

Shopping for Milk, Bread and Signatures: Massachusetts Supreme Judicial Court Allows Solicitation of Political Nomination Signatures on Stand-alone Retailer's Private Property

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Kevin P. O'Flaherty, Len Freiman, and Martin M. Fantozzi

A recent decision issued by the Supreme Judicial Court of Massachusetts has expanded a citizen's right to conduct political activity on a retailer's private property. In the case, *STEVEN M. GLOVSKY vs. ROCHE BROS. SUPERMARKETS, INC.*, the Court for the first time extended a prospective political candidate's right to gather nomination signatures to the front door of a stand-alone supermarket. Prior SJC decisions had allowed this type of signature gathering in the common areas of shopping malls, finding that mall common areas were the "functional equivalent" of the downtown shopping areas of yesteryear, and, therefore, signature gathering for political purposes must be allowed as a protected constitutional right in the mall's common area.

In *Glovsky*, a candidate set up to gather signatures not in a mall common area, but at the front door of a stand-alone suburban supermarket. The store manager advised the candidate that store policy forbade this type of activity on store property. The candidate left, but subsequently filed a lawsuit requesting a declaratory judgment that the store had violated his constitutional right to equal ballot access under Article 9 of the Massachusetts Declaration of Rights, which guarantees free elections. The lawsuit also demanded relief under the Massachusetts Civil Rights Act for an alleged violation of that constitutional right "by threats, intimidation or coercion." A Massachusetts trial-level court dismissed both claims. The Supreme Judicial Court took the appeal, vacated and set aside the portion of the judgment dismissing the plaintiff's request for declaratory relief under Article 9 and affirmed the remainder of the judgment, holding that (1) the plaintiff adequately alleged a right to solicit nominating signatures outside the supermarket, but (2) the supermarket did not violate this right by threats, intimidation or coercion. The SJC then remanded for entry of a judgment dismissing the request for declaratory relief as moot since the election for which the plaintiff was soliciting signatures had come and gone.

The case is significant because it extends the right to solicit political signatures to single, stand alone supermarket, when, under prior decisions, the Massachusetts SJC had confined the exercise of such rights to the common areas of large, multi-store and multi-tenant shopping malls. The decision also suggests that the right to solicit signatures for campaign nomination papers and ballot

initiative petitions under Article 9 of the Massachusetts Declaration of Rights will likely extend to certain other freestanding retail stores. But there is some potential good news in what might seem an unfavorable decision for Massachusetts supermarkets and big-box retailers.

In reaching its ruling, the SJC noted that it has not decided whether individuals in Massachusetts have broad rights to engage in expressive behavior under the free speech provision of the of the Massachusetts Declaration of Rights, Article 16, which parallels the first amendment to the United States Constitution, and that unlike Article 9, may contain a "state action requirement." In addition, the SJC declined to follow decisions from California, which permits broad rights to engage in expressive activity in the common areas of private shopping centers but has expressly refused to extend the right to conduct such expressive activities at stand-alone retail properties or smaller strip centers. The SJC distinguished the California cases by noting that, in California, the range of politically expressive activities allowed in a mall common area is much broader than the right to solicit signatures on ballot petitions that has been recognized in Massachusetts. In other words, while states like California limit the types of retail locations where politically expressive activities may override private property rights, the range of expressive activities allowed in those areas is much broader than has been recognized in Massachusetts. In Massachusetts, while signature gathering can now take place on the private property of stand-alone retailers, it is only this limited expressive activity, and not other forms of political "speech" that are allowed.

The *Glovsky* decision also notes that while it brings to the front door of standalone and big box retailers issues and considerations which in the past only concerned owners and operators of large regional shopping malls, these stand alone retailers may protect their customers from harassing efforts to obtain signatures by imposing reasonable time, manner, and location restrictions on signature gatherers.

Goulston & Storrs represents many owners and operators of regional, lifestyle and community shopping centers, and has counseled many of those clients regarding best practices to manage the issues presented in the *Glovsky* decision.

For questions about the information contained in this advisory, please contact your usual Goulston & Storrs' attorney or one of the members of the firm's Litigation Group listed below.

Martin M. Fantozzi

Director

(617) 574-3510

mfantozzi@goulstonstorrs.com

Len Freiman

Director

(617) 574-4188

lfreiman@goulstonstorrs.com

Kevin P. O'Flaherty

Director

(617) 574-6413

koflaherty@goulstonstorrs.com

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