Hon. Melanie Scheible
Chair, Senate Committee on Judiciary
Via Email To: SenJUD@sen.state.nv.us

March 27, 2025

To the Members of the Senate Committee on Judiciary:

Subject: SB 433- **Strongly OPPOSE**

SB 433 is a near exact replica of failed provisions in your 2023 effort with SB 417. I typically applauded second efforts- but not this one. The proposed changes to NRS 116 in SB 433, setting aside the intermingled provisions addressing building structural concerns, will provide an Orwellian board new authorities, they will cite to in threatening letters, to legitimize attempts at silencing opposition and/or dissatisfaction. I request your reconsideration.

NRS 116.31183, was first enacted in 2003 to protect HOA owners expressing concern with deep pocketed rogue HOA board, over-reaching developers, and/or underperforming corporate community managers. **Section 29** of SB 433 turns this on its head. If passed, it would allow corporate HOA boards to bring civil actions. It also opens a new and very dangerous door for community managers, agents of the association (contractors), and even employees of these entities to do similarly and/or act as proxies.

The private regulatory enforcement allowed in SB 433 is wrong. As a public enforcer you recognize tasking members of the public, their lawyers, and courts with regulatory enforcement authority is problematic. In HOAs this leads to a "chilling effect" deterring protected speech or actions due to fear of perceived illegality or negative consequences. **Public enforcers are best vested with the authority to implement the law- not HOAs, industry players, and/or their vested legal counsel.**

HOA legislation is needed to ADVANCE HOA board transparency and accountability. Lawmakers should be seeking to encourage greater owner participation in the governance of their communities. THIS BILL DOES THE OPPOSITE.

A second and previously failed provision was the expansion of NRS 116.31184 to address threatening and harassing behavior by any party. Conduct of this type violates existing law. The intent in 2013 when this provision was first introduced in NRS 116, was local police could be called and the person(s) could be prosecuted by an appropriate authority. It was purposefully exempted from the definition of a "Violation" under NRS 116. As such, it was kept outside the jurisdiction of Nevada Real Estate Division investigators**. Section 14** would expand the definition of a violation therein expanding the Division's jurisdiction to include allegations of harassment as well as new and highly subjective "bullying" and "cyber-bulling" conduct. It would make conduct of this type actionable by the Division and subject to Commission determinations. It would also, as a violation, permit a separate right of action under NRS 116.4117 (an already convoluted and arguably flawed provision of NRS 116).

As a general proposition, I find no viable reason an association (and certainly not a vendor to the association) be permitted to bring litigation against a member of an association for violations of HOA statutes. The UCIOA, adopted by Nevada, does not provide for a right of action by an association, outside enforcement of the declaration. And even then, only, with very limited exceptions, after mandated dispute resolution, and upon achieving an almost impossible hurdle of obtaining approval to do so from a majority of members.

There is wisdom in this position. HOA boards are volunteers with the sizable resource of the collective owners. Vendors like community managers and legal counsel often have an oversized influence. Importantly, there exists regulatory empowerment to investigate and a separate Commission, aided by the Attorney Generals' Office, with the authority to adjudicate alleged statutory non-compliance. To allow an association to enforce statutory violations via a separate right of action is not supportable.

We have a large body of law governing conduct when communicating with governmental bodies- which should include HOAs. As proposed, I see SB 433 running afoul of the petition clause of the First Amendment. **Section 29** defining defamatory statements as "retaliatory actions" is an end-run of Nevada's anti-SLAPP laws, recently found by Nevada's Supreme Court to apply to Nevada's "quasi-governmental" HOAs.

Section 28 should be deleted. This is a bad solution seeking a non-existent or at best a minor problem. It opens owners up to abuse and access denial without recourse. And it is inconsistent with other Nevada "public" records access charging. HOA document access via internet, implemented in the 2021 session (see NRS 116.31069), should makes this unnecessary. If anything is needed, it is an expansion of records accessible to owners via the internet. All records owners are entitled to inspect, already limited, should be directly accessible. This provision is a rainmaker for management companies and will be used as a barrier to transparency. Make it easy, not costly, for owners to become better informed on the governance and operations of their communities. Lastly, owners have a right to know what they pay in aggregate for salaries and benefits for their employees. You and the bills presenter acknowledged this and committed to changes when SB 417(2023) was heard.

Sections 41 & 42 should be deleted. Passage of the proposed changes will widen the already existing chasm too often used by the Division to deny owners their right to a CIC Commission determination. It would allow the Division, albeit widely acknowledged as capture by the industry, to further pick and choose investigations. What accountability that may currently exists will be lost. The effect will be more expensive civil litigation- where deep pockets have a huge advantage-- or owner's silence- what the supporters of this provision appear to be seeking.

Section 43 should be deleted. Government interfering in association elections should be taken very serious and only after much deliberate consideration. HOAs have a process for owners to recall directors. 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 the power to remove and/or disqualify an owner from holding office for 10 years- and for as little as a determination an affidavit filed was "misleading" (among other poorly defined offenses). If "misleading" was a punishable standard for attorney's filing civil litigation, we would most likely have a severe shortage of litigators.

I ask you reconsider SB 433. Setting aside proposed charges related to structural issues, it should die without a hearing. This Senator Scheible, is within your control. I will make myself available to you or your POC on this bill to discuss my concerns noted above in more detail.

Respectfully,

/s/ Michael Kosor
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