

# Massachusetts Supreme Judicial Court (SJC) Decision Permits Solicitation of Nominating Signatures at Supermarket Entrance

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Owners and operators of supermarkets and other commercial property in Massachusetts should be aware that on October 10th, the **Supreme Judicial Court announced its decision in Glovsky vs. Roche Bros. Supermarkets, Inc.**, SJC-11434, which **allows a candidate for public office to solicit nominating signatures at a supermarket entrance**, even a solo site supermarket which does not operate as part of a shopping center or mall.

Deciding the case upon review of a Motion to Dismiss, the Court articulated the following key points:

“Glovsky . . . has [adequately] alleged a right under article 9 [of the Massachusetts Declaration of Rights] to solicit nominating signatures on the private property outside the entrance to Roche Bros.’ Westwood supermarket.”

“Glovsky seeks only the right to engage in ‘unobtrusive and reasonable solicitations’ outside the store entrance. Nothing in the . . . record before us suggests that the proposed, presumably brief, interactions with shoppers as they enter or leave the supermarket would interfere with Roche Bros.’ use of its property.”

“Roche Bros. could post signs in the area disavowing any association with potential political candidates . . . . Additionally, Roche Bros. could prevent those soliciting signatures from harassing its patrons and impairing its commercial interests by prescribing reasonable restrictions on the location, time, and manner in which the nominating signatures may be sought.”

“[N]othing in the record suggests that unobtrusive signature solicitation, subject to such reasonable restrictions as Roche Bros. may prescribe, would impair Roche Bros.’ commercial interests. We conclude that Glovsky plausibly has alleged a right under article 9 to solicit nominating signatures on the private property outside Roche Bros.’ Westwood supermarket.”

The decision is based on the Court’s finding that “[i]n many rural and suburban communities, the local supermarket may serve as one of the few places in which an individual soliciting signatures would be able to approach members of the public in large numbers.” The Court rejected the argument that “privately owned area immediately outside the entrance to such a supermarket differs .

. . from the common areas of a shopping mall or shopping center . . . .” The decision is limited on its face to operating supermarkets, as opposed to retail stores generally, in recognition of the multiplicity of services and retail merchandise provided by modern supermarkets, which “in many communities would be dispersed among several shops along a public way . . . .”

Justice Cordy dissented, taking the position advanced by Roche Bros. and the Amicus Brief filed by New England Legal Foundation, the Real Estate Bar Association, and groups representing other commercial property owners, arguing that the majority decision “ significantly expands the scope of the right afforded by article 9 of the Massachusetts Declaration of Rights at the expense of the rights of countless commercial property owners across the Commonwealth. In so doing, its reasoning departs not only from the cautious analysis employed in Batchelder v. Allied Stores Int’l, Inc., 388 Mass. 83 (1983), but also from the overwhelming national consensus on the proper balancing of rights where a limited right to solicit signatures on private property is recognized. By failing to recognize the enormous differences between large shopping complexes that duplicate traditional downtown functions and free-standing stores selling multiple products, the court completely undoes the intended balance between the rights of property owners and the rights of those whom they invite to use their property, and creates serious consequences for property owners who miscalculate their obligations despite their best intentions.”

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