

NEW JERSEY STATE LEGISLATURE  
SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

IN THE MATTER OF: )  
)  
Testimony relevant to )  
the SCI Report on )  
"New Home Construction )  
in New Jersey;" )  
and S-1824, S-1825, )  
S-1826, and S-2046. )  
Testimony on laws )  
governing common )  
interest communities. )

Place: Essex County College  
Smith Lecture Hall  
303 University Avenue  
Newark, NJ 07102

Date: November 6, 2006

MEMBERS OF COMMITTEE PRESENT:

SENATOR RONALD L. RICE, Chairman  
SENATOR SHARPE JAMES, Vice-Chairman  
SENATOR FRED H. MADDEN, JR.  
SENATOR LEONARD T. CONNORS, JR.  
SENATOR NICHOLAS ASSELTA

ALSO PRESENT:

ROBERT C. ROTHBERG, OLS  
JULIUS BAILEY, Democratic Staff  
NICOLE DECOSTELLO, Republican Staff  
PATRICK GILLESPIE, Democratic Staff

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SENATOR RICE: Good evening. Okay, all right. I know it's a long day. Let me first of all thank those of you who traveled quite a distance to be here. My name is Ronald L. Rice. I'm a New Jersey State Senator. I represent the 28th Legislative District, which is part of the City of Newark, Belleville, Irvington, and Bloomfield. But I'm also the chairman of the New Jersey State Senate Community and Urban Affairs Committee. The Committee has been spending the majority of its time this summer going from south, to north Jersey, to middle New Jersey in efforts to hear a lot of bills that are going to impact on the residents of our state.

We have addressed, at many meetings, eminent domain. We have addressed -- which we will be hearing from you today, those may come a little later -- the State Criminal Investigations recommendations and reports. Some of the bills that we have in are trying to address that, but it's not the bills we want to really discuss. We really want to discuss and hear from you the problems you're having in the area of construction and the industry itself. We have been moving around discussing bills dealing with the condominiums and co-ops, where there appears to be some real problems in some areas of the state, between the communications and the powers and rights of the unit owners versus the board

members and the owners of the projects themselves.

And so, because we are trying to come to a wrap up in Trenton where we can debate legislation based on some of the public concerns we have heard, some of the other interest groups we have heard, today will be our last meeting on what we call the UCIOA, the planned communities, common communities. And it will be the last hearing outside of Trenton on the SCI investigatory reports. There will be other hearings, at least eight other hearings -- at least one on each bill -- in Trenton, as we try to move legislation.

Also, I want to take the opportunity to thank those of you who not only traveled, but those of you who are here who have sent me comments or called me and spoken to me on the phone; and your neighbors as well. Let me just do this meeting as we have done the rest of them. We know that there are several bills addressing each of these subject matters. But we've been approaching the meetings in the communities not so much from the bills themselves. We want to hear what the residents and others have to say to make sure that, when we look at the legislation, that we are addressing some of those concerns, if not all of them, as best we can.

And so we want to hear from the speakers in reference to your thoughts, your concerns, your problems.

And then, we're going to take all the transcripts which we've been looking at from each meeting. We're reviewing the transcripts. We're extracting recommendations and other thoughts from the transcripts. And we're reviewing them for a possible recommendations to some of the legislation. We're reviewing them for possible deleting of some of the information that may be in some of the legislation. And so the bottom line is that this committee, staff, and myself have traveled, which I think we should do on stuff this substantial, and we have listened. And we're going to do the best we can.

None of the bills or legislation that are passed and signed into law are going to be perfect. We know that.

This state is too big. Some people have problems, some do not. And those who do not may have problems in the future.

So we're going to try to address that too, so that there are ways and means for you to have relief in the future if the same problems arise. With that, let me just go to my left and allow the senator from the 29th Legislative District, which is part of Newark also, to greet you, say a few words if he so chooses, and then we'll start the hearings. Senator James?

SENATOR JAMES: Let me join the Chairman, Senator Rice, and say welcome to Essex County College, welcome to Newark. And it's home for me, because I've been a part of

this college for 22 years of my life. Most people say the ex-mayor, but before being mayor I was here for 22 years of my life. So I'm just happy to be here. And any time we talk about home ownership, we're talking about perhaps the greatest debt that an individual or family will have in their lifetime, the purchase of a home, life savings, payment, what have you. And any time the State of New Jersey can strengthen the laws that protect the home buyer, protect the laws that govern home ownership, and warranty, and all of those acts-- We're talking about a significant debt by the individuals.

So, my Chairperson, I'm just happy to come down from a classroom upstairs -- happen to have it here, where I'm here all the time -- and be with my Chairman today. And I also want to tease him today, because 40 some years ago he was my student here. So I get to tell that to him. He's been to Vietnam. He's a lawyer and all of those things, but his career started here at Essex County College when we were on Clinton Street. And this old man now was his teacher. But today he's my boss, as the Chairman of the Community Affairs Committee. (laughter) So I'm just happy to be here with you. Welcome, welcome, welcome; God bless you.

SENATOR RICE: Okay. Let me also thank Dr. A. Zachary Yamba for always opening his doors up to the State when we call this excellent institution, and allowing us to

be present here and you to be heard -- and his staff. And the Senator is correct. I am a graduate of Essex County College. This is probably the only college I talk about; I've got other degrees too. But this is my foundation, and we've come a long way here in the city.

With that, we're going to try -- let me just indicate one more thing. There's a direct relationship, from our perspective, from the UCIOA legislation, meaning the condominium (indiscernible) legislation, and the concerns of the homeowners addressed by the State Criminal Investigation Committee; and let me tell you what is the relationship.

The relationship is that some of the condominium communities and the planned real estate development communities -- the problems started to come about based on some of the problems that were caused by faulty construction, bad construction, what have you. And all of a sudden, a unit owner may go in, because there's a problem, and can't get it resolved. And they can't get it resolved because the boards may craft their by-laws and their authority so tight that they don't release them from maintenance you're entitled to, or bring things up they should be voting on. And then, when you're directed to conflict resolution, and ADR, and stuff like that, that's not resolved right. And the reason I'm bringing up that there's a relationship is because the speakers, who have signed up

to speak-- We're doing -- we'll start off with the condominium legislation; but we're also going to be hearing SCI stuff. So if you're speaking and you're looking at the relationship while you speak, then you can go on record with that. Because the recommendations from both, or the hearings that involve both, are going to be looked at in terms of where they should be as we straighten up State law.

With that, the first person I want to bring up is a person that, if I had listened to him, I would probably be an attorney today. I think I was 20 credits short. But I decided to get another profession because of my schedule, and we didn't see eye to eye. But the bottom line is, is that maybe it's good I'm not an attorney because I can listen to with a little bit more wisdom. And if I was an attorney I would be like this professor, and that's Mr. Frank Askin, Esq., from Rutgers University. This gentleman has been before the Supreme Court many times on behalf of the public and argued cases and won those cases in many cases.

While he's approaching, I know I have some colleagues from the Assembly and the Senate that's going to be coming in to give testimony. And I assured them, when they come in, I would get them in and get them out. I want them on the record. So if they come in and I bring them up, don't get angry with me, but that was one way of getting some of them here to testify. Frank?

MR. ASKIN: Good afternoon, Chairman Rice, Senator James. I am Professor Frank Askin, Director of the Rutgers Constitutional Litigation Clinic here in Newark. And by the way, Senator James, Chairman Rice was also once a student of mine at Rutgers Law School. So we have something in common there. I came to talk about the need for protection of the million-plus members of common interest communities in this state. My wife and I actually belong to two community associations, one in West Orange and one in Monroe Township. And both seem to be reasonably well governed.

However, there are thousands of such associations in New Jersey and, unfortunately, some of them are corrupt and despotic. They are daily reminders of the old adage that power corrupts. It just seems that some people who are given governing power suddenly turn into petty dictators. As the only lawyer in New Jersey who occasionally represents members of these communities pro bono -- or actually one of two, since Renee Steinhagen of the Appleseed Foundation has taken on a couple of these matters. But I get several calls a week from homeowners pleading for help on issues ranging from allegedly rigged board elections, freedom of speech, concealment of financial documents, or outrageous fines for alleged rules violations.

The latest outrage brought to my attention was from a condominium resident who has thus far been fined

\$40,000 and threatened with foreclosure for putting notices under his neighbors' doors. He gets fined \$50 for each flyer he puts under each door. There are 180 units in the building. So every time he tries to communicate with his neighbors, he's fined \$9,000. Now, I doubt that the condo or its lawyers actually believe they can get away with this. But in order to fight such outrages, the members has to go out and hire a lawyer, unless I happen to be free at the moment, and winds up paying for both sides' lawyers -- his own, and the condo association as part of his maintenance fees.

In the major community association case that I have now pending before the New Jersey Supreme Court, the Twin Rivers case, which we of course won in the Appellate Division, the members of the association have already paid \$300,000 in special assessments to defend the case. And, of course, my clients have to pay their share of the assessments to defend against their own lawsuit.

Now, of course, there are a few statutes that are supposed to provide some protection for members of these associations, such as the right to fair elections, the right to see governing documents, and the right to alternate dispute resolution. But, in fact, those laws are paper tigers. While the Department of Community Affairs allegedly has some limited jurisdiction to enforce these laws, they

have no resources to do so. There is one man in the Division (*sic*) of Home Owner Protection in the Department of Community Affairs, Edward Hanneman, who has to protect the rights of a million-plus people in these communities.

So while Mr. Hanneman does occasionally send a letter to an association to demand that they obey the law, those letters are more often than not ignored, since the association lawyers all know he has no way to enforce his demands. And that's why it is up to the Legislature to not only provide more rights for such homeowners, but also to provide for enforcement of those rights that do exist. And that's why I support the Rice-Turner bill, which I believe is now S-1608, but urge that it be amended to include some provision for enforcement of the homeowners' rights that it provides.

In closing, I would like to quote from an opinion of the New Jersey Supreme Court more than 30 years ago, which I think is quite relevant to this topic and should be looked to as guidance by the Legislature. The case was *State v. Shack*, where the Court said, and I quote, "Property rights serve human values. They are recognized to that end and are limited by it. Title to real property cannot include dominion over the destiny of persons who come upon the premises. Their well-being must remain the paramount concern of a system of law. Indeed, the needs of the

occupants may be so imperative and their strength so weak, that the law will deny the occupants the power to contract away what is deemed essential to their health, welfare and dignity.@

And that's why the Appellate Division, in its Twin Rivers opinion, said that the rights of the members of community associations have to be judged by constitutional standards, not by contract or the so-called business judgment rule. I assume the Supreme Court will agree with the Appellate Division and affirm the rights provided in the Twin Rivers opinion, which is one reason the Legislature should probably do nothing pending that decision from the State Supreme Court. But even if the Supreme Court affirms the Appellate Division, people will still need some way to enforce those rights without having to lay out their personal resources to retain lawyers in order to do so. And that's why it's so important that any legislation make provision for speedy and inexpensive enforcement of rights.

And I also wanted to state that Professor Paula Franzese of Seton Hall Law School has asked me to express her regrets that she's unable to testify today, and that she associates herself with my comments. I'll be happy to answer any questions that the panel may have. I thank you.

SENATOR RICE: Question.

MR. ASKIN: Yes.

SENATOR RICE: Do you know when the case is going to be heard by the Supreme Court?

MR. ASKIN: We do not have a date yet. I assumed it would be this Fall, but somehow we don't have a date. It looks like it's now going to be January or February, which means we'll get a decision probably next June.

SENATOR RICE: Okay. That's one of the problems -- is that we can always go back and look at legislation, and to relate to what the Supreme Court is saying. And in fact, this legislation, some of it, was coming through prior to the Supreme Court decision in *Kelo*. That was *Kelo*? Which was the case? But, anyway, I didn't know the case was coming through here, but they were trying to get me to push legislation, and I couldn't figure out why they wanted me to move so fast. But the point is, is that I think for us to do nothing -- and we may wind up doing nothing but (indiscernible) debate -- is foolish, and to some degree be suicidal for some of the people throughout the state that have helped the problem.

I think one of the things that we need to do, that we are attempting to do, is to balance those rights as best we can, at least get the area of mediation situated where it should be, and some enforcement. So at least there can be, if not total relief, a lot more relief than people are getting now, from some of the stories I have heard.

MR. ASKIN: Well, Chairman, I believe the Supreme Court opinion will wind up consistent with what's in your Bill 1608. It will do no harm if you pass that. It would make no sense to pass the other bill, which I call the Doria-Caraballo, bill because I think it's going to be inconsistent with whatever the State Supreme Court says.

SENATOR RICE: Yes, it's already somewhat inconsistent with what the Supreme Court has already said.

UNIDENTIFIED SPEAKER: Yes.

SENATOR RICE: And I'm trying to keep the politics away from behind us, and fair. But we're also looking at both bills to see -- I understand we're looking at different statutes. We're also looking at both bills and saying, okay, the components over here that are good that can be put over here in 1608; or is there a middle bill that we have to put in. We don't know, and that's why we are hearing from the people rather than discussing the bills per se. Because then we can determine what people are really saying, and where in either of those bills is there relief for that, or, if there is no relief, where does that relief component go in terms of recommendation? That's where we are right now.

Senator James?

SENATOR JAMES: Out of respect for the time, I didn't plan to comment. But you brought a very interesting analysis there about the flyer distribution. And as a

constitutional lawyer, I'm sure that when we talk about rights and protection, there's a pro/con, and then hopefully in the middle-- My mother lives in a condominium -- senior citizen, in a park --and you're not supposed to be able to get any literature whatsoever. But she gets, like, 100 under her door from within. They don't even allow you to come outside. So someone in the building just wakes up three o'clock in the morning and puts all that literature; and there's an election tomorrow.

So you probably have to weigh the good and the bad. Do you want 100 under your door or do you want zero under your door? It's almost like when we have these issues with the telephone. When someone gets your telephone number, makes the call to you. You have a private number but they have the ability now to call and solicit you. So there's always that debate about how far do we go in, saying, "You're denying rights;" and at the same time you have a public out there that some are clamoring for more and more privacy. So I appreciate those kinds of questions. That's why we're here today. Where do we draw that line between the right and the right of privacy for individuals? So that's an interesting topic.

MR. ASKIN: Well, okay. We can talk about -- if people want to put a note on their door, "Please put no flyers under my door," fine, they can do that. But for most

people, I don't think they care that much. Thank you.

SENATOR RICE: Thank you very much. Thank you very much. The next person to testify is Hadassah Linfield, Ms. Hadassah Linfield.

SENATOR RICE: Okay. Prior to this speaker, I just want to acknowledge one of my good colleagues from the Assembly side. Assemblywoman Greenstein is here and she represents a lot of the planned real estate development communities. She has also been working very closely with me and my colleagues, because she is very much concerned and interested in this. And there have been some proposals that we're looking at that came directly from her, that look like it's going to be part of some amendments to some of the bills, whichever bill goes. But, Assemblywoman, if you would like to say something before we get to the next person?

ASSEMBLYWOMAN GREENSTEIN: I'll be very brief, because I know there are a lot of people who want to testify. But I'm glad to be here today. I want to thank the Chairman for allowing me to sit up here. Though it's my first foray into the Senate; I'm normally not in the Senate. But it's a lot of fun up here too. And as you said, Chairman, very, very interested in this issue because my constituents are, and because it's very important to them. We certainly heard a number of different viewpoints in the community.

And I don't know, since I missed a little at the beginning -- and I apologize for being late -- I don't know whether you spoke of this amendment yet. And I guess that will come later.

But I think this could be a very good compromise to assist all of the different communities that have different viewpoints in getting what they want, the people that want to be part of what is ultimately done and the people that don't want to. I do want to commend Mrs. Linfield and her group because they have been very active in this. There is another group, I think -- is Ms. Huet here? They've been very active in it.

And a lot of different viewpoints out there, but certainly it's helped to keep us up-to-date on what is going on and what's important to the people in the community. So I look forward -- and perhaps I can say something later on, but right now I look forward to hearing the testimony. Thanks.

SENATOR RICE: Thank you very much and thanks for joining us. Ms. Linfield?

MS. LINFIELD: Hi. I want to thank you for the warm welcome. I'm here also speaking for these dozens of people who have come with me from Monroe Township. My name is Hadassah Linfield. I'm a resident of the Greenbriar at Whittingham community in Monroe Township, Middlesex County.

Our community is an age-restricted development organized under Federal and State statutes, consisting of 1,607 units and approximately 3,000 residents. It is an ethnically, racially and economically diverse community.

I am active in the debate regarding common interest regulation. The group that I helped organize supports the amendment offered by the sponsors of Assembly Bill 798 and Assemblywoman Linda Greenstein. It would exempt community associations and age-restricted communities from any common interest regulation legislation that this committee may offer for a vote to the New Jersey State Senate.

I have completed more -- I'm sorry. I have collected more than 1,100 signatures on a petition to support our request for this amendment. Such an amendment would obviate the need to examine at this hearing the complex bases for imposing the regulatory scheme in A-798 and other companion bills. A-798 was in large measure conceived and written by lobbyists for trade organizations and the special interests they represent. The amendment we support speaks for ordinary senior homeowners who populate our age-restricted communities and who are among the most vulnerable in our economy. Scores live on fixed incomes. Many find themselves in reduced circumstances with the loss of spousal Social Security, and perhaps pension rights, upon

the death of their mate.

A-798 is not without costs, which go far beyond the added budgetary expenditures to create and populate State agencies. In complying with the demands of A-798, every age-restricted community will experience increased costs of community management and operations. Depending upon each community's present mode of operations, the additional cost burdens will fall unevenly. But no community will escape added expenses to comply with any regulatory legislation. One thing is certain: Those added expenses will increase monthly maintenance fees. For the many citizens of this state who live on fixed or relatively fixed incomes, often without any adjustment for inflation, this is no small matter.

The Greenbriar community has overwhelmingly voiced its opinion that the costs of the proposed legislative regulation are not worth the additional expenses that compliance will require. I offer to this committee a copy of a resolution adopted by the Whittingham Homeowners Association regarding broad common-interest community legislation. It is attached to the documents you have. As this resolution suggests, there are other means to control the actions of common-interest boards that have run amuck. Bringing those community boards under control does not

justify, in our opinion, broad legislation that will unevenly tax every common interest community through their monthly maintenance assessments.

