



## Arizona Homeland Security Comm. Allows HOA to Ignore Homeowner Due Process Protections

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In a split vote, the Arizona House Homeland Security and Property Rights (HSPR) committee voted on March 26, 2007 to kill a bill aimed at preventing HOAs from regulating parking on public streets. By doing so, it saw no problem with the abuse of constitutional due process when HOAs fine a homeowner for a stranger's car parked out in front: a fine that is allowed to be a lien against an innocent homeowner. The failure to restrict the regulation of public streets for parking opens the door to the further private HOA government regulation of public streets, an unconstitutional delegation of police powers to a private organization.

As I viewed the live hearing, I had to rub my eyes to make sure that this was not coverage of a committee in Cuba or in China. Sadly, it was the Arizona legislative committee, right here in America. How is the homeland being made secure from the free grant of governmental powers to private organizations that deny citizens their fundamental constitutional rights guaranteed to all Americans? What homeland values and beliefs will remain for Homeland Security to protect when state legislatures see no evil in allowing private organizations to ignore the Constitution?

Even the mention of "bills of attainder" by a HOA president fell on death ears, apparently neither the HOA president nor the committee members understood what a bill of attainder is, and that it's prohibited by the US Constitution. Neither, apparently, did the lobbyist for the national HOA trade group, the Community Associations Institute (CAI), who opposed the bill because it somehow stood in the face of the voice local government. Say what? HOAs are not public governments; they are private contractual governments operating outside the Bill of Rights and 14<sup>th</sup> Amendment restrictions on state actions. CAI's position on this bill echoes its amicus curiae brief warning of an "unwise extension" to the NJ appellate court in the Twin Rivers HOA constitutionality suit when it wrote, "*In the context of community associations, the unwise extension of constitutional rights to the use of private property by members ....*"

The main argument proffered by the majority of the HSPR committee members in opposition to the bill was an incomprehensible view that the surrender of fundamental rights was willingly made and with full knowledge when the homeowner took position of his deed. A deed that was subject to CC&Rs "posted" to the county clerks office, but not required to be initialed or signed by the homeowner as is the actual purchase contract, and without explicit and sufficient notice of the surrender of these constitutional rights. And that somehow these private CC&Rs contracts are not subject to the laws of the land, and the parties can do anything they so desire without fear of state oversight. These legislators seem to have adopted the CAI view that the HOA declaration, prepared by profit-seeking developers, was a bona fide manifestation of the voice of the people even though the municipality mandates the HOA as the only form of new housing. That the

homeowners have expressed their free will through a supposedly democratic, yet authoritarian corporate form of local “government” in action, and that the proper course of action by the state was to hear no evil, see no evil and speak no evil.

A leading constitutionalist authority, Professor Randy E. Barnett, wrote in *Restoring the Lost Constitution*,

[T]hese rights remain the object and measure of any regulations. That is, the protection and facilitation of everyone’s retained rights in civil society is the purpose of any “police” regulation by law, and this object or end is the measure of whether a particular regulation is or is not reasonable. (P.74).

Where is the fundamental right to regulate parking on a public street by a private group? It may be rationalized under the general doctrine of “promoting the general welfare”, which applies to a state’s police powers to regulate, in general; but the regulation by a private group is prohibited as an unconstitutional delegation of legislative authority. The State of Arizona has not explicitly granted this right to the HOA governments.

Where is the right to due process of law protections against the deprivation of liberty and property? That is explicitly stated in the 5<sup>th</sup> and 14<sup>th</sup> Amendments. Yet, these HSPR members felt the regulation by private governments counted more than the US Constitution that they are sworn to uphold.

Something is definitely wrong here! What is happening to America? What is happening to the Declaration of Independence and the US Constitution? Have they become meaningless pieces of paper to be ignored, modified or supported according to the sentiments of the day, or by the political party currently in power? Such an approach can only erode confidence in government, making its authority subject to the temporary mood and sentiments of the people. Such an approach stands in sharp contrast to the foundations of the American system of government with firm belief that both the government and the people need checks and restraints upon one another if the Constitution is to survive.

That American way of life, that America of our Founding Fathers still talked about in public school texts, is rapidly becoming a mythical America that no longer exists. And the active support, cooperation with and coercion by state legislatures that entwine themselves into the operation of HOAs, thereby creating and evidencing a strong symbiotic relationship, must stop. If we are to remain the land of the free and the home of the brave, and faithful to the principles and values that have made America a great nation, then this unconstitutional privatization of government must end.