



October 7, 2019

VIA E-MAIL & FEDERAL EXPRESS

Candice Dennis
The Villages Community Standards Department
984 Old Mill Run
The Villages, Florida 32162
candice.dennis@districtgov.org

Re: *Unconstitutional, Selective, and Arbitrary Enforcement of The Villages Community Standards Against Wayne and Bonnie Anderson, 2439 Ansley Path, Unit 155, Lot 53*

Dear Ms. Dennis,

The American Center for Law & Justice (“ACLJ”) represents homeowners Wayne and Bonnie Anderson regarding The Villages Community Development Districts’ (“the District”) recent determination that 2439 Ansley Path, Unit 155, Lot 53 (“the Property”) is in violation of the District’s Rule that states: “Lawn ornaments are prohibited, except for seasons displays not exceeding a thirty (30) day duration.”

By way of introduction, the ACLJ is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued before the Supreme Court of the United States in a number of significant cases involving the freedoms of speech and religion. See, e.g., *Pleasant Grove v. Summum*, 555 U.S. 460 (2009) (unanimously holding that the Free Speech Clause does not require the government to accept counter-monuments when it has a war memorial or Ten Commandments monument on its property); *McConnell v. FEC*, 540 U.S. 93 (2003) (unanimously upholding the First Amendment rights of minors); *Lamb’s Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993) (unanimously holding that denying a church access to public school premises to show a film series on parenting violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding by an 8-1 vote that allowing a student Bible club to meet on a public school’s campus did not violate the Establishment Clause); *Bd. of Airport Comm’rs v. Jews for Jesus*, 482 U.S. 569 (1987) (unanimously striking down a public airport’s ban on First Amendment activities).



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STATEMENT OF FACTS

Wayne and Bonnie Anderson (“the Homeowners” or “the Andersons”) own the Property in The Villages. In their yard, the Andersons have placed a small, white cross in their yard as a personal expression of their religious speech and beliefs, and a colorful parrot as a decorative ornament. The cross and parrot (“the display”) are the only two items the Andersons display in their yard. The cross is 12 inches tall by 7¼ inches wide.

In January of 2019, a representative from the Community Standards Department of The Villages notified the Homeowners that their display was in violation of the External Deed Restriction Standards of The Village Community Development District No. 8, and specifically, Rule 2.16b, which states, “Lawn ornaments are prohibited, except for seasons displays not exceeding a thirty (30) day duration.”¹

The Deed Restriction Standards define Lawn Ornament as:

Lawn Ornaments – Lawn ornaments, or yard art, generally refers to manmade items located anywhere outside the structure or footprint of the home. However, pots and planters designed and constructed for plant use are permitted so long as they are used for their intended purpose. The inclusion or attachment of flowers or plants to a man made ornament, not originally constructed for plant use, does not change the item from a lawn ornament to landscaping. The word ‘lawn’ includes areas that are mulched, concreted, sodded, rocked, landscaped, bare earth or any other material outside the structure (footprint) of the home. The following is intended as a partial reference list of lawn ornaments: any man made concrete or ceramic statue or figure (including religious symbols), windmill, pinwheels, train sets, deer, geese, flamingos or any other animal or human figures. Residents may check with the Community Standards Department prior to purchase of lawn ornamentation/ landscape objects.

The Homeowners refused to remove their display, and the District held a public hearing on the matter on August 16, 2019. At that hearing, it was found “[t]hat the Owner of the Property has violated the District’s Rule” As such, a Corrected Order of Enforcement for Deed Compliance, dated August 16, 2019, was issued, notifying the Homeowners of the following:

III. Corrective Action and Imposition of Fine

- A. Find the Owner in violation of the District’s Deed Compliance Rule as cited by the Deed Compliance Staff.
- B. Owner has three (3) days to bring the property into compliance.

¹ External Deed Restriction Standards, Village Community Development District No. 8, Fine Schedule at I3 (effective Feb. 1, 2014), available at https://districtgov.org/departments/community-standards/images/compliance-standards/District8_Rules.pdf.

