

No. 09-559

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IN THE  
**Supreme Court of the United States**

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JOHN DOE #1, ET AL., PETITIONERS

v.

SAM REED, WASHINGTON SECRETARY OF STATE, ET AL.,  
RESPONDENTS

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On Writ of Certiorari  
to the United States Court of Appeals  
for the Ninth Circuit

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**BRIEF OF *AMICI CURIAE* MASSACHUSETTS GAY AND  
LESBIAN POLITICAL CAUCUS AND SUSAN WAGNER IN  
SUPPORT OF RESPONDENTS**

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## INTEREST OF AMICI CURIAE<sup>1</sup>

The Massachusetts Gay and Lesbian Political Caucus (“MGLPC”) is a nonprofit organization dedicated to the principles of equality and liberty embodied in the United States Constitution and the Massachusetts Constitution and Declaration of Rights. Since its founding in 1973, MGLPC has educated and organized citizens of the Commonwealth of Massachusetts to protect and advance the civil rights of lesbians and gay men through effective participation in the legislative and political process. MGLPC’s activities have included participating in direct voter initiative processes similar to the referendum process at issue in this case. Of particular relevance to this case, in 2001 and 2002 MGLPC co-chairs Arline Isaacson and Gary Daffin spearheaded a campaign to educate Massachusetts citizens about an initiative petition known as the Protection of Marriage Amendment. In the course of that campaign -- and because of public access to the names of signatories to the petition -- MGLPC uncovered and alerted the public to numerous instances of fraud and deception committed by paid petition signature gatherers.

Susan Wagner is a New York resident who serves as the President of Equine Advocates and is a long-time advocate for the humane treatment of horses. From 2001 to 2002, Ms. Wagner chaired Save Our Horses, a Massachusetts ballot question

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<sup>1</sup> This brief is filed with the consent of the parties. The letters of consent have been filed with the Court. Pursuant to this Court’s Rule 37.6, amici affirm that no counsel for a party authored this brief in whole or in part, that no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and that no person other than amici and their counsel made such a monetary contribution.

committee. Save Our Horses' mission was to enact through the Massachusetts initiative process Brown Beauty's Bill, legislation that would ban the killing of horses in Massachusetts for human consumption either within or outside the state. Save Our Horses was victimized by widespread fraud and deception in the 2001 signature gathering process and as a consequence was deemed to have failed to gather the number of signatures required for placement of its initiative on the 2002 ballot.

MGLPC and Ms. Wagner respectfully submit that their respective experiences with fraud in the initiative process and the role that public access to petition signatures played in discovering that fraud and in notifying victims may be of assistance to the Court in deciding the issues presented in this case.

### SUMMARY OF ARGUMENT

The Petitioners in this case claim that the First Amendment grants a right of anonymity to those who sign referendum petitions. In other contexts, when deciding whether the First Amendment implicitly grants protections necessary to the enjoyment of other rights expressly stated in the First Amendment, this Court has considered the tests of experience and logic, *i.e.*, whether recognizing a First Amendment right (a) is consistent with historical tradition; and (b) will play a positive role in the functioning of the governmental process at issue. *See generally Richmond Newspaper, Inc. v. Virginia*, 448 U.S. 555 (1980). Neither consideration supports the constitutional right of anonymity asserted by the Petitioners.

The history of direct democracy measures is one of openness. The historical predecessor to the referendum and initiative processes was the right of instruction, a popular democratic measure often employed by the Founders. Nothing about the instruction process was anonymous. Instructions were debated and voted on in public town meetings. The process was fully transparent; supporters and opponents were well-known to the community. As town meetings became less frequent, instructions were replaced by the initiative and referendum processes. But the openness that was so characteristic of the right of instruction remained, with petitions distributed, discussed, debated and signed in public fora such as streets, shopping centers, parks and parking lots. The public nature of the referendum and initiative processes therefore carries the favorable judgment of history.

Openness also plays a significant, positive role in the functioning of the referendum and initiative processes. As a general matter, openness is consistent with the First Amendment's core purpose of assuring freedom of communication on matters relating to official governmental functions such as the formal initiation and approval of legislation. Moreover, as the experience of the amici in Massachusetts demonstrates, openness plays an essential role in ensuring that the public has the means to serve as a watchdog over the referendum and initiative processes, safeguarding against fraudulent and deceptive practices that would otherwise go undetected. In short, neither experience or logic supports the Petitioners' claim that the First Amendment imposes a constitutional requirement of anonymity on the referendum or initiative processes.

