

# PassMass Amendment

## Petitioners' Comprehensive Guide - 2017



**Compiled for petitioners who need more information, who plan to “hit the streets” and ask for signatures from the general public.**

### **Includes information about:**

How to Petition

Places to Petition

Petitioners' Checklist

Frequently Asked Questions form

PMA ¼ page flyers for 2017

List of Mass. legislators

Documents supporting your petitioning rights.

For links, to get more involved, get on our email list(s), or for more information, see [passmassamendment.org](http://passmassamendment.org).

Questions? Email us at [passmassamendment@gmail.com](mailto:passmassamendment@gmail.com), or call 978 808 7173.

## How to Petition

**If you can give the effort an hour, or 2, or 10, you might discover how much fun it can be! Every signature we gather counts.**

## What IS Petitioning?

Petitioning involves asking voters for their signatures in order to influence legislators and make law. As a petitioner, you will speak directly with the public about what PMA is doing -- promoting bills to help limit the influence of Big Money on our political process -- and why we're doing it.

### **As a petitioner, you will be:**

1. asking people to sign our petitions, and making sure that they do it correctly.
2. gathering up the sheets of signatures and handing them in to your petitioning coordinator.

See below for more information on How to Petition.

### **“Who would I ask for signatures?”**

You should ask people you know, such as friends and family, coworkers, people you know in your church, clubs, and other civic organizations. However, most signers will be people you don't know – “friends you haven't met yet.” You'll probably find that petitioning is fun, and a great way to meet like-minded people.

### **“By myself or with others?”**

You can go it alone but you can also **join a team!** Contact us at 978 808 7173 or [passmassamendment@gmail.com](mailto:passmassamendment@gmail.com), and we will direct you to people who are petitioning near you. You can also sign up for our Action-List to see who else may be petitioning in your area.

Please note that the Action List, which is monitored, is intended for sharing information pertinent to this signature drive, such as great events for petitioning, like festivals, or outreach to other petitioners to join forces or trade ideas.

## HOW TO GATHER SIGNATURES – THE DETAILS

**1st, gather your materials:** Go to our website, [passmassamendment.org](http://passmassamendment.org). You can print out blank petitions at the “Get Petition Forms” page, and a list of other stuff you’ll need at the “Petitioner Checklist” page. While you’re there, visit the “Standout Sign” page to see how to make a terrific sign that’ll attract attention. (Some people like to and others don't.)

**2nd, choose a place:** Pick a spot where lots of people go. Movie lines and other places are waiting, crowded street corners, and in front of supermarkets and other stores. (If in front of stores, make sure to stand outside the door, close enough to be near the foot traffic, but do not block the foot traffic.) Check out the “Places to Petition” page on our website for ideas for great petitioning places.

Note!! Small gatherings are good for discussions of the issues, and large gatherings are better for getting more signatures quickly.

### **3rd, ask for signatures!**

- Start the conversation in any way that works for you. Some examples we’ve found useful:
  - Ask for their help to get a referendum question on the ballot, or
  - Get their attention with what the ballot initiative is about, such as "help get control over our democracy," or
  - Ask if they're a registered voter, then jump quickly to why we're asking!
- Ask people where they are **registered to vote**, which may be different from where they currently live.
- Provide the petition form for the town they are registered in. If you have one already ready to go for that town, great! Otherwise, use a blank petition form to create one. You do this by printing the name of this city/town on the correct place(s) on a blank petition form.
- Respond to questions about that the petition is for. (Check out our “FAQs” page on the website for some help.) This will probably be enough for most people. You might say things like:
  - “We're trying to get Big Money out of politics,”
  - "We're asking voters to sign the petition so that we can put these questions on the ballot in 2020,"
  - "It's not to vote yes or no right now. It's just to put the questions on the ballot."

## STRICT RULES TO FOLLOW

- **Only registered voters** are allowed to sign, and all should be registered in Massachusetts.
- **Signers must sign on the sheet designated for the correct town** (the one they are registered in): The town name needs to be on the sheet, in the space provided. Only voters from that town can sign on that sheet.
- **Signers must write the street address where they are registered to vote.** For example, college students may live in Boston but be registered in the town they came from, and so in many cases would be providing their street address from their home town (on a petition form designated for that town).
- **No other marks on the petition form**, other than the signature, street address, and town:
  - Do not highlight, underline, or write "see other side."
  - Do not put your initials or any other designation on the petition sheets.
  - Do not mark on the petition form itself where you left off from the previous session. Use stickie notes as described below to keep track of your "numbers."
  - Do not scribble on the form to get the pen started. Instead, use a scrap piece of paper.
  - If a voter signs incorrectly or makes an error, **do not erase or make changes**. Leave the incorrect line intact and ask the voter to sign his or her name and address again on the next line.
  - **If the signature is not readable**, have them print (neatly) their name next to their signature on the same line.
- **Married females should not sign as, e.g. "Mrs. John Smith."** As with all signers, they need to sign the name that they registered with, for example Mary Smith, instead. Note, though, that middle initials are not required.
- **Persons with physical disabilities may authorize another individual to sign for them** in the voter's presence but one spouse may not sign for the other.
- **There cannot be more than one town/city represented on a petition page.** Note that all the neighborhoods of Boston, such as Jamaica Plain, Roxbury, and Allston can all be on the same petition page, under "Boston."

## IMPORTANT NOTES

- **Do not try to convert people** if they are against our ballot measure. If they want an explanation, of course, take a couple minutes to talk to them, but if it's taking longer, it's best to give them a flyer (quarter page version) and let them look at it later. They can email and call us for more information as well, at 978 808 7173 or [PassMassAmendment@gmail.com](mailto:PassMassAmendment@gmail.com).
- **Please bring everything** listed in the Petitioners' Checklist whenever you go out to petition.
- **Get email addresses if you can** (but on a separate pad of paper, NOT on the petition forms). We are fighting to protect our democracy, and this fight will take years. We need to keep people up to date on our work and the progress we are making. When more people follow our progress, the legislature will feel more pressure!
- Please try to remember to **ask people to ask their legislators to endorse PassMassAmendment**. We will need 25% of our legislators to vote YES in 2 consecutive sessions of the legislature. In the Petitioners' Comprehensive Guidebook we've provided you with a list of all Mass. state legislators, inc. their contact information, as well as the web address for those who need to find out who their legislators are.
- **Petitioners have a constitutional right to petition in public spaces**, even if the location is privately owned. (Be sure that you're not obstructing foot traffic, and that are being respectful of pedestrians' and shoppers' "personal space.") The document (below) from Secretary William Galvin's office explains your constitutional right to petition. We recommend that you read the documents available at the "Petitioner Legal Rights" page on the website before hitting the streets for the first time.
- If a store manager doesn't understand that it is OK for you to petition, show them the documents. If that doesn't do the trick, ask them to call the police. The police can be very helpful. Towns do not want to get sued because the police did not protect your constitutional rights. Just asking the store manager to call the police is usually enough.
- If it has gone this far and the police officer asks you to leave, **it's your choice**: If you refuse, you run the risk of being arrested, which we don't encourage. Instead, at any point in this process (prior to being arrested), you can choose to walk away and find a more hospitable place to petition. If you who welcome the challenge of being arrested, we suggest that you consult with a lawyer beforehand.

## **ORGANIZING THE FORMS**

Organizing the forms in the field can be a challenge. Here are a few suggestions:

- Have the town you are in on the top, with a few nearby towns underneath, alphabetized by town.
- Have other towns alphabetized on another clipboard.
- Keep a list of towns that you already have forms for, on a separate piece of paper. This way you'll easily know if you need to prepare a new form for a town or just look through your clipboard!

**To help you report to coordinators how many signatures you gathered that day/week:**

At the end of the day, take a stickie note and put an arrow on it. Then place the stickie on the form so that the arrow is on the last signature you got that day. You can also write the date above the arrow, and the next date that you get signatures below the arrow. Do this for each town you got signatures for. Write only on the stickie notes, NOT on the petition forms themselves.

**HANDING IN THE FORMS:** Please go to the Hand in Petitions page on the PassMassAmendment website for more information.

## Where to Petition: Great Places to Gather Signatures

Anywhere huge crowds are gathering, or there are people are streaming in and out of a building, or people are waiting.

**However, you need to have access to the foot-traffic.** So if it's private property, you'll either need permission of the property-owner or event-organizer, **or** you'll need to have a public egress, i.e. a public sidewalk, next to the door. Not all locations have this, but all supermarkets and all public buildings (library, town hall, etc) do. Please take a look, near the bottom of the How to Petition page on the website, for more information and some important documents regarding petitioners' rights.

### Some ideas:

- Supermarkets, especially Whole Foods and Trader Joe's
- Festival/concert/ball game parking lots. See below for great links to event calendars.
- Libraries, especially at busy times, like Saturday afternoons
- Town Dump/Transfer Station, especially at busy times, like Saturdays
- Farmers Markets
- **Registered voters go to the polls!** So if there's an election in your region, and you want to gather signatures, head to the polls! Check the calendar on our website for more information, as we compile it.

## Events and event-listings

Let is know if you have know a good source of event-listing for us to check out. Here's some sources we know about. We plan to list some big events on our Calendar page, but we can use your help.

### Massachusetts FestivalNet

Festivals can be a huge source of signatures. While you can gather signatures anywhere, we recommend going to concerts with artists who are progressive thinkers. We'll be posting the huge concerts at Mansfield that we'll want large teams canvassing.

### The Lowell Sun Event Listings

# Petitioners' Checklist

This is what we recommend you take to "the field":

**PETITION FORMS:** Bring extras. You'll be glad you did. People may want to take some so they can help, so bring lots of them.

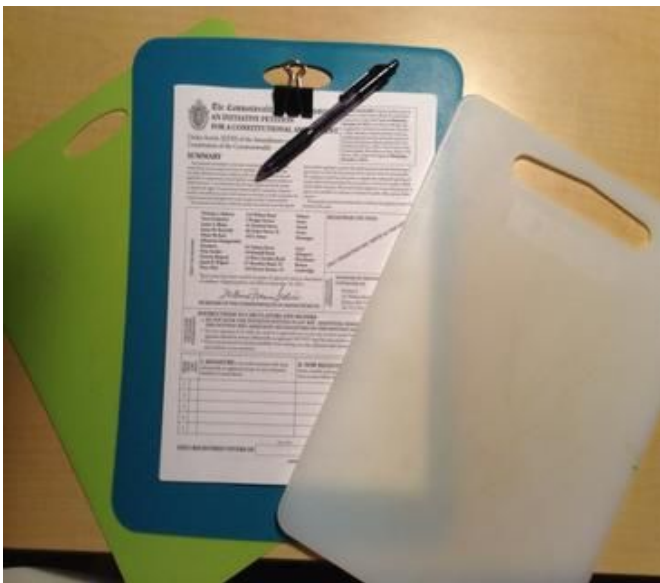
**NEW! Take a bunch of blank petition forms with you to hand out to casual petitioners**, those who are interested in getting the signatures of their friends, colleagues, and neighbors. This is working out great! People are actually filling them out and sending them in.