- C. If the property is brought into compliance within three (3) days of the Order of Enforcement, Case No. D8-04-19 shall be closed.
- D. If the property is not brought into compliance within three (3) days of the Order of Enforcement, impose a \$50 fine to be paid within (10) days of the invoice and impose a \$25 daily charge until the property is brought into compliance.
- E. It is the owner'[s [sic] responsibility to contact staff in order for the Deed Compliance Officer to visit the property to verify compliance.
- F. If the fines reach \$1,500, the case shall be turned over to District Counsel to seek all available remedies which may include initiating a lawsuit, seeking an injunction against the Owner and placing a lien on the property.
- G. Chairman to execute the Order of Enforcement.

On September 23, 2019, the Homeowners received an Invoice from the Village Center Community Standards Fund in the amount of \$700 for a Deed Compliance Violation accruing from the initial \$50 fee, and the daily \$25 fee from August 24 to September 20, 2019. This amount continues to rise today, until the amount of \$1500 is reached, and the threatened legal action is taken.

Upon information and belief, numerous homeowners within The Villages community currently have lawn ornaments or decorations displayed on their properties. The Homeowners have attempted numerous times to resolve this matter with the District. At one point, the Homeowners, while at their Property, speaking with a District representative, the Homeowners noted that there are surrounding properties adjacent to the Homeowners' Property where lawn ornaments are on display. The Homeowners inquired as to whether all property owners were being asked to remove their lawn ornaments. The District representative's answer was that the Deed Restriction Standards are only enforced after a complaint has been made against a property or property owner. Since complaints had not been made against those other properties, their lawn ornaments could stay.

STATEMENT OF LAW

This arbitrary and selective enforcement standard is expressly laid out in the District's Deed Restriction Standards. Therein, a Complainant is defined as: "An individual who makes a complaint and **puts the deed compliance procedure into motion.**"²

According to the Rules of the District, it is the District who is "authorized to enforce certain deed restrictions within its boundaries in accordance with said statute and upon adoption of this rule, The Rule to Bring About Deed Compliance"³ Notably, the section marked Enforcement

² External Deed Restriction Standards, Village Community Development District No. 8, at 1 (emphasis added).

³ Rules of the Village Community Development District No. 8, Chapter II, The Rule To Bring About Deed Compliance, at 1.

Remedies reads, “The District shall have the right but not the duty to enforce the Deed Restrictions adopted by this Rule. The Statute provides the District has the right to enforce this Rule and its fines imposed thereby in circuit court through injunctive relief.”

The District’s Community Standards FAQ document, however, states that “Each of the District Boards determined that reporting potential violations will be a complaint driven process. Potential violations are NOT reported by Community Standards, Community Watch or any other District Department.⁴

Remarkably, the Procedures for Compliances state that “[t]he purpose and intent of the deed compliance enforcement process is to provide and promote the health, safety, welfare and property value of this community. **The purpose of this procedure is to provide a clear, systematic, and consistent process for the investigation, notification and conformance with the Rule.**”⁶ By its own admission, however, the enforcement process does not begin unless and until a third party complains, thereby “put[ting] the deed compliance procedure into motion.”

This blatantly arbitrary and selective enforcement is discriminatory against the Homeowner’s religious speech and expression and is a violation of the protections afforded to them by the United States Constitution.

A PROHIBITION OF RELIGIOUS DISPLAYS AND/OR MESSAGES WHILE PERMITTING OTHER DISPLAYS AND/OR MESSAGES VIOLATES THE FEDERAL FAIR HOUSING ACT (FHA) AND HOUSING AND URBAN DEVELOPMENT (HUD) REGULATIONS.

The federal Fair Housing Act (“FHA”), 42 U.S.C. § 3601, *et seq.*, makes it unlawful “[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of . . . religion” 42 U.S.C. § 3604(b). The United States Department of Justice (“DOJ”) has explained that the FHA’s prohibition on religious discrimination “covers instances of overt discrimination against members of a particular religion as well [as] less direct actions” For example, apartment complexes cannot restrict individual from placing religious items or decorations on their doors if there is a general policy permitting residents to decorate their doors.⁷

Similarly, Housing and Urban Development (“HUD”) Regulations state that “[i]t shall be unlawful, because of . . . religion . . . to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.” 24 C.F.R. 100.65(a). These prohibited actions include, “[s]ubjecting a person to harassment because of . . . religion . . . that has the effect of imposing different terms,

⁴ The Villages Community Development Districts Community Standards FAQ.