#### **ARGUMENT**

##### **I. PUBLIC ACCESS TO THE NAMES OF PETITION SIGNATORIES IS NOT PROHIBITED BY THE FIRST AMENDMENT AND, TO THE CONTRARY, PROMOTES IMPORTANT FIRST AMENDMENT INTERESTS**

The Petitioners claim that the First Amendment grants a constitutional right of anonymity to citizens who sign referendum petitions. This argument surely is not compelled by the text of the First Amendment, which prohibits the government from “abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The First Amendment is, of course, “broad enough to encompass those rights that, while not

unambiguously enumerated in the very terms of the Amendment, are nonetheless necessary to the enjoyment of other First Amendment rights.” *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 604 (1982). As Justice Brennan once cautioned, however, because the “stretch of [any such] protection is theoretically endless,” judicial analysis of such claims requires “discrimination and temperance.” *Richmond Newspaper*, 448 U.S. at 588 (Brennan, J., concurring) (quoting William J. Brennan, Jr., *Address*, 32 RUTGERS L. REV. 173, 177 (1979)) (internal quotations omitted).

The Court has applied these principles of “discrimination and temperance” when deciding the analogous issue of whether the First Amendment provides the public with a right of access to criminal proceedings. Under the constitutional analysis employed by the Court, the First Amendment provides such a right where (a) there exists a historical tradition of public access to the proceeding; and (b) public access plays a positive role in the functioning of the specific proceeding at issue. *Globe Newspaper*, 457 U.S. at 605-06; *see also Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 8 (1986) (“*Press-Enterprise II*”); *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 505-09 (1984) (“*Press-Enterprise I*”).

Both considerations -- experience and logic -- are critical to sound constitutional analysis and are appropriately considered in this case to evaluate the Petitioners’ claim of a First Amendment right to anonymity. Historical tradition commands respect because “the Constitution carries the gloss of history,” and because tradition “implies the favorable judgment of experience.” *Richmond Newspaper*, 448 U.S. at 589 (Brennan, J., concurring). *See generally*

*In re Winship*, 397 U.S. 358, 361-62 (1970) (historical practice reflects a “profound judgment about the way in which law should be enforced and justice administered” (internal quotations and citation omitted)). Similarly, it is necessary to closely examine whether recognizing a First Amendment right of anonymity will play a positive role in the functioning of the specific process at issue in order to prevent “rhetorical statements” about the sweep of First Amendment protections from dictating constitutional results. *Richmond Newspaper*, 448 U.S. at 589 (Brennan, J., concurring).

As shown below, applying this two-part test to Petitioners’ claims demonstrates that signatories to referendum petitions have no First Amendment right to anonymity. First, there is no historical tradition of anonymity with regard to petition signatories. To the contrary, the historical evidence indicates that there is a tradition of public accessibility to such information. Second, as the experience of MGLPC and Ms. Wagner vividly demonstrates, public access to the names of signatories plays a positive role in the functioning of the petition process by preventing fraud and promoting the integrity of the process. In contrast, if adopted, the Petitioners’ position would have the effect of “limiting the stock of information from which members of the public may draw” in connection with the initiative process, thereby contravening the Amendment’s “common core purpose” of “assuring freedom of communication on matters relating to the functioning of government.” *Richmond Newspaper*, 448 U.S. at 575. See also *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978); *Mills v. Alabama*, 384 U.S. 214, 218 (1966) (“[A] major purpose of that Amendment was to protect the free discussion of governmental

affairs”). For these reasons, amici respectfully submit that the First Amendment does not provide a constitutional right of anonymity to signatories of referendum or initiative petitions.

## II. PETITION SIGNATORIES HISTORICALLY WERE NOT ANONYMOUS

Washington State’s referendum process, like similar procedures in numerous other states, is an attempt to balance the constitutional conflict between principles of republicanism and principles of direct democracy that has existed since even before the Revolutionary War. *See* Edmund Burke, Speech to the Electors of Bristol (Nov. 3, 1774), *in* 1 THE WORKS OF THE RIGHT HONOURABLE EDMUND BURKE 178, 180 (Henry G. Bohn ed. 1841) (“Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion.”); *see also* Letter from John Adams to J.B. Varnum (Dec. 26, 1808), *in* 9 THE WORKS OF JOHN ADAMS 604, 605 (Charles F. Adams ed., 1854) (“The right of the people to instruct their representatives, is very dear to them, and will never be disputed by me.”).

Modern direct democracy measures most commonly take the form of either a referendum petition or an initiative petition. A referendum authorizes voters to either ratify or reject a law already enacted by the legislature. An initiative authorizes voters to approve either a proposed law or a proposed constitutional amendment not yet acted upon by the legislature. Kenneth Bresler, *Rediscovering the Right to Instruct Legislators*, 26 NEW ENG. L. REV. 355, 358 (1991). *See generally* ROBERT LUCE, LEGISLATIVE PRINCIPLES: THE HISTORY AND THEORY OF LAWMAKING BY REPRESENTATIVE GOVERNMENT 434 (1930).



