INTRODUCTION

Nearly six million Californians \(^1\) live in some type of common interest development ("CID"), a figure that represents roughly twenty-percent of the state's population. \(^2\) CIDs with "homeowners associations are the fastest-growing form of housing in the nation," according to
the Community Associations Institute, a trade and lobby group based in Virginia.\(^3\) Projections for the year 2000 estimate that one-third of all Americans will live in housing governed by a homeowners association ("HOA").\(^4\) According to the Los Angeles Times, this rapid expansion of CIDs and HOAs "represents a social change that for Americans is something akin to a bloodless revolution."\(^5\)

The California courts bear witness to the rapid growth of common interest developments in the state. Since 1968 the courts have adjudicated over 64 cases\(^6\) involving CIDs and HOAs.\(^7\) Thirty-seven cases (58%) have come to trial in the last ten years, following the enactment of the Davis-Stirling Common Interest Development Act in 1985.\(^8\) Most cases deal with disputes over the covenants, conditions and restrictions ("CC&Rs") governing the CID. Other cases deal with the role of the HOA and its board of directors in issues involving negligence or fiduciary duty.

The purpose of this paper is to provide an overview of the history of California CID case law in selected areas. The paper first examines the recent CC&Rs enforcement case, \textit{Nahrstedt v. Lakeside Village Condominium Ass'n}, its precursors and progeny, and then discusses the major cases in the areas of HOA negligence, fiduciary duty and restricting public access to CIDs. Finally, cases involving construction defects and procedural issues, among other issues, are briefly described in a chart provided in Appendix B.

### ENFORCEMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS

It is common knowledge that much of the new housing developed in recent years . . . is subject to CC&Rs enforceable by [homeowner]associations. Some large homeowner associations have budgets which put them on par with small cities and towns. In many areas . . . homeowner associations have practically become a 'quasibranch' of municipal government.\(^9\)

#### I. The Reasonableness Test.

In \textit{Nahrstedt v. Lakeside Village Condominium Association},\(^10\) the California Supreme Court established a new standard for enforcing CC&Rs in common interest developments. The plaintiff, a cat owner, brought suit against her condominium association, challenging its pet restriction policy and seeking relief from fines levied against her for keeping her cats in her condo.\(^11\) In reaching its decision, the \textit{Nahrstedt} court examined the history of common interest developments and CC&Rs, as well as the legislative intent in enacting California Civil Code section 1354.\(^12\) The court held that CC&Rs were presumed to be reasonable, and unless a plaintiff could prove them to be unreasonable, CC&Rs would be enforced by the courts.\(^13\) The court defined unreasonable as a three part test: (1) being arbitrary, (2) violating a fundamental public policy, or (3) imposing a burden on the association member that substantially outweighed the benefit to the association as a whole.\(^14\) Lakeside Village Condominium Association prevailed in the suit because the plaintiff failed to prove that the pet restriction policy was unreasonable.\(^15\)

#### A. Criticism of \textit{Nahrstedt}.

\textit{Nahrstedt} has been criticized in two recent law review articles. Justice Armand Arabian, the lone dissenter in \textit{Nahrstedt}, expressed his concern for the rights of individual CID homeowners in \textit{Condos, Cats and CC&R's: Invasion of the Castle Common}.\(^16\) Justice Arabian wrote:

\begin{quote}
the reasoning and result in \textit{Nahrstedt} illustrated a matter of increasing concern both for those who choose and those who have no choice but to purchase their residential property in a CID. Their individual rights and interests may be sharply curtailed by CC&Rs they have little ability to modify. At the same time, they may find themselves at the mercy of their HOAs, which have the authority . . . [as] articulate[d] in \textit{Nahrstedt} to intrude into many every day activities in the guise of enforcing CC&Rs, with little accountability, much less due process.\(^17\)
\end{quote}
Arabian offers model legislation, which, if adopted, would prevent CC&Rs from restricting, without reasonable justification, activities that are "guaranteed by the Federal or State Constitution or by any federal, state, county or local statute, ordinance or regulation." In addition, this critic of the Nahrstedt decision believes the court's new standard has "unnecessarily blocked CID owners from the reasonable enjoyment of their unit by preventing courts from examining any particular facts and instead limiting judicial review to an examination of the restriction on its face."  

