S T A T E O F N E W Y O R K

3753

2011-2012 Regular Sessions

I N A S S E M B L Y

January 27, 2011

Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the civil rights law, in relation to freedom of speech and petition in certain shopping centers and shopping malls

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings and declaration. The legislature hereby finds and declares that the ideals and aspirations of American democracy are enhanced by preserving and expanding the rights of freedom of speech and petition guaranteed by the United States and New York constitutions. However, modern patterns of settlement and modern retailing practices have had the unintended effect of diminishing the opportunity to exercise such rights. Traditional forums for such speech -- public streets and town squares -- have been replaced by large shopping centers and malls.

The legislature further finds that permitting citizens to exercise their first amendment rights has benefits for society as a whole since it encourages debate on public policy issues and helps produce an informed citizenry. It is also important that citizens have access to information from a variety of sources concerning pressing social problems. For example, the opportunity for young people to gain information on such issues as drug and alcohol abuse and teenage pregnancy at a place they frequent, such as a shopping mall, can be an important part of society's efforts to address these problems.

Accordingly, the legislature hereby finds and declares that, as a matter of public policy, owners of shopping centers should be encouraged, and in some instances required, to permit the exercise of first amendment activities on their premises. However, in recognition of the commercial interests and reasonable investment-backed expectations of owners of shopping malls and their lessees, the legislature further

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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finds that the exercise of first amendment rights should be subject to reasonable time, place and manner restrictions.

S 2. The civil rights law is amended by adding a new section 16 to read as follows:

S 16. EXERCISE OF THE RIGHT OF FREE SPEECH AND THE RIGHT TO PETITION IN SHOPPING CENTERS. 1. DEFINITIONS. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "COMMON AREA" MEANS THAT PART OF A SHOPPING CENTER OR SHOPPING MALL THAT CONSISTS OF ENTRANCES, EXITS, PASSAGEWAYS, SIDEWALKS, MALLS, CONCOURSES AND PARKING LOTS PROVIDING ACCESS TO OR CONNECTING THE ESTABLISHMENTS OF THE SHOPPING CENTER OR SHOPPING MALL AND WHICH DO NOT CONSTITUTE PART OF THE GROSS LEASABLE AREA OF SUCH SHOPPING CENTER OR SHOPPING MALL.

(B) "ESTABLISHMENT" MEANS A STORE, BANK, RESTAURANT, THEATER, ARCADE OR OTHER SIMILAR TYPE FACILITY.

(C) "GROSS LEASABLE AREA" MEANS THE TOTAL SQUARE FOOT AREA OF ALL ESTABLISHMENTS OF A SHOPPING CENTER OR SHOPPING MALL LEASED OR OFFERED FOR LEASE, REGARDLESS OF WHETHER VACANT OR NOT, THE LOCATION OF SUCH AREA WITHIN THE SHOPPING CENTER OR THE DURATION OF THE LEASE.

(D) "MANAGEMENT" MEANS ANY PERSON, PARTNERSHIP, LIMITED LIABILITY COMPANY, CORPORATION, JOINT VENTURE OR OTHER ENTITY MANAGING, OWNING, OPERATING OR OTHERWISE CONTROLLING THE ADMINISTRATION OF A SHOPPING CENTER OR SHOPPING MALL.

(E) "SHOPPING CENTER" MEANS A PRIVATELY-OWNED COMPLEX, ENCLOSED OR OTHERWISE, CONSISTING OF AT LEAST TEN ESTABLISHMENTS IN WHICH MERCHANDISE IS SOLD AT RETAIL, WHICH GRANTS ACCESS TO THE GENERAL PUBLIC AND WHICH, INCLUDING COMMON AREAS, HAS AT LEAST ONE HUNDRED THOUSAND SQUARE FEET OF GROSS LEASABLE AREA.

(F) "SHOPPING MALL" MEANS A PRIVATELY-OWNED, ENCLOSED COMPLEX CONSISTING OF AT LEAST TWENTY ESTABLISHMENTS, WHICH GRANTS ACCESS TO THE GENERAL PUBLIC AND WHICH, INCLUDING COMMON AREAS, HAS AT LEAST TWO HUNDRED FIFTY THOUSAND SQUARE FEET OF GROSS LEASABLE AREA.

2. SHOPPING CENTER ACCOMMODATION PLANS. (A) THE MANAGEMENT OF EVERY SHOPPING CENTER SHALL PREPARE AN ACCOMMODATION PLAN SETTING FORTH THE SHOPPING CENTER'S POLICY WITH REGARD TO THE EXERCISE OF THE RIGHT OF FREE SPEECH AND THE RIGHT TO PETITION. WHERE THE EXERCISE OF THE RIGHT OF FREE SPEECH AND THE RIGHT TO PETITION IS PERMITTED BY ANY PERSON, SUCH EXERCISE BY ANY OTHER PERSON SHALL ALSO BE PERMITTED. TO THE EXTENT THE MANAGEMENT OF A SHOPPING CENTER DOES NOT PERMIT THE EXERCISE OF SUCH RIGHTS, THE PLAN SHALL SET FORTH THE REASONABLE REASONS FOR SUCH POLICY.

(B) IF THE MANAGEMENT OF A SHOPPING CENTER ESTABLISHES AN ACCOMMODATION PLAN THAT PERMITS THE EXERCISE OF THE RIGHT OF FREE SPEECH AND THE RIGHT TO PETITION, THE MANAGEMENT OF THE SHOPPING CENTER MAY ESTABLISH REASONABLE TIME, PLACE AND MANNER REGULATIONS CONSISTENT WITH THE PROVISIONS OF PARAGRAPH (B) OF SUBDIVISION THREE OF THIS SECTION.