The historical predecessor to the referendum and the initiative is the right of instruction, historically viewed by some as a binding command by the people to their representatives and by others as a non-binding exhortation. Bresler, *supra*, at 374-84. All three mechanisms -- the referendum, the initiative and the right of instruction -- share a history of openness that directly undermines the Petitioners' constitutional claims of anonymity.

**A. The Historically Public Nature of the Instruction Process**

Instructions to legislators have been a feature of American government almost since its inception. Town records show that as early as 1653, citizens publicly assembled in town meetings to propose, debate, and vote to accept or reject instructions to the town's deputies in the General Court. See SECOND REPORT OF THE RECORD COMMISSIONERS OF THE CITY OF BOSTON: CONTAINING THE BOSTON RECORDS, 1634-1660, AND THE BOOK OF POSSESSIONS 114 (2d ed. 1881). These instructions covered a wide variety of legislative matters including education, morality, political conduct, agriculture, trade and commerce, and taxation. LUCE, *supra*, at 449. By the time the colonies won their independence, towns assembled as frequently as several times a year to debate and vote instructions. See Letter from John Adams to the President of Congress (June 2, 1780), in 7 THE WORKS OF JOHN ADAMS, *supra*, at 180, 182.

The process of voting instructions in town meetings established a precedent for the modern initiative and referendum process. See DAVID SCHMIDT, CITIZEN LAWMAKERS: THE BALLOT INITIATIVE REVOLUTION 3-4 (1991) ("Since the seventeenth century, voters in hundreds of New England towns have exer-

cised their lawmaking powers in annual town meetings, using a method similar to the Initiative: citizens place . . . questions on the agenda by petition, meet and discuss the proposals, and then vote to accept or reject them.”); M. DANE WATERS, INITIATIVE AND REFERENDUM ALMANAC 3 (2003) (“These town hall meetings established the precedent which led to the creation of the legislative referendum process . . .”). Although they differ in some ways, instructions, initiatives and referenda all are part of the same democratic tradition. See Bresler, *supra*, at 358 (comparing questions of instruction, characterized as direct republicanism, with initiatives and referenda, characterized as direct democracy); Kenneth Colegrove, *New England Town Mandates*, in 21 PUBLICATIONS OF THE COLONIAL SOCIETY OF MASSACHUSETTS 411, 423 (1920) (stating that the one difference between the colonial practice of voting instructions and the modern initiative is that “[o]ur Puritan forefathers in town-meetings did not as a rule draw up the exact wording of the new laws which they demanded”).

In this tradition, the identities of those initiating popular legislative action and representing popular opinion have been known to the public. A historical review of the instruction process during the colonial and revolutionary periods demonstrates this fact. The process began when the town’s selectmen, by their own authority or upon petition by any seven townspeople, issued a warrant for the calling of a town meeting. Letter from John Adams to Abbé De Mably (1782), in 5 THE WORKS OF JOHN ADAMS, *supra*, at 492, 495 (1851); see also I WILLIAM GORDON, HISTORY OF THE RISE, PROGRESS, AND ESTABLISHMENT OF THE INDEPENDENCE OF THE UNITED STATES OF AMERICA 382 (1788). At the meeting, if the mo-

tion to instruct passed, the townspeople would appoint a committee to draw up the instructions. Colegrove, *supra*, at 420. Once the instructions were drawn, the committee would report them to the assembly, “and this report was debated by the town—not infrequently for several days.” *Id.* at 417. These debates involved face-to-face, open discussions by all who wished to address the assembly. As one historian recounts,

[O]ftentimes, the substance of the instructions will evoke a sharp debate, and the simple freeman will thus hear the affairs of the town and of the commonwealth discussed by the keenest of wits of the province; while, if his boldness gets the better of his prudence, he will attempt to gain the floor to express his own sentiments on the question before the meeting.

*Id.* at 420-21; accord GORDON, *supra*, at 382 (stating that at town meetings, “[e]ach individual has an equal liberty of delivering his opinion, and is not liable to be silenced or browbeaten by a richer or greater townsman than himself.”); Letter from John Adams to the President of Congress, *supra*, at 182 (“In these assemblies, every man, high and low, every yeoman, tradesman, and even day-laborer, as well as every gentleman and public magistrate, had a right to vote, and to speak his sentiments upon public affairs, to propose measures and to instruct the representatives.”). “As a rule, free-speech seems to have dominated the assemblies.” Colegrove, *supra*, at 417. Contrary to the Petitioners’ view of public disclosure as a burden on political speech, our predecessors viewed the public, non-anonymous

process of voting instructions to legislators as the quintessence of free political speech.

