



April 26, 2019

Mr. Bill Lefko, Pres.  
Concordia Homeowners Association, Inc.  
1 Clubhouse Drive  
Monroe Township, NJ 08831

Re: Request for Permission to Engage in Campaign  
Political Speech and Associational Activity

Dear Mr. Lefko and all Concordia Board members:

I am writing to you on behalf of Our Concordia, an unincorporated group of Concordia owners that has a significant number of members. The group was formed to support the nomination and election of several owners to the Board of Trustees, with the intent to engage in a host of campaign activities during the two- to three-month period prior to the upcoming election.

New Jersey Appleseed Public Interest Law Center is a nonprofit 501(c)(3) organization, which has a Common Interest Association Democracy Project under which we have decided to represent the members of Our Concordia. This project was operated jointly with Professor Frank Askin of the Rutgers Constitutional Law Clinic prior to his retirement and thus has focused and continues to focus on assisting common interest association owners in their various efforts to ensure open and fair board elections pursuant to the New Jersey Constitution and the Property Real Estate Development and Full Disclosure Act "PREDFDA").

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Toward that end, we are hereby requesting that the Board permit members of Our Concordia to engage in certain campaign activities, specified below; refrain from enforcing certain rules and regulations, also specified below; and once a new board is elected, work with all owners to amend the rules and regulations so as to reasonably accommodate owners' New Jersey constitutional rights of political speech and association pursuant to Art. I, par. 18.

As you know, Communities of Concordia Homeowners Association is a relatively large homeowner community that is spread out over approximately 489 acres. At this time, there are 1,757 homes with an approximate population of 2,900 persons. Roads within the community are private, and there are a variety of types of homes ranging from condominium units to townhouses and semi-attached and ranch-style detached homes. Common facilities include a clubhouse, tennis courts, shuffleboard courts, bocce ball courts, pickle ball courts, a bicycle/walking path, and an outdoor pool. Despite these common recreational facilities, many residents do not have the opportunity to interact with each other on a regular basis, except for their immediate neighbors. This is the primary reason that Our Concordia wants to engage in an active, face-to-face personal election campaign. They want to meet residents on a door-to-door basis, discuss with them their concerns, if any, and encourage them to participate in the election and in the affairs of the community generally.<sup>1</sup>

As you also know, the Concordia Rules and Regulations (Version 2019-1) explicitly ban all campaign activity or electioneering anywhere in Concordia, and owners risk being fined for even asking other residents for their support while on Clubhouse property. Specifically, the Rules and Regulations state:

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<sup>1</sup> Members of Our Concordia are aware that all candidates for the Board of Trustees are interviewed by the Concordia TV channel for a one-time broadcast, are given the opportunity to have their biography and goals and objectives printed in the *Concordian* (the community newspaper) and are required to participate in an event held in the Clubhouse where residents may attend and ask the candidates questions. These singular events, however, are not sufficient to get the word out to all 2,900 residents, as Our Concordia is intent on doing.

1600.1 Campaigning or soliciting of any type is prohibited door to door anywhere in Concordia.

1600.2 Campaigning or soliciting of any type is prohibited anywhere in or on Clubhouse property.

In addition to this blanket ban on all campaign activity (except the limited activity that is permitted as noted supra. n.1), there are several other prohibitions that directly impinge on an owner's ability to engage in activities typically associated with political campaigns. These include,

217.2 No sign of any kind may be placed on the inside or outside of a window that is visible from the exterior of the home.

718. Information submitted to the Concierge for approval by Management [to be placed on the Clubhouse bulletin board] must pertain to general Community concerns and interests, and but may not in any way be . . . political in nature.

720.1 Sanctioned organizations within the Concordia community shall be permitted to distribute flyers, communication or other type of informational material by placing them in residential newspaper delivery receptacles provided prior approval is received from Management.

Together, these prohibitions place a significant and unreasonable burden on owners' expressional rights; that is, they leave members of Our Concordia and all other owners without adequate (i.e., convenient, feasible) alternatives to get their political campaign message out to all Concordia voters. In accord with the New Jersey Constitution, as interpreted in a line of Supreme Court cases starting with Comm. For a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 192 N.J. 344 (2007) ("Twin Rivers"), through Mazdabrook Commons Homeowners' Ass'n v. Khan, 210 N.J. 482 (2012) ("Mazdabrook"), and ending with Dublirer v. 2000 Linwood Avenue Owners, Inc., 220 N.J. 71 (2014) ("Dublirer"), Our Concordia requests permission to engage in the following activities, and urges the Concordia Board not to enforce the relevant rules and regulations that we assert are unconstitutionally overbroad and thus invalid.

1. Door-to-door campaigning. Our Concordia requests permission to go door to door in order to talk with all

residents about their reasons for running for the Board of Trustees, engage in conversation about governance and other community issues, and urge such persons to participate in the election. This "campaigning" activity directly violates R. 1600.1. In none of the above cases were owners prohibited from campaigning door to door and talking to residents and directly handing them campaign literature. In fact, the N.J. Supreme Court noted in Mazdabrook, a case where the owner was challenging a total ban on signage, that Mr. Kahn "could walk door-to-door, distribute pamphlets, prepare mass mailings, stop and speak to neighbors on the street, speak to them before or after Association meetings, and telephone them." Mazdabrook, 210 N.J. at 502. See also Twin Rivers, 192 N.J. 368 (owners "can walk through the neighborhood, ring the doorbells of their neighbors and advance their views"). It is thus clear that R.1600.1 is overbroad as it relates to political speech, presents an unreasonable burden on owners' expressional rights and cannot in good conscience be applied.

