



HOMEOWNER ADVOCATE LEGAL RESEARCH INFORMATION SERVICES

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SAMPLE HALRIS RESEARCH MEMORANDUM

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HRM Report No.: _____

Date: _____

Client: _____

Client Nbr: _____

Client Complaint:

SB 1482 (2014) of the Arizona Legislature is an unconstitutional law violating both the US and Arizona Constitutions.

Statement of Events:

On April 17, 2014 Governor Brewer signed into law SB 1482, Ariz. Sess. L. Ch. 83 (2014).

Issues Presented:

Is a bill allowing HOA managers to represent HOAs while prohibiting the homeowner to engage an unlicensed and untrained third-party to speak for them in small claims court an unconstitutional special law in violation of the equal protection of the law under the US and Arizona Constitutions?

Sources of Law:

US Constitution
US Bill of Rights
Arizona Constitution

Discussion:

The HOA manager is the primary day-to-day interface between the homeowner and the HOA board. As described below with respect to UPL violations, HOA managers come with unclean hands. Those persons not living in an HOA are not disadvantaged by an organizational entity speaking up for the entity. It is an unconstitutional violation of the equal protection of the law and a special law for those cases involving an HOA.

The Arizona Justice Court webpage states that the small claims court process is “[I]ntended to be simple enough for a person to file all the necessary forms and represent him/herself at an informal hearing. . . . Small claims cases are simplified, therefore, lawyers are not allowed.” [Small Claims Suits, <http://justicecourts.maricopa.gov/CaseTypes/smallclaims.aspx>]. Apparently HOA board members, officers and employees are incapable of representing themselves in small claims court and would spend needless HOA funds, as lawyers are forbidden in small claims court, to pursue these small claims issues.

Rather the intent of this special interest driven bill is to further intimidate homeowners and generate further income for the HOA managers. There is no conceivable genuine government rationale to adopt this bill except to promote the special interests agenda at the expense of the homeowner. Section 7 is nothing more than an unconstitutional special interest bill that harms homeowners living in HOAs.

Arizona courts have held, “In general, a legislative enactment has a legitimate purpose when the government acts within its police powers by regulating to protect the public health, morals, and welfare. *Berman v. Parker*, 348 U.S. 26, 32 (1954) (“Public safety, public health, morality, peace and quiet, law and order — these are some of the more conspicuous examples of the traditional application of the police power to municipal affairs.” *Vong v. Aune*. The Vong court stated that “Courts have found a legitimate purpose lacking where a regulation fails to protect the public from harm.”

There is nothing in Section 7 that suggests any genuine government interest for the public good, but only to promote the interests of the HOA manager industry. In fact, the entire Section 7 is a special law favoring the HOA stakeholders in violation of Article 2, Section 13 of the Arizona Constitution. Furthermore, it exudes gross harm to the homeowner and denies his rights under the US Fourteenth Amendment and Article 2, Section 4 of the Arizona Constitution to due process under the equal protection of the law. SB 1482 removes a constraint from the HOA while permitting the constraint on homeowner third-party representation to continue to be denied in a mockery of justice.

Comments:

On February 4th Griffin introduced SB 1482, an SB 1454 redux in regard to the HOA amendments that contained the necessary “repeal” sections. Apparently, these unconstitutional statutes would remain on the books whether or not SB 1482 became law. The actions of Representative Ugenti (sponsor of HB 2371) with cooperation from Senator Griffin convincingly demonstrates the extent to which the special interests dominate Arizona legislators, and the extent to which legislators will go to gain favor with the special interests. (The HOA special interests are known as ‘stakeholders,’ which does not include homeowners in HOAs.)

In Ugenti’s statement before Sen. Griffin’s Government Committee in 2013 on HB 2371, the initial version of SB 1454, she boasted that she “felt very responsible to the stakeholders” and in a slight at homeowner backed bills, that there is “a plethora of personal HOA legislation” and tried “to spare the [committee] members the constant agony of many personal pieces of HOA legislation,” as contrasted to the industry legislation. HB 2371 failed to pass.

Table of Authorities:

Constitution, laws

US Constitution, Article II, Section 10
US Constitution, Fourteenth Amendment

Arizona Constitution, Article 2, Section 4
Arizona Constitution, Article 2, Section 13
Arizona Constitution, Article 2, Section 25
Arizona Constitution, Article 4, Section 13

Ariz. Sess. L. Ch. 83 (2014)(SB 1482)

Cases

Berman v. Parker, 348 U.S. 26, 32 (1954)
Cutshall v. Sandquist, 193 F.3d 466, 482 (6t Cir, 1999)
Fournier v. Sebelius, 718 F.3d 1110 (9th Cir. 2013)
General Motors Corp. v. Romein, 503 U.S. 181 (1992)

Staropoli v. State of Arizona complaint (CV 2013-009991, Maricopa County Superior Court)
Vong v. Aune, 1 CA-CV 13-0423 (Ariz. App. May 27, 2014)
Wigglesworth v. Mauldin, 195 Ariz. 432, 438, ¶ 19, 990 P.2d 26, 32 (App. 1999)