Popular support for instructions historically was garnered in public places, just as today's petition signatures generally are solicited and gathered in public venues such as sidewalks or even social networking websites. Town meetings in Boston, for instance, famously took place at Faneuil Hall throughout the revolutionary era. Meanwhile, the townspeople of New York assembled in an open field on the day they instructed their representatives in the General Court to boycott the importation of British goods. *See Resolutions Adopted by the Meeting in the Fields (July 6, 1774)*, in 1 AMERICAN ARCHIVES, FOURTH SERIES 1669, at 312-13 (Peter Force ed., 1846); *see id.* at 312 (listing the names of those voting in favor and against the appointment of a committee to draw up such instructions). On the eve of the American Revolution, the people of James City, Virginia met in the town tavern, Allen's Ordinary, to instruct their representatives "to exert [their] utmost abilities, in the next Convention, towards dissolving the connection between *America* and *Great Britain*, totally, finally, and irrevocably." Instructions from the Freeholders of James City County to Their Delegates (Apr. 24, 1776), in 5 AMERICAN ARCHIVES, *supra*, at 1046-47. In these open venues, no supporters of town instructions reasonably could believe that their participation in the process was confidential.

The identities of the committee members who drew up the instructions were not only known to the public generally but were recorded in the town records and occasionally printed in the town newspaper along with a copy of the instructions. For example, in 1765, an enthusiastic assembly in Faneuil

Hall voted to instruct the town's deputies to oppose the passage of the Stamp Act. *See* A REPORT OF THE RECORD COMMISSIONERS OF THE CITY OF BOSTON, CONTAINING THE BOSTON TOWN RECORDS, 1758 TO 1769, at 155-56 (1886). The corresponding town meeting minutes record that the town had appointed Samuel Wells, Richard Dana, John Rowe, Samuel Adams, John Erving, Joseph Green, and John Rud-dock to the committee that drew up the instructions. *See id.* at 152. Just as petitions today enjoy “no promise of confidentiality” from the State once they are submitted, *Doe v. Reed*, 586 F.3d 671, 677 (9th Cir. 2009), instructions in the past were not sent to representatives “in a private letter, which can be put in their pockets.” Statement of Rufus King Before the Massachusetts Convention (Jan. 19, 1788), *in* 2 DEBATES ON THE ADOPTION OF THE FEDERAL CONSTITUTION 47 (Jonathan Elliot ed., 2d ed. 1888). Historically, town instructions were “public instructions, which all the country will see.” *Id.* And indeed, Boston's Stamp Act instructions were published in the *Boston Gazette* on September 23, 1765, for all to see.

The historically public nature of the instruction process is vividly illustrated by one of the most famous instructions in the history of the Commonwealth. In 1779, a committee appointed by the town of Pittsfield in Berkshire County drafted instructions for their representative in the State Convention insisting on the adoption of a state constitution as a condition to permitting the highest court of the then-existing government to sit in Berkshire County. The document, credited with achieving the calling of the convention that led to the adoption of the Massachusetts Constitution, was known to be drafted by Thomas Allen of Pittsfield. J.E.A. SMITH, THE HISTORY OF PITTSFIELD (BERKSHIRE COUNTY) MASSACHUSETTS

FROM THE YEAR 1734 TO THE YEAR 1800, at 365-68 (1869); Frank W. Grinnell, *Note on the Legal Effect of the Popular Vote on the Rearrangement*, 7 MASS. L.Q., No. 1, 180, 181-82 (1921). According to one commentator, it is "probable that the existence of the Massachusetts Constitution owes as much to Thomas Allen as an initiative force as it owes to John Adams and Theophilus Parsons, as draftsmen and constructive thinkers." Frank W. Grinnell, *Speech Before the Maryland State Bar Association* (July 1, 1921), in 7 MASS. L.Q., No. 1, app. at 9 (1921). Just as the drafter and supporters of the instructions were known to the public, however, so too were those citizens who opposed holding the courts hostage to the calling of a constitutional convention:

And, as usually happens in acrimonious political conflicts, each party grossly misrepresented and maligned the other. On the one hand, although among those who favored a recognition of the obnoxious government, and the admission of the courts, there were some of the truest patriots in Berkshire, on whom not the shadow of suspicion of treachery to the American cause could justly have rested, yet they were indiscriminately posted in the public prints, and charged by the public action of the towns, as "enemies of their country," in precisely the same phraseology that was used concerning the Tories. One not acquainted with the facts would infer from the record, that Capt. Charles Goodrich, for example, was, in the opinion of his townsmen, false to the Revolutionary cause; while, in fact, it had no more sincere supporter.