Monroe Township has one of the densest concentrations of age-restricted communities in the state. The Mayor and Council are well aware of the division of opinion regarding the application of common-interest legislation. Nevertheless, both have chosen to represent the broad spectrum of opinion in Monroe Township that favors an exemption. Speaking to the Monroe Township community, Mayor Richard Pucci and the Monroe Township Council adopted a resolution that favors exemption for age-restricted communities. I've been told that that's also been forwarded to your Committee and to the Governor.

Frankly, it seems insulting to us that senior citizens who live in communities such as mine are viewed as incapable of managing their own affairs. One of the alleged benefits of aging is said to be the possibility of putting a lifetime of experience to work in self-governance. This legislation denies senior citizens that opportunity.

Regarding the broader governance issue implicit in A-798 and competing bills, I submit that a general conclusion has become evident. Having been unable to sell their version of the perfect community, some activists see the legislative process as a substitute for the ballot box.

We do not. Therefore, we support the amendment exempting age-restricted communities, offered as an appropriate solution for active adult communities. It should be pointed out that the amendment would allow an age-restricted community to opt into regulation. It allows those communities that favor regulation as a better course to muster the democratic process in their communities to opt into regulatory oversight, and thus avoid the tyranny of a minority that believes it knows best for all its residents.

This amendment then will give every age-restricted community an amendatory choice and bridge the differences in opinion among the activists in our communities.

I am so grateful that I've been given the opportunity to address the committee in support of the sponsors' and Assemblywoman Greenstein's exemption amendment to Assembly Bill 798. Your judgment of its merit will affect my life and those of my neighbors for years to come. Thank you.

SENATOR RICE: Thank you, as well. The problems that we have heard at testimony throughout the state has been one of "no need for us to do anything," to "we must do something immediately," to "we must do something within the middle." And that's the difficulty in trying to reconcile the two pieces of legislation that are presently there in the Senate and Assembly. And they affect different

statutes. And we're going to try to get there. And I think that the Assemblywoman's recommended amendments make good sense in terms of where we're trying to go, meaning those of us who recognize that the rights of the unit owners have to come first.

But we also have to balance the ability of a governing body, in this case the board, to govern. None of us want to see communities going down, you know. This is the City of Newark, and contrary to what you hear -- if you really took a bus tour through Newark, you will see a lot of things happenings in terms of economic development. But we know what it's like to go the opposite way because you're not given the tools to govern with. By the same token, we know what it's like when you are given tools and you usurp your authority, and your power, and you overstep it. Even in the Monroe community, or some of the South Jersey communities where I went, when people said there were "no problems in our development," there were those who stepped up and said, "Well, I do have a problem.

And so we have to be humanitarian enough and rational enough as people in government to say, well, if there's a problem that we can fix without hurting somebody, we can fix it. If we can make life better for somebody, we can do that. And that's what I've been trying to do. I spent a lot of time this Summer up and down the state.

I'm going to have two of my colleagues come up and speak, because one of them is a sponsor -- both of them may be sponsors of some of the legislation. But I want to hear from them also, on the record, as to why they feel that some of the legislation -- the thoughts they have, at least the concerns they have. Also, work interacting with people throughout the state, as well as other groups. Senator James, do you have any questions for --

SENATOR JAMES: I want to commend those coming all the way from Monroe, and you've got a gridlock locally, so I commend you. When you go to so many roads around here you're going to -- you have a problem. But I think it's a very potent statement to say that we don't want government to think for us, to do it all for us. We want less bureaucracy. It seems insulting to us that senior citizens who live in communities such as mine are viewed as incapable of managing their own affairs. One of the alleged benefits of aging is said to be the possibility of putting a lifetime of experience to work in self-governance. This legislation denies senior citizens that opportunity.

So I can speak as a senior citizen, saying I like that statement. And when I was looking at the Bill of Rights -- and it is difficult. I'm looking at one that says, "prohibiting increases of the sale price of a new home

without the agreement of the home buyer." And they go through all these other regulation, things like that. I just want to know who is going to regulate all these things. What kind of bureaucracy are you going to have that is going to make all of these individual and personal decisions, like no one is a baby anymore.

So I appreciate your comment. And although I'm on the Committee and this bill will come before Community Affairs, I come at it with no opinion until I hear from the citizens. And I think you're making some valid points there. And I'm a senior citizen, so -- and I'm looking for one of your communities, age-restricted communities. So I've got to be -- I'm reading it very carefully and closely. So, again, you made some very important comments here, statements. And if the framers of the Constitution were to wake up today, they wouldn't recognize government today because it's become such a tremendous bureaucracy.

I remember when I went to Trenton, someone said, "Sharpe, the budget used to be ten billion dollars for the State. Now it's 30-plus - 30 B -- because others believe they know more than we know. And the framers -- they're just taking more and more of our rights away and trying to -- the government can come and bloat it, too much of a bureaucracy." So I appreciate your comments.

MS. LINFIELD: Please consider our community when

you look around for a place to live.

SENATOR JAMES: Well, they're kicking me out of a lot of communities. So Monroe might be looking good to me.  
(laughter)

SENATOR RICE: I'm going to -- while the assemblywoman is speaking, I just want to acknowledge the entry of Senator Doria, Joe Doria, and also Assemblyman Gordon is here. And I'm going to ask both of them to come up. We're going to get you right on. Assemblywoman, go ahead.

ASSEMBLYWOMAN GREENSTEIN: I want to again commend the people in the Monroe community who have spoken out on this. And we elected officials get educated by our constituents as much as they do by us. And we've seen the different viewpoints out there. And I definitely want to commend this group for its effective lobbying. They've been good lobbyists and they let us know their concerns very clearly and articulately, and hopefully we'll be responding to those. So we'll look forward to working with you.  
Thanks.

SENATOR RICE: How are you doing, colleagues?

ASSEMBLYMAN GORDON: Very good, Senator.

SENATOR RICE: Okay. Either one of you can start off. I think the Assemblyman was here first. We're co-equal now. You know, one house is no different than the other.

We're co-equals.

ASSEMBLYMAN GORDON: Thank you, Senator, Mr. Chairman, members of the committee. Thank you for this opportunity to appear before you today. And as many of you know, there are a number of measures -- there are some measures pending before the Legislature now that would greatly impact the operation of common interest communities in the state. And since there a number of these communities in my own district and across the state, I've been working closely on this issue for some time.

In addition, I happen to live in a common interest community myself, the community of Radburn. And I know firsthand that many of these communities operate under an uneven and inconsistent set of procedures. This situation exacerbates many of the challenges facing these communities.

In addition, a clear set of guidelines regarding the rights of unit owners and the powers of their association boards do not exist. And when confusion and uncertainty reign, conflicts inevitably develop and trouble ensues.

To address these issues, legislation has been introduced in both the Senate and the General Assembly. The Assembly Bill A-798, which I helped sponsor along with Assemblyman Fred Caraballo and Peter Biondi, passed the Assembly in June. The Senate version, S-805, sponsored by Senators Joe Doria and Nick Asselta, is now pending before

this committee. This legislation updates the laws applicable to New Jersey's common interest communities; and more importantly provides numerous protections and rights to homeowners, and clarifies the limits and powers of community association boards.

This legislation establishes a consistent set of board powers and limitations for all boards to follow, thereby ending confusion over the rights of boards. Some of the issues addressed by this legislation are the ability to borrow money, grant easements over common property, and adopt rules and regulations governing certain types of negative behavior. Unit owners will benefit from this newfound clarity that addresses the powers and limitations of the homeowner association boards that are elected.

While disputes are an inevitable byproduct of community life, this bill creates a balanced and detailed approach to dispute resolution. The dispute process begins with mediation and ends with either binding or nonbinding arbitration. Although disputes occur, they do not have to become intractable, and this bill creates the framework for a fair and swift dispute resolution process.

There is no representative body more local and accountable than the officers elected by their neighbors to the governing boards of their homeowner associations. Volunteers elected by their neighbors are ultimately

responsible for preserving the community, meeting the expectations of neighbors, and protecting property values. It is critical, therefore, that owners feel that their association board elections are fair and transparent. This bill provides those guarantees, as well as mandates that elections be run by a committee of independent unit owners or qualified organizations designated by the New Jersey Department of Community Affairs, or DCA.

Most importantly for residents of association-governed communities, this legislation provides a homeowners bill of rights that closely regulates the levying of fines, limits the association's access to units, allows access to association records, requires certain contracts to be bid, and gives enforcement powers to the DCA in the event that a statute is violated. This bill memorializes these rights, a step that is long overdue. New Jersey residents have a right to live in communities that are governed fairly and responsibly. Unit owners place their faith and trust in the neighbors that they elect to their governing boards. Without creating a burdensome level of government oversight, this bill represents a balanced method to community association governance.

By consolidating the laws governing New Jersey's homeowner associations, and balancing the rights and responsibilities of owners with the rights and

responsibilities of the association, this bill provides a solid foundation for the future growth of common interest communities. Mr. Chairman, members of the committee, thank you for very much for the opportunity to be here today. I'd be happy to answer any questions that you might have.

SENATOR RICE: Thank you for your testimony.

Senator James, do you have any questions of the speaker before Senator--

SENATOR JAMES: I appreciate it, and echo some of the other concerns: balance, no bloated bureaucracy, and no overburden to the individual homeowner; and also, as indicated, rights of the individual in thinking. So I appreciate your comments very much.

ASSEMBLYMAN GORDON: Thank you very much, Senator.

SENATOR RICE: Senator.

SENATOR DORIA: Thank you very much, Chairman, Senator Rice, Senator James, Assemblywoman Greenstein. It's a pleasure to be here today as a sponsor of S-805, which is the same as A-798. And I'm happy to join my colleague, Assemblyman Gordon. And as you know, this bill is intended to provide a reasonable balance between the rights and responsibilities of individual homeowners and the rights and responsibilities of the majority of homeowners as represented by the community associations' elected governing board.

In that regard, it places more limitations on governing boards than exists under present law, especially with respect to management of common property, the enforcement of rules, the conduct of board and membership meetings, the rights of owners to records, the bidding of contracts. It also provides for some State oversight of community associations by the Department of Community Affairs. As I'm sure you are aware, the laws dealing with common interest communities have not been revised for well over 30 years, close to 40 years. And thus, there's a need to deal with some of the changes that have occurred over the years.

Today, the majority of association boards' powers are not defined by any legislation. They rely only on their own governing documents. There are some that argue that community associations aren't governmental in nature, yet they wish to impose many constraints and grant few powers. With this piece of legislation, we have adopted many of the governmental restraints that are beneficial to the community, such as the bidding of contracts, disclosure of records, open board work sessions, conflict of interest provisions. However, we believe that if the community associations are to be regulated in the manners similar to municipal governments, they deserve reasonable broad powers to effectively maintain, regulate, and preserve their

communities. That is the type of balance we seek to achieve through this legislation.

We do not think it appropriate to place all the nature of government restraints on community association boards and then so constrain their powers that no governmental unit would find them palatable to govern them.

This piece of legislation, which is the same as A-798, which has already passed the Assembly, for the first time in New Jersey history would create consistent law applicable to all forms of associations, guaranteeing public input at regular board meetings, public input before the adoption of a budget, public input before the adoption of rules; guaranteed access to records; guaranteed ADR through a comprehensive program; conflict of interest rules; bidding of contracts; require due process before any fines maybe imposed; limitation on the types of fines and the amount of fines; the government oversight of the association boards.

In addition, the legislation would create one law that is uniformly applicable to all forms of community associations, condos, co-ops, homeowner associations, lake associations, time-shares -- which is an area that has hardly been regulated in the past at all and has created a lot of problems, as we are aware -- and leasehold associations. It creates a balanced and detailed approach to resolve disputes, that starts with mediation and ends

with arbitration -- just as Assemblyman Gordon so well pointed out -- that is binding where the parties agree to binding arbitration. Otherwise, the arbitration is nonbinding. So it gives the opportunity to make it either binding or nonbinding depending upon the needs of the association and the constituent members.

It carefully balances the rights and responsibilities of owners with the rights and responsibilities of associations in important areas such as the bidding of contracts -- as I said, the access to records; fair elections, which is another major issue; conflicts of interest, of which many times there are many, and create a great deal of controversy amongst these board members; publishing of board minutes -- meetings -- of meetings of the minutes (*sic*); limits on association access to units; and limitation on fines and the assessing of fines.

It also would set forth specific provisions concerning the process of transition from developer control to association control, which is sometimes very difficult and cumbersome, and creates problems; and enables transitions of large communities to be undertaken in stages, which is important, thus avoiding the problem a developer is not responding to defective conditions years after they have become apparent.

Thus, this legislation is something that is needed and is long-needed. I'm aware that there is controversy over this legislation. I'm aware that some of the senior communities feel that they do not want this legislation. And as the sponsor, and in consultation with the Assembly sponsors, would be willing to say that we would exclude senior communities from this legislation if they wish to be excluded. In my opinion, it's beneficial for them to participate. But if the majority of the senior associations do not wish to participate, I think working in conjunction with our Assembly sponsors -- Assemblyman Gordon is showing his acquiescence, and I've spoken to Assemblyman Caraballo -- we could exclude senior associations. I don't think it would be beneficial but, again, if they want, we could.

As it relates to the Twin Rivers decision of the Supreme Court, this legislation would in no way interfere with that decision, but rather would reaffirm those parts of it which are appropriate for the protection of the homeowners association and their members. Thus, I believe that this legislation, in the end, is the best possible solution to a problem that has been festering here in the State of New Jersey, and has resulted in many inequitable situations for homeowners who are involved in these community associations. I would be happy to answer any questions, Mr. Chairman, you or the members of the committee

may have.

SENATOR RICE: Senator, do you have any question you want to raise?

SENATOR JAMES: Senator Doria, so you see a -- having this dialogue between competing bills is healthy, but the solution is where we're trying to draw a consensus. You don't see it as being enabling legislation, because enabling legislation would go to a municipality and the seniors would still be part, under that municipality. So you think an age-restricted community of senior citizens -- deletion in the bill would be -- would cure the bill?

SENATOR DORIA: Yes, I don't see this as enabling legislation where municipalities would implement it. I see it rather that it would be implemented at a State level through the Department of Community Affairs, and that we could exclude the senior communities if they wish to do so.

SENATOR JAMES: In the bill, or have DCA -- would it be an authorization to --

SENATOR DORIA: I think it could be done either way, but I think probably in the bill, so everyone would feel more secure.

SENATOR JAMES: Thank you.

SENATOR RICE: The committee is looking at provisions and working with Assemblywoman Greenstein to deal with concerns we've heard up and down the state, and that is

not so much an exemption, per se. It would be an exemption, but it would really be an opting in, because a lot of people don't have a problem today because of board management, because of whatever. It may very well, when there's a change of the guard, have the problem, and they need to have the ability to go back to get those problems corrected. We're trying to figure out how to get that done.

We're talking, in general, there are still some problems with some of the components -- a lot of us believe who have listened to the community, and we recognize that there are different communities. And that's why I've been trying, as you know, to balance the two thoughts of yourself and Senator Turner in the House. I'm still trying to do that, because if you look at the Supreme Court, it seems as though the Turner thought was in the right direction; but prior to the decision it almost got confirmed by the Court.

It seems as though the other thoughts were in the right direction, but there was some problems that might give the unit owners, the board, and the other people increased authority. And I've got to make sure that doesn't happen, except where needed -- which means it compounds the problem long-term. At least it's foreseeable. And I know you lawyers like to use the word *foreseeable*. We are trying to put that in check too. If we can't see it, we can't put it in check. And that's what we're looking at.

And now, seeing some of these faces here all Summer long -- and I've got to commend them, okay, because they travel. They come out. We left one meeting I think at 12 at night -- actually in the morning. And so I've got to make sure, when we get back to Trenton, that we strike a compromise. It may not be called 805; it may not be called 1608. It may be called something else, but it has to include enough to make sure that those who are having problems know that they're in a better situation to get those problems resolved -- without paying for attorneys over here, and paying for the board's attorney too, because they're paying twice. And they shouldn't have to get an attorney, in most cases, for a piece of paper that's requested and required.

And they shouldn't have to go down to the State or someplace under the ADR and get no real relief, no real direction, no real anything at all. And that's what part of the problem is. And you may not hear it when you are speaking to people outside of the sessions, just people bringing it to our attention. You may not hear the problem.

If you don't hear the problem when you go to some communities, there are no problems -- but there are others.

There are, here -- some here in Newark, big time -- foreclosures and everything else. And they are based on board decisions in many cases, and the ability not to

address that. And before the two of you came in, my colleagues, I had indicated to the speakers there's direct relationship between UCIOA concerns and SCI investigation.

And the reason I said that is because, if you look at Society Hill here in the City of Newark -- I don't know about Hudson over there. I meant to go over there and knock on some doors and find out. But, I know here, we've had some very bad construction that didn't come to light until after the fact, when you start going behind. But then there was no board complaint, maybe, until they went and said, "Here's my problem. Where do we go from here?" (Indiscernible) people don't want to respond to what they want. Attorneys are adamant as hell when it comes to these people, and I know that because I have spoken to some of these attorneys. That's got to be put in its proper place, whatever "that" means. And that's why I'm holding hearings.

So I want to thank the two of you for your testimony, and hopefully we can get copies also. And also, I want to indicate if you want to stay around, you're certainly welcome to come up here with your colleagues to listen and be heard. As the evening gets later, we'll probably have other people coming in to talk about some of the SCI stuff too. But right now we're trying to stay as close as we can with UCIOA. Okay?

SENATOR DORIA: Mr. Chairman, I just want to say

that the concept of opting in is a very good concept, which I would be supportive of, because I do believe that in some instances some of the senior communities face a number of the problems we've discussed. I think also, as your discussion relates to the SCI report -- as to the construction problems, and the quality of construction for many new homes, and the lack of proper inspection -- I think that those issues definitely relate again to the need for some kind of authority through these associations to be able to rectify some of those situations.