B. Cases preceding Nahrstedt.

Two California appellate cases decided prior to Nahrstedt deal directly with the enforcement and reasonableness of CID restrictions, Bernardo Villas Management Corp. v. Black and Portola Hills Community Ass'n v. James. Although the Nahrstedt decision directly overruled both cases, a brief review of the cases is helpful for understanding the significance of Nahrstedt.

In Bernardo Villas, the Bernardo Villas HOA sued to prevent the defendant from parking a new pickup truck in the condominium carport, in violation of the CC&Rs which prohibited the parking of any "truck, camper, [or] trailer." The trial court found for the defendant. The appellate court upheld the trial court's judgment, finding that the restriction was unreasonable because the homeowner's actions did not interfere with the other residents' use and enjoyment of their property. The court concluded by stating that "[o]ne person's Bronco II is another's Rolls-Royce."  

Similarly, in Portola Hills, the Portola Hills Community Association sued to force the defendant to remove a satellite dish that he had installed in his backyard. Given that the defendant's dish was not visible to other residents or the public, the appellate court questioned whether the restriction "promoted[d] any legitimate goal of the association." The court also noted that "[w]hether an amendment is reasonable depends on the circumstances of a particular case." The court found the restriction was unreasonable and promoted no legitimate goal. It further questioned whether even an invisible satellite dish would comply with the restriction.

Portola Hills and Bernardo Villas, thus, represent "the proposition that a restriction is unreasonable if the particular violation of that restriction does not interfere with the other homeowners' use and enjoyment of their property."  

C. Nahrstedt's Progeny.

Since 1994, only one California case, Liebler v. Point Loma Tennis Club, has applied the Nahrstedt rule. However, several cases cite Nahrstedt but do not apply the reasonableness test.

In Liebler v. Point Loma Tennis Club, the appellate court ruled that Point Loma's policy of restricting use of tennis courts to current residents did not fall into one of the three Nahrstedt unreasonable categories. Thus, the policy was presumed reasonable and enforceable.

D. Judicial Treatment of CC&Rs Outside of California.

In reaching its landmark Nahrstedt decision, the California Supreme Court reviewed case law from several states, including Florida, Massachusetts and Maryland. The court examined rules dealing with both a reasonableness test for CC&Rs and the reasonableness of prohibiting pets in
A 1975 Florida case, *Hidden Harbour Estates, Inc. v. Norman*, appears to provide the earliest influence of a reasonableness test for CC&Rs. In Norman, the Florida appellate court stated that "if a rule is reasonable the association can adopt it; if not, it cannot. It is not necessary that conduct be so offensive as to constitute a nuisance in order to justify regulation of it." The Norman reasonableness test was further defined six years later in *Hidden Harbour Estates, Inc. v. Basso* which was also cited by the Nahrstedt court. The Basso decision stands for the premise that the restrictions are presumed valid, absent a showing that they are "wholly arbitrary . . . in violation of public policy, or . . . abrogate some fundamental constitutional right."

In finding that the prohibition of pets by a HOA was not unreasonable, the Nahrstedt court cited several out-of-state cases in addition to the Norman and Hidden Harbor cases. In both Dulaney Towers Maintenance Corporation v. O'Brey and Noble v. Murphy, each respective state court dealt with the issue of an HOA prohibiting pets; each court ruled that prohibiting pets from a CID was reasonable. In explaining the basis for its reasoning, the O'Brey court stated that "communal living requires that fair consideration must be given to the rights and privileges of all owners and occupants of the condominium as to provide a harmonious residential atmosphere. [T]he rationale for . . . barring pets . . . is based on potentially offensive odors, noise, possible health hazards, clean-up, and maintenance problems, and the fact that pets can and do de-file hallways, elevators and other common areas."

The California Supreme Court echoed the O'Brey court's comments when it stated that the Lakeside Village pet prohibition policy was "rationally related to health, sanitation and noise concerns . . . [at] Lakeside Village."

**II. Property Owners Notice of CC&Rs: The Anderson decision.**

One other recent California Supreme Court decision involving common interest developments merits attention. *Citizens for Covenant Compliance v. Anderson* deals with the issues of constructive notice and enforceability of CC&Rs, as well as the creation of a common interest development general plan and governing documents. The California Supreme Court describes the case as "address[ing] an earlier step in the [CC&Rs] process [earlier than Nahrstedt]."