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So effectually, indeed, did the newspaper libellers affix this stigma to the rejection of civil administration in Berkshire, that it has not even yet been removed.

J.E.A. SMITH, *supra*, at 370, 371. Anonymity, in short, was not a historical attribute of the instruction process.

By the time of independence, the practice of voting instructions in New England town meetings was a century and a half old. Reflecting on the Revolution, John Adams declared that “[t]he consequences of these [town meetings] have been, that the inhabitants, hav[e] acquired from their infancy the habit of discussing, of deliberating, and of judging public affairs,” and that “it was in these assemblies of towns or districts that the sentiments of the people were formed in the first place, and their resolutions were taken from the beginning to the end of the disputes and the war with Great Britain.” Letter from John Adams to Abbé De Mably, *supra*, at 495. At the federal level, until the Seventeenth Amendment to the Constitution instituted direct popular election of Senators in 1913, state legislators regularly gave instructions to their Senators that were recorded in public votes. Bresler, *supra*, at 365.

## **B. The Public Nature of the Modern Initiative and Referendum Process**

In Massachusetts, as in other states, the constituent instruction ultimately gave way to the modern initiative and referendum. In 1915, the people of Massachusetts voted on the following question of instruction: “Shall the Representative from this District be instructed to support the Initiative and Ref-

erendum, so as to give the Voters the Power to accept or reject at the Polls, Measures that have been proposed by Petition?" MASS. OFFICE OF THE SECRETARY OF STATE, NUMBER OF ASSESSED POLLS, REGISTERED VOTERS AND PERSONS WHO VOTED IN EACH VOTING PRECINCT AT THE STATE, CITY AND TOWN ELECTIONS 512 (1915). The following year, the state legislature passed, and the voters approved, a bill authorizing a constitutional convention to consider various reforms, of which the most intensely debated was the initiative and referendum amendment.

When, in 1917, the Massachusetts Constitutional Convention debated the initiative and referendum amendment, proponents advocated for the initiative and referendum as a substitute for its precursor, the town meeting, whose preeminence waned with the end of town sovereignty. Delegate E. Gerry Brown of Brockton declared that "[b]ecause the town-meeting has dropped out [of the state constitution] we present the principle of the initiative and referendum to take its place." 2 DEBATES IN THE MASSACHUSETTS CONSTITUTIONAL CONVENTION, 1917-1918, at 417 (1918).

Unlike the right of instruction, the initiative and referendum processes did not include the open, face-to-face town meeting debates that triggered the formulation and delivery of instructions. *Id.* at 12 ("The open, oral discussion of measures . . . is of the essence of the town-meeting, of the Constitutional Convention, of all legislating bodies. But the most important features of a true debate are missing in, and are rendered impossible by, the initiative, and there is no remedy for this lack."). As a result, some members of the Massachusetts Constitutional Convention expressed concern that signature gathering



would be susceptible to abuse and would not accurately reflect public opinion. Delegate Henry T. Lummus of Lynn stated,

If I were to try to put my finger on the most vital defect in the proposed plan I should put it on the provision permitting the circulation of petitions and the employment of paid canvassers. Most of the practical abuses of the initiative result from that. . . . “The number of signatures does not, even in the absence of fraud . . . give any true indication of public opinion in regard to the measures submitted.”

*Id.* at 136 (second alteration in original) (quoting the testimony of Professor Barnett, Chair of Government at the State University of Oregon, before the Oregon legislature).

Although the initiative and referendum processes in Massachusetts lack the public town meetings that accompanied the instruction process, the processes are by no means confidential. For example, the identities of petition signatories are disclosed to third parties no less than five times during the initiative or referendum process:

1. Petitions typically are signed in public places such as shopping center parking lots and public streets, with the signatories in plain view of friends and strangers.

2. When one person signs a petition, the names and addresses of persons who previously signed on the same page of the petition are readily visible.

3. The referendum or initiative committees -- political partisans -- and paid signature gatherers who are otherwise total strangers to the issue being petitioned, collect all signed petitions and thus have access to the names and addresses of all signatories. Further, ballot question committees often photocopy signed petitions to retain names of potential supporters for use in future campaigns.

4. Signed petitions must be submitted to the registrars of the city or town where the signers appear to be voters (a process that does not include verifying the authenticity of the signatures). *See* MASS. GEN. LAWS ch. 53, § 7.

