From Eric Houg, HOA watchdog, carefree condo living, Country Club Condominium HOA eric@houg.com phone (503)530-8007 5180 NW Neakahnie Ave. #22 Portland Oregon 97229

## To The House Committee On Judiciary

HB 2617 protects the recording of meetings in homeowners associations (HOAs). Prohibiting recording is like suppressing news reporting in these fourth levels of government. All the other levels of government allow and facilitate recording. There should be a specific law about recording in order to avoid needless litigation. In year 2011, the Oregon House removed the opposite provision, "*The board of directors may restrict or prohibit the recording of a meeting of the board of directors*", before passing HB 3317. With that failure to prohibit recording, there is still no law one way or the other about recording HOA meetings. However, the status quo is for the courts to give HOA boards of directors wide discretion to deal with their internal affairs, which includes fining homeowners for recording.

## Quotes from the 2011 Legislative Session, HB 3317, April 29, 2011, House Floor

1:08:09 Representative Matt Wingard - R: "I have some problem with the idea that we would prohibit people from recording what may not be technically a public meeting but still has to do with a community and not everybody can be there. I'm uncomfortable with resting the authority in the board itself, the ability to block people from holding them accountable by recording their activities."

1:09:00 Representative Patrick Sheehan-R: "By allowing a board to disallow recording of the board of directors meetings, you're taking that accountability away, and these board meetings can be very contentious, and not allowing these sort of things to be used in court is just silly. A lot of financial decisions are being made here. Financial decisions on replacement of roofs and asphalt and important things. These things should have this accountability."

1:10:32 Representative Wally Hicks - R: "Additionally, limiting and indeed prohibiting from a court action evidence that's probably the most important evidence of any dispute that would arise out of these meetings is not a good precedent either."

Arguments Against Recording	Arguments For Recording	
Recording of meetings can be disruptive.	The recording process itself is not disruptive, but some opponents of recording are.  Attorney General's Public Records and Meetings  Manual 2014 - II. Public Meetings  We have concluded that members of the public cannot be prohibited from unobtrusively recording the proceedings of a public meeting. We believe the logic supporting the public's right to make an audio record of	

	a meeting also extends to video recording, subject to reasonable regulation to the extent necessary to prevent disruption of the meeting.		
Arguments Against Recording	Arguments For Recording		
Audio / video recordings could be altered or taken out of context.	Audio video recordings are difficult to alter. Written retellings such as meeting minutes are much easier to fabricate. Audio and video are more credible. That's why news reporters and police carry recorders, not dictation machines. Multiple independent audio and video recordings would make it even more difficult to rewrite history.		
Recordings could be used to create legal challenges which would cost the HOA money.	Yes, evidence helps protect the innocent and convict the guilty. Discouraging lawsuits based on false accusations would save the HOA money. In my HOA, the board of directors uses recordings and great gobs of HOA money to create legal challenges against individual homeowners.		
Being recorded prevents homeowners from speaking freely at the meetings.	The Board itself has a history of preventing homeowners from speaking freely at the meetings.		
People do not wish to be quoted.	The Board's standard punishment for homeowners is to misquote and mischaracterize them to make them look foolish. Recordings are a homeowner's defense. If a homeowner does not want the other homeowners to know what he truly says at a meeting, he should not say it.		
We are not a government where recordings might be of value. We are a private organization.	Oregon or United States	Country Club Condominiums	
	the executive branch	the board	
	the legislative branch	the board	
	the judicial branch	the board	
	independent news media	\$400 fine for audio or video recording	
	"A Homeowners Association's (HOA) board of directors acts like a mini-government." Ted McBride, Posted 6 <sup>th</sup> January 2014 by Vial Fotheringham LLP Lawyers, <a href="https://vf-law.blogspot.com/2014/01/embezzlement.html">https://vf-law.blogspot.com/2014/01/embezzlement.html</a> "The affairs of the Association shall be governed by a Board of Directors" - Country Club Condominium HOA <a href="https://www.article.lv">Bylaws, Article.lv</a> , Section 1		

	"The affairs of the association shall be governed by a board of directors as provided for in the bylaws adopted under ORS 100.410." - Condominiums ORS 100.405 (3)	
Arguments Against Recording	Arguments For Recording	
HOA boards have the power to prohibit recording because ORS 100.409 states that condominium association board meetings are to be conducted according to Robert's Rules of Order, unless the board, by resolution, adopts other rules. Here, the Board has adopted Robert's Rules of Order with an additional rule prohibiting audio and video recording.	A recording ban does not fit the definition of "rules of order".  https://www.dictionary.com/browse/rules-of-order the rules by which a legislative or deliberative assembly governs its proceedings; parliamentary law.  https://legal- dictionary.thefreedictionary.com/rules+of+order (redirects to Parliamentary Law) The general body of enacted rules and recognized usages governing the procedure of legislative assemblies and other deliberative sessions such as meetings of stockholders and directors of corporations, town meetings, and board meetings. Roberts Rules of Order are an example of such rules.  Robert's Rules of Order, 11 <sup>th</sup> Edition, p 482, ll. 25-29 states that a board has only such power as is delegated to it by the society's bylaws or by vote of the society's assembly referring individual matters to it.	

Five states already explicitly state that homeowners may record HOA meetings. No states state the opposite, that boards can prohibit recording.

Arizona A.R.S. <u>33-1804 (Planned Community Act)</u> / A.R.S. <u>33-1248 (Condo</u>

Act),

Florida Chapter 720 720.306

Illinois ILCS 605 Condominium Property Act. Section 18 (a) (9)

Nevada NRS 116.3108 9.

Virginia § 55-509.3:2. 3., § 55-510.1.