



COMMERCIAL REAL ESTATE INSIGHT & NEWS

The Bowditch & Dewey Real Estate Blog

Signature Solicitation at the Supermarket: *Glovsky v. Roche Bros. Supermarkets*

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Paul C. Bauer – With political passions seemingly higher than ever before, it is no wonder retail property owners fear alienating patrons by any hint of partisanship. Anticipating verbal arguments, ill will or even violence, owners may well prefer simply banning political activities at their stores rather than trying to accommodate traditional political activities like signature solicitation for ballot access.

The Massachusetts Supreme Judicial Court in *Glovsky v. Roche Bros. Supermarkets* recently addressed this issue in the context of signature solicitation outside the entrance to a supermarket. The supermarket contains a 47,000 square foot store on almost 5 acres. In addition to groceries, the supermarket possesses “departments” with a bakery, florist, and restaurant together with a full service bank branch. An individual requested the right to solicit nominating signatures for a seat on the Governor’s Council from voters on the sidewalk outside the entrance to the store. The manager of the store informed the individual that the store had a policy that did not permit signature solicitation anywhere on its property.

The Court applied a balancing test from an earlier decision, *Batchelder I*, that permitted signature solicitation in enclosed malls and concluded that the local supermarket (and here the only supermarket in the town) “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 and the individual has a substantial interest in soliciting signatures in this area.” At the same, the Court concluded that allowing individuals to solicit signatures would not be unduly burdensome and that prohibiting signature solicitation in such circumstances violated the individuals’ right to equal ballot access under Massachusetts law.

What can property owners do to mitigate the impact of the *Glovsky v. Roche Bros* case? First, an owner should take affirmative action now to determine whether its property likely falls into the category of properties described in *Glovsky* and *Batchelder I* where signature solicitation cannot be banned. There is nothing in the decision that implies that all properties in which the public has access, such as office buildings or limited access retail facilities, must permit

signature solicitation. The extensive discussion of these two cases provides a framework for making this determination.

Second, if an owner concludes that it is not obligated to permit signature solicitation under these cases, it should determine whether it wishes to permit or prohibit solicitation. The owner should have a written policy in either instance as well as a protocol for employees to follow in the event of a request to solicit.

Finally, if the conclusion is that permission for signature solicitation is likely required at the site, we are advising our clients that the owner should develop a written policy with reasonable rules and procedures as to time, place and manner for signature solicitation as well as employee protocols for handling such requests. In this way, the owner can best protect legitimate concerns about political activity at its property without running afoul of the *Glovsky* and *Batchelder I* decisions.