**A standout sign and other signs** to attach to a table or to your person or to...well, anything to draw attention! See the PassMassAmendment website for instructions and examples.

**CLIPBOARDS** or large strong pads of paper that you can attach things to (bring at least 3 of them!):

- 1 primary clipboard for the forms for the town you're in and the nearby towns
- 2nd clipboard for other towns
- 3rd clipboard for your email sign up list, and
- 4th clipboard if you are also gathering signatures for other petitions.

Using multiple clipboards is just one way to organize your petitions. Whatever helps you keep track of your petition forms, both the ones you've started and the blanks ones, is fine.



***Psst! Wanna make your own instead of buying clipboards?*** Use cutting boards instead: one to hold the petition in place and (optionally) another to use as protection from rain (see below for more ways to protect your signatures). Stiff cardboard also works great!



## More things to bring:

**Covers to protect the petition forms from rain:** Handy ideas are large plastic food storage bags that "zip" or zip bags that mattresses and sheets come in.

**A small piece of paper clipped to your clipboard to use to get pens to work,** because we CAN NOT make any marks in the margins of these petition forms.

**Extra pens (blue or black only)**

**A pad of paper,** to collect email addresses and for scribbling to get pens working.

**Your list** of towns/cities you've started petition forms for.

**Yellow stickie notes** to help you organize your forms and keep track of your "numbers."

**Reminder:** Do NOT use tape or mark right on the forms. Forms with extraneous marks will be discarded by the state.

Clips to **organize your papers**, and something to organize sheets for different towns (extra clipboards, an accordion file, or a milk crate) may be helpful.

**A cell phone**, charged, and a list of phone numbers: 978 808 7173 (Terra), and whoever you may be coordinating with in your region.

**Bring some handouts** for the public. See the website for

- PassMassAmendment flyers
- Frequently Asked Questions
- a list of all Massachusetts legislators and their contact information.

# PassMass Amendment

## FAQ (Frequently Asked Questions) (2017) -- Non-Resident Donations

### **Why is this ballot initiative (and its corresponding statehouse bill) important?**

PassMassAmendment's goal is to end the corrupting influence of corporations and big money on the political process. In this petition we are addressing the issue by limiting political contributions from non-residents of Massachusetts on campaigns and ballot questions in an effort to ensure that outside influence is at a minimum.

Here are examples in recent history which causes the concern, we aim to address:

Last election there was a ballot question #2 in which vast sums were spent. Whether you were for or against Charter Schools, the idea that so much money came in from the outside of MA to try and influence our political process and lawmaking should be appalling. The recent legalization of Cannabis question was largely funded by interests from outside of MA. There was also a question on a slot parlor in Revere, that were reportedly funded by a syndicate from Singapore.

### **How can I help?**

This signature gathering period lasts until November 22nd when petition forms will need to be turned in to local election officials to have the signatures certified as registered voters. Please help gather signatures and spread the word about our effort. We need regional coordinators and an effort to inform folks about our what we are trying to accomplish.

PassMassAmendment is a totally grassroots, all-volunteer organization that runs on people power. We really need your help to gather signatures and help inform folks of our efforts. Each signature gathered puts added pressure on the legislature to act!

While you're at it, contact your state legislators to support the bill that corresponds to our ballot initiative, [H3559](#), and ask friends and family to do the same. Check out [our other bills](#) as well!

- ***Why petition, if you have Legislative Bills in the Statehouse?*** Because we have enough experience to know that if we don't continue to build a network of petitioners, that this will never happen. AND because our legislative sponsors (see the list at the website) tell us that it helps them help us to get this to the floor, if the signatures increase.
- ***Where can people find petitions?*** At the website there is a button for the current locations
- ***Can people download a petition form to help petition, sign themselves, and/or get a few of their friends to sign?*** Absolutely! Please see [www.PassMassAmendment.org](http://www.PassMassAmendment.org)
- ***How to help:***
  - Sign up for our email list - Action Alerts will follow
  - Contact your legislators - Ask them to endorse PassMassAmendment
  - This is a true grassroots effort - Volunteer your time. [PassMassAmendment@gmail.com](mailto:PassMassAmendment@gmail.com) 978 808 7173
  - Donate. This is being run on a bare bones budget. No one gets paid - But we need money for printing and office supplies

## **REDUCE DARK MONEY IN POLITICS!**

### **Help Get Signatures in the Fall of 2017!**

And ask Mass. Legislators to Support 2017/18 Bills  
H63, H3484, H3559 to reduce the influence of BIG MONEY

[www.PassMassAmendment.org](http://www.PassMassAmendment.org)

**"CORPORATIONS ARE NOT PEOPLE"  
"MONEY IS NOT SPEECH"**



"Big Money" in politics hurts our communities and small business. Corporate dominance of Government and the political process is placing undue burdens on the people.  
**BIG COMPANIES PROFIT. You DO NOT.**

Terra Friedrichs, [PassMassAmendment@gmail.com](mailto:PassMassAmendment@gmail.com) 978 808 7173  
**Contact Legislators and ask them to ENDORSE!**

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**Contact Legislators and ask them to ENDORSE!**

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**Contact Legislators and ask them to ENDORSE!**

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### **Help Get Signature in the Fall of 2017!**

And ask Mass. Legislators to Support 2017/18 Bills  
H.63, H3484, 3559 to reduce the influence of BIG MONEY

[www.PassMassAmendment.org](http://www.PassMassAmendment.org)

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Terra Friedrichs, [PassMassAmendment@gmail.com](mailto:PassMassAmendment@gmail.com) 978 808 7173  
**Contact Legislators and ask them to ENDORSE!**

# Massachusetts State Legislators

source: [malegislature.gov](http://malegislature.gov)

Believed to be accurate as of 9/7/2017.

Please contact PassMassAmendment with any corrections.

<b><u>Mass. State Senators as of 9/7/17</u></b>				
<b>First</b>	<b>Last</b>	<b>Rm</b>	<b>Phone (617) +</b>	<b>Email</b>
Michael	Barrett	416	722-1572	Mike.Barrett@masenate.gov
Joseph	Boncore	112	722-1634	Joseph.Boncore@masenate.gov
Michael	Brady	109E	722-1200	Michael.Brady@masenate.gov
William	Brownsberger	504	722-1280	William.Brownsberger@masenate.gov
Harriette	Chandler	333	722-1544	Harriette.Chandler@masenate.gov
Sonia	Chang-Diaz	111	722-1673	Sonia.Chang-Diaz@masenate.gov
Cynthia	Creem	312A	722-1639	Cynthia.Creem@masenate.gov
Julian	Cyr	70	722-1570	julian.cyr@masenate.gov
Viriato	deMacedo	313C	722-1330	Vinny.deMacedo@masenate.gov
Sal	DiDomenico	208	722-1650	Sal.DiDomenico@masenate.gov
Eileen	Donoghue	405	722-1630	Eileen.Donoghue@masenate.gov
James	Eldridge	218	722-1120	James.Eldridge@masenate.gov
Ryan	Fattman	213A	722-1420	Ryan.Fattman@masenate.gov
Jennifer	Flanagan	312D	722-1230	Jennifer.Flanagan@masenate.gov
Linda	Forry	410	722-1150	Linda.DorcenaForry@masenate.gov
Cindy	Friedman	413D	722-1433	(unavailable on Mass.gov as of 9/7/17)
Anne	Gobi	513	722-1540	anne.gobi@masenate.gov
Adam	Hinds	309	722-1625	adam.hinds@masenate.gov
Donald	Humason	313 A	722-1415	Donald.Humason@masenate.gov
Patricia	Jehlen	424	722-1578	Patricia.Jehlen@masenate.gov
John	Keenan	413-F	722-1494	John.Keenan@masenate.gov
Barbara	L'Italien	413-C	722-1612	barbara.l'italien@masenate.gov
Eric	Lesser	519	722-1291	eric.lessen@masenate.gov
Jason	Lewis	511B	722-1206	Jason.Lewis@masenate.gov
Joan	Lovely	413A	722-1410	Joan.Lovely@masenate.gov
Thomas	McGee	109C	722-1350	Thomas.McGee@masenate.gov
Mark	Montigny	312-C	722-1440	Mark.Montigny@masenate.gov
Michael	Moore	109-B	722-1485	Michael.Moore@masenate.gov
Patrick	O'Connor	520	722-1646	Patrick.OConnor@masenate.gov
Kathleen	O'Connor Ives	215	722-1604	Kathleen.OConnorIves@masenate.gov
Marc	Pacheco	312B	722-1551	Marc.Pacheco@masenate.gov
Michael	Rodrigues	109-D	722-1114	Michael.Rodrigues@masenate.gov
Stanley	Rosenberg	332	722-1500	Stan.Rosenberg@masenate.gov
Richard	Ross	419	722-1555	Richard.Ross@masenate.gov
Michael	Rush	511C	722-1348	Mike.Rush@masenate.gov
Karen	Spilka	212	722-1640	Karen.Spilka@masenate.gov
Bruce	Tarr	308	722-1600	Bruce.Tarr@masenate.gov
James	Timilty	507	722-1222	James.Timilty@masenate.gov
Walter	Timilty	213B	722-1643	Walter.Timilty@masenate.gov
James	Welch	413-B	722-1660	James.Welch@masenate.gov