5. Signed petitions must also be submitted to the Secretary of State's Office, which reviews the petitions "for extraneous markings and compliance with exact copy requirements," and to "determine the total number of certified signatures" (but not to verify the authenticity of the signatures). 950 MASS. CODE REGS. § 48.07; *see also id.* at §§ 48.06, 48.07(2); App. 33a ("The Secretary does not make a review of individual signatures.").

In addition, the names of signatories are publicly available under the Massachusetts Public Records Law, MASS. GEN. LAWS ch. 66, § 10. As Massachusetts has learned all too well, such public access to initiative and referendum petition signatures is as crucial to the integrity of these citizen-lawmaking processes as the open town meeting was to the process of approving constituent instructions.

### **III. PUBLIC ACCESS TO NAMES OF PETITION SIGNATORIES PLAYS A POSITIVE ROLE IN THE FUNCTIONING OF THE REFERENDUM AND INITIATIVE PROCESSES BY PROMOTING THE DETECTION AND PREVENTION OF FRAUD**

The need for public access to the names of petition signatories in order to uncover and prevent fraud is not an academic matter to MGLPC or Ms. Wagner. As described below, although not aligned politically, MGLPC and Ms. Wagner each had personal experience with the effect of ballot fraud. Without public access to the names of petition signatories, the amici would not have been able to prove that fraud had occurred, nor would they have been able to alert the public and elected officials to this threat to the electoral process. As Massachusetts's 2001 experience with signature gathering demonstrates, public access to the names of purported petition signers is nothing short of imperative to maintaining the integrity of the citizen initiative process.

#### **A. Brown Beauty's Bill and the Protection of Marriage Amendment**

Pursuant to the procedures set forth in Article 48 of the Massachusetts Constitution, in 2001 several Massachusetts entities commenced the process of placing initiative petitions on the ballot. *See* MASS. CONST. art. 48, pt. 2, § 3. Among these organizations were Massachusetts Citizens for Marriage ("MCM"), Save Our Horses and the Committee for Small Government.

MCM was a ballot question committee formed "for the purpose of passing an amendment, known as

the Protection of Marriage Amendment, to the state Constitution.” Compl. for Decl. Relief at ¶ 1, *Pawlick v. New York Times Co.*, CA No. 03-10704 PBS (D. Mass. Jan. 2, 2003).<sup>2</sup> The Protection of Marriage Amendment (the “Marriage Petition”), also referred to as Petition E, defined marriage exclusively as the union of one man and one woman, and prohibited alternative forms of relationship recognition for same-sex couples. A wholly unrelated ballot question committee, Save Our Horses and its Chair, Susan Wagner, sought placement on the ballot and ultimate passage of Brown Beauty’s Bill, A Ballot Initiative to Ban the Slaughter of Massachusetts Horses for Human Consumption. Also known as the Horse Slaughter Petition or Petition A, Save Our Horses’ initiative prohibited the otherwise lawful slaughter or humane killing of horses if such slaughter or killing was for use as food for human consumption. Another unrelated ballot question committee, the Committee for Small Government, advocated placement on the ballot and passage of the Initiative to End the Income Tax (the “Tax Petition”).

As required by Article 48, Brown Beauty’s Bill, the Marriage Petition and the Tax Petition were “signed by ten qualified voters of the Commonwealth” and submitted to the Attorney General in early August 2001. *See* MASS. CONST. art. 48, pt. 2, § 3. The Attorney General subsequently certified these petitions, which were filed with the Secretary

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<sup>2</sup> Amici cite documents filed in *Arkuss v. Galvin*, CA No. 02-1318 A (Suffolk Mass. Super. Ct.) and *Pawlick v. New York Times Co.*, CA No. 03-10704 (D. Mass.). These cases, of which the Court may take judicial notice, concerned issues arising from Save Our Horses’ and MCM’s 2001-2002 efforts to advance their respective initiative petitions.

of the Commonwealth in early September 2001. *See id.*

**B. MGLPC Uncovered Alarming Fraud and Deception in the Signature Gathering Process**

Having obtained preliminary certification, MCM, Save Our Horses and the Committee for Small Government had until November 21, 2001 to gather the 57,100 signatures required to place their initiatives on the ballot. *See* MASS. CONST. art. 48, pt. 2, § 3; *id.*, pt. 4, § 2 (requiring that a petition to amend the Constitution be signed “in the aggregate by not less than such number of voters as will equal three per cent of the entire vote cast for governor at the preceding biennial state election”); *id.*, pt. 5, § 1 (imposing the same requirement for petitions to enact statutes); App. 23a. Each committee separately hired Ballot Access Company to gather the requisite signatures. The company’s workers simultaneously gathered signatures for all three petitions at the same locations, increasing the potential for confusion and mischief.