(C) THE MANAGEMENT OF EACH SHOPPING CENTER SHALL POST A COPY OF ITS ACCOMMODATION PLAN ON THE DISPLAY SPACE REQUIRED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION. UPON EACH REQUEST THEREFOR, THE MANAGEMENT SHALL MAKE AVAILABLE A COPY OF SUCH ACCOMMODATION PLAN FREE OF CHARGE.

3. ACCESS TO SHOPPING MALLS. (A) SUBJECT TO THE PROVISIONS OF THIS SUBDIVISION, EVERY PERSON SHALL HAVE THE RIGHT OF FREE SPEECH AND FREE EXPRESSION, INCLUDING THE RIGHT TO PETITION, IN THE COMMON AREA OF A SHOPPING MALL, PROVIDED THAT SUCH EXPRESSIVE ACTIVITIES DO NOT INTERFERE WITH THE FREE FLOW OF PEDESTRIAN TRAFFIC. SUCH EXPRESSIVE ACTIVITIES SHALL INCLUDE THE RIGHT TO WEAR CLOTHING, BUTTONS, ARM BANDS AND OTHER

FORMS OF SYMBOLIC EXPRESSION THAT CONVEY AN IDEOLOGICAL OR POLITICAL POINT OF VIEW.

(B) THE MANAGEMENT OF A SHOPPING MALL MAY ESTABLISH REASONABLE TIME, PLACE AND MANNER REGULATIONS GOVERNING THE USE OF A SHOPPING MALL BY PERSONS WISHING TO EXERCISE THE RIGHT OF FREE SPEECH AND FREE EXPRESSION, INCLUDING THE RIGHT TO PETITION. SUCH REGULATIONS MAY INCLUDE, BUT ARE NOT LIMITED TO: (I) REQUIRING A PRIOR APPLICATION FOR ORGANIZED GATHERINGS OF TWENTY OR MORE PERSONS, PROVIDED THAT THERE SHALL BE AN EXPEDITIOUS REVIEW OF EVERY SUCH APPLICATION; (II) DESIGNATING CERTAIN PORTIONS OF THE COMMON AREA OF THE MALL TO BE USED FOR THE EXERCISE OF SUCH RIGHTS, PROVIDED, HOWEVER, THAT THE MANAGEMENT OF A SHOPPING MALL SHALL DESIGNATE FOR SUCH USE AT LEAST TWENTY-FIVE PERCENT OF SUCH COMMON AREA; (III) LIMITING THE USE OF MALL FACILITIES IF THE EXERCISE OF SUCH RIGHTS WOULD INTERFERE WITH THE FREE FLOW OF PEDESTRIAN TRAFFIC; (IV) LIMITING THE NUMBER OF PERSONS PARTICIPATING IN THE EXERCISE OF SUCH ACTIVITIES; (V) RESTRICTIONS ON THE ON-SITE SOLICITATION OF MONEY; (VI) RESTRICTIONS ON LITTERING, FIGHTING AND MAKING OBSCENE GESTURES; AND (VII) RESTRICTIONS ON THE USE OF LIGHTS, LOUDSPEAKERS, CAMERAS, MUSICAL INSTRUMENTS, TELEVISION SETS OR RADIOS. SUCH REGULATIONS SHALL NOT DISCRIMINATE BASED ON THE POLITICAL OR IDEOLOGICAL CONTENT OF THE SPEECH OR EXPRESSIVE ACTIVITIES NOR SHALL THEY BE APPLIED TO PROMOTE OR UNDERMINE A PARTICULAR POLITICAL OR IDEOLOGICAL POINT OF VIEW.

(C) NO PERSON SHALL BE REQUIRED TO POST A BOND OR MAKE ANY PAYMENT FOR THE EXERCISE OF THE RIGHT OF FREEDOM OF SPEECH OR THE RIGHT OF FREEDOM TO PETITION IN THE COMMON AREA OF A SHOPPING MALL; PROVIDED, HOWEVER, THAT THE MANAGEMENT OF A SHOPPING MALL MAY REQUIRE PERSONS TO CLEAN UP LITTER OR OTHER DEBRIS RESULTING FROM THE USE OF THE SHOPPING MALL AND MAY DENY FUTURE ACCESS OR REQUIRE A BOND IF THE PERSON USING THE MALL HAS DEMONSTRATED A FAILURE TO CLEAN UP LITTER OR DEBRIS IN CONNECTION WITH A PRIOR USE OF THE SHOPPING MALL.

4. SPACE FOR POSTING. THE MANAGEMENT OF EVERY SHOPPING MALL AND SHOPPING CENTER SHALL MAKE AVAILABLE, PURSUANT TO REGULATIONS ADOPTED BY IT, DISPLAY SPACE READILY ACCESSIBLE TO PEDESTRIAN TRAFFIC IN THE SHOPPING MALL OR SHOPPING CENTER FOR THE POSTING OF ANNOUNCEMENTS, PUBLIC SERVICE MESSAGES, PROCLAMATIONS, PAMPHLETS AND OTHER SUCH MATERIAL. THE MANAGEMENT OF A SHOPPING CENTER OR SHOPPING MALL SHALL NOT PROHIBIT THE POSTING OF MATERIAL ON THE BASIS OF CONTENT EXCEPT WHERE SUCH PROHIBITION IS OTHERWISE CONSISTENT WITH CONSTITUTIONAL PRINCIPLES RELATING TO FREEDOM OF SPEECH.

S 3. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.