**Mass. State Reps as of 9/7/17**

<b>First</b>	<b>Last</b>	<b>Rm</b>	<b>Phone (617) +</b>	<b>Email</b>
James	Arciero	172	722-2019	James.Arciero@mahouse.gov
Brian	Ashe	236	722-2430	Brian.Ashe@mahouse.gov
Cory	Atkins	195	722-2015	Cory.Atkins@mahouse.gov
Bruce	Ayers	167	722-2230	Bruce.Ayers@mahouse.gov
Ruth	Balser	136	722-2396	Ruth.Balser@mahouse.gov
Christine	Barber	473F	722-2210	Christine.Barber@mahouse.gov
F. Jay	Barrows	542	722-2488	F.JayBarrows@mahouse.gov
Jennifer	Benson	42	722-2014	Jennifer.Benson@mahouse.gov
Donald	Berthiaume	540	722-2090	Donald.Berthiaume@mahouse.gov
Nicholas	Boldyga	167	722-2810	Nicholas.Boldyga@mahouse.gov
Paul	Brodeur	472	722-2013	Paul.Brodeur@mahouse.gov
Antonio	Cabral	466	722-2017	Antonio.Cabral@mahouse.gov
Daniel	Cahill	527A	722-2020	Daniel.Cahill@mahouse.gov
Thomas	Calter	446	722-2460	Thomas.Calter@mahouse.gov
Kate	Campanale	542	722-2488	Kate.Campanale@mahouse.gov
Linda	Campbell	238	722-2380	Linda.Campbell@mahouse.gov
James	Cantwell	136	722-2396	James.Cantwell@mahouse.gov
Gailanne	Cariddi	473F	722-2210	Gailanne.Cariddi@mahouse.gov
Evandro	Carvalho	136	722-2396	Evandro.Carvalho@mahouse.gov
Gerard	Cassidy	134	722-2400	Gerard.Cassidy@mahouse.gov
Tackey	Chan	134	722-2400	Tackey.Chan@mahouse.gov
Nick	Collins	39	722-2014	Nick.Collins@mahouse.gov
Mike	Connolly	437	722-2425	Mike.Connolly@mahouse.gov
Edward	Coppinger	26	722-2080	Edward.Coppinger@mahouse.gov
Brendan	Crighton	472	722-2013	brendan.crighton@mahouse.gov
William	Crocker	437	722-2425	William.Crocker@mahouse.gov
Claire	Cronin	136	722-2396	Claire.Cronin@mahouse.gov
Daniel	Cullinane	527A	722-2020	Daniel.Cullinane@mahouse.gov
Mark	Cusack	544	722-2637	Mark.Cusack@mahouse.gov
Josh	Cutler	26	722-2080	Josh.Cutler@mahouse.gov
Angelo	D'Emilia	548	722-2488	Angelo.D'Emilia@mahouse.gov
Michael	Day	473F	722-2210	Michael.Day@mahouse.gov
Marjorie	Decker	166	722-2692	Marjorie.Decker@mahouse.gov
David	DeCoste	236	722-2430	David.DeCoste@mahouse.gov
Robert	DeLeo	356	722-2500	Robert.DeLeo@mahouse.gov
Brian	Dempsey	243	722-2990	Brian.Dempsey@mahouse.gov
Geoff	Diehl	167	722-2810	Geoff.Diehl@mahouse.gov
Diana	DiZoglio	472	722-2013	Diana.DiZoglio@mahouse.gov
Daniel	Donahue	160	722-2304	Daniel.Donahue@mahouse.gov
Paul	Donato	481	722-2180	Paul.Donato@mahouse.gov

Shawn	Dooley	167	722-2810	Shawn.Dooley@mahouse.gov
William	Driscoll	134	722-2400	William.Driscoll@mahouse.gov
Michelle	DuBois	146	722-2011	michelle.dubois@mahouse.gov
Peter	Durant	33	722-2060	Peter.Durant@mahouse.gov
James	Dwyer	254	722-2220	James.Dwyer@mahouse.gov
Carolyn	Dykema	127	722-2680	Carolyn.Dykema@mahouse.gov
Lori	Ehrlich	167	722-2810	Lori.Ehrlich@mahouse.gov
Tricia	Farley-Bouvier	156	722-2240	Tricia.Farley-Bouvier@mahouse.gov
Kimberly	Ferguson	473B	722-2263	Kimberly.Ferguson@mahouse.gov
Dylan	Fernandes	437	722-2425	Dylan.Fernandes@mahouse.gov
Ann-Margaret	Ferrante	277	722-2012	Ann-Margaret.Ferrante@mahouse.gov
Michael	Finn	254	722-2220	Michael.Finn@mahouse.gov
Carole	Fiola	236	722-2430	Carole.Fiola@mahouse.gov
Paul	Frost	542	722-2489	Paul.Frost@mahouse.gov
William	Galvin	166	722-2692	William.Galvin@mahouse.gov
Sean	Garballey	540	722-2090	Sean.Garballey@mahouse.gov
Denise	Garlick	33	722-2060	Denise.Garlick@mahouse.gov
Colleen	Garry	238	722-2380	Colleen.Garry@mahouse.gov
Carmine	Gentile	39	722-2014	carmine.gentile@mahouse.gov
Susan	Gifford	124	722-2100	Susan.Gifford@mahouse.gov
Thomas	Golden	473B	722-2263	Thomas.Golden@mahouse.gov
Solomon	Goldstein-Rose	448	722-2582	Solomon.Goldstein-Rose@mahouse.gov
Carlos	Gonzalez	26	722-2080	Carlos.Gonzalez@mahouse.gov
Kenneth	Gordon	466	722-2017	Ken.Gordon@mahouse.gov
Danielle	Gregoire	167	722-2810	Danielle.Gregoire@mahouse.gov
Patricia	Haddad	370	722-2600	Patricia.Haddad@mahouse.gov
Sheila	Harrington	237	722-2305	Sheila.Harrington@mahouse.gov
Stephan	Hay	544	722-2637	Stephan.Hay@mahouse.gov
Jonathan	Hecht	22	722-2140	Jonathan.Hecht@mahouse.gov
Paul	Heroux	540	722-2090	Paul.Heroux@mahouse.gov
Natalie	Higgins	33	722-2060	Natalie.Higgins@mahouse.gov
Bradford	Hill	128	722-2100	Brad.Hill@mahouse.gov
Kate	Hogan	130	722-2130	Kate.Hogan@mahouse.gov
Russell	Holmes	254	722-2220	Russell.Holmes@mahouse.gov
Kevin	Honan	38	722-2470	Kevin.Honan@mahouse.gov
Steven	Howitt	237	722-2305	Steven.Howitt@mahouse.gov
Daniel	Hunt	155	722-2450	Daniel.Hunt@mahouse.gov
Randy	Hunt	136	722-2396	Randy.Hunt@mahouse.gov
Bradley	Jones	124	722-2100	Bradley.Jones@mahouse.gov
Louis	Kafka	185	722-2960	Louis.Kafka@mahouse.gov
Hannah	Kane	236	722-2430	Hannah.Kane@mahouse.gov
Jay	Kaufman	34	722-2320	Jay.Kaufman@mahouse.gov

Mary	Keefe	473F	722-2210	Mary.Keefe@mahouse.gov
James	Kelcourse	130	722-2130	james.kelcourse@mahouse.gov
Kay	Khan	146	722-2011	Kay.Khan@mahouse.gov
Peter	Kocot	22	722-2140	Peter.Kocot@mahouse.gov
Robert	Koczera	448	722-2582	Robert.Koczera@mahouse.gov
Stephen	Kulik	238	722-2380	Stephen.Kulik@mahouse.gov
Kevin	Kuros	443	722-2460	Kevin.Kuros@mahouse.gov
John	Lawn	174	722-2877	John.Lawn@mahouse.gov
Jack	Lewis	437	722-2425	Jack.Lewis@mahouse.gov
David	Linsky	146	722-2575	David.Linsky@mahouse.gov
Jay	Livingstone	472	722-2013	Jay.Livingstone@mahouse.gov
Marc	Lombardo	443	722-2460	Marc.Lombardo@mahouse.gov
James	Lyons	443	722-2460	James.Lyons@mahouse.gov
Adrian	Madaro	473B	722-2263	Adrian.Madaro@mahouse.gov
John	Mahoney	443	722-2460	John.Mahoney@mahouse.gov
Elizabeth	Malia	238	722-2380	Liz.Malia@mahouse.gov
Ronald	Mariano	343	722-2300	Ronald.Mariano@mahouse.gov
Paul	Mark	160	722-2304	Paul.Mark@mahouse.gov
Christopher	Markey	527A	722-2020	Christopher.Markey@mahouse.gov
Juana	Matias	448	722-2582	Juana.Matias@mahouse.gov
Joseph	McGonagle	134	722-2400	Joseph.McGonagle@mahouse.gov
Joseph	McKenna	33	722-2060	joseph.mckenna@mahouse.gov
Paul	McMurtry	448	722-2582	Paul.McMurtry@mahouse.gov
Joan	Meschino	437	722-2425	Joan.Meschino@mahouse.gov
James	Miceli	237	722-2305	James.Miceli@mahouse.gov
Aaron	Michlewitz	254	722-2220	Aaron.M.Michlewitz@mahouse.gov
Leonard	Mirra	548	722-2488	Leonard.Mirra@mahouse.gov
Rady	Mom	43	722-2030	Rady.Mom@mahouse.gov
Frank	Moran	279	722-2017	Frank.Moran@mahouse.gov
Michael	Moran	42	722-2014	Michael.Moran@mahouse.gov
David	Muradian	156	722-2240	David.Muradian@mahouse.gov
Mathew	Muratore	39	722-2014	Mathew.Muratore@mahouse.gov
James	Murphy	146	722-2575	James.Murphy@mahouse.gov
Brian	Murray	437	722-2425	Brian.Murray@mahouse.gov
David	Nangle	479	722-2520	David.Nangle@mahouse.gov
Harold	Naughton	167	722-2230	Harold.Naughton@mahouse.gov
Shaunna	O'Connell	237	722-2305	Shaunna.O'Connell@mahouse.gov
James	O'Day	540	722-2090	James.O'Day@mahouse.gov
Keiko	Orrall	540	722-2090	Keiko.Orrall@mahouse.gov
Jerald	Parisella	156	722-2240	Jerald.Parisella@mahouse.gov
Sarah	Peake	163	722-2040	Sarah.Peake@mahouse.gov
Alice	Peisch	473G	722-2070	Alice.Peisch@mahouse.gov
Thomas	Petrolati	171	722-2255	Thomas.Petrolati@mahouse.gov