The problem that you have in many instances -- and this relates to the issue of the takeover from the developer to the association -- is that in many instances by the time the association takes over, the developer has let many things go on. That's why the concept of phasing in would be very beneficial, especially in those larger developments where the developer holds onto the association powers to the end; and that could be three, four, five, six years. And then there is no ability to be able to provide for protections to the members of the community. So I agree with you. I think they tie together very well. And I think the need for protections is very important.

And as you are aware, Mr. Chairman, the Department of Community Affairs, Mr. Connolly, is very concerned about these issues and is very supportive of the need to move

forward in providing some of these protections. And some of them are basic protections-- the conflict of interest issue, the open records, the accessibility of records. Sometimes, as you point out, it is absurd that members of these common interest communities have to hire lawyers while at the same time they're paying the fees for the lawyers of the association that are fighting them.

And that is an unfair situation, and in many instances it ends up resulting in people who are the members being hurt the most. In the associations or the management company -- most of all the management company running the association comes out ahead of the game in both ways. And that's something I think that needs to be looked at because, in many instances, these associations are truly not associations, but are being run by management companies who don't have the best interest of the people in the community at heart.

SENATOR RICE: All right, Senator.

ASSEMBLYMAN GORDON: Mr. Chairman, if I could just also make an observation. In my own community, which has been around for 75 years -- actually one of the first planned communities in America -- the issue has been the way elections are held. There is -- the issue is whether the public or the members of the community have an opportunity to fairly pick those who run for the board of trustees, as

opposed to having the candidates selected by their predecessors. This became such a contentious issue in my community, in the greater community of Fair Lawn in Bergen County, that there was great pressure put on the municipality to draft an ordinance to bring freedom to Radburn.

And the municipal council, in their wisdom, realized that this was really something for the State Legislature to deal with, not a municipality. And my concern is that unless the Legislature acts soon to deal with these problems, what we may see across the state is a patchwork of municipal laws which is only going to exacerbate the disparities between the rules of operating these associations. So I really think this is something that the State needs to act on. As I understand it, one of out of every seven New Jerseyans lives in some kind of community association. This is a major new trend in the way we live in New Jersey, and I think we need to update the laws to reflect that. Thank you very much.

SENATOR RICE: Assemblywoman?

ASSEMBLYWOMAN GREENSTEIN: I feel a little funny being up here. We can switch, Senator. It's kind of nice though. It's good to see both of my colleagues. This is an issue of great concern in my community. And many of the people sitting out in the audience, as you know, are from my

community. Certainly, I believe the majority of the ones who are here are very grateful that you're agreeing to do this amendment, and I think that will certainly help those who are very content in their communities. I see a couple of my constituents who I think are planning to try to speak who actually strongly favor the Turner bill and feel that there are some issues. And in the past, I've heard from many who strongly favor the bills that you're doing.

In fact, your names are on our lips all the time.

It's always the Doria bill, the -- we're saying your names all the time, because these are a big issue in my community.

I wondered if either of you have become familiar with the Turner bill enough that you, you know, can compare it. Because my understanding is it codifies court decisions. It's seen as very homeowner oriented, and I know you have many homeowner protections in your bill. Clearly, even though we'll have this amendment, we still want to make these bills as good as possible. Do you see a way of putting these together in some way?

SENATOR DORIA: Actually, I'm somewhat familiar with Senator Turner's bill, and we've actually had a meeting -- it's now over a year ago -- with Senator Rice and Senator Turner, as it relates to the two pieces of legislation. I believe that the Turner bill, obviously, is very important, and a number of the issues within the bill are very similar.

I think that what's -- however, it doesn't deal, I think, with some of the more important issues as it relates to the protection for the community and, most of all, as it relates to making sure that there is some kind of control at the state level for abuses that may occur.

It does not allow for as much input from the Department of Community Affairs as we believe there should be. You know, there are many issues. And I'm not saying the State is all knowing and all powerful. But the State Department of Community Affairs needs to have some input into the process to guarantee that some of the issues, such as the election issue, is handled properly. And what Assemblyman Gordon pointed out, as it relates to the problems within communities, is increasing in so many communities. And I agree with him. We don't need to have a patchwork quilt of ordinances and all the different communities of the state trying to deal with this, most of which would probably be thrown out once they went to court.

But everybody will be spending money again -- time and money on lawyers, rather than allowing for some kind of centralized organizational process at the Department of Community Affairs, where it really belongs. And that's given the fact that we do have the authority there and the expertise. So I think that's one of the major areas, I think, of difference between the Turner bill and the bill which I'm

sponsoring and which Assemblyman Gordon is sponsoring. We have blended together a number of the elements of the bill already in the reintroduction that took place during this term. So I do think that we have been able to move, and I'm sure we can move a little further in that direction.

And as Senator Rice so well pointed out, we can create a committee substitute which would neither be either bill, but which would be reflective of the best of both bills. And I have no problem doing that, because I think that that's part of the legislative process. Under the direction of the chairman, we obviously would be willing to work together. And then, hopefully our colleagues in the Assembly -- and I'm sure Assemblyman Gordon, Assemblyman Caraballo, Assemblyman Biondi would be able to work together to do the same thing.

I think the point here is that we do need to revise these laws which were created well before anybody even had a thought in their mind about what's been going on. Time-shares, for example, and all the things involved with time-shares, and how complicated, and how many times people have actually found themselves cheating as a result of some of the procedures used in time-shares. And those are increasing continuously, because not only do we have -- we now have time-share condominiums, which we tied to associations as well as time-shares. So you're creating

issues that were not even thought about 35 to 40 years ago.

ASSEMBLYWOMAN GREENSTEIN: Thank you very much.

ASSEMBLYMAN GORDON: It's been a while since I looked at the Turner bill, but I remember there was one section that troubled me. And that was the section relating to work sessions of the governing boards. Those of us who have served in municipal government know that there are situations where the public rightfully should be excluded from a work session when strategy for labor negotiations is being discussed, litigation, personnel issues involving privacy. As I recall, the Turner bill didn't allow for the exclusion of the public in those situations, and if that --

ASSEMBLYWOMAN GREENSTEIN: That might be true, because I think that's one of the complaints that I've heard.

ASSEMBLYMAN GORDON: Yes, and that really caught my eye.

SENATOR DORIA: That is true.

ASSEMBLYMAN GORDON: So that would be something I would want to take another look at.

ASSEMBLYWOMAN GREENSTEIN: It's not accurate?

UNIDENTIFIED SPEAKER: No, it's not accurate.

ASSEMBLYWOMAN GREENSTEIN: She's saying it's not accurate.

UNIDENTIFIED SPEAKER: I think both bills require work sessions to be open.

SENATOR RICE: Right.

ASSEMBLYWOMAN GREENSTEIN: Both do?

UNIDENTIFIED SPEAKER: Both do.

SENATOR DORIA: Okay. As I said, it was an early draft.

SENATOR RICE: Yes, the -- you know, we prefiled. We drafted and prefiled.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

SENATOR RICE: We need to get back together once we get to Trenton, hopefully -- for the sponsors of the 805, the sponsors of the 1608, and hopefully come back to the table with some recognition. We're not that far apart. The major concerns are the communities. Number one, we can not do legislation, as a way of avoiding it, that impacts on people who have need to be impacted on because "there is no problem." We have to be, as their representative, *foresightful* enough to recognize they may not see a problem now, but the next wave or generation may have the problem. So we have to make sure they have the ability, whatever law we have, to get (indiscernible) and not have to change the law.

We have to make sure that there are no economic hardships or burden placed to those who the laws intend to help. And so we are looking to remove these little fees and stuff that the owners -- because I got the information, too

-- sent letters out and distort it. Now, I understand the politics. I've been doing it 21 years. But making people think we're really doing harm, going to be bankrupting them, they're going to lose their units in foreclosure-- You don't even know what real foreclosure is until you hear from some of my neighbors up here, who happen to be attorneys in some cases, and had to stop practicing to fight boards in court to try to save units -- okay -- their own, at that.

But the point is, is that some place those things have to be recognized. We can't allow our supporters -- and I have them like anyone else -- the board members or all these owners who have been writing me these letters that I continue to put in the garbage, because they say the same thing -- we cannot allow them to drag this process. The investor's job, they invest. They're not goodwill people; they invest to make money. And this is America, they should do that. The people buying the units want quality housing at reasonable costs. But they also want to know, because a lot of them are on fixed income or a limited income, that when things occur, they have some say so in how their money is being spent.

My parents live at -- no one ever asks about my life. Every time I go to a committee meeting, I have to bring a new aspect of my life. My parents are 81. They live in the same kind of development and there are special

assessments. But there is a process that we're involved with. And they're in Pennsylvania now. And I know we have to have that transparency, but I'm also smart enough to know that these are quasi-government organizations, whether we like to call them that or not. They are legal boards like a housing authority board, like a school board. They are there. And they have to have the ability to control the quality of life in their community within reason. So we know that.

And my review of one bill - does that, in many aspects, and then it falls short. And then, from my review, the owners pick up a little bit more power than any -- the revisions make it a little better. The Turner bill was lacking. And (indiscernible) said, you know, you have to have some executive meetings versus some others. And I'm saying, okay, let's clean them up. Call it what you want, get the same sponsors -- but I've got to move something. And right now, unless we can clean them up, we're looking, win or lose, to move the Turner bill because, at least we know there, there is Supreme Court protection and sanction.

And as Frank Askin indicated, another bill, another court case may be coming through. And so I'm trying to get there. So just bear with me, stay open-minded. And I'll continue to talk to the special interests and the people that are writing me and calling. You know, you don't have to

be bad guys. Just tell them to see me. I have no problem telling them, look, I ain't got time for that. I ain't got time for that, whether it's the public or the people. This way we can get through it. See, if everybody is like this, you know, nobody is taking the heat. Let me take it, get it to where we want to go, as long as our intent is to really help a balanced situation.

ASSEMBLYWOMAN GREENSTEIN: Senator, can I ask one question?

SENATOR RICE: Yes.

ASSEMBLYWOMAN GREENSTEIN: I'd just like to ask one more question, because this is one that I've grappled with in my communities. How would you, as sponsors of the bills who know it better than anybody, how would you answer people who say, "I live in a development where things are going well? What can the Doria, Gordon, Caraballo bills do for me? How will it help?" In other words, these are developments that have their governing documents. Things are going well. How would you answer? How would help people like that?

ASSEMBLYMAN GORDON: Well, you know, I would respond this way. The membership of governing boards change. Professional managers change. Things may be fine today, but at some point in the future, things can get a little lax, audits not get done, and so on. You know, this provides a framework

-- a long-term framework for guiding these communities, and I think we need something like that.

I would also just like to add one other comment in response to the Chairman's point about redrafting legislation. If we go in that direction, I think it's important to remember that co-ops are a little different than condos and community associations. They're in many ways a strange animal. I have a good number of them in the Fort Lee/Cliffside Park area. They have expressed concern to me that some aspects of this legislation, which attempted to deal with as many different promises as possible, but not necessarily every one-- They've indicated that they feel more attention needs to be given to the special needs of the co-op. So I think, as we go forward, we should make sure we cover that.

SENATOR DORIA: I'm going to agree with Senator Gorman. Now, we do a lot of things in order to make sure that the public is protected. You have a fire department, not because you want to have fires but because you want to protect people from fires. And it's the same thing here. This is there to protect those associations for the future, to make sure that elections are run properly, to make sure that records are available. There's no guarantee -- if you're dependent upon the people that are there at present and there is no systematic means by which you can create a

protection, then something may change in the future. The management association may change. The members of the board may change. It may become an oligarchy and they become, you know, an inherent type of position, which happens in some of these associations. And the end result is the protections that exist and disappear.

So what this does is guarantee that there are protections without really -- those organizations that are running well, it's not going to impact on them. I mean, it's going to basically allow them to continue to run the way they run presently. But if there is a problem in the future, it can be corrected easily, rather than spending a lot of time in court paying a lot of lawyers to argue out the conflicts that could occur. So it's preventative, and I think that that's -- we do a lot of things that are preventative.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

SENATOR RICE: I'm going to -- thank you very much.

ASSEMBLYMAN GORDON: Thank you. Thank you very much.

SENATOR RICE: You're certainly welcome to come up and stay. I'm going to ask Ms. Lamouria -- is she here, Society Hill?

UNIDENTIFIED SPEAKER: Did you say Born?

SENATOR RICE: Yes.

UNIDENTIFIED SPEAKER: Born?

SENATOR RICE: You're from Howard Court?

UNIDENTIFIED SPEAKER: I'm sorry?

SENATOR RICE: Howard Court. Is Lamouria here?

Did she step out?

UNIDENTIFIED SPEAKER: She was here.

SENATOR RICE: All right. She may come back.

Okay, we have Eileen Born.

SENATOR JAMES: Mr. Chairman, maybe you can call three at a time and they can be seated down there, and then we--

SENATOR RICE: Yes, I've got a couple of them I'm going to do that with.

SENATOR JAMES: It will save time so they --

SENATOR RICE: Yes.

SENATOR JAMES: For the marathon walk to come down there.

MS. BORN: Good evening, Mr. Chairman and members of the Committee. My name is Eileen Born, and I'm an attorney at Dolan and Dolan in Sussex County, New Jersey. And I'm here today representing the New Jersey Coalition of Lake Associations. For those who are not familiar with the Coalition, the Coalition has approximately 80 member lake associations. The purpose of the Coalition is to identify the common problems and concerns that affect the member lake

associations in the operation of their communities; to coordinate various seminars and activities that are mostly educational, environmental and legal in nature; to serve as an information center regarding lake water management and lake community association management problems and practices; to represent lake associations in various legislative bodies; and to pursue legislation which will be beneficial to the lake association. COLA is a member of the North American Lake Management Society.

I am here today on behalf of my client to urge you to consider exempting lake associations from both the UCIOA and the Common Interest community and homeowners' association act. I would like to highlight some of the problems unique to lake associations, and demonstrate why the proposed legislation will be ineffective in solving these problems and may, in fact, raise additional challenges to some associations that already struggle financially.

The first issue I'd like to address is the applicability of both of the statutes to the lake associations. Unlike condominiums and co-ops, lake associations were predominantly created in the early to mid-1900's by individual developers, many of whom created the original developments as summer residences for people who lived in the city. While many used a master deed with covenants, many others did not. My office has reviewed the

formation documents of dozens of lake associations and find more differences than similarities, even from the same developer.

The most stable of the communities are the ones whose membership in the association or the club was required for all purchasers of the property at the lake, and where the obligation to become a member was a covenant that ran with the land. Less than a third of the lakes that we represent fall into this category. Other lakes have various requirements in their formation documents, such as mandatory maintenance fees -- which may or may not have an escalation clause, and even if they do, do not cover the basic expenses of maintaining the lake and the common properties.

Some lakes have no requirement for payment of dues to an association in their formation documents, but may have been granted an easement or right to use the lake or the common elements in their original deed. We have relied heavily on the development of case law, in those circumstances, in assessing those property owners who do not wish to become members. Under the legal theory, which was recently upheld by the Appellate Division, those who benefit from an easement are obligated to contribute their fair share for the maintenance of that easement. That is particularly helpful in situations where a dam repair is necessary.

A final category are those who are formed without covenants regarding membership in their formation documents, and without an easement as well. They rely on voluntary members to finance the cost of paying the taxes and insurance in maintaining their lake. The Common Interest community and homeowners association act identifies a common interest community as subject to the act if the owners are obligated to maintain commonly owned elements pursuant to the covenants in the individual deed. The UCIOA defines common interest property as real estate with respect to which a person, by virtue of ownership of a unit, is obliged to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in the declaration.

Given the various formation vehicles used for lake associations, it is not at all clear which associations would be subject to either of the proposed legislations. While I believe the first category would absolutely be subject and the last category would not, it's the two middle categories that are questionable. And probably two-thirds of the lake associations fall into those categories.

The second area I would like to address is the failure of the statutes to recognize the unique nature of the lake associations. Lake associations not only have a unique formation history in New Jersey, they face unique

issues that are not addressed in either proposed statute. I think it is fair to say the single most important issue for most of the lake associations is the issue of maintenance of the lake itself; and particularly dam repair and restoration, and the means to finance the repair. The dam safety statute in the DEP governs the periodic examination and oversight of all dams in the State of New Jersey.

A dam's owners, which are mostly lake associations, are responsible for submitting the engineering reports and, when necessary, repairing or replacing the dam. Dam repairs can range from several hundred thousand dollars to well over a million dollars. One of the statutes requires an approval of 80 percent of homeowners for certain capital repairs. In the case of most of these lake associations, they probably would not be able to get that kind of approval from their members, and then they would be faced with having the dam mandatorily -- the lake mandatorily lowered.

Another example of a unique issue facing the lake association is the mediation or ADR process. While mediation requirements are beneficial for most associations, any requirement for an outside provider or DCA oversight would likely be counterproductive, as they will not necessarily be knowledgeable about the very specific issues in a lake association, such as beaches or boating

activities. In contrast, the issues most often raised regarding other common interest communities involve architectural or other appearance issues for the individual unit owners, construction defects, pets, parking garages, decorating and land elements -- all of which are addressed in detail in the proposed legislation, but are not really applicable to lake associations.

In addition, lake associations are historically not subject to the statutory guidelines, such as the condominium statute or the planned real estate development statute, but were rather considered nonprofit corporations subject to the business judgment rule. As a result, lake associations benefit from a case law history which recognized their unique nature and provided them with certain protections. These protections will be undone with both of the current proposed statutes. I'd like to cite two examples.

In the case of *Highland Lakes Country Club and Community Association v. Franzino*, the Supreme Court decided last -- this year, upheld that Highland Lakes can recover dues and assessments in arrears from purchasers who take title as a result of a foreclosure action. The Court found the original formation documents, recorded judgments and the club's bylaws put perspective purchasers on notice that they would be responsible for dues and arrears, thus saving the

community members from having to continually absorb the cost of delinquent dues and late fees which were discharged in a mortgage foreclosure. The proposed legislation would eliminate this hard-won right of the lake association.

Another example, the Appellate Division has determined that those persons who are not required to become lake association members are nevertheless obligated to pay their fair share of the upkeep of their easement. This Lake Lookover case has allowed several lake associations to recover the cost of dam repair from all property owners affected, not just the voluntary members. The legislation does not recognize this right to collect from those who do not have a covenant in their chain of title.