The committees paid Ballot Access Company on a per signature basis, with Save Our Horses executing a contract on September 12, 2001 to pay the company \$1.70 for each signature collected. App. 23a. Signature collectors hired by Ballot Access Company were paid per signature and were compensated more for signatures on the Marriage Petition than those on Brown Beauty’s Bill, a disparity with the potential to incentivize fraud. App. 21a. The incentive to commit fraud increased when the Committee for Small Government terminated its relationship with Ballot Access Company part way through

the signature gathering process, thus decreasing the signature gatherers' sources of revenue.

Throughout the 2001 signature gathering period, MGLPC spearheaded a Decline To Sign campaign. MGLPC led this campaign as a founding member of MassEquality: The Campaign for Equality ("MassEquality"), then a newly-formed voluntary coalition of Massachusetts organizations working to advance marriage equality in the Commonwealth. The Decline to Sign campaign aimed to dissuade individuals from signing the Marriage Petition. Focusing on locations where paid signature gatherers worked, staff and volunteers trained by MGLPC stood outside shopping malls, grocery stores, and other public places. When a member of the public appeared willing to sign the petition, a Decline to Sign campaigner would politely ask that person not to sign and would explain the principles of equality and fairness animating the request. Campaigners were courteous, friendly and peaceful in their discussions with members of the public.

In the process of executing the Decline to Sign campaign, MGLPC and its coalition partners witnessed signature gatherers for the Marriage Petition engaging in bait and switch tactics and other fraudulent and deceptive conduct in order to obtain signatures from unwitting Massachusetts citizens. For example, some signature gatherers used clipboards covered by a copy of Brown Beauty's Bill petition and a picture of a horse colored in red, white and blue, but had signature pages for the Marriage Petition hidden under that façade to be signed by unsuspecting citizens.

Individuals not associated with MGLPC corroborated MGLPC's findings of fraud and deception. Ac-

According to Jason Hampton, a signature gatherer paid by Ballot Access Company, “it was much easier to get people to sign Petition A than Petition E. Petition A was so popular that I made my own color copies of the American flag horse picture to attract people to the table.” App. 20a; *see also* App. 25a (“Ballot Access Company had instructed its signature gatherers to ‘sell’ voters on signing Petition A but trick them into signing Petition E instead.”). Mr. Hampton recalled Ballot Access Company providing him and other signature gatherers with “pre-prepared clipboards that had a picture of a horse colored like the American flag on the top, a copy of Petition A underneath that, and then a mix of Petition A and Petition E signature pages on the bottom.” App. 19a. According to Mr. Hampton, Ballot Access Company “said we should show people Petition A, but if they weren’t paying attention to have them sign on one of the petitions underneath, most of which were Petition E.” *Id.*

The Secretary of State’s Office received multiple complaints regarding such trickery. According to Michelle Tassinari, Legal Counsel for the Secretary’s Elections Division, “[t]he allegations have been similar in that voters are being solicited to sign ‘Petition A’ (prohibiting the slaughter of horses) and then provided with ‘Petition E’ (relating to the marriage question).” Steve LeBlanc, Associated Press, *Activists Say Voters Were Tricked Into Signing Gay Marriage Question*, Dec. 18, 2001. In addition, MGLPC and Save Our Horses notified the Attorney General and Secretary of State of the fraud they had discovered.

Recognizing the gravity of the situation, the Attorney General issued a news release on November

16, 2001 captioned “**ATTORNEY GENERAL CAUTIONS VOTERS: BE CAREFUL IN SIGNING BALLOT QUESTION PETITIONS.**” According to the release:

The Attorney General’s Office has received several complaints about deceptive practices by some people gathering signatures on certain initiative petitions. Voters said they have been asked to sign a petition for a law to ban the slaughter of horses for human consumption, but when they indicated they wanted to sign that petition, they said they were given another, different petition to sign -- one that proposes a constitutional amendment stating that only the union of one man and one woman shall be recognized as a marriage in Massachusetts.

After receiving those complaints this week, the Attorney General’s Office did some spot checks which revealed that some voters may have signed a petition they did not support.

App. 29a; *see also* Pam Belluck, *Drive to Ban Gay Marriage is Accused of Duping Signers*, N.Y. TIMES, Apr. 7, 2002, § 1 (quoting Ann Donlan, a spokeswoman for the Attorney General’s Office, stating “[w]e found that there were some irregularities and that people may have signed a petition they didn’t want to sign”).