William Smitty	Pignatelli	146	722-2575	rep.smitty@mahouse.gov
Elizabeth	Poirier	124	722-2100	Elizabeth.Poirier@mahouse.gov
Denise	Provost	473B	722-2263	Denise.Provost@mahouse.gov
Angelo	Puppolo	122	722-2006	Angelo.Puppolo@mahouse.gov
David	Rogers	36	722-2370	Dave.Rogers@mahouse.gov
John	Rogers	162	722-2092	John.Rogers@mahouse.gov
Jeffrey	Roy	236	722-2430	Jeffrey.Roy@mahouse.gov
Byron	Rushing	234	722-2783	Byron.Rushing@mahouse.gov
Daniel	Ryan	33	722-2060	Dan.Ryan@mahouse.gov
Jeffrey	Sánchez	236	722-2430	Jeffrey.sanchez@mahouse.gov
Angelo	Scaccia	167	722-2230	Angelo.Scaccia@mahouse.gov
Paul	Schmid	466	722-2017	Paul.Schmid@mahouse.gov
John	Scibak	43	722-2030	John.Scibak@mahouse.gov
Alan	Silvia	167	722-2230	Alan.Silvia@mahouse.gov
Frank	Smizik	274	722-2676	Frank.Smizik@mahouse.gov
Todd	Smola	124	722-2100	Todd.Smola@mahouse.gov
Theodore	Speliotis	20	722-2410	Theodore.Speliotis@mahouse.gov
Thomas	Stanley	167	722-2230	Thomas.Stanley@mahouse.gov
William	Straus	134	722-2400	William.Straus@mahouse.gov
Jose	Tosado	34	722-2320	Jose.Tosado@mahouse.gov
Paul	Tucker	136	722-2396	Paul.Tucker@mahouse.gov
Chynah	Tyler	130	722-2130	Chynah.Tyler@mahouse.gov
Steven	Ultrino	443	722-2460	Steven.Ultrino@mahouse.gov
Aaron	Vega	146	722-2011	Aaron.Vega@mahouse.gov
John	Velis	174	722-2877	john.velis@mahouse.gov
David	Vieira	167	722-2230	David.Vieira@mahouse.gov
RoseLee	Vincent	473F	722-2210	RoseLee.Vincent@mahouse.gov
Joseph	Wagner	42	722-2370	Joseph.Wagner@mahouse.gov
Chris	Walsh	473G	722-2070	Chris.Walsh@mahouse.gov
Thomas	Walsh	276	722-2676	Thomas.Walsh@mahouse.gov
Timothy	Whelan	39	722-2014	Timothy.Whealan@mahouse.gov
Susannah	Whipps	540	722-2090	Susannah.Whipps@mahouse.gov
Bud	Williams	22	722-2140	Bud.Williams@mahouse.gov
Donald	Wong	541	722-2488	Donald.Wong@mahouse.gov
Jonathan	Zlotnik	26	722-2080	Jon.Zlotnik@mahouse.gov

plaintiff

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 08-2223-G

RICHARD MAX STRAHAN

vs.

SIMON PROPERTY GROUP, INC. & another<sup>1</sup>

**MEMORANDUM OF DECISION AND ORDER REGARDING PLAINTIFF'S  
EMERGENCY MOTION FOR A PRELIMINARY INJUNCTION AND DEFENDANTS'  
CROSS-MOTION FOR A PRELIMINARY INJUNCTION**

The plaintiff, Richard Max Strahan ("Strahan"), brought this action to enforce his ability to engage in "Public Outreach" at Copley Place Shopping Mall ("Copley Place") from now until mid-November 2008.<sup>2</sup> Strahan wants to gather the signatures of Massachusetts registered voters through the initiative petition process to place the "Whale Safe Law," aiming to protect whales and sea turtles from state licensed fishing gear, on the 2010 ballot. The defendants, Simon Property Group ("Simon") and Allied Barton Security Services ("Allied Barton"), oppose Strahan's motion and cross-move for a preliminary injunction.

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<sup>1</sup> Allied Barton Security Services.

<sup>2</sup> On the day this motion was heard, Strahan presented the court with papers for an Amended Emergency Motion for a Preliminary Injunction that included prayers for access to other Simon-owned properties in Massachusetts. However, this court will rule only on Strahan's access to Copley Place, the subject of Strahan's original preliminary injunction motion, because it has insufficient information before it as to what restrictions the defendants might impose with regard to other properties. Logically, this lack of information is the result of insufficient notice from Strahan to the defendants of Strahan's request for "Public Outreach" access to venues other than Copley Place.

## **BACKGROUND**

In May 2008, Strahan filed suit against the defendants alleging violations of the Massachusetts Civil Rights Act with regards to Strahan's petitioning activities at the Copley Place and the South Shore Plaza shopping malls. Simon is the indirect corporate parent of the owner of both malls and Allied Barton provides security services. Strahan seeks (1) a declaratory judgment affirming that articles 9, 16, 19 and 48 of the Massachusetts Declaration of Rights protect him and members of the public engaging in "Public Outreach" in the common areas of private shopping malls, (2) a declaratory judgment that there is no probable cause for shopping mall owners to arrest any member of the public for criminal trespass while conducting "Public Outreach," and (3) compensatory and punitive damages.

In the motion before the court, Strahan prays for injunctive relief allowing him to (1) collect signatures on ballot sheets for the Whale Safe Law in Copley Place from now until November 19, 2008, (2) use a small table, with an affixed banner placed by the waterfall, (3) accept donations while gathering signatures and (4) distribute literature relating to his campaign for the Whale Safe Law.

## **DISCUSSION**

To prevail on a request for a preliminary injunction, the moving party must satisfy the three-part test articulated in Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609 (1980). First, the court must evaluate the moving party's claim of injury and its likelihood of success on the merits. Id. at 617. Second, it must determine whether failing to issue an injunction "would subject the moving party to a substantial risk of irreparable harm." Id. Third, if the judge finds

that such harm would arise to the moving party from denial of the injunction, the judge must balance this risk against any similar risk of irreparable harm to the opposing party. *Id.* at 617. In balancing these factors, “[w]hat matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party’s chance of success on the merits. Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue.” *Id.*

When the public interest is at stake, a fourth factor may be considered by the court in deciding whether to grant a request for a preliminary injunction. Although many cases dealing with this public interest factor involve suits between the government and a private entity,<sup>3</sup> “[t]he public interest may also be considered in a case between private parties where the applicable substantive law involves issues that concern public interest.” Bank of New England, N.A. v. Mortgage Corp. of New England, 30 Mass.App.Ct. 238, 246 (1991) (citing Krebiozen Research Foundation v. Beacon Press, Inc., 334 Mass. 86, 99 (1956) and Planned Parenthood League, Inc. v. Operation Rescue, 406 Mass. 701, 716 (1990).).

### ***I. Application of the Preliminary Injunction Standard***

The first element that must be met to justify the issuance of a preliminary injunction is a substantial likelihood of success on the merits. The United States Supreme Court held that there is no right to petition in private shopping malls under the First Amendment to the United States Constitution. See Lloyd Corp. v. Tanner, 407 U.S. 551 (1972) (holding that the First Amendment offers no protection to speech in private shopping malls when the speech is not related to the

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<sup>3</sup> See Commonwealth v. Mass. CRINC, 392 Mass. 79, 89-90 (1984) (noting that the Attorney General is not required to demonstrate irreparable harm where opposing party’s activities may adversely affect the public interest).

mall's functions and adequate alternatives to such communication exist). Nevertheless, the Court provided some room for expansion upon free speech liberties in privately owned shopping malls and elsewhere, asserting that states "may adopt in [their] own Constitution[s] individual liberties more expansive than those conferred by the Federal Constitution." Pruneyard Shopping Ctr. v. Robins 447 U.S. 74, 81 (1980).

As interpreted by the Supreme Judicial Court ("SJC"), the rights provided by the Massachusetts Declaration of Rights are indeed broader and allow petitioning in private shopping malls in certain limited circumstances. In Batchelder v. Allied Stores Int'l, Inc., 388 Mass. 83 (1983), the plaintiff Donald P. Batchelder asserted a right under articles 9 and 16 of the Declaration of Rights to seek signatures supporting ballot access in the common areas of the North Shore Shopping Center. The SJC concluded that article 9<sup>4</sup> permits an individual to both seek signatures for ballot access and to distribute associated material as long as they do so in a "reasonable and unobtrusive manner" in compliance with reasonable regulations imposed by the mall's ownership. Id. at 84. The decision rested on ballot access grounds and not on free speech rights. Id. at 92.

Although Batchelder recognized only an individual's right to petition for signatures in support of ballot access in a privately-owned shopping mall, the right was expanded upon by the Federal District Court in Strahan v. Frazier, 156 F.Supp. 2d 80 (D. Mass. 2001). In Frazier, Strahan brought suit against four officers of the Braintree Police Department alleging that the officers unlawfully prevented him from gathering signatures for an initiative petition at the

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<sup>4</sup> Article 9 provides that "All elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments." art. 9 of the Massachusetts Declaration of Rights.

privately-owned South Shore Plaza shopping mall. The initiative petition process is governed by article 48 of the Declaration of Rights, which provides in relevant part:

“Legislative power shall continue to be vested in the general court, but the people reserve to themselves the popular initiative, which is the power of a specified number of voters to submit constitutional amendments and laws to the people for approval or rejection; and the popular referendum, which is the power of a specified number of voters to submit laws enacted by the general court, to the people for their ratification or rejection.” art. 48 of the Massachusetts Declaration of Rights

In Frazier, the strong similarities between the right to individual ballot access governed by article 9 and the right to the initiative petition process governed by article 48, led a Federal District Court Judge (Young, D.C.J.) to extend Batchelder’s rationale to protect petitioning in a shopping mall for the “purpose of placing proposed legislation on the ballot.” Id. at 94. First, neither articles 9 nor 48 are limited in their application to protection against governmental interference with rights created directly in the people and may therefore be asserted against private property owners. Id. Second, obtaining signatures for ballot access and for initiatives and referenda depends a great deal on personal contact with the voters whose signatures are sought. As the Frazier court observed, “[i]deas and views can be transmitted through the press, by door-to-door distributions, or through the mail, without personal contact. On the other hand, a person needing signatures for ballot access requires personal contact with voters. He or she cannot reasonably obtain them in any other way.” Id. at 94-95 (citing Batchelder, 388 Mass at 92). In observing the importance of personal contact, the Frazier court noted that the initiative petition process is arguably more entangled with an individual’s ability to interact with the public than are ballot access petitions. See Id. at 95 (citing Meyer v. Grant, 486 U.S. 414, 421-22 (1988) (“[C]irculation of a petition involves the type of interactive communication concerning political

change that is appropriately described as ‘core political speech’”)). The court concluded that “Strahan has the right to collect signatures for his initiative petition in a private shopping mall.” Id.

Due to the clear, albeit limited, holding of Batchelder and the convincing rationale expressed in Frazier behind the extension of Batchelder to the initiative petition process, Strahan is likely to succeed on the merits of his declaratory judgment claim with regard to articles 9 and 48.<sup>5</sup>

The second showing that must be made in order to obtain a preliminary injunction is whether the failure to issue an injunction would expose the moving party to a substantial risk of irreparable harm. Strahan states that the time sensitive nature of the initiative petition process presents the potential for such harm. Under article 48, the time period for collecting signatures on initiative petitions in 2008 does not extend beyond November 19, 2008. Strahan contends that the loss of even a single day in connection with his efforts to collect the needed signatures subjects him to irreparable harm incapable of remedy through monetary damages. Viewed in light of the strong arguments for a right of access for the initiative petition process and the substantial likelihood of success on the merits in this regard, interference with Strahan’s petitioning abilities would cause considerable harm.

