April 25, 2017

The Honorable Hannah-Beth Jackson, Chair
Senate Judiciary Committee
ATTN: Tim Griffiths, Consultant
Via email and fax 916.445.8390

SB407/Wieckowski -- SUPPORT

Dear Senator Jackson:

The Senate Judiciary Committee will soon have before it SB407, legislation clarifying that homeowners living in California's 52,000 common interest developments are entitled to protected political free speech. SB407 confirms that these rights also extend to the residents of mobile and manufactured home parks. The Center for California Homeowner Association Law (CCHAL) urges an **AYE** vote on the measure.

What the Legislation Does. SB407 clarifies that member and residents of California's 52,000 common interest developments and its 5000 mobile home parks are entitled

- To assemble peaceably for the purposes of civic engagement, that is, to discuss issues, legislation, or elections impacting common interest communities
- To freely communicate with one another concerning issues of common concern
- To invite public officials and candidates onto the premises
- To distribute without prior permission from the association or its agents information about common interest living
- To use common area facilities for these civic engagement purposes without having to make a deposit or purchase insurance
- To obtain an injunction if the association, its agents, or governing documents try to stop the exercise of the rights to assemble and to communicate.

Why the Legislation is Needed. Both the Legislature and California's Appellate courts have established that common interest developments (CIDs) are quasi-governmental entities,[1] some of whose powers exceed those of cities and counties. Essential to good governance of any governmental entity are the rights to peaceable assemble and to political expression unfettered by prior restraint. That is, homeowners and residents governed by this entity are not only entitled to assemble, petition, and canvass their neighbors and the governing board but are urged to participate in governance.

However, CID members and residents routinely report to our Center that they are unable to exercise these rights, e.g.

- A group of homeowners in an **Orange County association** who repeatedly asked the board and its agents for permission to use common areas to discuss a ballot measure that the board supported but that some owners opposed. The opposition owners were

[1] See Assembly Judiciary analysis of SB61/Battin/2005 (association elections) and Senate Judiciary analysis AB1799/Mayes/2016 (association elections); see also ***Chantiles v. Lake Forest II Master Homeowners Association 37 Cal.App.4th at p. 922*** and ***Cohen v Kite Hill Association (1983) 142 Cal.App.3d 642,***

repeatedly denied permission to use the HOA's common areas to assemble for their meeting. The Court of Appeals for the 4th District ruled in favor of the owners in ***Wittenberg v. Beachwalk Homeowners Association (2013) 217 Cal. App. 41 654***.[2]

- **The Alameda County homeowner**, who planned to convene a forum on "Civil Rights in HOAs", got a letter from the association's law firm ordering him to cancel the event, because he didn't have permission to use the HOA's common areas for the meeting.[3] The letter said that if "outsiders" [the forum's panelists] "trespassed" on the premises that law enforcement authorities would be summoned. Told by the law firm that he himself was in jeopardy of legal action should the "Civil Rights in HOAs" forum be held, the homeowner was forced to cancel the discussion and dis-invite the panelists.
- In 2016, another **Alameda County homeowner** was cited by the property manager for going door-to-door in her association with information about an elections bill (AB1799/Mayes) that would have impacted homeowner voting rights. She was summoned to a disciplinary committee, fined, and ordered not to approach her neighbors again.

SB407 makes clear that residents of common interest communities cannot be barred from civic engagement activities like the three described above and in the ***Wittenberg*** Appellate case. Specifically, HOAs cannot use governing documents, including Operating Rules constructed under Civil Code §§4340 et seq., to obstruct the exercise of the basic rights of assembly and free political expression.

Homeowner associations are not country clubs or casual neighborhood groups. They are quasi-governmental entities endowed with specific legal powers over the property of the people who live in them. Wrote the Appellate Court in ***Cohen v Kite Hill:*** "[U]pon analysis of the association's functions, one clearly sees the association as a quasi-governmental entity paralleling in almost every case the powers, duties, and responsibilities of a municipal government."

Essential to the effectiveness of these self-governing communities is the right of members and residents to participate fully in civic life; and essential to ***self-governance*** is political free expression. We urge, therefore, an **AYE** vote when SB407 comes before the Committee.

If the Committee wishes to discuss our position, please contact me at mmurray@calhomelaw.org or 510.272.9219.

Sincerely,

Marjorie Murray, President
Center for California Homeowner Association Law
3758 Grand Ave., #56
Oakland, CA 94610

cc: Members of the Senate Judiciary Committee

[2] The Appellate Division remanded the case to the lower court, which subsequently voided the disputed election.
[3] See attachment from Gill Hughes Cochran to homeowner Jonathan Pool.

HGC HUGHES GILL COCHRANE P.C.
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January 7, 2013

VIA U.S MAIL AND E-MAIL

Jonathan Pool
2550 Dana Street, Unit 2C
Berkeley, CA 94704

Re: Berkeley Town House Cooperative Corporation – Use of First Floor Common Area Facilities

Dear Mr. Pool:

As you are aware, this law firm is general counsel to Berkeley Town House Cooperative Corporation (the "Corporation").

I am informed that you have, without the Corporation's permission as required by its Rule 13 Guidelines, held meetings or sponsored forums in the past in the building's first floor common area facilities. I have also been informed that you posted notices in the building and on your website that you are sponsoring a presentation and forum that will be held in the first floor community room on January 10, 2013. From your announcements, it is clear that you intend to bring in outside speakers and "arrange" for others to gain access to the building to attend the presentation. You have neither requested nor received the Corporation's permission for the January 10 meeting.

Please be advised that you may not use the first floor common area facilities on January 10 for the presentation/forum that you have noticed. Any attempt to use those facilities as you have indicated will be a violation of the Corporation's Rule 13 and may subject you to legal action by the Corporation. Representatives of the Corporation are prepared to contact law enforcement authorities should unauthorized persons trespass or attempt to enter the building in connection with the presentation/forum that you have noticed.

Kindly refrain from posting further notices at the building concerning the January 10 event you intended to hold in the common area facilities. Further, to avoid inconvenience, please also post a cancellation of that event on your website and notify speakers and others who expected to attend that the event has been canceled.

My client and I will appreciate your cooperation. Should you have any questions or wish to discuss this matter, please contact me.

Very truly yours,

HUGHES GILL COCHRANE, P.C.

Stephanie J. Hayes

SJH:ls
cc: Client
Fred M. Feller, Esq.
David H. Schwartz, Esq.