is untouchable even from the application of constitutional law, since it's the voice of the people. Wrong! (BTW, CAI in its brief to the NJ appellate court in Twin Rivers HOA free speech case warned the court against *"the extension of constitutional protections for members [of HOAs]"*).

Is this the position you are defending when you say you are speaking for your constituents? Supporting a constituency that rejects the supreme law of the land, the US and Arizona constitutions in favor of a private "contract"? A contract that these people regard as superior to the Constitution? It sure seems that this is your position as Mayor of Glendale.

I believe a word on the Constitution, the Founding Fathers, and rule by the majority without trespassing on the rights of others is in order. One of the sensitive points with respect to the successful functioning of a representative democracy was their concern for the dominance of a portion of the citizenry, referred to as a “faction”. In short (see The Federalist Papers, #10 by Madison), that those in a position of power, whether a majority or a minority “clique”, do not trample the rights of the other faction(s) in violation of constitutional and state law protections.

The much-touted claim that the HOA represents the voice of the community is false, and that it represents local majority rule is false, likewise. The HOA, and especially CAI, do not represent the views of the members in public matters, as there is no such grant of that power under the CC&RS! (In fact the HOA functions indeed as it has been structured under the corporation law - as a typical business board of directors and not as a representative democracy similar to the City of Glendale, for example).

In contrast to the operation of a bona fide democracy, the HOA does not obtain a vote of the "people" on these matters of public concern. In a similar way, the vote of a legislator does not in itself represent the consent of their constituents, nor necessarily of any majority of their constituents.

5. *"that their private contracts, entered into with full knowledge, executed and recorded . . . ."*

The private contract, the CC&Rs that you referring to, are the CC&Rs, is not the actual purchase contract, and the law does not require that it be read, agreed to or signed in order to be binding. While the AAR "standard" contract requires the buyer to not only sign the purchase contract, but also initial all nine or so pages, there is no signing or "execution" required of the CC&RS, and which are only required to be delivered after signing the purchase contract.

Therefore, the only the purchase contract is executed, without full knowledge of the CC&Rs, and it is not recorded. The CC&Rs were simply recorded many years ago, and not signed by the homebuyer. Why not? This legal, but grossly unjust procedure, does not meet the requirements of a bona fide contract under the law. And, apparently you do not have a problem with this.

Specifically with respect to "full knowledge", this cannot occur because the homebuyer is not given full knowledge. The required HOA disclosure is totally inadequate in that there are no warnings or advisories, for instance, that they have surrendered certain rights and other unspecified rights, and among those are the application of the reasonable expectation that the laws and processes of the State of Arizona protect the buyer. They are not! They are subject to the imposed CC&R contract, which is not the product of full bargain and exchange consent to be governed, but the product of a "take it or leave" unconscionable adherence contract. Such as the covenant for the regulation of parking on public streets, which is a usurpation of the legal powers and authority of the City of Glendale?

And in regard to your email reply of March 24th in response to an email from Ms. Hill,

1. *"It is my right, authority and responsibility to represent the citizens of Glendale."*

Yes, you have the right to speak for your constituents. All of them, and not one faction that seek to usurp the legitimate powers and authority of Glendale. That would be a gross abuse of discretion.

2. *"The 60 Glendale residents . . . ."*

I am curious to know how many HOAs were part of these 60 constituents. One? Two? How many? Were these residents board members? Were they members of Community Associations Institute (CAI)? Are they members of the West Valley Homeowners Associations whose VP, or now President, is Curtis Ekmark, CAI member and former CAI Legislative Action Committee Chair?

Understand the HOAs per se are not allowed as members of CAI since it is not an educational organization, but a business trade group. A clarification of their status would shed important light on just what constituents that you are argue you are representing.

Respectfully,

George K. Staropoli, Pres.  
Citizens for Constitutional Local Government

**Website references:**

Constitutional Local Government

HOA Private Government

Privatopia

Homeowner's Against Unchecked HOA's

On The Commons internet radio