The third factor in the Packaging Industries three-part test for issuance of a preliminary injunction involves balancing the risk of harm to the moving party resulting from denial of the

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<sup>5</sup> Because this court finds a substantial likelihood of success on the merits of Strahan’s article 9 and 48 claims, it is not necessary to examine the merits of the other claims made in his original complaint. Moreover, the rights granted by article 16 (free speech) or article 19 (right of assembly) would not seem to extend any additional protections to Strahan in the context of a private shopping mall.

injunction against the risk of harm to the opposition if the injunction is granted. The defendants, while alleging that Strahan has no substantial likelihood of success on the merits, have not met their burden of showing irreparable harm to their interests in their cross-motion for a preliminary injunction. Further, Strahan contends that petitioning activities actually serve to enhance the commercial interests of property owners like the defendants. This is a contention that the defendants do not expressly contest.

This court also finds that the relief Strahan seeks in this motion for a preliminary injunction implicates many important issues related to the public interest. Strahan asserts a right to petition in Copley Place that he contends is granted by the Massachusetts Declaration of Rights. The public clearly has a substantial interest in rights afforded under the Massachusetts Constitution, and particularly in those rights that implicate the political process. In this specific case, Strahan also seeks to place legislation on the 2010 ballot which purports to advance environmental interests that are inherently in the public interest.

In sum, Strahan has met his burden of showing a substantial likelihood of success on the merits of his article 9 and 48 claims to the right to petition for signatures in accordance with the initiative petition process as well as the right to distribute material associated with that petitioning.<sup>6</sup> Strahan has also shown a substantial risk of irreparable harm with regard to his petitioning efforts, which outweighs any potential harm alleged by the defendants. Additionally, Strahan's proposed "Public Outreach" and his contention that the Massachusetts Declaration of Rights protects his rights as well as those of others are issues that directly implicate the public

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<sup>6</sup> The right to petition and to distribute associated materials are the subject of Strahan's first and fourth prayers for relief.



interest. The court's consideration of these factors together weigh in favor of granting Strahan's request for a preliminary injunction subject to the limits discussed below.

## ***II. Strahan's Specific Prayers for Relief and Batchelder's Limits***

In his second prayer for relief, Strahan asks this court for the right to place his table in Copley Place at a location of his own choosing and contends that Batchelder supports his right to do so. However, both Batchelder and Frazier recognize that the rights of owners of private property are due substantial consideration in spite of the rights granted to others on their property. Batchelder states that collection of signatures and the distribution of "material associated therewith" are "subject to reasonable regulations adopted by the mall owner." 388 Mass. at 84. Further, the SJC noted that

Close attention must be given to the property interests of a mall owner in determining whether an intrusion is reasonable in time, place, and manner. We are not discussing signature solicitations in stores but only unobtrusive and reasonable solicitations in the common areas of the mall, areas that have been dedicated to the public as a practical matter. Id. at 92.

The defendants are not contesting Strahan's access to Copley Place in the instant case and have offered Strahan the opportunity to collect signatures for his initiative petition at a location in the mezzanine concourse near the Marriot hotel, which would allow him access to mall patrons traveling between Copley Place and the Prudential Center.<sup>7</sup> The defendants also communicated their willingness to permit Strahan 43 hours per week from now until November 19, 2008 to conduct his petitioning activity in a reasonable and unobtrusive manner and subject only to the same uniform rules of conduct that mall ownership imposes upon all visitors to Copley Place

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<sup>7</sup> That the defendants may specify such a location subject to reasonable time, place and manner restrictions is suggested by language in Batchelder acknowledging the mall owner's right to "prescribe reasonable limitations on the locations at which signatures may be solicited and the manner in which they may be sought." 388 Mass at 93.

regardless of their purpose. Having examined the photographs and documents submitted by both parties, this Court finds these time, place and manner restrictions to be reasonable.

In his third prayer for relief, Strahan seeks the right to solicit donations while conducting his petitioning at Copley Place. Whether Strahan has such a right is contested by both parties and has not been determined by any Massachusetts appellate court. However, neither the rationale nor holding of Batchelder provides support for the right to collect donations. First, unlike ballot access or initiative petitions, there is no constitutionally entrenched right to collect donations in the Commonwealth of Massachusetts. Second, donations to support Strahan's cause reasonably can be collected in ways that do not require the same kind of personal contact involved in collecting signatures for either ballot access or initiative petitions. For example, funds can be raised through website campaigns or perhaps through the mail after interested individuals have perused the materials distributed to them through Strahan's public outreach efforts. Therefore, this court finds no support for Strahan's claimed right to collect donations in Copley Place in connection with his petitioning activities.<sup>8</sup>

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<sup>8</sup> This court declines to follow the decision of the court, Cratsley, J. in Prudential Insurance Company of America v. Greenworld, Inc., SUCV1994-6034 (Mass. Super. November 29, 1994) (unpublished) cited by Strahan. That decision allowed Strahan to solicit donations in connection with the solicitation of signatures pursuant to the initiative petition process at the Prudential Center shopping mall. That decision was rendered in connection with an expedited hearing on a non-dispositive motion for injunctive relief almost fourteen years ago and the holding regarding the solicitation of donations has never been tested by an appellate court.

## ORDER

For the foregoing reasons, it is hereby **ORDERED** that the defendant's cross-motion for a preliminary injunction is **DENIED**. Strahan's motion for a preliminary injunction is **ALLOWED** in part subject to the following terms:

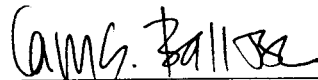
The plaintiff, including those assisting him or acting at his direction, may solicit signatures and distribute associated material at Copley Place in conjunction with the Initiative Petition for the passage of the Whale Safe Law. However, these activities must be conducted in accordance with the conditions set forth below, and he is enjoined from conducting the "Public Outreach" activities described in this paragraph in violation of the following conditions:

1. Strahan and those assisting him or acting at his direction must conduct their activities in a reasonable and unobtrusive manner;
2. Strahan and those assisting him or acting at his direction must abide by the Uniform Rules and Regulations for Soliciting Signatures and Nominating Papers and Ballot Questions in Massachusetts adopted by the defendant Simon Property Group, which include restrictions proscribing the placement of banners, signs, posters and placards in Copley Place;
3. Strahan and those assisting him or acting at his direction must abide by the "Code of Conduct" adopted by the defendant Simon Property Group for Copley Place;
4. Strahan and those assisting him or acting at his direction may solicit signatures in support of the Whale Safe Law and distribute associated material in the mezzanine concourse in front of the Marriott Hotel and between the Tiffany store and the entrance to the bridge to the Prudential Center (located between and in line with the Bocelli and Truffles kiosks);
5. Strahan and those assisting him or acting at his direction may conduct his petitioning activities in the area described above on Saturdays from 10:00 am to 6:00 pm, Sundays from 12:00 pm to 5:00 pm, and 30 hours per week to be used from Monday through Friday between 7:00 am and 7:00 pm;
6. Strahan's activities must cease by 5:00 pm on Wednesday, November 19, 2008, the

deadline for the submission of signatures; and

7. During his petitioning activities at Copley Place, Strahan may not solicit donations.

By the Court,

A handwritten signature in cursive script, appearing to read "Carol S. Ball", written over a horizontal line.

Carol S. Ball  
Justice of the Superior Court

Date: 10/2/08



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth

**SOLICITING SIGNATURES ON NOMINATION PAPERS  
AND BALLOT QUESTION PETITIONS AT SHOPPING CENTERS**

The Massachusetts Constitution protects the right to solicit signatures on candidate nomination papers and ballot question petitions, in a reasonable and unobtrusive manner, in the common areas of privately owned shopping centers. Distribution of printed material in connection with signature solicitation is also protected.

Shopping centers may adopt reasonable regulations that require petitioners to identify themselves, prevent them from harassing customers and obstructing pedestrian traffic, and allocate space and times among different groups of petitioners.

However, the Secretary advises that shopping centers may not:

- require petitioners to give significant advance notice (more than 24 hours).
- substantially limit the days and times when petitioning can occur.
- prevent petitioners from actively soliciting signatures in a reasonable area. For example, petitioners may not be restricted to standing behind a table or booth.
- require petitioners to have insurance coverage, agree to assume liability, or make a deposit of money.
- discriminate in favor of or against any group of petitioners.

The above advice by the Secretary of the Commonwealth, the chief elections officer of Massachusetts, is based in part on a 1983 decision by the state Supreme Judicial Court and on later court cases. Petitioners should notify shopping centers before soliciting signatures, and should try to resolve problems with shopping center managers before contacting the Secretary's Election Division.

In the Secretary's view, failure to allow petitioners the rights outlined above violates the state constitution. In addition, interference or attempted interference with these rights by threats, intimidation, or coercion violates the state civil rights law, which provides for money damages and attorney's fees. Petitioners or the state Attorney General may obtain a court order against any violations.

For more information or assistance, please contact: Elections Division, Office of the Secretary of the Commonwealth, One Ashburton Place, Room 1705, Boston, MA 02108, telephone (617) 727-2828 or 1-800-462-VOTE.



## The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth  
Elections Division

### SOLICITATION OF SIGNATURES IN PUBLIC PLACES

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Both the United States and Massachusetts Constitutions protect the right to solicit signatures on nomination papers and ballot question petitions in a reasonable and unobtrusive manner in open public areas. This includes the public areas of municipal property as well as the common areas of privately owned shopping centers. Distribution of printed material in connection with signature solicitation is also protected. The right of signature solicitation (along with other free-speech activities) on municipal sidewalks, in parks and in similar open public areas is clear. Hague v. CIO, 307 U.S. 496, 515-16 (1939).

#### ***Public Areas of Privately Owned Shopping Centers:***

The state Supreme Judicial Court has provided guidance specifically to those persons gathering signatures in privately owned shopping centers. Batchelder v. Allied Stores International, Inc., 388 Mass. 83, 445 N.E.2d 590 (1983). Although the Batchelder Court ruling was limited to gathering signatures on candidates' nomination papers, this standard also applies to gathering signatures on initiative and referendum petitions, under the Massachusetts Constitution. Mass. Const. amend art. 48. Shopping centers may adopt reasonable regulations that require signature gatherers to identify themselves, prevent them from harassing customers and obstructing pedestrian traffic, and allocate space and times among different groups of petitioners. It is therefore suggested that solicitors contact the management company of a privately owned shopping center to arrange for a mutually convenient time for such activity.