⁵ Appendix B, Procedures for Compliance of External Deed Restrictions and Schedule for Fines for Village Community Development District No. 8 (Rev. Feb. 17, 2017).

⁶ *Id.* at 1 (emphasis added).

⁷ DOJ, Civil Rights Div., Combating Religious Discrimination and Protecting Religious Freedom, <https://www.justice.gov/crt/combating-religious-discrimination-and-protecting-religious-freedom-5> (last visited Oct. 3, 2019).

conditions, or privileges . . . or denying or limiting services or facilities in connection with the sale or rental of a dwelling.” 24 C.F.R. 100.65(b)(7).

Courts have reiterated that § 3604(b) of the FHA applies to “post acquisition conduct” including governance by homeowner’s associations. *United States v. Advocate Law Grps. Of Fla.*, 2019 U.S. Dist. LEXIS 167233, *17 (M.D. Fla. 2019). See also *Bloch v. Frischholz*, 587 F.3d 771, 779 (7th Cir. 2011) (citing *Cox v. City of Dallas*, 430 F.3d 734, 746 (5th Cir. 2005)); *Committee Concerning Community Improvement v. Modesto*, 583 F.3d 690 (9th Cir. 2009); *Neals v. Mortg. Guar. Ins. Corp.*, 2011 U.S. Dist. LEXIS 53183, *10 (W.D. Pa. April 2011). In other words, the FHA’s protections, under 3604(b), are not left on the doorstep as owners enter their new homes. In *Bloch*, for example, plaintiff homeowners brought suit under the FHA against the condo association following the association’s refusal to allow the owners to display a mezuzah on their exterior doorpost. The Blochs alleged that the Board discriminated against them in wielding its power. *Bloch*, 587 F.3d at 771. The Seventh Circuit held that because the Blochs purchased dwellings subject to the condition that the condo association can enact rules that restrict the buyer’s rights in the future, § 3604(b) prohibits the association from discriminating against the Blochs through its enforcement of the rules, even facially neutral rules. *Id.* at 780.

As the Eleventh Circuit has held, “the Supreme Court has repeatedly instructed us to give the Fair Housing Act a ‘broad and inclusive’ interpretation.” *Hunt v. Aimco Props., L.P.*, 814 F.3d 1213, 1223 (11th Cir. 2016) (quoting *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1216 (11th Cir. 2008)). Simply put, the FHA absolutely prohibits an association from applying regulations or guidelines to the owner’s use of their property and/or common areas in a manner that discriminates against religion.

Here, the District is allowing violation of its Deed Restrictions to go unaddressed, unless and until a third party individual – who may remain anonymous – files a complaint. The complaint could be made based for a discriminatory purpose, yet the District will set the “deed compliance procedure into motion.” The District’s subjective application of its regulations and guidelines is, in fact, subject to scrutiny under federal law – specifically the FHA. The District’s arbitrary application of the Deed Restriction Standards to prohibit the Andersons from displaying a small cross and a parrot in their yard while permitting numerous other lawn ornaments across The Villages constitutes a violation of the FHA – especially where, as here, selective enforcement can reasonably be interpreted as hostility towards religion.

CONCLUSION

In light of the clearly established law on this matter, we request that you provide us with written assurances **no later than October 18, 2019, that the District will cease all religious discrimination and arbitrary enforcement of its Deed Restriction Standards against the Andersons and that every effort will be made to avoid another instance of religious discrimination.** This would necessarily include educating The Villages Community Standards Department and all other individuals tasked with carrying out the responsibilities of the District, regarding application of the FHA and its prohibition of discrimination on the basis of religion.

We also request your assurances that Mr. and Mrs. Anderson will not be harassed and/or retaliated against for the exercise of their rights under federal law. Finally, we request written assurances that the fines currently accruing against the Property for the supposed violation of the Deed Restriction Standards will cease, that the September 23, 2019, invoice issued by The Village Center Community Standards Fund will be voided, and that no new invoice will be issued.

Should you have any questions, please feel free to contact me at cwhite@aclj.org or by phone at (800) 296-4529.

Sincerely,



Edward L. White III*
Senior Counsel
AMERICAN CENTER FOR LAW & JUSTICE
**Admitted in Florida and Michigan*

cc: Michelle K. Terry, ACLJ Senior Litigation Counsel
Clients