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## Court Permits Political Candidate to Solicit Nominating Signatures on Retailer's Private Property

The Massachusetts Supreme Judicial Court has ruled that a supermarket violated a political candidate's state constitutional rights when the store manager prevented him from collecting nomination signatures on the sidewalk outside the store. *Glovsky vs. Roche Bros. Supermarkets, Inc.*, SJC No. 11434 (October 10, 2014).

In 2012, Steven Glovsky set out to collect signatures on a sidewalk outside the entrance of a Roche Brothers Supermarket in order to earn a place on a state election ballot. The supermarket is a free-standing building that sits on a five acre site. When Glovsky informed the store manager of his plan, he was told that store policy prohibited signature solicitation anywhere on store property including the sidewalk.

Glovsky sued claiming that Roche Brothers' decision violated his rights under Article 9 of the State's Declaration of Rights which protects individuals' rights to participate equally in the electoral process including a candidate's right to solicit signatures. Glovsky requested relief under the Massachusetts Civil Rights Act for a violation of his rights by "threats, intimidation or coercion." The Court found that Glovsky adequately alleged a protected right to solicit signatures under Article 9, but failed to make out his Civil Rights Act claim because the actions of the store manager in stating the supermarket's policy did not rise to the level of "threats, intimidation, or coercion" necessary to make a claim under the Act.

In an earlier decision, the Court applied a balancing test weighing a candidate's need to collect nominating signatures against the burden such conduct imposed on a property owner. There, the Court found that a candidate had a right to collect nominating signatures in the common areas of a private shopping mall due to the importance of shopping malls to the public for retail shopping and a candidate's need for access to the public. Roche Brothers sought to distinguish this earlier case by arguing that Article 9 only protects signature solicitation on private property that "serves as the functional equivalent of a traditional public forum." Citing cases from California and other jurisdictions finding in favor of property owners, Roche Brothers argued that candidates did not have a protected right to solicit signatures on private property located at the entrance to a free-standing retail establishment because store owners invite the public to pass through store entrances, not to congregate there.

The Court disagreed. Distinguishing the California rulings, the Court explained that the right to solicit signatures fell under California's free speech clause

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Beveridge & Diamond's [Retail Practice](#) assists the retail sector with cross-cutting environmental, land use, and natural resource issues affecting development and operation of stores and distribution/return centers, as well as product design, packaging and labeling, distribution, and end-of-life management. For more information contact:

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which “recognizes an expansive right to engage in free speech on certain private property that is broader than the limited [A]rt. 9 right to solicit nominating signatures.” The Court also noted that the California courts had relied on the fact that the public was only invited to pass through the area outside the store’s entrance, not to congregate there. The *Glovsky* Court, however, opined that whether individuals congregate or pass through a store has no bearing on whether a candidate has a protected right under Article 9. Instead, applying the balancing test, the Court reasoned that “in 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 did note that the Roche Brothers could post signs renouncing any association with potential political candidates. Roche Brothers also has the right to prevent those soliciting signatures from harassing customers and impairing the store’s commercial interests by creating reasonable restrictions on the location, time, and manner in which candidates sought nominating signatures on their property.

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