#### ***Municipal Property:***

In Batchelder the Supreme Judicial Court held that Article 9 of the Massachusetts Constitution protects the right to solicit signatures, and to distribute related printed material, in the common areas of privately owned shopping centers, subject to reasonable regulations. At least the same amount of protection must apply on municipal property that is regularly open to the general public for municipal business. Therefore, ballot-access and nomination paper signature solicitation must be allowed on municipal property that is regularly open to the general public for municipal business, subject only to reasonable time, place and manner regulations.

Please do not hesitate to contact Michelle K. Tassinari, Legal Counsel, at 617.727.2828 or 1.800.462.VOTE for more information on the right of individuals to gather signatures in public places.

03/02





## The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth  
Elections Division

### SOLICITATION OF SIGNATURES IN PUBLIC PLACES

---

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03/02

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## Authors



**Brian C. Levey**  
Principal  
(781) 416-5733  
[blevey@bdlaw.com](mailto:blevey@bdlaw.com)



**Gayatri M. Patel**  
Associate  
(202) 789-6072  
[gpatel@bdlaw.com](mailto:gpatel@bdlaw.com)

## Court Permits Political Candidate to Solicit Nominating Signatures on Retailer's Private Property

The Massachusetts Supreme Judicial Court has ruled that a supermarket violated a political candidate's state constitutional rights when the store manager prevented him from collecting nomination signatures on the sidewalk outside the store. *Glovsky vs. Roche Bros. Supermarkets, Inc.*, SJC No. 11434 (October 10, 2014).

In 2012, Steven Glovsky set out to collect signatures on a sidewalk outside the entrance of a Roche Brothers Supermarket in order to earn a place on a state election ballot. The supermarket is a free-standing building that sits on a five acre site. When Glovsky informed the store manager of his plan, he was told that store policy prohibited signature solicitation anywhere on store property including the sidewalk.

Glovsky sued claiming that Roche Brothers' decision violated his rights under Article 9 of the State's Declaration of Rights which protects individuals' rights to participate equally in the electoral process including a candidate's right to solicit signatures. Glovsky requested relief under the Massachusetts Civil Rights Act for a violation of his rights by "threats, intimidation or coercion." The Court found that Glovsky adequately alleged a protected right to solicit signatures under Article 9, but failed to make out his Civil Rights Act claim because the actions of the store manager in stating the supermarket's policy did not rise to the level of "threats, intimidation, or coercion" necessary to make a claim under the Act.

In an earlier decision, the Court applied a balancing test weighing a candidate's need to collect nominating signatures against the burden such conduct imposed on a property owner. There, the Court found that a candidate had a right to collect nominating signatures in the common areas of a private shopping mall due to the importance of shopping malls to the public for retail shopping and a candidate's need for access to the public. Roche Brothers sought to distinguish this earlier case by arguing that Article 9 only protects signature solicitation on private property that "serves as the functional equivalent of a traditional public forum." Citing cases from California and other jurisdictions finding in favor of property owners, Roche Brothers argued that candidates did not have a protected right to solicit signatures on private property located at the entrance to a free-standing retail establishment because store owners invite the public to pass through store entrances, not to congregate there.

The Court disagreed. Distinguishing the California rulings, the Court explained that the right to solicit signatures fell under California's free speech clause

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which “recognizes an expansive right to engage in free speech on certain private property that is broader than the limited [A]rt. 9 right to solicit nominating signatures.” The Court also noted that the California courts had relied on the fact that the public was only invited to pass through the area outside the store’s entrance, not to congregate there. The *Glovsky* Court, however, opined that whether individuals congregate or pass through a store has no bearing on whether a candidate has a protected right under Article 9. Instead, applying the balancing test, the Court reasoned that “in many rural and suburban communities, the local supermarket may serve as one of the few places in which an individual soliciting signatures would be able to approach members of the public in large numbers.”

The Court did note that the Roche Brothers could post signs renouncing any association with potential political candidates. Roche Brothers also has the right to prevent those soliciting signatures from harassing customers and impairing the store’s commercial interests by creating reasonable restrictions on the location, time, and manner in which candidates sought nominating signatures on their property.

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# DONALD P. BATCHELDER vs. ALLIED STORES INTERNATIONAL, INC. & another.

[\[Note 1\]](#)

388 Mass. 83

May 5, 1982 - January 28, 1983

Essex County

Present: HENNESSEY, C.J., WILKINS, LIACOS, ABRAMS, NOLAN, LYNCH, & O'CONNOR, JJ.

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A person seeking signatures in connection with access to the ballot in a public election has a right under art. 9 of the Massachusetts Declaration of Rights to do so, in a reasonable and unobtrusive manner, in the common areas of a large shopping mall, subject to reasonable regulations adopted by the mall owner. [91-93] LYNCH, J., with whom HENNESSEY, C.J., and O'CONNOR, J., join, dissenting on the ground that art. 9 does not apply to private conduct of the type challenged in this case. [94-97]

CIVIL ACTION commenced in the Supreme Judicial Court for the county of Suffolk on March 31, 1980.

On transfer to the Superior Court Department, the case was heard by Good, J.

The Supreme Judicial Court granted a request for direct appellate review.

Roderick MacLeish, Jr., & Robert A. Sherman (John Reinstein with them) for the plaintiff.

John A. Christopher, IV, for the defendants.

Anthony P. Sager & Stephen M. Limon, Assistant Attorneys General, for the Attorney General & another, amici curiae, submitted a brief.

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**WILKINS, J.** We are concerned with the right of a person to solicit signatures in the mall area of a large, private shopping center in support of a candidate's nomination to public office. The defendants (North Shore) denied that right to the plaintiff, Donald P. Batchelder. Batchelder then commenced this action asserting that he had a right under arts. 9 and 16 of the Declaration of Rights of the

Constitution of the Commonwealth, and under G. L. c. 12, Section 11I, to solicit signatures in support of ballot access in the mall, or common area, of the North Shore Shopping Center.

A Superior Court judge rejected Batchelder's claim and ordered entry of judgment for North Shore. We granted Batchelder's request for direct appellate review and now conclude that (1) Batchelder had a right under art. 9 to solicit nominating signatures in a reasonable and unobtrusive manner, (2) we need not consider any rights under G. L. c. 12, Section 11I, and (3), although the action is moot, the judgment should be vacated and a new judgment entered declaring Batchelder's rights pursuant to art. 9. [\[Note 2\]](#) We conclude that any person seeking signatures in connection with access to the ballot, and distributing material associated therewith, has a right under art. 9 of the Declaration of Rights to do so, in a reasonable and unobtrusive manner, in the common areas of a large shopping mall, subject to reasonable regulations adopted by the mall owner.

On Saturday, March 22, 1980, Batchelder, a resident of North Reading, entered the North Shore Shopping Center

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in Peabody for the sole purpose of obtaining signatures, and distributing related printed material, in support of his nomination as a candidate of the Citizens' party in the Sixth Congressional District and in support of the nomination of the Citizens' party's candidate for President. In 1980 the Sixth Congressional District consisted of the cities and towns in Essex County with the exception of the city of Lawrence and four towns. See G. L. c. 57, Section 1, as appearing in St. 1971, c. 1074, Section 1. Batchelder needed 3,700 valid signatures by May 6, 1980, to be placed on the ballot. In the mall Batchelder solicited signatures and passed out circulars in an orderly and quiet manner. He had obtained about fifteen signatures, during the first half hour of his endeavors, when a North Shore security guard advised him that soliciting signatures and distributing political circulars were not allowed at the shopping center. Batchelder objected but left the premises. Batchelder did succeed in obtaining the required signatures, his name appeared on the ballot, and he received about 3,300 votes in the election. [\[Note 3\]](#)

The North Shore Shopping Center is a large retail shopping center, with an enclosed mall. It has ninety-five retail stores, ranging from large department stores to small specialty stores. There are also a motion picture theater, an exercise facility, a beauty salon, a bowling alley, and a chapel affiliated with the Roman Catholic Church. It is located on approximately eighty-four acres at the junction of Routes 128 and 114 in Peabody, a city in the Sixth Congressional District. The shopping center is the largest shopping mall in Massachusetts. There was evidence that, at the time of the trial, it was the fifteenth largest shopping center in the country. On an average, between 175,000 and 200,000 people visit the shopping center each week. Gross

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sales in 1980 at the shopping center exceeded \$108,000,000. North Shore schedules special events almost every week of the year; some are charitable and civic, and some are simply entertainment. [\[Note 4\]](#) Many events have a direct commercial benefit for the tenants of the shopping center by attracting people to the shopping center; others benefit North Shore and its tenants by creating goodwill. The shopping center is entirely privately owned. It receives no government subsidy. None of its property has been formally dedicated to the public. North Shore has consistently applied a nondiscriminatory policy concerning political campaigning. No solicitation of signatures is permitted. Candidates already on the ballot may appear at the shopping center and shake hands with voters.

The shopping center is the most favorable site in the Sixth Congressional District for obtaining signatures of voters in that district. Door-to-door solicitation, particularly for a member of a minority party, is far less effective. The downtown areas of municipalities are also less attractive places to obtain signatures. In spite of the relatively attractive qualities of the shopping center, there are other places in the district where sufficient signatures can be obtained, as Batchelder himself demonstrated.

We start with the question whether we should dismiss the appeal because the action is moot. The 1980 election is well behind us, and Batchelder did obtain the necessary valid signatures. The issues Batchelder raises are, however, likely to arise again, and appellate review will probably not be possible in any subsequent

action before that case also becomes moot. See *First Nat'l Bank v. Haufler*, [377 Mass. 209](#) , 211 (1979). Where the issue is one of substantial public interest and has been fully briefed and argued, immediate

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resolution of the issue is desirable. *Brach v. Chief Justice of the Dist. Court Dep't*, [386 Mass. 528](#) , 533 (1982).

Considerations under the Constitution of the United States appear to be substantially neutral on the issue before us. A person has no First Amendment right to distribute handbills in a privately owned shopping center. See *Hudgens v. NLRB*, 424 U.S. 507 (1976), repudiating *Amalgamated Food Employees Local 590 v. Logan Valley Plaza, Inc.*, 391 U.S. 308 (1968); *Lloyd Corp. v. Tanner*, 407 U.S. 551, 569 (1972). We will assume that the fact that Batchelder was seeking signatures in support of access to the ballot, and not merely "leafletting," does not enhance his position under the Federal Constitution. Batchelder does not so argue. On the other hand, the Supreme Court of the United States has made it clear that a State may "adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution" and "in the exercise of its police power may adopt reasonable restrictions on private property so long as the restrictions do not amount to a taking without just compensation or contravene any other federal constitutional provision." *Prune Yard Shopping Center v. Robins*, 447 U.S. 74, 81 (1980).

