

Key Free Speech Case: Twin Rivers
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By Frank Askin

Members and officials of community associations all across the United States and New Jersey will be watching intently Thursday when the New Jersey Supreme Court hears argument in the case of *The Committee for a Better Twin Rivers v. The Twin Rivers Homeowners Association*.

The case will decide whether residents of property owners associations, which are quickly proliferating throughout the state and nation, have rights under the New Jersey Constitution against their elected governors. More than 50 million Americans, including more than a million in New Jersey (many in Bergen County) now live in these such self-governing communities, with their numbers increasing exponentially.

The New Jersey Superior Court Appellate Division was the first court in the country to so rule, and if the State Supreme Court affirms that ruling, homeowners in other states will try to get their own courts to follow suit. The case is of such importance that the national AARP, which has 34 million members, many of whom live in adult communities, filed a friend-of-the-court brief urging the New Jersey Justices to uphold the lower court ruling. So did the New Jersey Public Advocate.

Residents of the Radburn Association in Fair Lawn, currently involved in related litigation over its method of electing its Board of Trustees, will be paying especially close attention.

Because these communities-- which include HOAs, POAs, condominiums and other forms of planned unit developments -- are considered to be private property under the Federal Constitution, residents of these associations have only those rights recognized by their own states' laws.

New Jersey courts have long held that our own Constitution can, at times, reach beyond formal public bodies and public officials to restrict private entities which exercise dominion over persons allowed to use their property. Thus, New Jersey is one of the very few states which require regional shopping malls to permit strangers to engage in leafleting and petitioning.

In so ruling, the State Supreme Court noted that, unlike the federal constitution, which merely prohibits government bodies from abridging free speech, the New Jersey Constitution includes an affirmative grant of free speech to its citizens. And once the former town squares and village greens had been replaced by the malls as the primary public gathering places, the Court ruled that free speech had to follow the public to the malls.

The basic issue before the Court in *Twin Rivers* is whether by similar reasoning, Constitutional guarantees also follow residents past the gates -- real and imaginary -- of these new *private* towns. Twin Rivers, for example, while not a gated community, is home to ten thousand persons living in three thousand dwelling units, which include apartments, condominium townhouses, and private homes, all governed by an elected 9-member Board.

The specific issues involved in the Twin Rivers case are the right to post political signs on homeowners lawns, the right to rent the community room for a public meeting for a nominal fee to cover the added cost of use to the association, and a right of equitable access for dissenting opinions to the community newspaper.

The Homeowners Association is supported by the Community Associations Institute, the trade association which represents the interests of the elected boards, the management companies

and the cadre of attorneys who represent them, in arguing that the residents agree to waive any constitutional rights by buying homes subject to the communities' rules and regulations.

The Plaintiffs insist that in a housing market more and more dominated by such community associations, buyers do not have free choice when they are seeking affordable housing— that all they can choose among is one set of regulations or another. The Appellate Division agreed, holding that homeowners rights were to be decided not by contract law but by constitutional standards.

Indeed, it is worth remembering that the current boom in planned communities is a direct consequence of deliberate state policies which encouraged developers to build tract housing on small lots and avoid local zoning regulations in order to maximize profits. In exchange, the law required the establishment of associations with elected boards to govern the developments.

As the New Jersey Supreme Court said in an opinion than 40 years ago in a related context, we are dealing with “rights too fundamental to be denied on the basis of an interest in real property and too fragile to be left to the unequal bargaining strength of the parties.” Those words seem equally applicable today.

FRANK ASKIN is a Professor of Law at Rutgers School of Law, Newark, and a General Counsel of the American Civil Liberties Union. He is the founding director of Rutgers' Constitutional Litigation Clinic, through which he and his students have been litigating the Twin Rivers case.