In Anderson, a group of neighbors sued the Andersons for keeping llamas, growing grapes and operating a winery on their property, claiming the CC&R's prohibited such activities. The Andersons argued that the CC&R's were not enforceable because they were "not mentioned in any deed to their property." After a lengthy discussion of both the history of covenants and equitable servitudes and the current confusing state of the law, the Anderson court issued a new rule for determining when restrictions that do not appear on a deed may be enforced. The rule asserts that where a declaration establishing a common plan is (1) recorded before execution of the sale contract, (2) describes the property, and (3) states that it is to bind all purchasers and successors, then subsequent purchasers have notice of and are bound by the common plan.

Citizens for Covenant Compliance prevailed in the case because the original declaration describing the Anderson's property contained restrictions against farming, operating a business, and keeping animals other than household pets.

**III. Required Practices For HOA Litigation: The Duffey decision.**

The *Duffey v. Superior Court* case involved a lawsuit amongst the Coast Homeowners
Association (HOA) and three families, the Bertrams, the Duffeys and the Mehrenses. Each family owned a home in San Clemente which was subject to the CC&Rs of the HOA. The HOA sued the Bertrams to stop them from building a patio cover which would allegedly block the ocean views of their neighbors, the Duffeys and the Mehrenses, an action prohibited by the CC&R's. The lawsuit was instigated by the Duffeys and the Mehrenses, who had voiced their objections about the patio cover to the HOA. The HOA argued that the Duffeys and the Mehrenses should be made parties to the suit for two reasons: (1) if they had not objected to the Bertrams' patio cover the HOA would not have had to file the lawsuit; and, (2) if they were not made parties to the suit, and did not approve of its outcome, they could then sue the HOA.

After examining the applicable land use law, the appellate court ruled that an individual owner does not have to "be a defendant in any lawsuit brought by a (HOA) to discharge its own duty to enforce the CC&Rs simply because that owner complains about a neighbor's proposed construction." The court further commented that the HOA's duty to enforce the CC&Rs "exists independently of what any given group of owners . . . might think or assert." Finally, the court concluded that California civil procedure "requires that judgments brought in litigation under statute be res judicata and binding on the individual owners, including those who do not participate in the litigation." Thus, Duffey stands for the premise that members of an HOA who request that their association enforce the CC&R's cannot be compelled to participate in the litigation, but they must abide by the court's decision.

HOMEOWNERS ASSOCIATIONS AND NEGLIGENCE
In 1986 the California Supreme Court ruled for the first time that homeowners associations and the HOA board members had a duty to take reasonable measures to protect others from the risk of harm. Since then, Frances T. v. Village Green Owners Ass'n has become the standard for measuring HOA negligence claims. Thirty-six California cases have cited Frances T., as well as cases in the Ninth and Second Circuit Courts.

In Frances T. v. Village Green Owners Ass'n, the plaintiff sued her homeowners association and the individual directors of the association for negligence, among other things. The plaintiff sustained injuries when attacked by an unknown person who entered her condominium unit. At the time the plaintiff was attacked, her unit was without exterior lighting. The plaintiff had previously installed security lights after her condo had been burglarized. However, due to the associations' enforcement of the CC&R's, which prohibited unapproved lighting, she was ordered to disconnect her security lights; doing so effectively extinguished all her exterior lighting. The plaintiff's injuries occurred the same night after she was forced to disconnect her lights.

In its decision, the California Supreme Court noted that the issue of condominium association and association directors owing a duty of care to association members was a question of first impression before the court. Thus, it conducted a lengthy review of the law of negligence and corporate fiduciary duty, analogizing the responsibilities of landlords and directors of corporations to those of homeowner associations and association directors. The court concluded that Frances T. could bring suit against both the homeowners association and the directors for failing to take action to avoid harm and contributing to the risk of injury to residents. The case was remanded to the lower court for further proceedings under the court's newly established law.
HOMEOWNERS ASSOCIATIONS AND FIDUCIARY DUTY

The issue of fiduciary duty, or the legal duty to act primarily for the benefit of others when one has assumed such a role, was first addressed by the California courts in *Raven's Cove Townhomes, Inc. v. Knuppe Development Co.* *Raven's Cove* was upheld by the California Supreme Court and has been cited in seventeen other California cases since 1981.