In the *Prune Yard* case, the Supreme Court held that the Federal Constitution does not prohibit a State from creating a right under its State Constitution to distribute pamphlets and to seek signatures on petitions in a private shopping center substantially similar to the North Shore Shopping Center. The Court rejected *Prune Yard*'s claim that the State's attempt to authorize intrusions into its private property constituted a taking of its property without due process of law. *Prune Yard* made no showing that the solicitation activity unreasonably impaired the value or use of its property as a shopping center. Furthermore, the California court recognized that *Prune Yard* could restrict expressive activity by adopting time, place, and manner regulations that would minimize any interference with its

commercial functions. Thus the Supreme Court concluded that Prune-Yard had not shown that orderly solicitation in the common

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areas of the shopping center was a violation of the taking clause of the Fifth Amendment or of the Fourteenth Amendment guarantee against the deprivation of property without due process of law. *Prune Yard Shopping Center v. Robins*, supra at 83-85. The Supreme Court also rejected Prune Yard's claim that it had a First Amendment right not to be forced by the State to use its property as a forum for the speech of others. *Id.* at 87-88. The Court concluded that members of the public passing out pamphlets or seeking signatures are not likely to be identified with the owners and that the owners could disavow any connection with the message by posting signs in the appropriate area. *Id.* at 87.

Free from any demonstrated restraint or mandate under the Constitution of the United States, we address Batchelder's arguments based on the Declaration of Rights of the Constitution of the Commonwealth. [\[Note 5\]](#) He relies both on the freedom of speech provisions of art. 16 of the Declaration of Rights, as amended by art. 77 of the Amendments to the Massachusetts Constitution ("The right of free speech shall not be abridged") and no art. 9 concerning the freedom and equality of elections. [\[Note 6\]](#) We need not consider Batchelder's arguments under art. 16, in view of our interpretation of art. 9. Unlike the prohibition of the First Amendment to the Federal Constitution ("Congress shall make no law . . .") and the limitation of the Fourteenth Amendment ("nor shall any State deprive any person . . ."), art. 9 is not by its terms directed only against governmental action. There is, thus, no "State action" requirement expressed in art. 9, and we see no reason to imply such a requirement, and thereby

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to force a parallelism with the Federal Constitution. [\[Note 7\]](#) Courts in several other States have regarded as meaningful the absence of State action language in their State Constitutions. See *Robins v. Pruneyard Shopping Center*, 23 Cal. 3d 899, 908 (1979); *State v. Schmid*, 84 N.J. 535, 559-560 (1980), appeal dismissed sub nom. *Princeton Univ. v. Schmid*, 455 U.S. 100 (1982); *Commonwealth v. Tate*, 495 Pa. 158, 169, 171 (1981); *Alderwood Assocs. v. Washington Env'tl. Council*, 96 Wash.

2d 230, 243 (1981) (plurality opinion). We also think that the distinction is significant and reject any suggestion that the Declaration of Rights should be read as directed exclusively toward restraining government action. [\[Note 8\]](#) We thus reject North Shore's argument

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that we should find a "State action" requirement in art. 9. [\[Note 9\]](#)

A majority of the State courts that recently have considered rights under State Constitutions to engage in orderly free speech, free assembly, or electoral activity on private property held open to the public have recognized such a right. A variety of State constitutional provisions have been found to create such a right. The Supreme Court of California held in *Robins v. Pruneyard Shopping Center*, 23 Cal. 3d 899, 902 (1979) (4-3 decision), *aff'd*, 447 U.S. 74 (1980), that "soliciting at a shopping center of signatures for a petition to the government is an activity protected by the California Constitution." In *State v. Schmid*, 84 N.J. 535 (1980), the Supreme Court of New Jersey concluded that its State Constitution provided freedom of speech and assembly to individuals, and protected the reasonable exercise of those rights, so as to bar the conviction of a person who reasonably sought to exercise those rights on the campus of a private university which had adopted no reasonable standards concerning the exercise of those rights. In substantially

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similar circumstances, the Supreme Court of Pennsylvania reached the same result under the Pennsylvania Constitution in *Commonwealth v. Tate*, 495 Pa. 158, 173 (1981). In *Alderwood Assocs. v. Washington Env'tl. Council*, 96 Wash. 2d 230 (1981), a plurality of the Supreme Court of Washington concluded that, under the Washington Constitution, a person has the right to solicit signatures in a large, privately owned shopping mall. One justice, who joined in the result, concluded that the provision of the State Constitution concerning initiative proposals and petitions justified allowing the defendant's solicitation of signatures on private property. *Id.* at 251 (Dolliver, J., concurring). Finally, a trial court in Connecticut, relying on its State Constitution, upheld the right of persons to solicit signatures in support of the Equal Rights Amendment to the Constitution of the United States in

the common area of a large shopping mall. *Cologne v. Westfarms Assocs.*, 37 Conn Supp. 90 (Super. Ct. 1982). The only contrary view expressed in recent years by a State court of last resort appears in *State v. Felmet*, 302 N.C. 173, 178 (1981), in which the court recognized that it could interpret its State Constitution to permit the solicitations of signatures on a petition in the parking lot of a large shopping center but simply stated, without analysis, that "we are not so disposed." [\[Note 10\]](#)

It is important that we carefully define the issue that this case presents. We are concerned with ballot access and not with any claim of a right to exercise free speech apart from the question of ballot access. Ballot access is of fundamental importance in our form of government because through the ballot the people can control their government. See *Bachrach v. Secretary of the Commonwealth*, [382 Mass. 268](#), 272 n.9 (1981). In limiting our decision to the matter

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of soliciting signatures on ballot questions, we leave to another day the question of rights that may arise under art. 16 (free speech). [\[Note 11\]](#) The concept of free elections and an equal right to be elected "for public employments" embodied in art. 9 supports our conclusion that Batchelder has a constitutional right to solicit signatures at the North Shore Shopping Center. The difference between free speech and art. 9 rights to free elections and to be a candidate equally with others is not purely theoretical. Ideas and views can be transmitted through the press, by door-to-door distributions, or through the mail, without personal contact. On the other hand, a person needing signatures for ballot access requires personal contact with voters. He or she cannot reasonably obtain them in any other way. Reasonable access to the public is essential in ballot access matters.

The fact that we are dealing with the private action on private property and not with public property or with at least direct government action is an important consideration. Close attention must be given to the property interests of a mall owner in determining whether an intrusion is reasonable in time, place, and manner. We are not discussing signature solicitations in stores but only unobtrusive and reasonable solicitations in the common areas of the mall, areas that have been dedicated to the public as a practical matter. The North Shore Shopping Center is one of the largest shopping malls in the country. Shopping malls, a recent and



growing form of retail merchandising, function in many parts of this State much as the "downtown" area of a municipality did in earlier years. On the record, the North Shore Shopping Center is the most favorable area in the

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Sixth Congressional District to solicit signatures. Batchelder's activity was substantially related to the basic right of free election, which would be substantially impaired in the absence of access. The fact that Batchelder could (and did) obtain a sufficient number of signatures at less desirable locations is not controlling.

We acknowledge North Shore's right to prescribe reasonable limitations on the locations at which signatures may be solicited and the manner in which they may be sought. Where, however, North Shore has not shown that Batchelder's solicitations adversely affected its economic interests or those of its tenants or that the views expressed by Batchelder could reasonably be attributed to North Shore, North Shore's bare title to the real estate is the only property interest whose protection would support a decision against Batchelder. [\[Note 12\]](#)

The judgment of the Superior Court is vacated, and a judgment declaratory of Batchelder's rights consistent with this opinion shall be entered.

So ordered.

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**LYNCH, J.** , dissenting (with whom Hennessey, C.J., and O'Connor, J., join). In deciding that the plaintiff has a right under art. 9 of the Declaration of Rights to solicit signatures on the defendants' property, this court has concluded that no "State action" requirement limits the application of this article to the facts of this case. I respectfully dissent.

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Consideration of the general purposes of our State Constitution persuades me that art. 9 does not apply to private conduct of the type to which the plaintiff objects. This court has said that "[t]he function of a written constitution adopted by the people is to establish . . . an objective standard of conduct by which all departments of the government, executive, legislative and judicial alike, shall be

bound." Opinion of the Justices, [324 Mass. 746](#) , 748 (1949). "It is the final statement of the rights, privileges and obligations of the citizens and the ultimate grant of the powers and the conclusive definition of the limitations of the departments of State and of public officers. In its grant of powers, the bounds set for their exercise, the duties enforced and the guarantees established are found the constitutional liberty of the individual and the foundation for the regulated order and general welfare of the community. To its provisions the conduct of all government affairs must conform." Opinion of the Justices, 233 Mass. 603 , 611 (1920). Accord *Loring v. Young*, [239 Mass. 349](#) , 376-377 (1921). See also *Tax Comm'r Putnam*, [227 Mass. 522](#) , 523 (1917). Consistent with the thrust of these passages are statements more specifically concerned with the Declaration of Rights. Thus: "The purpose of the Declaration of Rights was to announce great and fundamental principles, to govern the action of those who make and those who administer the law . . ." *Foster v. Morse*, 132 Mass. 345 , 355 (1882). In an earlier case it was said that "[t]he manifest object of the Declaration of Rights was, to give the most explicit an abiding sanction to some of the general principles, supposed to be essential to the maintenance of free government, for the general guidance and regulation, as well of the legislature as of the people." *Commonwealth v. Kneeland*, 20 Pick. 206 , 219 (1838).

As these passages illustrate, the fundamental role of our State Constitution is to define and to regulate the relationship between the government and the people. The liberty of the people is safeguarded by grants of power to, and limitations on, the various branches of government. The

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Constitution and the Declaration of Rights serve as ultimate arbiters of conflicts between the people and those who represent government in all its manifestations. Regulation of the relationship between individual citizens or groups of citizens is not, generally speaking, a concern of the Constitution but of the Legislature acting pursuant to its police power and other constitutional powers. When the equal right to elect and be elected to public office guaranteed by art. 9 is read in light of these principles, it is clear that the article is concerned with governmental abridgements and not with interferences generally.

My review of the State cases relied upon by the majority also convinces me that it would be unwise to depart from a requirement of governmental conduct in this instance. These courts, reaching the same result as the majority here, adopt a balancing test and proceed to analyze a variety of factors in order to determine the extent of the protected activity in a particular case. See *State v. Schmid*, 84 N.J. 535, 563 (1980), appeal dismissed sub nom. *Princeton Univ. v. Schmid*, 455 U.S. 100(1982); *Commonwealth v. Tate*, 495 Pa. 158, 173-174 (1981); *Alderwood Assocs. v. Washington Env'tl. Council*, 96 Wash. 2d 230, 244-246 (1981). I find no support for such an open-ended approach.