Finally, regarding compliance and government oversight, unlike condo associations, the majority of lake associations are not managed by a professional management company. Board members are elected and in many cases recruited. Only a handful of associations actually have a manager, and those tend to be community members as opposed to professional companies. Many operate with no, or limited, part-time, staff. While all have meetings open to the public, they do not have staff managing an office, for example, so that records may be examined on demand. It is one of the biggest challenges that face a current board to

locate the historical records of the community. In addition, the Turner-Rice bill would require managers to be trained, adding an additional burden to the community.

One of the biggest problems, therefore, is the-- In addition is the authority of the Department of Community Affairs over the community complaints, voting procedures, and conflicts of interest, of particular concern is the ability of DCA to fine individual board members for failure to comply. As you can imagine, if a lake association is without staff, it will be difficult to recruit volunteer board members if they will be personally liable for compliance issues. The Turner-Rice bill includes the authority of DCA to promulgate additional rules and regulation, creating layers of government.

For reasons stated above, the Coalition urges you to consider providing a specific exemption for lake associations. Exemptions are only contemplated in the UCIOA for those associations that can demonstrate their common area is not significant or the number of units is very small. This would not allow for exemptions, readily, to most lake associations. I was not aware of the exemption that you have spoken about, and would suggest that lake associations be allowed to opt in or opt out as senior-restricted housing associations would, and that would be a solution to the lake association problem. In closing, thank

you for taking the time to consider some of the unique problems facing lake associations, and to consider our request for an exemption to the proposed legislation. And I would be happy to answer any questions.

SENATOR RICE: Do you have any questions at all?

(no response)

SENATOR RICE: Thank you very much. We'll pay attention. We'll look and see. We know there are some differences between lake associations and associations in general, in terms of the rules you have to play by. But there are also rules that are common to all these community organizations, because you start up with the permit that you have a developer, an investor, and somebody is selling something. Then, after that, there are expectations from those who purchase as to what they expect to come from those who govern.

And so we respect the fact that there is water there, but we also have to respect the fact that this whole issue is geared towards, believe it or not, the rights of homeowners versus the rights and authority of boards and owners. And so someplace in there you fit in. I'm not so sure if it's a total exemption. I just haven't heard any complaints from the lake community yet, okay? I'm hearing them and SCI from the beach community, you know; but I haven't hear them from the lake yet. But we will take that

into consideration as we move forward. And I really appreciate you taking the time to come down to speak to us.

MS. BORN: Thank you, Mr. Chairman.

SENATOR RICE: And also, you can submit -- if you didn't do it, you can --

MS. BORN: I think I did submit --

SENATOR RICE: Okay. Testimony?

MS. BORN: -- the statement of position.

SENATOR RICE: Okay.

MS. BORN: Copy of the letter to Senator Littell.

SENATOR RICE: If you give me --

MS. BORN: I'd be happy to -- I think I submitted it via e-mail about a week ago.

SENATOR RICE: Okay.

MS. BORN: But I would be happy to resubmit that. Thank you.

SENATOR RICE: Okay. First of all, let me acknowledge the presence -- he's been very patient -- of Mr. Charles Johnson, Jr. He is the chief of staff or assistant to Assemblywoman Oadline Truitt, from the 20th Legislative District. Did you want to speak or you just wanted to be acknowledged? (no response)

SENATOR RICE: Okay. The Assemblywoman could not be here today. Unlike other individuals in this state, she is up for reelection, because she came in through a special

election. So we're going to pray for her and we're going to help her too. The -- is Lamouria back? (no response)

Okay. I'm going to bring up, now, Janet -- is this Hunt or Heet?

MS. HUET: Huet.

SENATOR RICE: Huet?

MS. HUET: Yes.

SENATOR RICE: I have a problem -- not with you. But if I pronounce your name wrong, because everybody is writing like this, and I don't know what letter is which letter-- John Casteliano, he's here. John, come on up. And we have Bill D'Ambrosio (phonetic).

We're going to let the young lady speak first. And we have -- is Mr. D'Ambrosio here? There you go. We're going to be shifting mikes back and forth. Okay. You can move yourself a little bit. There you go.

MS. HUET: I have one question for Senator James.

SENATOR RICE: Sure.

MS. HUET: I'd like to know what kind of a student Senator Rice was.

SENATOR RICE: Don't ask him. Check the record. I was on the Dean's List doing honors, doing -- here at the university, and Who's Who Among Junior Colleges. They just wouldn't give me any scholarship money. I still had to pay.

MS. HUET: Oh, that's not fair. Should I start?

SENATOR RICE: Yes.

MS. HUET: Okay. I am a member of --

SENATOR RICE: Excuse me one moment, yes.

MS. HUET: I'm sorry.

UNIDENTIFIED SPEAKER: I'm sorry, Mrs. Huet, is that H-u-e-t?

MS. HUET: That's correct.

UNIDENTIFIED SPEAKER: Okay.

MS. HUET: I am a member of the League of Women Voters; I am a member of CIHC, a homeowners coalition. And I am on the board of directors of another homeowners coalition; AHRC. I am here on behalf of AHRC. We aren't powerful, we aren't wealthy, but we are angry and disappointed. We adamantly oppose the Doria-Caraballo bill, and we are in favor of the Turner-Rice bill, which looks out for the rights of the 1.3 residents of our state who live in homeowner associations.

The residents of this state who live in these associations -- I skipped something. We don't have a lobbyist who can campaign, make campaign contributions. But we know that the Doria-Caraballo bill is backed by a national trade organization, CAI, Community Association Institute. And the lobbyists are trying to get bills like the Doria-Caraballo bill passed in several states. In Texas, it is called TUPCA. Those who live in homeowners

associations in Texas, California and Arizona are trying like hell to stop these bills, because they are extremely detrimental to the owners and a gift to the members of CAI, the trade organization.

Texas, California and Arizona, like New Jersey, have large numbers of citizens who live in homeowner associations, and we are a target of the CAI. I would hate to see New Jersey be the first of these states to pass this bill. I believe it would be an embarrassment. There is one state that I have been told has passed legislation that favors owners, and that is Baby Bush's state, Florida.

There are too many parts of the Doria-Caraballo bill that are detrimental to owners for me to list to you. I will give you one example. Well, first of all, I'd like to say that the bidding section has so many exceptions that the exceptions swallow the rule. My personal favorite is the part that states that management doesn't have to get bids for insurance. The community I live in spends almost a million dollars annually on insurance. We, as individuals, shop for lower cost insurance, and huge corporations like IBM gets bids for insurance. But CAI doesn't want its members to get bids for insurance. Why?

We all know how trustworthy the insurance industry is, so perhaps there is no need to get bids. But, then again, last year Elliott Spitzer in New York fined the three

largest insurance companies in America hundreds of millions of dollars for price fixing. So perhaps there should be some bidding going on. I don't think it's wise, however, to hand them millions of dollars without getting bids. Would you do that if it were your money? We could possibly benefit from a -- who could possibly benefit from associations getting bids? The favorite insurance program, the insurance company, or the owners who are paying the bill for perhaps someone else? It certainly isn't the homeowner.

The Doria-Caraballo bill also states that all the powers of an association may be delegated to a profit or nonprofit umbrella association that exercises all of the powers on behalf of one or more common interest communities.

Most communities like the one I live in are nonprofit. Residents are outraged by the monthly maintenance increases we have received over the past six years. And I am in a community for people over 55. I hate to think of what these increases would be if we were managed by a for-profit organization.

The Turner-Rice bills states -- disallows this type of consolidation. It states, **A**No master or umbrella association shall be formed or authorized to conduct business within the state if all of the powers and rights of the membership of the subassociations have been irrevocably delegated to an umbrella organization. The rights of an

owner to vote to elect a representative of the members immediate community association shall not be diluted, assigned or delegated to an umbrella association.@ That sounds very good to me. The Turner-Rice bill sounds like a bill that will protect us from CAI, the trade organization, and its nationwide blocking group.

Unfortunately, what I have told you is just the tip of a very large iceberg, a 117-page iceberg. I understand that an amendment was or is being written which will allow owners who live in age-restricted communities to vote to opt in or out of this bill if it becomes law. This is being done because there has been so much opposition to this bill in Monroe Township, where there are several age-restricted communities and there are a couple of very small, very vocal, very angry owners' groups who have made their objections known.

Among these owners are a number of members of NARFE, the National Association of Retired Federal Employees. Have you ever in your life heard of a bill that allowed a particular group or groups to vote to opt out of the law's requirements? What this tells me is that some of the older owners in Monroe Township are aware of the many detrimental parts of this bill. Because we are so opposed to it and have seen its many flaws, someone has decided to give us a way out in the hopes of shutting us up.

There are two reasons why I believe this amendment is as unconscionable as the bill itself. The first, my mother often said, "There but for the grace of God go I" when she saw or heard of someone less fortunate than she. This is *simpatico*. It's an Italian word that means much more than sympathy. It means putting yourself in the other person's shoes.

This amendment is meant to placate us and make us perhaps say, "Better you than me. I've got mine; to hell with you. I have my way out of this hard law." It seems that today people no longer say, "There but for the grace of God go I." Today they say, "Better you than me." This amendment tells me we know how harmful this bill is to those who live in homeowner associations. And since your group or groups are wise to our intent, you can vote to opt in or out. Perhaps that's the American way now.

The second reason why I believe that this is unconscionable is that management in my community, Rossmoor, will spread propaganda about this bill and inform our owners that this bill is looking out for their best interests and that it's the best thing since canned soup. We who oppose the Doria-Caraballo bill in favor of the Turner-Rice bill don't have a means of contacting or informing residents of how detrimental this bill will be to them. I assure you that when our management finishes telling our residents

about the Doria-Caraballo bill, the majority of our residents will want to be a part of what they will believe is a gift from above. Opting out will be out of the question.

This has happened to us before, when our management's attorney rewrote our master deed and dumped numerous responsibilities and costs on the owners. Of course, we were told that it was being written to make it consistent. You see, we had two different master deeds before -- one for the older sections, and one for the newer ones. The new master deed doesn't resemble either of these previous master deeds, but it is now consistent. It's consistently in favor of management to the detriment of owners. Now we are trying to get management to take back these responsibilities to no avail. Believe me, they cannot be trusted to be truthful.

The attorney who wrote our new master deed is a member of CAI and claims to also have written the Doria-Carraballo bill. I now have a question. Who the hell is looking out for us? Why isn't the Turner bill going anywhere -- the Turner-Rice bill? It protects the 1.3 million citizens of New Jersey who live in homeowners associations.

That is why it's going nowhere. We are only the people. We the people don't count and we can't make large campaign contributions. This has become a country of the lobbyists,

for the lobbyists and by the lobbyists; and to hell with protecting the people.

Thomas Jefferson said the following: **A**What a cruel reflection that a rich country cannot long be a free one.**@** John Adams said, **A**Remember, democracy never lasts long. It soon wastes, exhausts and murders itself. There never was a democracy yet that did not commit suicide.**@** Ladies and gentlemen, I don't think our democracy is feeling fairly well at this point in time. I spoke before the Assembly Committee last year, as did others from communities throughout out state. We spoke about the problems within our communities, and said that the Doria-Caraballo bill would make them worse. We had no effect on their vote. As my grandfather used to say, it was like spitting in the wind. And as I said, our democracy is not feeling very well.

Today I am not speaking about the individual problems within our communities. Today, I am speaking to your conscience. I'm speaking about the right thing to do. I'm speaking about standing up to a national trade organization, CAI, and their lobbyists. Where have all our great leaders gone? Do you think we will ever again see a Thomas Jefferson, a John Adams, an Abe Lincoln or a Martin Luther King, Jr.? I don't think so either. What do you think these men would do in this situation?

Today our laws are for sale to lobbyists, and to

hell with the people. We must do all we can to protect ourselves because the lobbyists are not going to do it. Let's hope that our representatives will do the right thing and bury the Doria bill and support the Turner-Rice bill. We desperately need a bill like the Turner-Rice bill. When you make your decision, please pretend that one of these great men I mentioned is standing next to you. I have nothing to gain by supporting the Turner-Rice bill. I'm not a politician. I'm not looking for votes. I'm not a lobbyist for a special interest group. I'm a resident of a homeowner association, and I'm tired of having my rights trampled on and I'm tired of management lying to us.

Being given a way to opt out or in to the Doria bill tells us one thing and one thing only. This bill is detrimental to everyone who lives in homeowner associations, and those who are wise to its intent are being given a way out in the hopes of shutting them up. They are attempting to bribe us. Ask yourself if Thomas Jefferson would do this and ask yourself why our forefathers didn't give us a way to opt out of the Bill of Rights. Please do the right thing and support the Turner-Rice bill and oppose the bill that's being supported by the lobbyists for CAI, a special interest group. And remember that their interests are definitely not the same as ours. Help bury this bill.

I'd like to end with three quotes. The first is by

Abigail Van Buren. AThe best index of a person's character is how he treats people who can't do him any good and how he treats people who can't fight back.@ Thomas Jefferson said, AThe most sacred of the duties of a government is to do equal and impartial justice to all its citizens.@ Again, Thomas Jefferson, ANo man has a natural right to commit aggression on the equal rights of another, and this is all from which the laws ought to restrain him.@"

There are some who don't want either bill. That would be a good thing if it were possible to do, but it's not. CAI has been trying for years to get this bill passed.

It comes back every year like a recurring nightmare. CAI will not give up and will continue to bring the Doria-Caraballo bill back each year, perhaps with a different name, a different number, in the hopes that we will lose interest. I assure you that they will not lose interest in New Jersey or in any other state. The only way to stop them is to have a bill like the Turner-Rice bill that will protect us.

If you would like to see how homeowners in other states are trying to fight similar bills, please go to AHRC.com and you will see what's going on in California and Texas, of how homeowner associations are fighting to prevent these bills from being passed. I'd like to thank you for listening to me, and I hope you'll all do the right thing.

SENATOR RICE: Thank you very much. You can stay up there just in case there are questions. Go ahead, sir. You can give your testimony. Yes, you can stay there in case the committee wants to --

MS. HUET: Okay, all right.

MR. CASTELIANO: My name is John Casteliano. And Mr. James and Mr. Rothberg, I like the ties you're wearing. (laughter) But any how, listen, I'm just a lost soldier here looking for something to be done right. I served with the greatest combat division the world has ever seen, the 82nd Airborne. We left 15,000 crosses and some Stars of David in ten different countries. So that's where I'm coming from. I just want to know, with all this corruption that went on in the communities -- that you say there was and has to be -- how many arrests were made? How many indictments were made? Can anybody tell me that? Is it the number zero? Is it one? Is it 100? Nothing was done.

What guarantee have we got that when you put new people in they're not going to do the same thing? There's no guarantee. But with the deal that we're looking for, a rider to exempt us from this bill is the best line you can take, because we signed a POS. Everybody signed that statement when we moved into this community and we can't break it. What gives you the right to break it? Nobody gave you the right to break that POS that we signed. We're self-governed

by some of the finest men I ever met on the battlefield and off.

I think you should really take this into consideration. A rider costs you nothing. You always can come back and say, "There are violations here, you didn't live up to your agreement -- out." But the way you're do it now, you've got eight people in the room, and three of them committed a crime, and you want to arrest the whole eight of them? There's no fairness, gentlemen. There's no fairness in what you want to do by trying to pass a bill like this.

This community that I live in -- I know the young lady there came down. When something is wrong or somebody does something wrong, they go before a conference committee of residents, not before a board member. A board member has nothing to say when a conference committee comes back with a decision. We're self-governed. The cost factor is nil for what the people of the State of New Jersey have to do for us. Please consider an amendment to your bill which -- I know there are a lot of problems in other places -- but it's not going to cost you anything to give us a rider on -- a pass-on rider. Thank you very much, young men.

SENATOR RICE: Thank you also. And let me -- thank you for being a member --

MR. CASTELIANO: You can't have my tie.

SENATOR RICE: I won't take the tie.

MR. CASTELIANO: Okay.

SENATOR RICE: But I'll thank you for the work that the 82nd did in Vietnam.

MR. CASTELIANO: Well, you were a good outfit there too. You were in the Marines there.

SENATOR RICE: The 82nd and the 101st took care of us, you know.

MR. CASTELIANO: All right. You had the 101st with you.

SENATOR RICE: Yes. The Assemblywoman I think has a question or a comment.

ASSEMBLYWOMAN GREENSTEIN: Thanks, I appreciate it. I just want to clarify a few things as I was listening, because we've talked -- certainly I've talked with Janet many times, and people in the group sitting out there. There are some subtle things that I want to, sort of -- I don't know if the word would be correct, but at least speak to here. There are differences of opinion, and I just want to see if everybody is on the same page as I am. The group that is sitting up there, most of the people up there, have taken the position that things are going fine. They don't want to be part of -- when you say the bill, I always say to people, clarify what you're talking about. They don't want to be part of either bill. They don't want to be part of Doria. They don't want to be part of Turner. Have I said that

correctly?

UNIDENTIFIED SPEAKER: Yes.

UNIDENTIFIED SPEAKER: Yes.

ASSEMBLYWOMAN GREENSTEIN: That's correct. So you're touting the Turner bill, a very valid position to have. But they don't want to be part of the Doria bill and they don't want to be part of the Turner bill.

One of the places where there's a subtle difference -- and I think it's important to point it out, and I wrote down some of the quotes. You said the amendment that's being proposed is a way to shut them up, a way to placate us. The amendment, the thrust of that amendment really came through citizens. It was not the CAI that really said, oh, let's just have this amendment to placate them. The citizens wanted and continue to want this amendment.

In fact, if I understood the gentleman correctly, you were speaking about the amendment. The concept of the amendment -- and this is really important -- is to allow those who want to just be out of it, to be out of it -- as these folks up here. They don't want to be part of Doria or Turner. That's important. And those who would want to be part of it, as you would, Ms. Huet, would be able to do that. You would get a group together and you would opt in and become part of it. That's what the amendment says. But what's important is, this was not a CAI production; this was

the citizens coming forth and wanting the amendment, because they don't want to be part of either the Doria or the Turner bill. Do you see the subtle difference in --

MS. HUET: I see that, but in my community I assure you --

ASSEMBLYWOMAN GREENSTEIN: In your community, yes.