In *Raven's Cove*, the Raven's Cove Townhomes HOA brought suit against the developer and developer's employees, as former directors of the HOA, for breach of fiduciary duty, among other things. The HOA contended that the developer had failed to fund a reserve account, which would have covered the costs of repairing latent construction defects. After discussing the processes by which the developer, as the initial HOA, should have assessed each unit to build a reserve account, the court commented:

> [w]here developer or sponsor totally dominates the association, or where the methods of control by the membership are weak or nonexistent, 'closer judicial scrutiny may be . . . appropriate' and the principles of fiduciary duty established with business corporations 'may exist for holding those exercising actual control over the group's affairs to a duty not to use their power in such a way as to harm unnecessarily a substantial interest of the dominant faction.'

In its decision, the court first reviewed the fiduciary relationship between HOA directors and HOA members, describing it as analogous to the fiduciary relationship between corporate promoter and shareholders. The court then ruled that the HOA had breached its basic fiduciary duties of acting in good faith and using good management skills by not establishing a reserve fund for maintenance and repairs.

RESTRICTING THE PUBLIC FROM CIDs

In the last three years, several southern California homeowners' associations have attempted to restrict public access to their communities by erecting gates on main access streets. Brentwood Circle, El Niguel Heights, and Whitley Heights homeowners' associations all approved plans to erect gates as a means of improving security and cutting down traffic in their neighborhoods.

Currently, the gating plans are all in different stages. The Los Angeles City Council voted in favor of allowing Brentwood Circle to become a gated community with a 24-hour guard and security fences. The fate of the El Niguel Heights gates awaits the decision of the Orange County Superior Court, due to a suit filed by a group of Laguna Niguel Heights residents protesting the loss of access to a public park within the common interest development's borders. The plan to erect gates in Whitley Heights has reached closure with the Court of Appeal ruling that the homeowners' association could not legally erect gates to restrict use of public streets.

In *Citizens Against Gated Enclaves v. Whitley Heights Civic Association*, residents of the neighborhoods surrounding Whitley Heights brought suit against the Whitley Heights homeowners' association to prevent the association from erecting gates on the main streets that serve the neighborhood. Those opposed to the gates "regularly use[d] the public streets and sidewalks inside the proposed gated area for such purposes as commuting to work and jogging."

In its opinion, the Court of Appeal discussed the history of the Whitley Heights area, an historic district listed on the Department of the Interior's National Register of Historic Places, as well as the history of the gating project. It noted that the gating project had
a fifteen year history, with residents fully financing the construction of the gates and receiving full approval of the Los Angeles City Council. The court with "deep and abiding concern . . . for crime prevention and historic preservation" ruled against the Whitley Heights homeowners' associations and prohibited the construction of the gates.  

The court applied section 21101.6 of the Motor Vehicle Code in holding that the city lacked authority to vacate or abandon public streets and the association could not erect gates on public streets. The court further commented that it "doubt[ed] the Legislature wants to permit a return to feudal times with each suburb being a fiefdom to which other citizens of the State are denied their fundamental right of access to use public streets within those areas." The court's concern that neighborhoods would seek to isolate themselves by erecting gates stemmed from an amicus curie brief, which stated "that as of January 1993, the City had over one hundred pending applications for street closures."  

Neighborhoods seeking to erect gates seem to be learning from the Citizens Against Gated Enclaves decision. For example, "[t]he city of Laguna Niguel has tried to sidestep the [public streets] issue by requiring El Niguel Heights to privatize the streets within their boundaries." It has also "drafted guidelines for all communities seeking gates that include not only privatizing the streets but also ensuring public access to any parks or public areas inside their boundaries."  

CONCLUSION  
During the past twenty years, the California courts have dealt with many issues involving common interest developments. At the forefront are issues dealing with CC&Rs enforcement and creation. The Nahrstedt and Anderson decisions were attempts by the California Supreme Court to reduce the lower courts' caseload by narrowing the grounds on which suit could be brought, specifically, by establishing the presumption of reasonableness of CC&Rs and notice based on recordation of a common plan.  

Given the large numbers of Californians that live in CIDs, and their projected expansion as a popular housing choice, the number of cases heard by the courts is certain to increase. Future CID case law will most likely deal with issues of current concern to HOA members, including "public" versus "private" status of CIDs, double taxation and creation of a CID in an existing subdivision. Each issue promises to require the same rigorous judicial scrutiny found in Nahrstedt, as common interest developments continue to establish their place in California case law.  