I am aware of the important role which privately held shopping centers play in the commercial life of many communities today. See generally, Note, *Private Abridgement of Speech and the State Constitutions*, 90 Yale L.J. 165, 168-169 (1980). Understandably, many individuals and groups hoping to promote a political, social, or religious cause view shopping centers such as the North Shore Shopping Center as highly desirable forums for the communication of their views. Nonetheless, history and logic persuade me that our State Constitution should be read as incorporating a threshold requirement of State action before the courts may act to protect asserted rights under the Declaration of Rights. Furthermore, I see no reason to find in art. 9 a guarantee of greater rights than those protected under the Federal Constitution. *Hudgens v. NLRB*, 424 U.S. 507

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(1976). *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972). The plaintiff in this case was free to gather signatures and to distribute campaign literature in the public areas of all the towns and cities in the Sixth Congressional District, and his right to do so was protected under both the Federal and State Constitutions. It should be kept in mind that it was by the exercise of this right that the plaintiff obtained a place on the ballot. I would hold, however, that he had no further right, under the State Constitution, to carry his efforts into the North Shore Shopping Center.

Article 9 expresses "[t]he Commonwealth['s] . . . substantial, compelling interest in assuring the fairness of elections and the appearance of fairness in the electoral process." *Anderson v. Boston*, [376 Mass. 178](#) , 193 (1978). The plaintiff's argument that art. 9 entitles him to carry out campaign activities at North Shore because it is

"perhaps the largest center for the congregation of voters in the Sixth District" has potentially broad ramifications. It suggests that art. 9 is violated every time the owner of private property which attracts large concentrations of people bars political campaigning on the property. Article 9 does not reach this far. It is a guarantee that no branch of the government will do anything inconsistent with "[f]airness and the appearance of fairness" in the electoral process. *Id.* at 195. It does not ensure that all candidates receive the same level of public exposure. No governmental agency erected any barrier to the plaintiff's campaign. I would find this fact conclusive on the art. 9 issue.

Even if no State action requirement is found to limit the application of art. 9, it does not appear to me that the plaintiff's cause is aided by this article. The plaintiff's experts testified that the alternatives to solicitation of signatures at the North Shore Shopping Center were door-to-door and downtown area campaigning and that these methods were inefficient and not very effective. Thus, the plaintiff has at best established that his solicitation of signatures on North Shore's property may be desirable but not necessary for the effective exercise of his ballot access rights. I believe that

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such a showing is an insufficient basis for affording him art. 9 rights on the defendants' property. Furthermore, the record demonstrates, and the trial judge found, that North Shore's policy was to permit political candidates already on the ballot to enter and walk around the mall area but prohibited all candidates from soliciting signatures and distributing literature. It is hard for me to understand how such a policy, uniformly applied, could violate art. 9, which guarantees that elections be free and that the inhabitants of the Commonwealth "have an equal right to elect officers, and to be elected, for public employments."

In sum, my principal objection to the majority position is its adoption of a balancing of interests concept in place of a State action requirement. It has been pointed out that once a State Constitution is freed from some form of State action limitation, its protections would theoretically apply to a wide range of private disputes. Note, *Developments in the Law -- The Interpretation of State Constitutional Rights*, 95 Harv. L. Rev. 1324, 1425 (1982). *Alderwood Assocs.*, *supra* at 250-251 (Dolliver,

J., concurring) ("[n]ow there is no limit to the range of wrongs which this court may right").

There is no reason to so expand the role of this court. I would affirm the judgment of the Superior Court.

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## FOOTNOTES

[\[Note 1\]](#) The other defendant is All-Stores Realty Corporation. The defendants are said to be doing business as the North Shore Shopping Center.

Allied Stores International, Inc., apparently owns the real estate on which the shopping center is located. The record does not set forth in detail the respective obligations of the defendants in the management of the shopping center. We shall refer to the defendants as North Shore and to the shopping center property as the shopping center or the North Shore Shopping Center.

[\[Note 2\]](#) As we have noted, Batchelder relies in part on G. L. c. 12, Section 11I, inserted by St. 1979, c. 801, Section 1, in support of a claim for injunctive relief. That section authorizes an action for injunctive and other appropriate equitable relief, compensatory damages, and costs and attorney's fees, by "[a]ny person whose exercise or enjoyment of . . . rights secured by the constitution or laws of the commonwealth has been interfered with" by threats, intimidation or coercion. We need not consider what, if any, rights are expressed in G. L. c. 12, Section 11I, that are not otherwise available pursuant to art. 9. Batchelder makes no claim, before us at least (the complaint is not in the record appendix), for compensatory damages, costs, or attorney's fees. The occasion for any mandatory injunction against North Shore has passed. Therefore, a declaration of Batchelder's constitutional rights is sufficient in the circumstances.

[\[Note 3\]](#) This action was commenced on March 31, 1980, in the Supreme Judicial Court for the county of Suffolk. Batchelder's request for a preliminary injunction was denied on the ground that he had not shown any likelihood of irreparable harm. The case was transferred to the Superior Court in Essex County. The case was tried in April, 1981, after the 1980 election, and judgment was entered for the defendants in July, 1981.

[\[Note 4\]](#) North Shore presents events such as Military Week; a Memorial Day service; a Peabody School Exposition; Fire Prevention Week; Bicycle Safety Week; Library Week; a Dental Health Fair Exhibit; a Health and Beauty Fair; a Boat Show; a Winterizing Show; a Senior Citizens' Week; a Charity Week at which churches, PTA groups, Girl Scouts, and other nonprofit organizations may sell homemade goods; a United Cerebral Palsy Telethon; and orchestra and band concerts.

[\[Note 5\]](#) We are not concerned here with the rights of a person to enter on private property pursuant to a statute or duly authorized regulation. See *Consolidated Cigar Corp. v. Department of Pub. Health*, [372 Mass. 844](#) , 850-851 (1977).

[\[Note 6\]](#) Article 9 of the Massachusetts Declaration of Rights states: "All elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments."

[\[Note 7\]](#) Even if one were to read a "State action" requirement into art. 9, the result in this case would not necessarily be different. The use of the courts to enforce the laws of trespass could be regarded as "State action" in a constitutional sense. There are some instances, rare and arguably resultoriented, in which the Supreme Court of the United States has been willing to extend the concept of State action so as to affect the relationships of private parties. See, e.g., *New York Times Co. v. Sullivan*, 376 U.S. 254, 265 (1964) (First and Fourteenth Amendments limit the circumstances in which a private plaintiff may recover damages in a civil action for libel against a private defendant because the application by a State court of the common law of libel constitutes State action); *Shelley v. Kraemer*, 334 U.S. 1, 20 (1948) (Fourteenth Amendment bars enforcement by State courts of private agreements to exclude persons of certain races from occupying real estate); *Marsh v. Alabama*, 326 U.S. 501, 509 (1946) (First Amendment prevents private owners of a company town from abridging handbill distribution on its business block because town performs a "public function").

[\[Note 8\]](#) There is language in this court's opinion in *Commonwealth v. Noffke*, [376 Mass. 127](#) , 134 (1978), suggesting that a State action requirement might be found in art. 16 of the Declaration of Rights: "And, at least in this context, the protections of arts. 16 [free speech] and 19 [right to assemble] extend no further than the comparable provisions of the First Amendment . . . . Articles 16 and 19 protect the rights of free speech and assembly from abridgement by the government. Therefore guaranties of those articles do not extend to the conduct here which occurred on the property of a private employer" (citations omitted).

The issue in the Noffke case was "whether a State court may convict a defendant of trespass for his presence on an employer's premises when he is there as a nonemployee soliciting employees in the course of a union organization campaign." *Id.* at 128. The difference between the parking lot of a private hospital and the common area of a multiestablishment shopping center is significant. The Noffke opinion did not focus on free speech rights in the context of political activity. Moreover, it was published almost two years before the Supreme Court's *Prune Yard* opinion indicated that States were free to fashion their own constitutional principles concerning the exercise of free speech in the common areas of large shopping malls. We decline to take the dictum of the Noffke case out of context and apply it to the case before us.

[\[Note 9\]](#) Although it is a powerful document expressing restraints on governmental action, the Declaration of Rights contains other provisions dealing with relationships between private parties. See, e.g., *Reeves v. Scott*, [324 Mass. 594](#) , 598-599 (1949) (arts. 1 and 10 of the Declaration of Rights of the Massachusetts Constitution preclude a private union of musicians from interfering with the lawful conduct of the business of an unaffiliated musician); *McNeilly v. First Presbyterian Church*, 243 Mass. 331 , 339-340 (1923) (art. 3 of the Declaration of Rights, as amended by art. 11 of the Amendments to the Massachusetts Constitution, entitles a religious society, against the objection of a minority of its members, to elect a pastor); *Coffin v. Coffin*, [4 Mass. 1](#) , 25-29 (1808) (art. 21 of the Declaration of Rights bars a defamation action by one citizen against another for defamatory words if the speaker was acting as a member of the House of Representatives).

[\[Note 10\]](#) In *Commodities Export Co. v. Detroit*, 116 Mich. App. 57, 62-63 (1982), the court held that there was no constitutional right to distribute commercial handbills on private property to which the public had access. The opinion contains no separate analysis of provisions of the State Constitution, although a free speech claim apparently was advanced under the State Constitution.

[\[Note 11\]](#) Batchelder relies on both art. 9 and art. 16 before this court. The Attorney General's brief, on his own behalf of the Secretary of the Commonwealth as amici curiae, argues in support of Batchelder solely in reliance on art. 16. No party relies on the right of the people "in an orderly and peaceable manner, to assemble to consult upon the common good." Art. 19 of the Declaration of Rights. Some of the recent opinions of other State courts have alluded to State constitutional rights of assembly. See *State v. Schmid*, *supra* at 557-560; *Commonwealth v. Tate*, *supra* at 169, 173.

[\[Note 12\]](#) North Shore has authorized numerous exhibits and activities at the mall, including entertainment, and has allowed various civic and charitable organizations to conduct activities for their own benefit. See note 4, *supra*. These events were designed to attract persons to the mall and to generate good will. Admittedly, these authorized activities differ from Batchelder's activity because his involved no benefit to the mall. However, North Shore did permit political candidates, already on the ballot, to shake hands with patrons at the mall. Its authorization of these political activities tends to suggest that what Batchelder was doing was not a significant intrusion on North Shore's interest.

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