

New Jersey Supreme Court Allows Limits on Common Interest Community Unit Owners' Free Speech Rights With Respect to Electioneering and Other Internal Communications

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The Supreme Court of New Jersey has affirmed an unreported August 2011 Superior Court of New Jersey, Appellate Division opinion concerning political free speech in a residential common interest community setting. *Robert Dublirer v. 2000 Linwood Avenue Owners, Inc.* was decided on December 3, 2014.

The property in question in the case is Mediterranean Towers South, a high-rise apartment building and cooperative in Fort Lee, New Jersey. The co-op's Association had a 'house rule' banning the placing of literature, including election leaflets, under the doors of residences without the prior consent of the Association.

The Court found the practice, as carried out by the Association, to be unconstitutional under the free speech provision of the New Jersey State Constitution. Importantly, the ruling is unique to New Jersey and is not based on the First Amendment of the United States Constitution.

This case has implications for all common interest residential communities in New Jersey, including condominiums and fee simple ownership regimes, as well as cooperatives.

After deciding to run for a seat on the board of the Association, Plaintiff Robert Dublirer requested an exception to the house rule to permit the placement of leaflets under doorways. When this request was denied, Dublirer brought suit against the Association. The trial court upheld the Association's house rule, however the Appellate Division reversed the trial court and the Supreme Court has now affirmed the Appellate Division.

It was emphasized by the Court that New Jersey's constitutional guarantee of free speech is among the broadest in the nation, and that protection extends to "unreasonably or oppressive conduct on the part of private entities" such as the governing bodies for common interest housing communities. Even though a community association directorship is not a public office, it is similar enough that speech supporting a candidate should be treated as political speech, which is entitled to the highest level of protection.

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The Court held that residents' rights to speak about the governance of their community in the form of a leaflet left under a door was a minimal intrusion and outweighed the Association's concern for litter and preservation of the tranquility of the residential community. Importantly, the Court focused on the fact that there was no viable alternative afforded by the Association to the candidate for political communication. One such alternative, rejected by the Court, was the use of the postal service, which reportedly would have cost approximately \$200 to accomplish the same goal as hand-delivery of the pamphlets.

Although the Court found that the barring of pamphlets cannot be considered a minor restriction, the right to place pamphlets under doors was not found to be an absolute right. Community associations may adopt restrictions on such communications that are reasonable in terms of time, place and manner. Any such restrictions are subject to challenge under the holding in the *Dublirer* case. Restrictions the Court suggested as appropriate are limitations on the hours of distribution and the number of distributions. Particularly disturbing to the Court in the *Dublirer* case was the fact that the Association reserved the right for it to communicate via materials placed under the door at its discretion, including materials critical of the opposition to the Association's leadership.

Community associations should consider reviewing their election procedures and other regulations restricting communications about governance issues in light of this important case. Although circumstances may differ from association to association, it is certain that the political speech of candidates for the office of a community association director or trustee may not be unreasonably restricted.

If you have questions regarding the laws impacting common interest communities in New Jersey, please contact the author of this Alert, **John H. Hague**.