

LEGAL UPDATE: CALIFORNIA PROTECTS RETAILERS AND SHOPPING CENTERS

As the year drew to a close, the **California Supreme Court issued a long-awaited decision in *Ralphs Grocery Company v. United Food and Commercial Workers Union Local 8***. The Court's decision permits retailers to prohibit expressive activity, other than peaceful union picketing, when such activity occurs on a private sidewalk in front of a customer entrance.

Ralphs operated a warehouse grocery store with only one entrance for customers. When the store opened in 2007, United Food and Commercial Workers Union Local 8 picketed the store, encouraged shoppers not to shop at the store because employees were not represented by a union and did not have a collective bargaining agreement.

It has long been the law in California that **a privately-owned shopping center may constitute a public forum under the California Constitution** because of the importance of the shopping center as a place for citizens to congregate. California considers shopping centers to be public forums and protects speech in privately-owned shopping centers. However, such speech can be limited by reasonable regulations to assure that the expressive activity does not interfere with normal business operations.

The Court's decision in *Ralphs* clarified that to be a public forum under the California Constitution's liberty-of-speech provision, **"an area within a shopping center must be designed and furnished in a way that induces shoppers to congregate for purposes of entertainment, relaxation, or conversation, and not merely to walk to or from a parking area, or to walk from one store to another, or to view a store's merchandise and advertising displays."** On that basis, the Court held that Ralphs' privately owned entrance area was not a public forum under the California Constitution.

That being said, the Court also held that the union's picketing activities in such a location, while not constitutionally protected, were statutorily protected in California by statutes enacted to "promote the rights of workers to engage in concerted activities for the purpose of collective bargaining, picketing or other mutual aid or protection."

Sblend Sblendorio and Jenn Protas recently assisted the Paragon Outlets in Livermore Valley with a similar situation. If a retailer or shopping center owner experiences such a situation, Sblend and Jenn

are available to assist.

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Related Attorneys

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