Appendix A  
An act to add Section 1354.5 to the Davis-Stirling Act, relating to common interest developments.  

LEGISLATIVE COUNSEL'S DIGEST  
Under existing law, the covenants and restrictions in the declaration of a common interest development shall be enforceable equitable servitudes, unless unreasonable.  

This is an act concerning Condominium and Homeowners Association restrictions for the purpose of prohibiting certain provisions in the recorded covenants and restrictions, declarations, bylaws, and rules of certain condominiums or homeowners associations that restrict the use of maintenance of units or common elements without certain justification.
or in a manner that denies certain civil rights, and generally relating to the recorded covenants and restrictions, declarations, bylaws, and rules of condominiums, and homeowners associations.

This bill would include rules and regulations passed by associations that are not in the common interest development's declarations. These rules cannot restrict activities in one unit or in the common areas if they deny a civil right guaranteed by the Federal or State Constitution or by any federal, state, county, or local statute, ordinance or regulation.

The people of the State of California do enact as follows:

1 SECTION 1. BE IT ENACTED BY THE STATE OF
2 CALIFORNIA, that the Laws of California read as follows:
3 ARTICLE - REAL PROPERTY
4 A recorded covenant, condition or restriction, a provision in a
5 declaration or a provision of the bylaws or rules of a common
6 interest development may not restrict the use or maintenance of a
7 unit or the common elements:
8 (1) Without reasonable justification, based on economic,
9 aesthetic, health, or safety considerations; or
10 (2) In a manner that denies a civil right granted or guaranteed
11 under the United States Constitution, The California Constitution, or
12 a federal, state, county, or local statute or regulation.

Appendix B

COMMON INTEREST DEVELOPMENTS:
CALIFORNIA CASE LAW AT A GLANCE

<table>
<thead>
<tr>
<th>Issue</th>
<th>Case (may appear in more than one category)</th>
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<tbody>
<tr>
<td>ENFORCING CC&amp;R'S</td>
<td>California Riviera Homeowners Ass'n v. Superior Court, 56 Cal. Rptr. 2d (Sept. 6, 1996). owner v. HOA re: recordation of notice of violation of CC&amp;R</td>
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<tr>
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<td>Nahrstedt v. Lakeside Village Condominium Ass'n, 8 Cal. 4th 361 (1994). owner v. HOA re: pet policy</td>
</tr>
</tbody>
</table>


Fig Garden Park No. 1 Homeowners Ass'n v. Assemi Corp., 223 Cal. App. 3d 1704 (1991). HOA v. developer re: notice of CC&R's


CONSTRUCTION

DEFECTS


CONDOMINIUM

CONVERSION


PROCEDURAL

QUESTIONS


California Riviera Homeowners Ass'n v. Superior Court, 56 Cal. Rptr. 2d (Sept. 6, 1996). Owner v. HOA re: recordation of notice of violation of CCR/litigation privilege


Fig Garden Park No. 1 Homeowners Ass'n v. Assemi Corp., 223 Cal. App. 3d 1704 (1991). HOA v. developer re: notice of CC&R's

La Jolla Mesa Vista Imp. Ass'n v. La Jolla Mesa Vista Homeowners Ass'n, 220 Cal. App. 3d 1187 (1990). HOA #2 v. HOA #1 re: homeowners' consents to petition to extend


Footnotes


2. Id. back to text


4. Id. back to text

5. Id. back to text

6. Based on search results on Westlaw, using key terms "common interest developments" and "planned unit developments." CIDs are also referred to as planned-unit developments or PUDs. back to text

7. See Appendix B for Table of Cases. back to text


10. 8 Cal. 4th 361 (1994). back to text

11. Id. at 361. back to text

12. Id. At 370-84. Cal. Civ. Code 1354(a) provides that "[t]he covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development." back to text

13. Id. at 386 back to text
14. Id. back to text

15. Id. back to text


17. Id. at 10. back to text

18. See Appendix A for the full text of Justice Arabian's model legislation. back to text

19. Id. at 28. back to text


21. Id. at 795. back to text


23. 4 Cal. App. 4th 289 (1992), overruled by Nahrstedt V. Lakeside Village Condominium Ass'n, 8 Cal. 4th 361 (1994). back to text