MS. HUET: -- that AHRC, our homeowners association, is very opposed to the Doria bill. And what they did to us with our master deed, they will do the same thing with this. When they make this proposal to the people and say, oh, you can vote in or out -- I don't know which way this is going to go--

ASSEMBLYWOMAN GREENSTEIN: In.

MS. HUET: --they will make it sound like the best thing in the world. They'll think it's a gift from God. They will not tell them that the bidding section is so full of exceptions that you might as well not be there.

ASSEMBLYWOMAN GREENSTEIN: But remember, don't -- okay, your -- AHRC, which is a citizen group within your development, would like to be part of Turner. You'd like the Turner bill.

MS. HUET: We'd like --

ASSEMBLYWOMAN GREENSTEIN: You'd like the --

MS. HUET: We wouldn't care if they both went away. But the problem is, the Doria bill will never go away

because it's backed by a special interest group that will keep bringing it back and back and back. You told me that if --

ASSEMBLYWOMAN GREENSTEIN: But you -- if you say that you wouldn't care if they both go away, that's the same position as these folks up here have.

MS. HUET: But I know they will not both go away. And you know it, Linda.

ASSEMBLYWOMAN GREENSTEIN: But the thing is, if this amendment goes through, if it goes through then you won't care whether it goes away. Some developments may want to have it, and that's why we want to make these bills as good as possible; maybe the folks will put them together. But what's important is you won't have to be part of it if this amendment goes through.

MS. HUET: Yes, we will. Because I assure you, if the amendment says that we are out of it, period, we don't have to vote, but if we have to vote to be in or out of it, there is no, no, no way in hell that the people in my community are going to be properly informed about the Doria bill. They're going to be told it's the best thing in the world and that -- we have 3,000 residents. I have no way of contacting these people and giving my opinion.

SENATOR RICE: Let me interject here. First of all, the opting out/opting in provision, in my mind, is

going to apply to whatever legislation comes through. I don't know why people assume that S-805 is coming through. To be quite frank about it, I'm the Chairman. I can lose the vote on the floor, but I chair the committee. I'm on 1608.

MS. HUET: I know.

SENATOR RICE: And I'm on 1608 for a reason. I was not on it when it first came in, but I look at it as 805. And there were some problems that are based on this community here too. And I brought the two together. But, as I said, 1608 may not go forward.

MS. HUET: I said --

SENATOR RICE: The whole -- no, that's not the record, just in general. The whole idea of going state is to find out what the problem is. The bill may become S and A something else, with a combination of both things. But to do nothing is wrong, because when people-- Look, there are people who don't understand the problems that senior citizens have economically. They've never been in that position. So if you go to a man and he says, "I don't get -- no, no, no, no, you don't have a problem, you're doing fine, Mr. or Mrs. Whoever." They have a problem. They're on a fixed income. You have a problem -- you're making 200,000 a year and still you're 34 years old.

There are people that don't understand veterans' problems. Some have problems, some don't. So I have to try

to be objective and say, hold it, you don't have a problem from what I'm hearing. And so you wouldn't care, like you said, if both bills went away -- fine, because you don't have a problem -- yet. But long after you're gone, someone else may have the problem. So I can at least make sure we can protect. I can't wait until then and I get a problem that I've got to deal with. You see, opting out becomes a provision on whatever legislation is considered, in my mind it becomes a provision, because my feeling is that regardless of what we do, there is going to be a group that has no problems; one with a small problem that's not impacting, and so they can care less; and one with very substantial problems. And if the majority is over here, the ones with substantial problems never get addressed.

I am living proof of that. I am living proof as a minority. I'm living proof coming from urban communities. You know, that -- if you look at the quote, unquote -- and I'm not talking black and white now -- I'm talking "minority" as it relates to the economics of things in these areas. The majority feel, we're not in a real problem. My colleagues think the same way. My colleagues sit down there and act like the only world they know is the world they represent. I bet you most of them don't know where Whiting, New Jersey. Because I didn't know it until I came. But I go. They don't come here. They don't go into Society Hill

here.

But I go in Society Hill, and Jersey City off 440. They have similar problems. The thing is, they don't know who to talk to. They just call DCA, or call this one or call that one. People in my position -- I've been blessed. Senator James has been blessed. Senator Connors has been blessed, and a few others, because we were local government officials for a period of time, which means people came to us with all the problems, because that was their first line of communications -- like the infantry going out first or recon getting out and seeing what is going on. And so a lot of my colleagues don't have that experience.

And so we understand that there are problems that need to be addressed, but we also understand when no one else knows about the problem, but that select few with it. And by the way, while I'm saying it, I want to acknowledge Mayor Bowser from East Orange here, who understands these. But I'm not going to prolong this. I just wanted to thank you for coming. I hear your comments.

I also want to say that I want to commend the Assemblywoman, because the opting-out provision -- we had this discussion because the first conversation to us was not a recommendation. She had concerns that the people in Monroe and elsewhere have-- There are some dollar amounts in these bills that don't make any sense. It may seem to

small in some people's eyes, but it's big in someone else's. And you had this concern; and how do we address this. I said, you're right, let's come up with some concept. We kept dialoguing, and we determined that, you know what, we're going to have, particularly for the communities I've been in - I sat there with staff, basically by myself. And it was clear to me, after one time, they had -- there's no problem.

Then I had to come down-- I'm going to let you speak, Senator. Then I had to come down and make a determination as to how do I do that with this group which may be in the minority, for a change, and don't know it, versus the group that has the big problem. And that's why we are crafting.

Senator James.

SENATOR JAMES: Mr. Chairman, I just think that if we're going to have public hearings and hear from the people and they don't want it, then we shouldn't give it to them. And it ought not be enabling legislation. It should be by law, where DCA cannot pose the question to a group (indiscernible) holding public hearings -- you want to hear from the people. I've got six bills in front of me that overlap -- each bill about some of the others. It's confusing. And I'm listening to the testimony here -- "detrimental," "conspiracy," "the right thing to do is to bury it." Thomas Jefferson -- we all support that.

"Protect us from California (*sic*) Homeowners Association."  
And, "We're all veterans." You've got the Vietnam here with  
the chairman; and I'm Germany, 1960, the Berlin Wall. And I  
certainly appreciate your contribution.

But I think the point is that we're hearing the  
overregulation, we're hearing bureaucracy. We're hearing  
that the right of self-governed -- people can govern  
themselves. And sometimes when trying to fix things for a  
few, we impose a hardship on a greater number. Now, I've  
read some of these bills, and I know you're addressing one  
situation where people bought a house and it said in the  
contract, if you do not close within X period of time --  
almost a year -- the owner had the right to change the price  
of the home. Well, your lawyer and you, signed that. You  
read that. So you can't wait a year-and-a-half and the owner  
changes the price of the home, then you get mad at the world  
and want government to solve what your lawyer should have  
read, what you should have read, and what you should not  
have signed. You can't correct every problem with  
government. Government can't solve every problem.

So I would hope that if we're having these public  
hearings and the people say, "It affects us detrimentally,  
it's not going to help, it's going to hurt us" -- not allow  
DCA to have enabling legislation where they could say,  
"Well, let's go poll that association. Let's go poll that--"

No, that's not it. We will strike that out of the law so we will not overburden, overregulate and place the handicap on you. I would hope that would be the outcome. In fact, too many -- all these bills overlap. There are six of them. You mentioned two of them. I've got six of them in front of me we're talking about. They all overlap.

Everyone is trying to pass a bill because it seems like you get more points -- the more bills you pass, you're more important. Sometimes you don't need six bills, you know? So we are listening to you tonight, and again you are to be commended for giving up your time and your energy. You're not home watching television. You're not cooking. You're not cleaning. You're here because you care, and we have to recognize that. So thank you for your valuable time.

MS. HUET: Thank you. I just want to say one thing. I want to be clear that I don't think there's anything detrimental to us in the Turner-Rice bill. And when I said I would rather see none, I mean I would rather see none than see the Doria. But I don't think it's possible to have none, and I think you agree. And my fear is that CAI, with their lobbyists, will get their way, and that would be terrible for the 1.3 million people who already live in homeowner associations. And if you didn't know, there is one out of every six Americans in this country lives in a homeowner

association. And that's why this AHRC.com is so active in opposing these bills that are written by CAI. Thank you for listening.

SENATOR RICE: Thank you. We're going to conclude on two comments, a quick one from me and a quick one from--

MS. HUET: Yes.

SENATOR RICE: First of all, I want to make it clear for the record, because I started out this way and I'll say it again. I'm not patting myself, because I'm tired. I've been up and down this state. The agenda today was very clear coming in, for those who read it. We indicated that we would not -- we would keep on the UCIOA -- UCIOA meaning the condominium and co-op association, the real estate planned community. That has nothing to do with the bills that are listed on the agenda in terms of open discussion -- not on the substance of the bill. But they were there. That deals with the State criminal investigations, and turn that into this crappy, rundown, newly constructed stuff that people can't live in.

And we've heard from the people, those of us who made the committee to lead us up and down the state. But I have both of those conversations on the agenda today primarily so we wouldn't have additional hearings, because we have to start to move legislation. But I also know that Society Hill in Newark and some other condos and co-ops have

a problem with the Doria bill. But they are also the same people -- unlike maybe your development -- also have construction problems, where Hovnanian built a bunch of crap in some of those units, in phases over there, until we tightened them up. That's why they are both here.

So I didn't want the conversation to kind of overlap. This is not meant to confuse. And I said I will listen to both. That's why we record it, because this committee and staff would extract those things directly related to SCI, not so much in terms of the bill number, but we know the conversations. And those things that you are talking about, that have nothing to do with the six bills, deals directly with what UCIOA has been doing and attempting to do with the legislation they want, versus the Rice-Turner bill. Assemblywoman?

ASSEMBLYWOMAN GREENSTEIN: Yes. I just very much want to thank you for coming and expressing this alternate view. I also feel that the Turner-Rice bill is an excellent bill that will be of help to homeowners. I also think there are some good things in the other. So I think I like -- and I really appreciate the senators and the chair talking in terms of possibly putting them together. I think -- the one thing I guess I don't agree with you on -- you know, obviously this will remain to be seen. But if this amendment does go through, senior communities wouldn't be

part of it. But I don't think it's going to be quite as hard to opt in, in a development like yours, as you think; and I think there will be help, I hope. I hope I'm right about that.

MS. HUET: Well --

ASSEMBLYWOMAN GREENSTEIN: But I think that way different positions will be able to get what they want.

MS. HUET: Well, speaking from my experience of living in Rossmoor, I assure you that management will convince our residents, who I believe the average age is now 76, that this is the best thing that ever happened to them.

I assure you of this. And by the way, our community is probably one of the least expensive communities. It's almost 40 years old. You can buy a place for 60,000, up to 300,000, but the average cost is 170. We're a very old community with a lot of very old people. I have a 93-year-old neighbor and an 89-year-old neighbor, one on one side and one on the other. And, believe me, these people are hurting for money. Thank you.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

SENATOR RICE: Thank you very much.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

SENATOR RICE: Thank you. Next, we're going to have -- is Ms. Dorina DeSellsa (phonetic spelling) available? Ms. Dorina DeSellsa from Essex County? (no

response)

SENATOR RICE: Okay. Do we -- be patient, Senator, I know. I've been doing this all summer. We're okay. We're in good shape. Can we have now Michael -- is he back here? Is Michael Pessi here, David Ramsey and Jack McGrath? (no response)

SENATOR RICE: While you are coming up, did Bill D'Ambrosio come back in?

UNIDENTIFIED SPEAKER: I apologize. I thought that was just a fill-in for pensions.

SENATOR RICE: That's all right. Thanks for coming. Is anyone here that wanted to speak that didn't sign up? I know I had some phone calls from people representing the co-ops, which is a little bit differently situated. They have problems with the bill too. Okay. I just want to be sure. Yes, sir?

UNIDENTIFIED SPEAKER: I think I'd like to have something to say.

SENATOR RICE: Okay. Just give him a slip and -- just give him a form to fill out. Okay?

UNIDENTIFIED SPEAKER: Okay.

SENATOR RICE: Okay. Introduce yourself for the record. I know each of you represent an organization. Try to respond to some of these questions. Let me just lay it out to you. Certainly I respect your organization and every

other organization, but you need to tell us, publicly, the problems that you are having, that are overwhelming, that we have to have so much teeth -- that people are coming under heavy, heavy feet in some of these organizations. And the questions of the organizations is, is that good nationally; what do we do to balance things. Because definitely you have some bad apples that need to come out of your organizations. Like, I've got bad apartment owners who need to come out of the builders association or the tenants association. Do you follow what I'm saying?

MR. PESSI: Sure.

SENATOR RICE: Because there is definitely a problem here, and I need to know where that problem is.

MR. PESSI: Okay.

SENATOR RICE: Okay?

MR. PESSI: Thank you, Senator Rice and members of the committee. I'm Mike Pessi. Dare I admit that I'm a property manager who runs a firm managing community associations in the State of New Jersey? We manage about 110 communities. We're located in Clifton. And, first, I'm proud to do what I do. I'm also proud to be a member of CAI. Without addressing the individual bills as you requested, Chairman Rice, I just wanted to give you my perspective. I think the one thing I do have, as a property manager who manages a hundred plus communities, is exposure to many. As

opposed to people who may live and govern in one community whose perspective may be more limited, I'm out there. I'm out there too many nights to count.

And what I've seen out there is, an overwhelming number of communities are well run led by competent volunteers in their communities. And we ought to be very careful with whatever legislative enactment we come up with to not drive away those very good people. And certainly some of the legislation that has been proposed runs a serious risk of doing exactly that. On the other side of the coin, there clearly is a need for reform. There are instances and the bad apples that you refer to that sully the name of all of us, those of us who manages communities, those well-intentioned board members who live in these communities.

So the question is, how do we deal with the bad apples in a way that doesn't deprive the ability of the well-run associations to continue to do that, and to keep good people coming forward? And oddly enough, I think the areas are not that divergent. And I just want to hit upon a couple of examples to give you an idea of how striking the balance is important.

Elections. There are clearly situations where elections are not run well, and where the incumbents do what they can to retain the power that they have. In my

experience, those issues are few and far between. And much more prevalent are those associations where we can't even get enough volunteers to populate the open board positions. So, you know, right now, we're begging people to step forward in many of our communities. A lot more bureaucracy and a lot more regulation as to what they do are going to drive away those good people. So let's be careful, again, to not legislate with a hammer here in an area like electioneering.

Requests for documentation. Once again, there clearly are boards that resist the opportunity for people to look behind what's going on and that's wrong. By the same token, there have been many a person who has requested to look at records who basically want to camp out and say, bring me the next box. And I think well-run associations can't permit those fishing expeditions and continue to do what they do.

And, finally, the example of rules violations. The example was mentioned before about a board imposing what was characterized as inappropriate fines for rules violations. My experience is -- first of all, I'm sure that's true in some examples. My general experience, though, is most people who move into these communities want rules enforced. If they didn't, they would have moved into a single-family home where the neighbor can do anything they want. They move into a community with some sense of

uniformity because that's what they want.

So that we, once again, have to strike a balance between not treating the alleged violator in an unfair way and making sure that we give them due process, but also making sure that we don't turn a blind eye to the rules that people bought for.

So I thank you. I'm not suggesting it's an easy task, but I think the legislation that ultimately comes out of this committee and is ultimately adopted has to be very careful to do it right.

SENATOR RICE: Let me listen to the other two speakers, but let me give the other speakers something to think about in your discussion. Number one, we are very much aware of the election process in a lot of these. We know, for example, if you need 123 quorum, we can only get 80 out. We also know if you get 80 out, it does not mean that the three personnel from the board -- the three people have the decision to put the board back. That's got to be addressed some kind of way.

So you're right. When you say it's hard to get people on the board, depending on how your bylaws and your board is set up it is. Because there are some people that work on the board under the conditions they're under, they just can't get elected. Because they can't get enough people at the election because they can't get a quorum, because the

numbers are too big.

The other thing -- and I know that happens right here. The other thing is that, when you talk about a fishing expedition -- 16 years in the city council in this city, 21 in state government, I'm aware of that. I can tell you everybody, basically, in Newark, who comes before us, every council meeting, calling us a bunch of names, want everything in the world. We're trying to prevent that. We know you need to have some control over your destiny, but there's another side to that. And we'll get to that side through the other speakers.

There's the people side, who do buy into these things -- but not to the point that they are being hung up and choked, choked, choked to death, because board changed, and management changed, a lot of things changed, and they have no input in the change process. But go ahead.

MR. RAMSEY: Thank you, Senator Rice, and Senator James, and Assemblywoman Greenstein. It's my pleasure to be here. My name is David Ramsey. I am a member of the Community Associations Institute. In fact, I have been the president of the National Community Associations Institute as well as the New Jersey Chapter. I do have to spend one minute -- and I'm sorry, but I can't let the record stand with some of the statements that were made previously here today.

CAI is a national organization essentially involved in the education of boards. It was created 30-some years ago by the Department of Housing and Urban Development and by the National Association of Home Builders, because they saw a crying need 30 some years ago for homeowners to have education. And, in fact, nationwide CAI has about 34,000 members, of whom two-thirds are homeowners. New Jersey has 21 hundred members of whom 1,500 or 1,600 are homeowners. Today, what we still do is educate. In fact, the State of Florida, one of the biggest states that has community associations, contracts with CAI to provide education on behalf of the state.

The second thing I have to say is, CAI didn't draft UCIOA. UCIOA is the product of the Uniform Law Commissioners, an organization that, when they put a bill together, brings across experts from the entire country in all sorts of different disciplines and then has advisors come in from all sorts of different areas. In fact, I serve as an advisor to the National Conference of Uniform Law Commissioners, and I know from going to the meetings the kind of people that are there. And they include homeowner representatives who present their position as well. Having said all that -- and I won't waste any more of your time, but I just would like to make sure you understand what CAI is

and what it is about. And it's here to educate homeowners. That's its main goal in life.

