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VIA FACSIMILE - (602)256-7045
(Original by U.S. Mail)

Nick Dranias, Director
CENTER FOR CONSTITUTIONAL GOVERNMENT
Goldwater Institute
500 East Coronado Road
Phoenix, Arizona 85004

Re: Editorial "Regulating HOAs Violates Freedom of Contract"

Dear Mr. Dranias:

I am writing in response to your editorial entitled "Regulating HOAs Violates Freedom of Contract". I was surprised that as Director for the Center for Constitutional Government at the Goldwater Institute that you apparently believe your position concerning homeowners associations to be one which supports limited government and our Constitution. Please consider the possibility that your position concerning homeowners associations is directly contrary to the founding principles of the Goldwater Institute. As indicated on your website:

The Goldwater Institute board and staff share a belief in the innate dignity of individual human beings, that America is a nation that grew great through the initiative and ambition of regular men and women, and that while the legitimate functions of government are conducive to freedom, unrestrained government has proved to be a chief instrument in history for thwarting individual liberty.

As one who has addressed homeowners association disputes both representing the homeowners association and by representing individual homeowners, I feel confident in asserting that one of the greatest threats to individual liberty endured by our citizens on an ongoing basis is from the

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unchecked powers of local “quasi-governments”, which are otherwise known as homeowners associations. We agree with the principles of the Goldwater Institute that “... unrestrained government has proved to be a chief instrument in history for thwarting individual liberty.” The unrestrained powers of homeowners associations has resulted in significant infringement of individual liberties of homeowners in these associations.

Any suggestion that homeowners, by moving into these communities, “contract” with the association and therefore have agreed to be subject to potentially harsh and oppressive acts, is as ridiculous as suggesting that a citizen of the United States, by living in this country, has also agreed to be subjected to harsh and oppressive policies of an unchecked state, federal or local government. Citizens of this country subject themselves to the laws of this country just as homeowners subject themselves to the laws of their association by choosing to live in that association. Your suggestion that it is inappropriate to seek to limit the powers of such associations because the relationship between the homeowner and the association is one of contract would be the same as suggesting that citizens of this country should not seek to limit the powers of our state, federal and local governments. The whole purpose of the United States Constitution was to place limits on the powers of our government, just as the purpose of the proposed legislation is to put limits on the powers of homeowners associations. Unfortunately, members of homeowners associations do not have a “constitution” to limit the powers of the associations, and oftentimes the only protection they have is when legislators seek to place limits on the powers of the associations by passing appropriate laws, just like our founding fathers sought to place limits on the powers of our federal government when drafting the Constitution.

Case law is clear that government regulations that equally affect the rights of all parties to a contract are not contrary to our Arizona Constitution. In this case the prohibition against an award of attorneys’ fees is equally applicable to both parties. The alleged risk to our liberty due to concerns over the statutes supposed infringement on our right to contract is far outweighed by the ongoing and significant risk to our liberty that results from unrestricted homeowners associations. It is evident from reading your article that you have little understanding about the ongoing daily challenges many homeowners face in their associations due to the uninhibited powers of their association.

Those of us that have sought to support such legislation are truly “freedom fighters” seeking to secure the rights for those who are often unable to stand up to the overwhelming power of their associations on their own. We believe that “extremism in the defense of liberty is no vice and that moderation in the pursuit of justice is no virtue,” and we will be undeterred



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by your article that is, in our humble opinion, directly contrary to both the principles of the Goldwater Institute and of the United States and Arizona Constitutions.

Very truly yours,

CHEIFETZ IANNITELLI MARCOLINI, P.C.

By: _____

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For the Firm

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