24. Bernardo Villas Management Corp., 190 Cal. App. 3d at 153-54.back to text

25. Id. at 154. back to text

26. Id. back to text

27. Id. back to text

28. Portola Hills Community Ass'n, 4 Cal. App. 4th at 291-92. back to text

29. Id. back to text

30. Id. at 293, citing Ritchey v. Villa Nueva Condo. Ass'n, 81 Cal. App. 3d 688, 694 (1978). back to text

31. Id. at 583.back to text

32. Id. back to text

33. See Puterbaugh, supra note 20, at 797 n. 56; Portola Hills, 4 Cal. App. 4th 289, 293 (1994). back to text

34. 40 Cal. App. 4th 1600 (1996). back to text


36. Liebler v. Point Loma Tennis Club, 40 Cal. App. 4th at 1604-12. back to text

37. Nahrstedt, 8 Cal. 4th at 1281-83. back to text

39. Norman, 309 So. 2d at 181 (finding that prohibiting the consumption of alcohol from the HOA common areas was not unreasonable). back to text


41. Nahrstedt, 8 Cal. 4th at 1283. back to text

42. Basso, 393 So. 2d at 639-40 (holding that the HOA could not prohibit a member homeowner from drilling a shallow well). back to text

43. 418 A.2d 1233 (1980). back to text

44. 612 N.E. 2d 266 (1993). back to text

45. O'Brey, 418 A.2d at 1235. back to text

46. Nahrstedt, 8 Cal. 4th at 1290. back to text

47. 12 Cal. 4th 345 (1995). back to text

48. Id. at 348. back to text

49. Id. back to text

50. Id. back to text

51. Id. back to text

52. Id. back to text

53. 3 Cal. App. 4th 425, 427 (1992). back to text

54. Id. back to text

55. Id. at 427-29. back to text

56. Id. back to text

57. Id. at 428. back to text

58. Id. at 431. back to text

59. Id. back to text

60. The Duffey court cited California Code of Civil Procedure §374 (now renumbered to §383 Cal. Civ. Code). Section 383 states: "An association established to manage a common interest development shall have standing to institute . . . litigation . . . in its own name . . . without joining with it the individual owners of the common interest development in matters pertaining to . . . enforcement of the governing documents." Cal. Civ. Code § 383 (a) (West 1996). back to text

61. Doctrine by which a final judgment by a court is conclusive upon the parties in subsequent jurisdiction. Barron's Law Dictionary (3d ed. 1991). back to text

62. 3 Cal.App.4th at 433-434. back to text
63. Frances T. v. Village Green Owners Ass’n, 42 Cal. 3d 490 (1986). back to text
64. Westlaw, Shephard's Case History Service (1996). back to text
65. 42 Cal3d at 495. back to text
66. Id. at 496. back to text
67. Id. back to text
68. Id. at 496-498. back to text
69. Id. back to text
70. Id. at 496. back to text
71. Id. at 499. back to text
72. Id. at 497-511. back to text
73. Id. back to text
74. Id. at 513. back to text
76. 114 Cal. App. 3d 783 (1981). back to text
77. Westlaw, Shephard's Case History Service (1996). back to text
78. 114 Cal. App. 3d. at 797. back to text
79. Id. at 787-98.
80. Id. at 799, quoting Hyatt and Rhoads, Concepts of Liability in the Development and Administration of Condominium and Homeowners' Associations, 12 Wake Forest L. Rev. 915, 923. back to text
81. Id. at 800. back to text
83. Mary Moore, Part of Brentwood Allowed to Become Gated Community, L.A. Times, June 4, 1995, Part J. back to text
84. Hall, supra note 82 at Part B. back to text
86. Id. at 816-17. back to text
87. Id. at 816. back to text
88. Id. at 815. back to text
92. Section 21101.6 of the California Motor Vehicle Code provides that "local authorities may not place gates . . . on any street which deny or restrict the access of certain members of the public to the street, while permitting others unrestricted access to the street." back to text

93. Citizens Against Gated Enclaves, 23 Cal. App. 4th at 818-22. back to text

94. Id. at 824. back to text

95. Id. at n.8. back to text

96. Hall, supra note 82, at Part B. back to text

97. Id. back to text