

# Court Rules New Jersey HOAs Can't Ban Political Signs

by *Donald Scarinci*

As the political season heats up, look for more campaign signs to pop up in New Jersey communities. The New Jersey Supreme Court recently ruled that [homeowners associations cannot ban political signs from doors and windows](#) because doing so would violate free speech guarantees provided by the New Jersey Constitution.

## *The Facts of the Case*

In [Mazdabrook Community Homeowners' Association v. Khan](#), Wasim Khan, a resident of the Mazdabrook Commons planned community in Parsippany, challenged a rule banning the posting of political signs. While running for local political office, Khan hung one of his campaign posters in a window of his townhouse. The Mazdabrook Commons Homeowner's Association (HOA) notified him that posting signs of any kind was prohibited and told him to remove it within three days. Khan removed the sign, but was fined \$75.

In a later disagreement with the HOA over outstanding fees, Khan challenged the constitutionality of the association's ban on signs. The trial court ruled that the sign prohibition was not unconstitutional, relying on *Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n*, 192 N.J. 344 (2007). In that case, the court upheld the constitutionality of an HOA policy that limited residents to posting one sign in any window of their home and a second sign in a flowerbed near the residence. The Appellate Division disagreed.

## *The Court's Decision*

In a 5-1 decision, the New Jersey Supreme Court concluded that the HOA's rules violated Khan's free speech rights. As the majority opinion highlighted, New Jersey is unique in that an individual's affirmative right to speak freely is protected not only from abridgement by government, but also from unreasonably restrictive and oppressive conduct by private entities in certain situations.

Using the factors first set out in *State v. Schmid*, 84 N.J. 535 (1980), the court balanced nature and purpose of the property, the extent to which it is available to the public, and the purpose of the prohibited activity. As articulated by Chief Justice Stuart Rabner, "Balancing the minimal interference with Mazdabrook's private property interest against Khan's free speech right to post political signs on his own property, we conclude that the sign policy violates the free speech clause of the State Constitution."

The court also seemed to emphasize that the sign in question supported the campaign of the homeowner rather than a third party. "Political speech in support of one's candidacy for public office is fundamental to a democratic society," the opinion adds.

This case clarifies that HOAs cannot impose blanket restrictions on a unit owner's right to post a political sign on his or her own property. However, they can still enact reasonable time, place and manner restrictions, such as limiting the number or location of the signs.

For additional advice on drafting HOA bylaws that will pass legal scrutiny, please contact an [experienced New Jersey business attorney](#).

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