Now, in terms of issues, Senator, I couldn't agree with you more. There are certain issues that have to be dealt with. When we drafted the original plain vanilla UCIOA, back in 1996, it had none of the homeowner reform provisions in it. Assemblyman Bateman then had his task force hearings, and came out with 32 recommendations in his task force. We incorporated -- of those 32 recommendations, we incorporated 23 of them. Now, some of them couldn't go into legislation at all. Some of them had nothing to do with legislation. I think there were about five of them that we didn't incorporate at all.

The one thing you'll find out about us in this process is we have always been willing to talk. We have always been willing to say, "Well, what's your position? Here's our position. Where can we reach some middle ground that works for both of us?" And we've done that, otherwise we wouldn't have had a bill that changed dramatically as it's changed over the years. And, Senator Rice, for instance, your discussion about quorums -- as an attorney who represents community associations, I couldn't agree with you more. To have a meeting frustrated because you can't get a quorum, when the documents say that the quorum requirements are 40 percent of the community or whatever it happens to

say, and you can't do business, is crazy.

And, in fact, if you wanted to talk to us about some legislative provision dealing with quorum requirements, we would be happy to do it, because we think you should be able to do business. It just frustrates people. But I do believe -- and, again, we're willing to talk, but I do believe that some of the very issues that Senator Doria and Assemblyman Gordon talked about, and my colleague Mike Pessi just talked about -- we agree that the bad apples-- We want them out as much as anybody else wants them out, because they're giving our entire industry a bad name. We want those people stopped. And we believe that there has to be some enforcement provision in the bill -- and our bill does have an enforcement provision -- to stop the people from the bad apples -- who are the bad apples.

And our bill actually says if the DCA finds somebody is violating the law and they repeatedly violate the law and won't stop, they can be removed from office. We believe that's the right way to deal with that issue. Take them out. Let somebody else come in and serve in their place. But not to fine them, because as Mr. Pessi said, if you start fining these folks, the places where you can't get board members, you can't get unit owners to serve, they're not going to serve if they're going to be subject to fines. They're not going to do that. They don't get paid anything

to do this job. They are pure volunteers, pure.

So I'm not going to repeat what's already been said numerous times here today. You've heard it all many times. All I will say is, we're always happy to discuss issues and we will continue to be happy to discuss issues. I think the 805 bill is going in the right direction. There are some things that you would like to see changed. We'll talk about them. The one thing I do want to say: I was also a student of Professor Askin. And I guess I didn't learn my lessons well, because I don't 100 percent agree with him on some of the things that he says. These bills have very little -- neither of these bills have very much to do with the Twin Rivers case, very little to do.

While, Senator Rice, your bill and Senator Turner's bill, in the preamble, talks a lot about the Twin Rivers case, the substance of the bill doesn't deal really at all with the Twin Rivers case.

SENATOR RICE: Nor does S-805.

MR. RAMSEY: No, nor does S-805. And let me just say this --

SENATOR RICE: I just -- I didn't mean to cut you off. I wanted to be clear, but it deals with the people issues. And what Twin Rivers basically says is that, hold it, the Turner bill is more right than 805. And if you didn't get that from Frank Askin's class in terms of

interpreting the law, then you're right. You're the attorney. I didn't finish school. I'm 20 credits short. But a lot of people got out of Rutgers with degrees and some of us didn't make it out of there, who look at things differently. But go ahead, give me your view.

MR. RAMSEY: Well, my view on this is that if you have a law that says a municipality, for instance, may adopt a certain kind of law, of course they must do that in accordance with the Constitution. You don't say, when you have a law that says "You may adopt a zoning law" or "You may adopt this kind of law, or that kind of law -- you don't put in the legislation" and it must follow this particular case," because of course it has to follow the New Jersey Constitution. The same thing with our bill and the same thing with your bill, Senator Rice, and Senator Turner's bill. It doesn't keep referring back to, nor does it need to keep referring back to the Constitution, because the Constitution always preempts everything else that we do. And we recognize that. The bills are long enough as it is. If we had that provision in there, they would be twice as long.

So, in any event, I think we can both deal with that issue. I think it is time now to move forward. It's not time to wait, yet longer, for the Supreme Court to yet rule.

MR. McGRATH: Thank you, Mr. Chairman, Senator James, Assemblywoman Greenstein. I too have a connection to Newark, as I was born and raised here in my early years. My family had a business not too far from here, 75 to 80 years, on Cabinet Street off of West Market, until the Newark Housing Authority took the property -- or actually asked to take the property.

SENATOR RICE: Could you give your --

MR. McGRATH: I'm sorry. My name is Jack McGrath. I am a homeowner. I have the dubious distinction of being the first homeowner president in the New Jersey chapter history of CAI. I've listened to many things that were said today. I've been around this state. I've listened to problems that people have had. My community association, which I was just recently reelected last week to serve another term, doesn't have those problems. But I think the chairman has recognized that there are communities within this state that do have that problem, and he's trying to balance the act to correct these situations.

I am also the chair-elect of the Community Association Volunteer Leaders of CAI National. There are seven of us that represent homeowners throughout the country. I'm proud to be a member of CAI. I really resented some of the things that were said here today, but I'm not going to direct myself to that.

Committee associations have to make important and sometimes complex decisions that impact every homeowner in their community. Consolidating the laws that govern community associations will more completely define the structure within which these associations are permitted to operate. By reducing the potential for confusion, we hope to also reduce the potential for internal conflict and misunderstanding with individual community associations. And, in closing, I'm reminded of an adage by Bill Cosby. I don't know what the key to success is, but the key to failure is trying to please everyone. Thank you for the opportunity to address you today.

SENATOR RICE: And let me concur with your quote.

Anyone who knows me, I don't try to please everyone. I try to help everyone, recognizing that if I try to help everyone, I fall short but I take care of the majority. That's my history, that's my legacy, and it's documented. Let me also indicate that those who are promulgators of the 805, I understand from talking to Bill Caulis (phonetic) and others that this initiative started years ago, to the point that Bill got frustrated talking to me as well. It's almost like, "I've got to have it because I worked so long." But times change, and so do people and the way things happen.

But I never really hear or get a good grip, line by line, what's wrong with 1608, if you took the foundation

of it. Because some of the things that are in 1608 came from S-805 when we came -- we started whacking up pieces. But there seemed to be sections -- and I won't identify them now; if you want me to identify them I will -- that you are very adamant about. And the areas that you are very adamant about are the areas, it seems, to not really "balance" the rights of residents, but in some cases create more authority for the board, that can be of use to diminish those few rights they have left.

Now, if you need me to get that to you -- because maybe you should be talking about not 1608, not 805; maybe that's the problem. Everybody has their team now. Maybe we should talk about what is it we agree to in 805, what is it we agree with, in 1608 -- not the good stuff, the hard stuff. Maybe we should do the opposite. Let's talk about what we don't agree with and how we get agreement, particularly if you're talking about expanding powers to board members beyond what they have. Make things a little tighter, and give more rights to homeowners that, maybe -- rights that go too far that -- I guess get those long lines. Maybe that's where we should be at, at this point as we move forward, you know, because I think it's important that we do something.

But we can't say, "This is where I was for so many years and now" -- you know, instead of -- because I'm telling

you right now, as Chair, it may not ever come out of committee. And I think if we did nothing, then it would make it status quo, which means we still have the problems. Some of the people having problems, they're spending big money individually and collectively for attorneys. And attorneys want that, by the way. I know some of these attorneys, okay? Some of them are legislators. But they like that stuff. And in the meanwhile, they are paying your organization -- not your organization, but the management group attorneys, because the management has to have an attorney. And they're getting double-whammied. In the meanwhile, people are being foreclosed and everything else.

So to do nothing to me is foolish and suicidal. To move forward, even though we -- none of us may be happy. Give you the benefit, since 1996, to get a step up and open doors so we can continue to dialogue and talk and weigh things. Given our option would at least -- you know, Senator James -- allow some folks in the senior community who don't have problems, or others, some kind of way not to do it. I believe in permissive legislation and I believe in statewide mandates. But I also believe that we can create a compromise, if that's the only way to go to help people, and other people don't get hurt; that's the best way to go, you know.

So I don't try to legislate to make everything one

way for every city, when there are 566 different cities. But if I can't help it, then somebody gets hurt in the mix, because I've got to help those who need help too. And so think about those things for me. You've got good representation -- believe me, you've got the best -- that called me quite a bit to educate me, try to get compromises, etcetera, in Trenton, people that I talked to on your behalf and others. But we're not there yet. And either the chairman, that's me, is going to move a bill forward that looks like 1608 or there won't be a bill. And I think we need to have one.

So my point is, is that let's take 1608 and 805, come back to the table. That's what I tried to do with both people a year ago, and some of the staff there. We were doing pretty good until somebody outside decided we shouldn't go any further. They thought maybe we were working too good together. We need to get back to that. This will be the last bill to come out of our my committee in terms of the series of public hearings that I've been holding over the summer. We're going to do eminent domain. We're going to do SCI. So -- But in November, beginning of December, I expect a call for a debate on the bill. If it is my committee and the majority see fit for a bill to come, it's going to be the bill that's a reflection of these public hearings and other things to be heard, and all the interest groups on both

sides that had it.

If they say "not," then there won't be a bill. And that means that next year when we start doing campaigning, those who think I'm wrong can do all they can to get me unelected. I've been there before too. But I've got to work for everybody. I've got to work for you. I've got to work for the people in particular. And I've got to work for not just people in my district, but my vote, when it gets cast, is statewide. And so we are New Jersey senators and assemblypersons, and we've got to be mindful of the fact.

And so I'm not going to go into the election year worrying about this group of people who are residents and voters, what they're going to do to me. I'm not going to go in worrying about what the money people are going to do to me. I'm going to continue to stay focused since I have 21 years, on how do we work together. And we have been doing that. We're almost there. I just think we're a little bit away from where we should be. And I will get back and call the legislators together, and everybody else, with all of this to see where we are. I don't think we're that far apart on helping the people.

MR. McGRATH: If I can say one thing, Senator Rice.

SENATOR RICE: I'm sorry, excuse me.

MR. McGRATH: I don't want there to be a

misimpression that for 10 years we've stood still, because far from it. We've made dramatic changes to the bill in response to other people's requests to it over that 10-year period of time. What we have found is the people who are adverse to us are unwilling to make any changes. And to be honest with you

-- and I should be honest on behalf of our organization -- we would never accept 1608 as it currently is drafted. And if you do want a line by line, we're always ready to do that.

I mean, I have it here and I could spend the next hour telling you what's horrible about 1608. But I don't suspect, for the sake of everybody else who is here -- that's not fair.

SENATOR RICE: Well --

MR. McGRATH: But I'm always willing to engage in dialogue to get to a bill that meets the specific concerns that you have and also meets the concerns that we have.

SENATOR RICE: Well, that's what I want. What I've been asking for is objectivity, line by line, because I can take your bill and I can go line by line until I'm very happy what I know about that bill. I can even lay it down with all the other statutes, okay, what was intended for what. I can lay it down in your bill as to why I can't do this because, if I do this, this really should be over here. I can do the same thing with the -- but what I don't know is

your side, line by line. If I raise the question, "Why would you not want to do this, this is not taking away power from you but it's helping so and so," then I want you to say, "Well, I disagree, this takes away our power." Be honest.

If it's a power thing, don't be ashamed and say, I don't want my power diluted, okay. Don't be ashamed to say, we need more help and more teeth. Let me know exactly what's wrong, okay, because one thing I know, if I don't know anything else, a lot of things people give up, they have no problem with. But for some reason, when it comes to power -- I don't care if it's political power, position power, organization power -- nobody wants to give. And I've always argued to the people to get off their butts. The real power is in the people in the first place. They just don't know it because we keep them divided so much. But show me where we hurt you, because I don't want to hurt you. I want to help. But I want to help the public that you serve because it's the same public that we serve.

MR. McGRATH: We're happy to do that. And I want to make it clear that at the end of the day, what hurts the association hurts the owners in the associations. And that's where we have a problem and that's why I want to have that dialogue.

SENATOR RICE: That's what we have to see. That's where we have to break it down, okay?

MR. McGRATH: That's fine.

SENATOR RICE: Okay, thank you very much.

UNIDENTIFIED SPEAKER: Thank you.

UNIDENTIFIED SPEAKER: Thank you.

SENATOR RICE: Okay. We're wrapping up for those who have to leave. Okay. We have John Cannel. And Conor Fennessy. Is Conor still here? (no response)

SENATOR RICE: Okay. I'll get to you. We're getting ready to wrap up, okay? I just want to stay with UCIOA stuff, okay?

MR. FENNESSY: That's fine.

MS. BOYD: My name was called twice. I'm sorry, Senator.

SENATOR RICE: You're back.

MS. BOYD: Lamouria.

SENATOR RICE: Yes. Why don't you come on up. You can come up and sit, John, but let her speak first.

MS. BOYD: Thank you.

UNIDENTIFIED SPEAKER: I'm sorry, you've got two others.

SENATOR RICE: Yes, I told him to sign it and to come up. She was --

MR. KAMINSKY: I signed it. They have a bus waiting for us.

SENATOR RICE: Oh, they have a bus waiting for

you?

MR. KAMINSKY: Yes.

UNIDENTIFIED SPEAKER: Yes.

SENATOR RICE: Okay. You're the last speaker?

MR. KAMINSKY: I will be very brief.

SENATOR RICE: Come on up, no problem.

SENATOR JAMES: Take your time.

MS. BOYD: I don't mind waiting. I just --

SENATOR RICE: Yes, just --

UNIDENTIFIED SPEAKER: She can come up and sit  
down now.

SENATOR RICE: Yes, I'm telling her to come up now.

UNIDENTIFIED SPEAKER: She can sit down. Yes, come  
and sit down, Lamouria.

SENATOR RICE: Wait a minute. You guys let -- and  
I respect the Senator and I respect the staff. Let me run  
the meeting. I understand that, okay?

You were asked for several times. Have a seat,  
okay, and we'll let you speak. I know I told you you could  
speak; and I also said I had him come, but I didn't know a  
bus was leaving. So I'm getting this together. Okay, all  
right?

And thank you for allowing the gentleman to speak  
so he can make the bus, because the people did travel a long  
way, as well.

MR. KAMINSKY: Thank you very much for giving me this opportunity.

SENATOR RICE: Just make sure you give your name for the record and where you are from. Okay?

MR. KAMINSKY: My name is Joseph Kaminsky. I'm a resident of Monroe Township, Greenbriar at Whittingham. And I thank you for giving me this late opportunity to speak. I'm going to try to be as brief as possible, but one thing that has not been discussed is that in 1608, that calls for the ban of an umbrella association. And in my development, we have three different villages. And as I understand, the banning of this umbrella association would require us to have three different organizations. That includes three different managements, three different boards, etc. I don't know if this is interpreting it the way the law is written.

However, if that be the case, the three managements would -- no one has ever mentioned how much it's going to cost in additional costs to run these operations. I have made a tentative calculation. I'm certified. Based on three different managements, if 1608 comes through, it's going to be a substantial increase. You'll have to have three different management teams. That costs money. And other than costs, CAI sticking their two cents in with lobby costs. It's just an increased cost on everything.

And I blame the community themselves for this

problem, because no one wants to get out and vote. It's always, "Leave it to the next guy." But as soon as anything comes through, then everyone bitches and moans. But you've got to do something for us. This isn't going to help if that be the case.

SENATOR RICE: Well, let me-- Is that your reading of 1608, or is that something that was explained to you by --

MR. KAMINSKY: Would that require an umbrella ban? The umbrella organization would be banned. What would be replacing the umbrella organization?

SENATOR RICE: Yes, my question is, that's your interpretation from reading the bill or that's something --

MR. KAMINSKY: That's only one of them. There are plenty --

SENATOR RICE: Okay. Then let me just --

MR. KAMINSKY: I don't want to go into too much detail.

SENATOR RICE: Yes, but my point is, is that that's not totally accurate.

MR. KAMINSKY: Well, what's accurate?

SENATOR RICE: What happens right now, they can form these master organizations and break them down. The builder is trying to stop that from happening unless they are already formed.

MR. KAMINSKY: That's how it's read?

SENATOR RICE: Yes.

MR. KAMINSKY: I don't know --

SENATOR RICE: Hang on. We're going to take --

MR. KAMINSKY: I understood it to mean that that would be banned, and in lieu of there will be three different organizations.

SENATOR RICE: Hang on a moment.

ASSEMBLYWOMAN GREENSTEIN: The --

SENATOR RICE: No.

ASSEMBLYWOMAN GREENSTEIN: That's not -- the court decision in *Fox v. Kings Grant*, which is a New Jersey Supreme Court decision, held that certain types of master associations are not permitted to be formed by a developer if they usurp all of the political power of a subcondominium association within a larger planned community. And the bill provides that that court decision is modified. So that a developer would not be permitted to form a master association in that right. The bill does not -- there's no provision in the bill for disbanding any master associations that have already been formed prior to the court decision.

MR. KAMINSKY: Well, I'll have to go through it because the way I read it -- and I had someone give me an opinion on it who is an attorney. This is what they understood it to be. It would ban -- there has to be an

increase in costs, period, no matter what goes through. And we're really under some pressure where I am now, because the latest thing -- they're estimating an increase in our maintenance costs starting in 2007, plus all the other increases. It's just going to be an unbearable situation for most of the senior citizens living in New Jersey.

SENATOR RICE: Now, did the -- in the Senate Bill 805, unless there's been some amendments, Section 44 of that particular bill, part of that bill, 805, not 1608, what that does -- that permits the developer to form the master association. And then if, in fact, that happens, then it's actually going -- it's actually contradicting pretty much what was said in the New Jersey Supreme Court case of *Fox v. Kings*. But we'll look back into it to make sure there is clarity, because the idea is not to go retrospect, but to go future; and that's the whole idea. But I think you have it -- you've got the two bills wrong in terms of which one does what.

MR. KAMINSKY: I don't know. That's very possible. Of course, where we are now in Greenbriar, we're very, very happy with our board. It's -- everything is open door. If I want to go into my accounting office and ask for a statement, no question. If I have a problem with management, I go right into the manager's office and state my -- no problem. Everything is an open door. Nothing is

hidden. We have elections free and clear, no problem. We don't want any part of this situation.

