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August 30, 2010

Javier Delgado, Esq.
Carpenter, Hazelwood, Delgado & Wood, PLC
1400 E. Southern Ave.
Suite 400
Tempe, AZ 85282

RE: Andy McDonel,

Via Email and Certified Mail

Dear Mr. Delgado.

The American Civil Liberties Union (ACLU) Foundation of Arizona has been contacted by Andy McDonel about the recent ultimatum from the Avalon Village Community Association. I have also read your recent release to the press about this demand. On August 6, 2010, the Association demanded under threat of fines that Mr. McDonel remove the "debris" from the front of his house. The debris referred to apparently included the historic Gadsden Flag that Mr. McDonel had openly displayed for months.

The demand by the Association violates Arizona law and the basic rights of Mr. McDonel. In 2002, similar arbitrary acts by Association boards resulted in intervention by the Arizona Legislature. In a bill introduced by a bi-partisan group of 66 legislators, Associations were prevented from prohibiting American and other flags. In 2003, a well-publicized denial by an HOA of a display of the Gadsden flag was a factor in the legislative expansion of the flags covered to include those of any branch of the United States military. As reported by the Arizona State Senate Issue Brief, an HOA cannot prohibit "any U.S. military flag" (Jan. 14, 2010); A.R.S. § 33-1808.

The Gadsden Flag has long been a motto flag for the United States Marine Corps. The motto was used as early as 1775 by five Companies of marines from Philadelphia after muster by the Second Continental Congress. For many at the time, the flag symbolized the spirit of the American Revolution. The use continues by United States Marines and the flag is officially displayed at military installations including in Iraq and Afghanistan. As opposed to your representation, there are not "many historically significant flags" with such longstanding use by and association with a branch of the U. S. military.

All parties have an interest in resolving this matter without resorting to time-consuming and costly formal proceedings. Indeed, assuming *arguendo* that there is merit to your narrow reading of the state law, the result would likely be clarification and expansion by legislative action. Such consideration by the Legislature would not be limited to this one issue and would likely include other areas of potential concern to HOA boards.

Please contact me with any questions. I am available to facilitate reaching a constructive resolution.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Pochoda". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Dan Pochoda
Legal Director
ACLU-AZ