SB 417- Testimony in opposition, Senate Committee Judiciary Tuesday April 11, 2023

My name is Mike Kosor. I strongly oppose SB 417.

I have been a victim of a deep pocket HOA developer using litigation to silence my lawful opposition to its continuing control of my association- which today runs an unprecedented twenty-three (23) years and counting. I was hit with a defamation action when I first ran for one of only two elected director positions on my five person Master Board. I have subsequently been elected to that Master Board (for a nearly 9,000 units community) running on a clear platform the board lacked transparency and should essential, not be trusted.

Senators, HOA legislation is needed to **ADVANCE** board transparency, especially where boards are declarant-controlled, and to encourage greater owner participation in the governance of their communities. **THIS BILL DOES THE OPPOSITE**. In my eight years serving on both small and large HOA boards and years advocating for HOA legislative change, this is likely the most dangerous bill I have seen make it to committee.

I am a retired USAF Colonel and fighter pilot, with combat experience in the first Gulf War. My experience defending the attacks by this developer on my family's financial future, was the most stressful experience of my life. I do not wish it on anyone. Thankfully, the defamation action was successfully defeated. But only after many years, a Nevada Supreme Court ruling (*Kosor v Olympia*) and almost seven figures in litigation costs- the lions share by the developer. While the developer lost this battle, he arguably won the war. The developer's litigation had a materially chilling effect on my fellow community owners, that continues today.

My assessment of each section of SB 417

Sec 1- This is a bad solution seeking a non-existent or at best minor problem. HOA document access via internet, implemented in the last session (NRS 116.31069), makes this unnecessary. If anything is needed, expand document accessible on the internet. Include all documents owners are entitled to inspect. Many associations are already there. Holding down the cost to inspection records in a community you are member, will likely eat into a revenue source of some management companies. But it is not a viable reason to advance this legislation. Make it easy, not costly, for owners to become better informed on the governance and operations of their communities.

Second, "actual" costing for document production, especially "without limitations", is a very bad idea. Many reasons exist. 1) It opens owners up to abuse and 2) access denial without recourse. It allows 3) charging beyond just labor, would 4) require association construct polices sure to be subject of disputes (albeit more attorney rainmaking), and 5) it is not consistent with other Nevada "public" records access charging. 6) It also fails to consider the fact owners already pay for management services. Due you really want to jump into the likes of the very treacherous HIPPA style records program?

Sec 2 & 3- Several major and truly dangerous issues here. This section of NRS 116 was intended (in 2013 when added) to provide the Division and Commission powers to protect homeowners from bulling, "out of control" HOA corporate boards and management companies. Existing civil laws dealt with owner misconduct- a misdemeanor. What is now proposed creates as new crime and seeks to reverse what was intended in 2013. It gives corporate HOA boards a new tool to engage in speech-chilling attacks on homeowners engaged in what are, or certainly should be, protected activities. It runs into First

Amendment rights violations and more, given HOA's clear quasi-governmental status (see *Kosor v Olympia*). We have a larger body of law governing individual conduct in communicating with governmental bodies. As proposed, I see this runs afoul of the petition clause of the First Amendment and is an effort to end-run Nevada's anti-SLAPP (strategic lawsuit against public participation) laws (NRS 41).

Importantly, the power of a board to initiate litigation has always been strictly limited for good reasons- most notably 1) litigation costs are paid by owners and 2) rogue Orwellian boards could seek to target, without accountability, good faith owner opposition. NRS 116.31088 requires an association climb a huge hurdle to initiate litigation-an owner vote for approval. As proposed in this bill, not only could boards bring litigation targeting owners, it opens a dangerous door for community managers, officers of the manager, and agents of the association (contractors) to do similar and/or act as proxies. This is in addition to avenues already provided by law. Deep pocket boards and management companies could, as is being proposed, silence owners with threats of "retaliatory actions" (with a new definition) and/or simply asserting defamatory social media posts. While simultaneously soliciting the Division to act similarly adding credibility to their litigation claims. Imagine if County Commissioners, County staff, and County contractors, were given similar abilities. We have a huge body of laws plus other regulatory agencies to address bad conduct, workplace issues, civil disobedience, First Amendment freedoms, etc., all of which this proposal looks to duplicate or circumvent.

Sec 4- Government interfering in association elections should be taken very serious and only after much deliberate consideration. In Nevada an incarcerated person's right to hold public office is restored four (4) years after discharge from probation. This legislation proposes giving the CIC Commission (an appointed group of mostly industry representatives) the power to disqualify an owner from holding office in their own community for 10 years- and for as little as a determination an affidavit filed was "misleading" (among other not well-defined offenses and even if unknowingly based on the proposed deletion). If "misleading" was a punishable standard for attorney's filing in civil litigation, we would most likely have a server shortage of litigators.

Sec 5- The proposed phrase in this section is nonsensical and adds ambiguity. An allegation of a violation is by definition a violation under the condition of the hypothesis -"assuming it is true". The new process for handling an owner complaint proposed would move an affidavit unnecessarily from the complainant and Ombudsman office, where today it is dropped off, to the Division for the nonsensical "assume true" evaluation, then back to the Ombudsman (to give assistance, guidance, and report), and then back to the Division for investigation (to find good cause to move to Commission or not). Worst, it would allow the Division to simply reject an affidavit on its face never getting the complaint to the Ombudsman. This would only further, what I see is an already huge problem in the Division's complaint process- a lack of accountability and transparency, denying owners accesses to a Commission hearing. This leaves owners no recourse but costly litigation, where deep pockets and "influencers" have a huge advantage.

This is a bad bill all around. Please, do not pass.

Michael Kosor, Colonel, USAF Ret.
Director, Southern Highlands Community Association
Mikekosor.com