2. Distribute flyers in residential newspaper delivery receptacles, known as "newspaper chutes". If people are not at home, members of Our Concordia would like to place flyers in residents' newspaper chutes. In accord with R. 720.1 only "sanctioned organizations within the Concordia community" are permitted to distribute flyers through such receptacles, and only after receiving prior permission from Management. Placement of flyers in such chutes is equivalent to placing a flyer under the door in a co-op apartment complex, as the N.J. Supreme Court discussed in Dublirer. In that case, Mr. Dublirer "sought to be elected to the Board of Directors of the co-op, and his message related to the governance of the residential community in which he lived." He "sought to communicate with fellow co-op members in the most direct and least expensive way possible--by placing written campaign materials under the door of each apartment." Dublirer, 220 N.J. at 87. The Court held that the Board's complete restriction of such activity was unreasonable despite the fact that "Dublirer c[ould] post materials on a bulletin board in the rear lobby of the building and c[ould] distribute information at two annual board meetings. He c[ould] also use the postal system to send mailings at a cost of more than \$200 per mailing." Id. The Court noted that a board could adopt reasonable time, place and manner restrictions to serve the community's interest, but that a ban, such as existed in that case, on the distribution of all written materials anywhere on the premises without written authorization of the board deprived Mr. Dublirer of a "convenient, feasible and alternative means" to engage in substantially the same

expressional electoral activity that putting flyers under doors provided. Id. Therefore, refusal to permit members of Our Concordia to distribute campaign material in the chute simply because they are not a "sanctioned organization" would be clearly invalid under New Jersey's Constitution.<sup>2</sup>

3. Talk to residents on Clubhouse property and when navigating throughout the community on common property. Our Concordia would like to support its candidates for the Board of Trustees by talking and engaging in electoral activity in and on Clubhouse property in direct violation of R. 1600.2. Again, this complete ban on campaigning in or on Clubhouse property is unreasonable, especially since owners may not post anything on the Clubhouse community board of a political nature. Our Concordia would accept time limitations on their campaign activity in the Clubhouse, as well as place limitations within the Clubhouse or on other common recreational sites, but a complete prohibition is unreasonable in the context of such a spread-out community, with few common meeting places. Such time and place restrictions, however, would have to promote the quiet enjoyment of residents of the Clubhouse property but without unreasonably interfering with owners' free speech rights.

4. One sign on inside of house window facing street and signage inside car window. The opportunity to talk to neighbors and distribute flyers in support of candidates for the Board of Trustees are both important to Our Concordia's campaign. But as the N.J. Supreme Court stated in Mazdabrook,

Those options, though, are not substitutes for a more enduring message, identified with the speaker in the form of a political sign in the window of the speaker's home. The available alternatives cannot replace the venerable, unique, and important role that inexpensive, convenient residential signs play-- particularly in connection with a political campaign.

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<sup>2</sup> Members of Our Concordia are also under the impression that in previous years, Management has permitted incumbent board members running for election to put campaign materials in the newspaper chutes. If that is the case, refusal to grant them permission to do so would also constitute discrimination in violation of the board's fiduciary duty against arbitrary decision-making and its obligations to serve the general welfare of the residents of the community. PREDFDA, N.J.S.A. 45:22A-44. See Twin Rivers, 192 N.J. at 369-370.


Id., 210 N.J. at 502-503 (citation omitted). Accordingly, Our Concordia requests the ability to place one sign in the inside of the windows of their respective homes that face the street in violation of R. 217.2. The Court's decision in Mazdabrook specifically supports such request. Cf. Twin Rivers, 192 N.J. 368 (where court upheld association restriction that permitted homeowners to place "a single sign in each window and signs could be placed in the flower beds adjacent to the homes"). Members also request the ability to place a campaign sign inside their automobile. Though there is no direct rule prohibiting such a sign, members of Our Concordia were told that a former board candidate was threatened with a fine for engaging in such speech. Such limitation on an owner's use of their automobile when traveling on common property roads within the community is clearly unreasonable.

In Dublirer, supra, 220 N.J. at 74, the N.J. Supreme Court made clear that when evaluating restrictions on an owner's expressional rights in a common-interest community like Concordia, courts should focus on the purpose of the expressional activity in relation to the property's use and should conduct a balancing test of those rights and private property rights of the association. Under such approach, it is clear that a complete ban on campaigning for board elections door to door, distributing flyers in an owner's newspaper chute, talking with neighbors on common property such as the Clubhouse, and putting signage inside one's windows or in one's car cannot be justified. We hope that the Board of Trustees agrees with our analysis.

Our Concordia is looking forward to conducting a vibrant and robust campaign in support of its candidates who are running to become members of the Board of Trustees. They intend to conduct a positive campaign, but one that fully and fairly discusses various issues that relate to the governance of the community. We therefore request that you grant permission to Our Concordia to engage in the four activities listed above and refrain from fining them. If the Board decides to threaten fines and generally interfere with Owners' political speech and campaigning activity, please let me know. Though we do hope to come to some agreement on what owners may or may not do with respect to campaigning, if we cannot so agree, Our Concordia intends to seek a temporary restraining order as soon as possible. As you know, if we were to prevail, we would be entitled to legal fees and costs under New Jersey's Civil Rights statute, N.J.S.A.10:6-1 to -2.

Thank you for your anticipated consideration of our request.

Sincerely,

  
Renée Steinhagen, Esq.

Cc: Our Concordia

