

Guidelines Pertaining to Library Imposed Bans on Petitioning

Issue

Each year, as election season approaches, public libraries are often favorite locations for petition circulators seeking to obtain signatures to place issues on the ballot or, in the case of candidates for public office, to gather sufficient signatures to make the ballot. Many public libraries have asked whether they may place restrictions on these petitioners and, specifically, whether a public library may prohibit petitioners from soliciting signatures (1) outside the library in the parking lot or on the library's sidewalks and (2) inside the library or within the library's lobby.

Background

Solicitation is a recognized form of speech protected by the First Amendment. However, the First Amendment does not require the government (public libraries, in this case) to grant access to all those wishing to exercise free speech rights on its property. The courts look to the nature of the government property at issue to determine what access restrictions are appropriate. The applicable level of scrutiny is determined by the type of forum in which the speech is restricted, as well as whether the restriction is based on the content of the speech.

What Does this Mean for Libraries?

It is unlikely that a library could impose any regulation restricting petitioners from soliciting signatures outside the library in the parking lot or on the library's sidewalk. Sidewalks and streets are places that have traditionally been used for expressive activity. For this reason, a court would be extremely protective of the public's free speech rights in these areas. Furthermore, the solicitation of signatures outside of a library would generally not interfere with a library patron's use of the library for its intended purpose. Because the distribution of leaflets and the solicitation of signatures lies at the heart of the First Amendment, it is unlikely that a restriction banning all petitioning outside of a library would pass constitutional muster.

It appears, however, that in most circumstances, libraries may ban petitioners from soliciting signatures inside the confines of a library. A library is obligated to permit the public to exercise only those rights that are consistent with the nature of a library and consistent with the government's purpose in establishing a library. The purpose of a library is to provide a place for reading, writing and quiet contemplation. The exercise of many oral and interactive First Amendment activities is antithetical to the nature of a library. A ban on petitioning within the confines of the library, including the lobby and main reading area, would likely be permissible because the government has a significant interest in prohibiting petitioners from disrupting library patrons' use of the library.

It should be emphasized, however, that any ban on petitioning must be content-neutral. For example, it would be impermissible to allow one group of petitioners to solicit signatures, while banning another group. If a library bans petitioning, it must ban all petitioning, regardless of the cause. So, for example, a library could not permit a school board member to obtain signatures within the library as part of his or his candidacy for re-election while prohibiting ballot issue petitioners. Furthermore, if the lobby of a library is open to other forms of public

discourse, a rule banning petitioning within the library's lobby may not withstand constitutional scrutiny. For example, if the lobby of a library contains a coffee shop, gift store or designated area to talk, the lobby may not be considered as a place designed nor intended to create a conducive atmosphere for reading, writing and quiet contemplation. If such is the case, the library may no longer have a significant interest in prohibiting petitioners from soliciting signatures within the library's lobby and any ban on petitioning would likely be impermissible.

As always, libraries should understand that this is not legal advice. Ohio's public libraries should seek the counsel of their statutory legal representative, their county prosecutor, and should follow their prosecutor's advice. The OLC's legal counsel, Jonathan Iten, of Vorys, Sater, Seymour and Pease (614-464 5653), is available to discuss this memorandum with and to provide supplemental information to your county prosecutor.