
**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

No. SJC-12413

1A AUTO, INC. and 126 SELF STORAGE, INC.,
Plaintiffs - Appellants

v.

MICHAEL SULLIVAN, Director,
Office of Campaign and Political Finance,
Defendant - Appellee

On Appeal from the Summary Judgment Order,
Memorandum and Decision dated April 4, 2017 by the
Honorable Paul D. Wilson, Suffolk County Superior
Court - Civil of the Commonwealth of Massachusetts
No. 1584CV00494

**OPPOSITION TO MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF**

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On February 21, 2018, Common Cause and Free Speech for People (collectively "Common Cause") filed a Motion for Leave to File Amicus Curiae Brief and conditionally filed a brief with the motion. Common Cause's motion is untimely and its proposed brief raises irrelevant issues.

The motion should be denied and the brief struck.

I. Common Cause's Motion is Untimely.

This Court's rules are clear that, absent special leave, "[a]ny amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support." Mass. R. App. P. 17. Common Cause urges affirmance of the Superior Court's denial of Plaintiffs' claims. Br. of Common Cause at 4 n.2; 20-33. Accordingly, its motion should have been filed on or before February 5, 2018 – the deadline, including a 60-day extension, for Defendant-Appellee Sullivan's brief. Common Cause's motion and proposed brief were filed on February 21, 2018 – 16 days late.

Common Cause's brief was filed a day after Plaintiffs-Appellants' Reply Brief and just 13 days prior to oral argument. Had Common Cause timely filed its brief, Plaintiffs-Appellants would have had ample opportunity to respond in their Reply Brief.

Common Cause offers no explanation for its untimely filing and does not attempt to show cause why

this Court should grant leave for its later filing. Common Cause's motion is grossly untimely and should be denied on that basis. See, e.g., *Pizza Zone, Inc. v. Darn Realty, LLC*, 78 Mass. App. Ct. 1106 (2010) (unpublished).

II. Common Cause's Proposed Brief Raises Irrelevant

Issues.

If Common Cause's brief is not summarily struck for failure to comply with Mass. R. App. P. 17, it should nevertheless be disregarded. Common Cause repeats arguments made by Defendant-Appellee Sullivan, arguing that unlimited independent expenditures can substitute for limited direct contributions. The Supreme Court has decided otherwise. See Reply Br. at 3-4.

Common Cause focuses most of its brief on the propriety of an Interpretive Bulletin, IB-88-01, which is not at issue in this litigation. Defendant-Appellee Sullivan also raised these arguments. Reply Br. at 17 n.7. But Common Cause's strenuous attempt to shoehorn IB-88-01 into this litigation inadvertently helps demonstrate why IB-88-01 is irrelevant, as is Common Cause's brief.

As Plaintiffs-Appellants have explained, and the text of G.L. c. 55 § 8 makes plain, the ban on businesses "directly or indirectly" contributing to political candidates, PACs, or party committees on the same

terms as any other organization in Massachusetts is a statutory problem. *Id.* The Interpretive Bulletin with which Common Cause disagrees makes that unequal treatment worse, but even in the absence of IB-88-01, only businesses like Plaintiffs-Appellants would be banned from making political contributions.

Common Cause speculates that non-profits and unions would not contribute to candidates in the absence of IB-88-01 because making contributions would subject them to the regulatory requirements governing political committees. Br. of Common Cause at 12. But Common Cause misses a dispositive point: Even under its reading of the statutes, non-profits and unions would be free to establish, administer, and control a political committee (a "PAC"), through which the groups could solicit contributions. Section 8 would still ban businesses from doing the same. The inability of businesses to control a PAC that makes candidate contributions is the core of Plaintiffs-Appellants' First Amendment claim. Op. Br. at 14-20; Reply Br. at 1-2, 8-13. Section 8 prevents businesses, and only businesses, from having even the PAC option, which also creates an equal protection problem.

By arguing that groups must make contributions through political committees, Common Cause highlights the discriminatory treatment imposed by Section 8. The statute alone imposes the discriminatory prohibition

CERTIFICATE OF SERVICE

Pursuant to Mass. R. A. P. 13(d), I, James Manley, hereby certify, under the penalties of perjury, that a copy of this Brief and Addendum for Plaintiffs-Appellants have been served on the party below by U.S. first-class mail on this the 26th day of February, 2018.

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