SENATOR RICE: And that's why --

MR. KAMINSKY: It only incurs additional costs.

SENATOR RICE: No, first of all, cost is coming out, but it could be cost, indirect if you sued us, why we're looking at the option; where you have an option of taking your

(indiscernible) and not to be a part of it. But we also want to make sure, in the future, long after you've transferred someplace else, if the problems do start to rise, they can get in. Okay?

MR. KAMINSKY: That's another problem.

SENATOR RICE: We're on your team right now. Okay?

MR. KAMINSKY: I thank you very, very much for your time.

SENATOR RICE: Okay, thank you, thank you very much.

ASSEMBLYWOMAN GREENSTEIN: You have to speak into that one.

SENATOR RICE: Speak in -- go sit next to John here, Lamouria. Sit right next to the big mike. Okay.

MS. BOYD: Thank you, Senator Rice, members of the subcommittee.

ASSEMBLYWOMAN GREENSTEIN: Thank you. Thank you,

all.

UNIDENTIFIED SPEAKER: Thank you.

SENATOR RICE: First of all, thank you, everybody.

Excuse me. Thank you very much for being patient, for traveling. You became a new family. I don't know what the bill is going to look like. You may not want me in the family later, but we've been spending a lot of time together. And I'm sure the Assemblywoman is just as --

ASSEMBLYWOMAN GREENSTEIN: Thank you all, constituents, for coming.

SENATOR RICE: Go ahead.

MS. BOYD: Thank you. First off, I'd like to thank the subcommittee for permitting me to address my concerns. Secondly, I'd like to thank you personally, Senator Rice, for keeping your promise and following through on these issues which are so critical to over one million New Jersey residents; and also, I believe, to people who are living outside the homeowner associations. My name is Lamouria Boyd. I am an attorney. I am not a member of any common or community association organization. I am a homeowner in Society Hill, here in Newark. I am also an assistant county counsel here in Newark. I am not a nut, but I am someone who believes in advancing the causes that are critical to my community and also standing up for what I believe are my rights.

The reason that I have opted to address this subcommittee is because of a nightmare that I lived for three years, all right, to litigate against nine attorneys in order to assert my rights and to preserve my home over what started out to be a minor dispute over a refundable deposit. The bylaws, the governing documents of my condominium association were not followed. And in the context of litigation and also in the context of being a homeowner throughout the years, I asked for a review of the homeowners association's records and was denied access to that information.

I followed through with a complaint to the Department of Community Affairs, Division of Codes and Standards, Bureau of Homeowner Protection, only to receive a response approximately nine months later that if I wanted to review those documents, I would have to go through the condo association attorneys, which is not the procedure outlined in my homeowners' governing documents. Additionally, there were financial records that were applicable solely to my unit that I asked to review and I was denied access to those things. And in trying to litigate those issues, I was shocked to have a Superior Court judge say to me, "You have no right to review those records," even though it's clearly outlined in the condominium act that you had a right to review them prior to purchasing your home.

Now, I'll tell you why that's so significant for me -- because I undertook to litigate those issues myself as an attorney. I looked for three years for counsel to represent me. Professor Askin was here, testifying before you earlier, and he said something that was right on point. If you find an attorney that is well-versed in the area of the law, they won't be representing homeowners. They will be representing condo associations. So what really the homeowner is left up to is to have a lot of money to pay the average attorney to bring him or herself up to speed with this area of the law. And then ultimately if they don't prevail, they're going to be paying two attorneys, notwithstanding, in your association dues, you're already paying for those attorneys.

So the burden on the homeowner, I think, is an enormous burden, when you have rights that you should be able to assert and you're left with basically either pulling the equity out of your home or refinancing, or whatever you have to do, in order to assert your right. And so your other alternative is to impart to the Legislature the importance of making sure that your rights are protected. I just want to emphasize how critical what you're doing is here today for those of us who are homeowners. I don't come to you as anything but a homeowner. But what I am doing, I think, is speaking out for that average homeowner, my

neighbor, who maybe couldn't get to this hearing, that neighbor who doesn't feel empowered to reach out to you.

Senator Rice, you know -- I wrote you a letter which I'll provide a copy of this letter to the committee, I made extra copies -- you know that I've been on this issue for a long time now. And I wrote you outlining some of the concerns that I had on January 21 of 2005. And those issues have not gone away. I think it's atrocious that Ed Hanneman is really the only go-to person that we have here in the State of New Jersey, and he has no real viable backup in terms of litigating these issues on our behalf.

As well -- and, again, I have a volume of information on this subject, but I know the time is limited.

As well, there are some issues with respect to the construction defects. Now that we're out of time in Society Hill, I want to ensure that new homeowners are -- that there is full disclosure as to possible defects to new homeowners.

I have an electrical box dangling underneath my kitchen sink. There should never be that kind of situation, an electrical box dangling under a water source. That's something that I just, from common sense, know as a unit owner. I'm sure that someone constructing these developments has to know better.

But, I want to know, how did that get past inspection? Why is it that there is only one means of

egress and ingress in Society Hill? Why is it that it took me six months to get my condo association to have my neighbor remove two park benches that were chained in front of my bedroom windows? It should not take that long to have simple issues addressed.

So I'm going to ask -- the other thing is that one of the things that I learned in the course of all of my research is when you are purchasing these properties, even if you review the governing documents ahead of time, you're not told what you're going to be faced with if you try to assert your rights under them. I think there ought to be full disclosure by these condo associations as to whether or not they are going to adhere to their own rules and regulations, because in my view it's a fraud in the inducement if you know that when a homeowner goes to assert their rights, you're not going to cooperate with them and you're not going to follow your ADR procedures.

And I believe that this Legislature also ought to take a look at how what it is doing conforms to what Federal regulations and nonprofit law says. And so I appreciate the opportunity to speak out on these issues. As you can only imagine, I have a lot more to say, but I am mindful of the time constraints and I thank you.

SENATOR RICE: A couple of things. We're at a stage now, Ms. Boyd, that some of the recommendations that -

- and then you understand the legislation. You kind of know the changes made so far in these different bills, 805, 1608.

But beyond the bills, the conversation that was generated here today, I need you to take the time again to give me an update on potential recommendations that govern these condos units; because people don't even know what you and your neighbors are going through. They think that the way they're living -- that's the way they all are, and they're not. And it's easy to say, well, go make the board do it that way. You can't make the board do it that way given the structure.

So I need to know what those recommendations are so we can look at them.

MS. BOYD: Thank you, Senator.

SENATOR RICE: In terms of this whole construction piece -- of SCI, etc. -- a lot of problems at Society Hill -- we were glad to see Society Hill come here. We know it's the spark plug to taking Newark to where it should be. You know Newark, has come -- you can hunt for their (indiscernible) there. But unfortunately, in some of those phases the developer -- you know, at one time I thought they did it because it's Newark. One thing about people coming to Newark, they figure minority and women, etc. You know -- it's Newark, we'll do what we want to do and nobody will know it.

Unfortunately, the same developers did the same

type of construction in suburban and wealthier communities.

That's unfortunate. The question is, how do we start to tighten up, given an SCI investigation, where there is fairness, because the majority of the people in the industry who are builders are not bad. But there are a handful of developers, from my perspective, and it's my opinion that an investigation needs to go beyond SCI. It needs to go directly into a criminal investigation. And I'm getting those things -- those are things that my colleagues, such as Senator James and others who don't make these meetings, don't hear. They hear what people tell them in Trenton, and then people in Trenton are usually lobbyists and people who are friends of ours, supporters in some cases, but they represent other interests.

What they don't do is come out and hear from people like you on this very serious stuff. And that's why, when they get to committee meetings like this, it's a little confusing about what we're talking about, because there's no real focus. And so I would need anything you can give me and the residents over there. I know that some of the residents work late and they said they would probably come here. They were going to send an attorney for the boards because I want to know what they have to say as well. But get back and get me what you can; and I appreciate it. Okay?

MS. BOYD: If I can just respond, Senator?

SENATOR RICE: Sure.

MS. BOYD: I actually had -- unfortunately had taken pictures, which I downloaded. I couldn't print out fast enough in order to try to halfway make this meeting.

SENATOR RICE: I understand.

MS. BOYD: I had a very busy day today. However, if it pleases the subcommittee, I can certainly create a file attendant with the pictures that I have taken.

SENATOR RICE: Right.

MS. BOYD: And some of the other documentation which I think is critical to what you are doing. And I can e-mail it to the committee members, if that's acceptable.

SENATOR RICE: That's acceptable. And also, I'm very much interested because you're going through a process that others are going through, a little differently, in some of the other developments, like Ms. Giovine's and others. I need to know how to tighten the process up. You know, how do you go before a construction board and they to some degree work with you, and on the other side ignore you? You know, how do I turn and just say, "Well, we're going to just give you what we want to give you, more or less, and the hell with you, that's what everybody get and we agree with that? For example, inspection on your house. You know, I respect the fact that so many units you want a general

inspect. But if I require one with my name on it, what's so difficult about putting my name on it? Do you understand?

MS. BOYD: That's right.

SENATOR RICE: I need to know these kind of things. I need to know what happened when you tried to go to ADR. I know-- Mr. Frasier (phonetic) was going to be here. I don't know who is right or wrong. But I know he's been writing every day he's been to the state. He said, okay, you want me to go down there, I'll go down there. He went down there and came back totally frustrated. I don't think because the result; I think because of the process. You know, I need to know and it's on the record, you know, what do you mean you waited nine months for a response from DCA?

See, there are things that my colleagues don't want to take into consideration in this legislation. They just want to make it sound good, tell somebody did something wonderful for them, get reelected and move to the next piece. And I respect that, but that's not my style, as you know. I've got to know where I'm going. Look, when it's all over with, everybody is not going to be happy with me anyway. And I'm talking about people who I'm trying to do the bill for. But we want to put as much writing in as we can, before we strike compromises to get a bill passed.

MS. BOYD: Well, the beautiful thing, Senator, is

I'm a packrat. So I have all their letters. I'll be glad to send them to you.

SENATOR RICE: Thank you.

ASSEMBLYWOMAN GREENSTEIN: Senator?

SENATOR RICE: Assemblywoman.

ASSEMBLYWOMAN GREENSTEIN: One quick line. I'm really glad to hear your story. It's clearly compelling. And I want you to know that our Monroe people who have left, they were giving you a big thumbs up because --

MS. BOYD: Good for them.

ASSEMBLYWOMAN GREENSTEIN: -- your story and theirs are similar. So obviously, it's good for us to know how this is happening throughout the entire state.

MS. BOYD: Absolutely.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

MS. BOYD: Thank you.

SENATOR RICE: One thing that didn't come up throughout the state -- maybe you can speak on it, and then maybe they'll want to, Ms. Boyd.

MS. BOYD: Yes, sir.

SENATOR RICE: Maybe it's something you can discuss in general or in detail, whichever you choose. Maybe it's something you don't want to discuss because we've had conversations. The number of foreclosures in these common community developments, at least in that area, are

ridiculous. And then I'm told that a lot of the foreclosures are justifiable. But I'm also told that a lot of foreclosures are really caused by some of the decisions and the way the board is handling things.

MS. BOYD: Absolutely.

SENATOR RICE: And we need to have a little bit more, if you can, on the record for that.

MS. BOYD: I can give you just what I know, Senator.

SENATOR RICE: Okay.

MS. BOYD: I'll tell you what prompted me to litigate. What prompted me to litigate was, as I indicated, it started over a simple dispute over a deposit, a refundable deposit. And I was a little shocked to see how the condo association attorneys were so eager to go after me. And I then turned to my governing documents and what I expected was the ADR procedures as outlined in my governing documents, and to resolve some concerns and issues I had. What I got was actually exactly the opposite, okay?

So fast forward to three years of litigation. I attended the board meeting in October of 2005 and I addressed these concerns with the board. And I was told flat out by the board treasurer, who is now the board president, we don't do -- we don't oversee what the property management association does and their attorneys. We just

let them do their own thing. So, in other words, you're standing in the fiduciary duty to me, and you just let the attorneys and the property management do their own thing -- the property management company whose contract expired two years prior, mind you, and so, under our governing documents, had no authority to do any of the things that they were doing.

As an attorney, I also knew that I had -- the number of foreclosures in Society Hill was a matter of public record. So I could request of the court, say, an accounting of how many foreclosures had transpired. And that letter, I think, then was distributed to you. At that time I think I had counted about nine foreclosures. When I updated my research, about six or -- maybe six to eight months later, the number of foreclosures which had taken place had actually exceeded the number of units in the development. Now, my neighbors and I, we're working people.

You know, there are some retirees and maybe a few others who, you know, I don't know what their incomes are. But, for the most part, we're working people.

So this is not just a neighborhood of deadbeats. Our maintenance isn't so exorbitantly high that people can't pay it. But I think that what has happened, and what I would have rather had seen, was that these aggressive attorneys had gone after the developer during the period of

time when they could have litigated the construction defects, rather than running my neighbors out of their homes when they probably could have sat down with the neighbors and worked something out. And then they undertook to unilaterally -- although there should have been a 70 percent vote of the homeowners in order to change or amend our bylaws or our governing documents -- the board undertook on itself to amend our bylaws and then engage in the practice of towing unit owners' cars from the lot.

So these violations are egregious. One year ago I asked for the minutes of that board meeting. I was told they were not available. We're having a board meeting on November 20. So now I'm expecting on, November 20, to get the board meeting -- the minutes from last year's meeting. But, clearly, there is a problem here.

SENATOR RICE: So to get the -- do you know whether or not the minutes are available from last year's meeting?

MS. BOYD: I was told they were not and would not be until this year.

SENATOR RICE: So minutes from a meeting are not -- okay. In other words --

MS. BOYD: That's what I was told.

SENATOR RICE: -- there's that much time in between producing minutes for a meeting?

MS. BOYD: That's what I was told.

SENATOR RICE: The staff needs to note that, because these are the kinds of things -- you can't get records, you can't expedite things, you can't -- these are the kinds of things that nobody wants to hear about, I know at least in the political arena. You know, they think 805 is the greatest thing in the world and it's not. And I really wish my colleagues had stayed to listen to Ms. Boyd. That's why I was trying to get her up a little earlier. Okay. Thank you very much, Ms. Boyd.

MS. BOYD: Thank you. Thank you, Subcommittee.

SENATOR RICE: Okay, John.

MR. CANNEL: Thank you. I --

SENATOR RICE: Excuse me one quick moment.

MR. CANNEL: Sure.

SENATOR RICE: I'm glad that you stayed. Would you relate back that, in those communities in Monroe and others where there is no problems, this is the opposite side of it, the story you just heard? You know what I'm saying?

UNIDENTIFIED SPEAKER: There are plenty of problems in our community.

SENATOR RICE: Okay.

UNIDENTIFIED SPEAKER: There are plenty of problems in our community.

SENATOR RICE: Right. And I was talking about the

ones -- all of the them don't have them. I'm talking about the ones that say, "I want to try to help," that don't have them. This is the other end of it. Okay, go ahead.

MR. CANNEL: I am a lawyer. I work for the New Jersey Law Revision Commission -- legislation commission. And the Commission began about four or five years ago working in this area. We turned out a piece of work that I'm not sure was terribly helpful. A lot of the unit owners liked it and the CAI didn't. And it went nowhere, and that may have been perfectly all right; in fact, appropriate given all the things that have happened since. This is perhaps the most important area that you are likely to legislate in. It might be the most important bit of law in this generation. Basically, what's happened is we --

SENATOR RICE: Needed changes.

MR. CANNEL: Yes.

UNIDENTIFIED SPEAKER: Can you give your name?

MR. CANNEL: Oh, I'm sorry, my name is John Cannel.

I'm the Executive Director of New Jersey Law Revision Commission. What's happened is, there's developed this new level of government that has come in, that affects between a sixth and a seventh of the people in the State of New Jersey, and the law has not done much with it. There is a real need for comprehensive legislation that will regularize everyone's rights and responsibilities in this area. But,

having said that, it isn't easy to do.

When the Commission began its project, it began with the Uniform Common Interest Ownership Act as a start. But they found -- the commissioners found technical problems with it very quickly, both in terms of its language -- that is it wasn't understandable -- and in terms of certain defects in the areas it covered. And then found, most importantly, that it didn't cover the most important areas that you are now concerned with, which is the problems between the boards and the unit owners. As a result, the Commission did some work in that area and produced something, and it was as good as it was at the time. But that's a long time ago, and I don't think it's sufficient. You're welcome to look at it. It may be useful to you.

I don't think the Uniform Common Interest Ownership Act is a good place to begin right now, for two reasons. First, it's a rather bad uniform act. There are good ones and there are bad ones, and this one isn't wonderful. Second, and more important, the National Conference of Commissioners on Uniform State Laws are in the process of revising it. They don't think it's up to snuff. And, therefore, probably the right thing to do is not to begin with it right now.

However, you don't have the option of doing nothing. These problems that you've heard are very severe.

During the time that we were working on the area, I must have gotten three or four calls a month, straight through. Four-fifths of them were probably objections to something that the board was doing to some individual unit owner. The other fifth were people from the board saying that this unit owner was completely intractable and driving everybody else crazy, and what could be done with it. Somebody has to set down the particular rights and responsibilities in this area.

And we can no longer say that this is merely a contractual problem, because at common law no party has the right to fine another. No one can act like the government.

But, in this area, we are allowing the boards to fine the individual members, which means we're treating them like a government. If they're going to be treated like a government, they need to have some of the restrictions of a government put on them. Which ones? How many? How they should operate? I'm pleased to say that's now on your desk and not mine. It isn't an easy issue.

Some of the things you've talked about, I think they're very clearly excellent ideas -- the openness and things like that. Enforcement is never something the Commission dealt with. And I will not express an opinion as to whether you want good, easy, available enforcement that costs money to the society, or whether you want to rely on

lawyers which will not cost money to the society but will to the individual people. There is no right answer to any of these problems. It is always a balancing act and -- which makes it uniquely better for the Legislature to do than for my Commission, because the Commission does best in areas that are really technical and where the substance is one of, how can we do it efficiently, not how we make the political decisions.

Notwithstanding, the Commission is back in business on this area again, and authorized me to come and share material with you that you've just seen. That is, the commissioners have a breadth of experience and they've all run into problems in condominiums and cooperatives where they work. And one is the right to sell or transfer your interests, and that's one of the provisions they drafted. Another is the right not to be evicted from your unit, because apparently that's begun to be done in certain areas.

And the third is the right not to be subject to unreasonable regulations, especially in a situation where you come into the unit, you count on it, you've bought a unit and now all of a sudden they change the regulations out from under you. And you don't really have the -- and it really interferes with your ability to live as you want to live.

Those three areas are in the materials you've just been given. I want one caveat on it: this is a work in

progress. The Commission is now on something like a fifth draft of this. As you can see from the marks on it, some of the things are things that were done at the last meeting. They haven't even seen how they drafted them up. They may not agree with them. That's their duty more than right.

But -- and when the Commission finally is done, it will put out a tentative report before it puts out a final report. So this will all be ongoing. I give them to you, simply because if you are going to be acting in this area, it would be irresponsible not to share with you what we have, regardless of the fact that it is not final. And, Commissioner Greenstein, your materials were mailed out to you this morning.

ASSEMBLYWOMAN GREENSTEIN: I get them all the time. Thank you. I read them too. So thank you.

MR. CANNEL: If you have any questions about any of this, I certainly will do what I can to answer them.

SENATOR RICE: Well, first of all, let me thank you for coming in to speak on this and, you know, staying. We're at the end, pretty much, now. And so we say sometimes that those who are last are the best and they are first, you know. But, Assemblywoman, do you have any questions at all to John?

ASSEMBLYWOMAN GREENSTEIN: It's hard to know where to begin. I guess, yes. I know that you-- Hello, by the

way. How are you doing? I know that you started out saying that -- I believe you said you thought the UCIOA bill was bad and didn't --

MR. CANNEL: Well, not so much the bill, as UCIOA itself.

ASSEMBLYWOMAN GREENSTEIN: UCIOA.

MR. CANNEL: Some of the things that have been added to it are better than it is.

ASSEMBLYWOMAN GREENSTEIN: Okay, the homeowner protections and that sort of thing. What about UCIOA do you think is no good?

MR. CANNEL: The first thing the Commission asked me to do is translate it into English. That turned out to be a very big task. But when we got past that, there is a lot of the technical stuff that was really deficient -- the definition of common elements, and the use of common elements and limited common elements. A lot of the stuff associated with the developer's rights wasn't clearly set out. And when you finally did parse it through, there were problems in it.

That is-- It's mainly provisions, each of which alone are not very important. But when you add them together, you can understand why the uniform law commissioners want to do this again. And I don't know when they're going to come back with their final report -- with

their final thing, but the earliest it could be would be a year from now.

ASSEMBLYWOMAN GREENSTEIN: I don't know if you did this, but I went online and I started to read what the uniform commissioners were doing. In fact, I know one of them very well. He's an old college friend of mine. So I was seeing his name throughout the entire thing. But it was fascinating to see what they went through. I mean, AARP came there and tried to get certain protections put in. I mean, it was a very lengthy, complicated process.

MR. CANNEL: Well, there's also problem in the process itself. That is, in its early -- it's about a hundred-year-old process. And the thing that has made it more accessible to more kinds of people in the last 20 years has also made it much harder for them to get out a product.

It used to be that nobody lobbied them. They had a whole group of people, who were sort of experts, who came in and shared wisdom; and they came out with something that people loved or they didn't love, but it wasn't the product of a political process. Now, there is an institutional political process and a lot of institutional litigants, and people with financial interests come in and lobby. And it makes it in some ways better, in some ways worse, but certainly takes longer.

ASSEMBLYWOMAN GREENSTEIN: Senator, I actually

just had one more thing I wanted to ask.

SENATOR RICE: All right.

ASSEMBLYWOMAN GREENSTEIN: If I understood this correctly, you have some existing law. You have the condominium act and planned real estate development --

MR. CANNEL: And a little bit of stuff on cooperatives, not much.

ASSEMBLYWOMAN GREENSTEIN: Right. And the attempt here was to put it all together and fill gaps in, to make it very simple.

MR. CANNEL: Yes, that is -- right now, we distinguish between condominiums and cooperatives, and then these other things that stretch down to the lake communities. And there are all kinds of other things where there is some common element or another common element. And we have slightly different laws for them, and in some cases it is not based on any rational distinctions. Whether it's a condo or a cooperative shouldn't really matter. We treat these things like real estate. The people live in them. Most of the protections don't really turn on that difference of form. And so that was one of the strengths of the Uniform Common Interest Ownership Act -- is it really tried to bridge those differences.

ASSEMBLYWOMAN GREENSTEIN: Thanks.

SENATOR RICE: Thank you very much.

MR. CANNEL: You're very welcome.

SENATOR RICE: It has not been easy.

MR. CANNEL: It will not get easier, either.

SENATOR RICE: Even my colleagues are getting angry and hope that leadership tell me what to do. Thank God we have a good Senate President. The Assembly may be a little different. But we're going to get there. We're going to do something, because we have no choice to help, hopefully, everybody, but at least help the residents, put them first, the unit owners. And without the unit owners there would be no condo boards.

MR. CANNEL: Well, even if you were --

SENATOR RICE: I mean, if you could understand that, you know, it's like the government, you know; without the taxpayers and voting, there would be no government. So how can you say you're going to, you know, own and direct boards on your profit-making entity? But we'll get there and we're going to take a look at your statements too.

MR. CANNEL: Even if you could only -- only got into the areas of the relationship of the boards and the unit owners, and were able to do something that was a first step to deal with those issues relatively comprehensively, you would have done something very important.

SENATOR RICE: Well, there are a couple of things. See, one thing affects the other. So you can't do one

thing. One point is that first of all, it's the process, how does a board come into being? We know how the developments comes into being. They built it and they market it. And they do have a set of rules that people understand when they come in. But those rules change, either because someone changed the rules in writing or they changed it in terms of their interpretation of the rules -- which was not my interpretation, understanding when I came in by way of clarity, when you articulated to me and I read it -- by way of interpretation or by way of interpellation. It was not my understanding.

MR. CANNEL: Or --

SENATOR RICE: And when there's a consensus we can understand, and maybe we have more rights than you. You don't mind saying that, okay. So, my point is, we've got to at least address that piece. Then the question is, you know, which we are going to address, you know, at what point in time. Does the owner kind of remove himself from any control? And that's why we are looking at--

MR. CANNEL: Well, the developer issues are certainly important, but they're to some degree severable.

SENATOR RICE: Exactly, because we know where you are. Then there's this issue as, okay, what am I entitled to? Look, if you're telling me to spend my money on any product -- it doesn't have to be a house -- there are certain

things I have a right to know. It's just that simple and it's my understanding. So the question is, how much? I don't need personal information being given to homeowners about Mr. Smith, and then Mrs. Smith, who couldn't get loans and how they -- no, no, no, that's not what they're asking for.

What they are saying instead, look, "Let me ask you a question. If you're going to build a brand new swimming pool, how much is it going to cost me? It's going to cost him a -- can I see that in black and white?" "Here." "Yes, but, can I see the contract? What company did you talk to? Where are your bids?" When people tell you you can't get that kind of information, but they're going to just --

MR. CANNEL: That's exactly the kind of information that people were complaining to me about not being able to get.

SENATOR RICE: Yes. And then, when they come in here under the guise of helping people, whether it's legislators coming in here or the people -- and I respect them all and I respect they are lobbyists, they are friends of mine, through their support of me, depending on which situation it is -- that's wonderful. But to deny that's not happened, see, I don't want to think -- that's the easiest thing to do something about, because that makes me

suspicious, being a former cop. Okay? When you tell me that you're not going to tell me what company you are buying whatever from, that I've got to pay for, then I get real -- what's that relationship all about? And that's what all the people ask me. I've yet to hear the people who have a problem ask for anything difficult. And that's why I don't understand why we can't move legislation. Okay?

MR. CANNEL: Conflict of interest were the other things that I got calls about. That is, the management company was hiring members of the board or using -- you know, using a member of the board's insurance agency and that would -- there are all kinds of stuff of that sort. Now, I don't know how prevalent in these areas. I don't think that they're the majority of these associations. But then, the majority of houses don't burn down, but we still buy fire insurance.

SENATOR RICE: Well, the bottom line is that there's a thin line. You know, we don't have a lot of corrupt people running government, running churches, running businesses. We probably had -- this never came in light. But somebody came along and said, "Well, it must be okay, everybody is doing it," not realizing the law says you can't do it. Then, all of us get paid the same (indiscernible). So we don't want to perpetuate something because it's not a lot. If you're doing the insurance thing, then we will put a

stop to it before everybody else catches on to it and thinks it's okay.

Because, to be quite frank, half the people that graduated school, law school in particular, no knock to you personally, to me don't really know what they're doing. They work for big firms, reputation, or what have you, and they bill everybody. And they just tell them, "No, don't worry about it. This is it; there's only a couple of people.

You can do this." They don't even go far enough. Some of them don't even know that there was case law to go against the statute already there. They don't lay all the documents down. Some of them don't even know how to check local law, with county law with Federal law, etc. And I recognize that reality. That's not mocking anybody. But these are the people -- and they don't do it with malice or bad intent, but they go back and say, well, here is what I understand.

MR. CANNEL: Well, this is --

SENATOR RICE: It's okay until somebody comes and tells you you're being sued or locked up. Okay? And then the courts say, well, you should know better; you shouldn't rely just on your lawyer. Well, how am I supposed to know better? The lawyers is supposed to know the law that I don't. You know, I mean, that's what -- and I can't put the homeowners in a position of that kind, but I can't put those business people in their either because -- and business

people who are doing business with these associations should not feel that they are held hostage to the point that they have to do the wrong kinds of things. Okay?

MR. CANNEL: This is part of the reason why I think that it is important to craft any exemption for senior citizen organizations rather carefully. That is, if you're going to set up a set of basic rights and responsibilities, it would be best if that applied to every kind of association. But if certain things are burdensome, like adjustment procedures that cost money, or certain kinds of requirements that are inconvenient, just as-- The condo across the street from me that is three units, you wouldn't apply quite the same rules to, that you would to Rossmoor.

Similarly, there may be reasons to opt out of certain provisions for certain of these groups. But if you're talking about basic freedom of election and information, and just sort of the openness and your rights not to be restricted by new regulations that take away the value of something that your whole life savings are in, those should probably apply across the board.

SENATOR RICE: Let me ask you a question. Prior to recently, and while this was going through, one of the things that was discussed over and over at these meetings, and continued to come up, is the lack of staffing at DCA in these areas for different kinds of things. I mean, it

shouldn't take nine months to get an answer back from the State. If I had known, I would have gotten an answer, because I would tell them up front, if they would come before me for one vote, "I will cut your committee up. Give an answer."

But it is staffing to some degree. Some degree, it's politics, where people are delaying, thinking I won't call back. But my point is, is that -- and some of this stuff that these people are doing -- many of these, quote, unquote, either the unit owner or those who are on the board or others, are criminal that came from SCI. The question is, is there a role that maybe the State Inspector General should have in this now, because we didn't have that before, or a rule that the public advocate should have in this?

You know, we took out the public advocate, now we have an inspector general. Because some of this stuff needs to be looked at expeditiously. Because, as I told the SCI people, I said, "Wait a minute. My concern is that this should have been looked at earlier. And looking at it from my own experience and light, had we done that, it wouldn't have gotten to this level where it is criminal." In other words, we helped create a situation by delaying action on a situation. Okay? "Maybe I didn't intend to go that far, but because you didn't come in and snatch me, hit me in the head, fine me, shake me up, wake me up or do whatever you had to

do, I kept going thinking everything is okay for whatever reason. Now I've got a real mess here." So, the question is, some place in there, should I--

MR. CANNEL: There's a serious problem whichever way you go. The theory of enforcement is that all of these organizations will gradually come to the view that this is standard operating procedures. When the municipal governments were first faced with open government and open public meetings and records, they found it almost impossible. And they complained a great deal, and they got used to it in no time flat. And everybody now expects this isn't nearly the problem they thought it would be. So to some degree, that might happen.

But, at least in the short run, you're writing a big check. A hundred years ago when I was in law school, we attempted -- I was part of a project where we tried to see how much legal services was necessary to the poor. And they took-- From the one legal aid agency in downtown New Haven, they went to something like six or eight lawyers scattered throughout the town and a whole lot of law students aiding them. And they found they got no place near saturation with those.

The problems may be so many out there, right now, that you would need so many people in DCA before you even approached saturation. And I don't know that; it's hard to

know which answer will work, whether these boards will just learn and get used to it the way the municipal governments did, or whether you will need 40 people down there constantly dealing with these problems. I don't know.

SENATOR RICE: Well, New Haven needs a lot more lawyers now. They did an exchange. It didn't work at all. And they keep promising when they --

MR. CANNEL: Look, anything I know about the City of New Haven is safely 40 years old, and we don't need to worry about it.

SENATOR RICE: There you go. Well, they need more lawyers about. You were right about it. They're saturated now. But the -- then, what about -- and this is the final question. What about -- I've got to get to it. What about maybe a potential revisited sunset provision or -- I mean, some kind of way I've got to figure out how they'll be able to test what we do. Is it working? Because I can't -- you're right, there are people going to follow things correctly and there are those who are not, because they have the mentality or lack of integrity --

MR. CANNEL: Or they're amateurs. They just don't know.

SENATOR RICE: Right, but the question is-- We don't have the luxury when people lose their homes. Let me tell you something. There are seniors who are going to live

-- in fact, I know my -- 90 years old. I remember -- she started with me. I remember her husband. Ninety, and she's still moving around healthy. There are some are going to be 110, 115. But to be quite frank, God bless my parents. They're 81. And I've always said that I hope they live long, and I do; and I hope I get to 100. But there's a 50-50 probability that they won't.

And in the community they live in, okay, they can't afford to wait to test something out for five or six years to see if it works. Do you see what I'm saying? We've got to get as much of them right now to some -- so they can have those golden years.

MR. CANNEL: I agree.

SENATOR RICE: Yes.

MR. CANNEL: There is very little -- that is, most of the people you're dealing with are not people who chose to live in a community because they want a lot of rules, they want somebody looking over their shoulder, or they love this particular community. They moved to that community for the same reason my sister bought one. It was the right house at the right price. And that is their single largest investment, perhaps their only substantial investment. Their life is tied up in it, and you've got to do it right. Having said that, I don't know that you can ever know that you are going to do it right.

SENATOR RICE: Thanks. I really appreciate it. Conor, it looks like you're the last of the last. I would appreciate it -- yes, but you know --

MR. FENNESSY: You're a Marine.

SENATOR RICE: You've been first sometimes, and you've been last, so.

MR. FENNESSY: Back when I was younger. Thank you, Mr. Chairman. Again, my name is Conor Fennessy, of the New Jersey Apartment Association. We represent property owners, property managers, and developers of both market-rate and affordable rental housing here in the state. We provide housing to about one million New Jersey working families, couples and seniors. I want to raise an issue for clarification with your proposal, S-1826, which is in response to the comprehensive SCI investigation on new home construction.

In that 51-page report, there is no mention at all of multiple dwellings and multifamily apartments, apartment or anything in that angle. It's exclusively single-family new home construction. And I just wanted to request that as the committee does move forward with the legislation, they would get us some clarifying language to the proposal clarifying that it does not affect multifamily or apartments, because clearly the recommendation the SCI made, which I believe is on Page 49 of our report, regarding UCC

violations, Uniform Construction Code Violations, were for single-family new construction. Do you need a couple of copies?

SENATOR RICE: Do you have copies?

MR. FENNESSY: I do.

SENATOR RICE: Okay.

MR. FENNESSY: The report is quite comprehensive, but the SCI spent, I think, nearly a year and a number of public hearings on the issue. But there is no reference whatsoever about the multifamily or the apartments. And I just wanted to see if we can work with you on a clarification on that regard, Mr. Chairman.

SENATOR RICE: So then, this bill is --

MR. FENNESSY: This is 1826, sir.

SENATOR RICE: Is this the bill that's coming up in the Assembly?

MR. FENNESSY: No, sir. This is actually one of your bills. The bill in the Assembly on Thursday is actually one of the affordable housing bills we talked about.

SENATOR RICE: Oh, okay. So what you're looking for here is clarity on -- the committee?

MR. FENNESSY: Yes, sir, just for clarification that indeed the proposal is aimed at single-family homes, new construction, as reflected by the SCI investigation; and

it's not for apartments or for multifamily homes because the report doesn't mention any problems regarding multifamily or multiple dwellings.

SENATOR RICE: We're visionaries. We are foreseeable people, foresight, you know. But I will put my (indiscernible) on this and we'll take a look at it, objectively. Okay?

MR. FENNESSY: Certainly. I know when we spoke on it in June, when you did have a hearing in Trenton, it was something you were amenable to. I just wanted to make sure that, since some time had passed, that it's still something we can work with you and, also, the folks at Legislative Services on.

SENATOR RICE: Sure. The staff has noted, and Bob will take care of it.

MR. FENNESSY: Thank you. Thank you, Mr. Chairman.

SENATOR RICE: All right. Let me thank those who stayed, those who came and stayed, those who came and had to leave. Once again, we're going to do the best we can. I'm only one person. I work with a great Committee. I work with great staff. I work with great legislators in both Houses, in both parties. We just differ sometimes on where we should go. Not so much as where we should go, how to get there is often the case. And there are a lot of influences

in our lives that we have to pay attention to. Most of the influences are good; some of the influences are bad. It's depending on who you are.

Hopefully, at the end of this process, we'll give New Jersey something that may not satisfy everybody but will be better than what we have and won't hurt anyone. And that's really the goal. Thank you very much. Thank you, Assemblywoman, for your time --

ASSEMBLYWOMAN GREENSTEIN: Thank you so much. I really appreciate it.

SENATOR RICE: -- and for just working so closely with me on this.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

SENATOR RICE: This meeting is now officially adjourned.

UNIDENTIFIED SPEAKER: Thank you, Senator Rice. Thank you.

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**C E R T I F I C A T I O N**

I, Carla M. Oakley, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on tape numbers 1, 2, 3, 4 and 5 is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded, to the best of my ability.

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