The revelation of this fraud did not halt the initiative process. At the conclusion of the signature gathering period, Save Our Horses and MCM sub-



mitted signed petition forms for “certification” by local registrars of voters. This “certification” consists of matching the names of petition signatures with names on the voter rolls of the registrar’s district. *See* MASS. GEN. LAWS ch. 53, § 7. There is no requirement to verify either that the signature is authentic or that the signature appears on the petition the signatory intended to support. *See id.*

Individuals from Save Our Horses and MCM also were responsible for retrieving their petitions from the registrars and submitting them to the Secretary of State. *See* MASS. CONST. art. 48, pt. 2, § 3 (“the remainder of the required signatures shall be filed not later than the first Wednesday of the following December”); 950 MASS. CODE REGS. § 48.06(5). The Secretary was then obligated to review the petitions “for extraneous markings and compliance with exact copy requirements,” and to “determine the total number of certified signatures.” 950 MASS. CODE REGS. § 48.07. The Secretary of State’s review, like the registrars’ “certification,” does not include verifying the authenticity of the signatures or any other effort to detect fraud or error in the signature collection process. *See id.* at §§ 48.06, 48.07(2).

By letter dated December 20, 2001, the Secretary of the Commonwealth informed Neil Arkuss, the first signatory to Brown Beauty’s Bill, that the petition “had received only 54,526 allowable signatures out of the 57,100 required to qualify for the ballot.” App. 25a. Despite a subsequent lawsuit brought by Mr. Arkuss and six Massachusetts voters who intended to sign the bill but instead were duped into signing the Marriage Petition, the Secretary declined to transmit Brown Beauty’s Bill to the Clerk of the House of Representatives and the initiative petition

died. The Marriage Petition, in contrast, was certified for transmission to the Clerk of the House of Representatives, the next step in the initiative process. *See id.*; MASS. CONST. art. 48, pt. 2, § 4.

**C. Public Access to the Names of Petition Signatories was Necessary to Uncover and Disseminate Information About the Fraud that Tainted the 2001-2002 Initiative Process**

Although for different political reasons, MGLPC and Save Our Horses were deeply concerned by the fraud and trickery that led people to unknowingly sign the Marriage Petition, often at the expense of Brown Beauty's Bill. *See* Stephanie Ebbert, *Accusations Swirl On Petition Tactics*, BOSTON GLOBE, Jan. 9, 2002, at B1 ("Now, defenders of both animal rights and gay rights are challenging the fates of the disparate initiatives, saying the signature gathering company misled citizens into putting their names on the gay marriage ban when they thought they were signing the petition against horse slaughter."). As recognized by the Secretary of State, "the only way to make [a demonstration of deception in the signature gathering process] – because of the fundamental presumption that each signature appearing on a petition is valid – is 'one signature at a time.'" Def.'s Opp. to Pls.' Mtn. for Prelim. Inj. at 2, *Arkuss v. Galvin*, CA No. 02-1318 A (Suffolk Super. Ct. Apr. 17, 2002); *see also* App. 34a ("the only way to ultimately determine whether an individual truly did not sign the Horse Petition is to review the actual petitions that were submitted to the Secretary"). Because neither Save Our Horses or MGLPC and its coalition partners, acting alone or in combination with one another, had the time, substantial financial

resources, and handwriting expertise to compare the tens of thousands of petition signatures with those on the voter registration cards on file in each of the cities and towns in Massachusetts, the groups set out to empower the citizens of Massachusetts to determine whether their signatures were stolen.

MGLPC and Save Our Horses first lawfully obtained signatures pursuant to the Massachusetts Public Records Law, MASS. GEN. LAWS ch. 66, § 10. *See also* 950 MASS. CODE REGS. § 48.08 (providing that “[i]n no event shall state ballot question petitions be open for public inspection until the Secretary has provided the first ten signers with a final official count of the number of certified signatures”). MGLPC then coordinated an effort to place the names of purported petition signers on a MassEquality website, created by Amy Hunt with the technical assistance of Sarah Bennett. The names of all petition signers also were posted on the website of Save Our Horses. App. 26a. To the best of amici’s knowledge, this was the first time in the nation that the names of signatures on an initiative petition were posted on the Internet. Posting the names of purported petition signers allowed interested citizens to determine easily and inexpensively whether their names appeared on petitions they in fact intended to sign. The publication of names found on the two petitions likewise allowed Save Our Horses and MGLPC to utilize the feedback of concerned citizens in ascertaining the scope of the deception perpetrated against supporters of Brown Beauty’s Bill. Via the websites, Save Our Horses and MGLPC and its coalition partners received numerous submissions from frustrated and upset individuals stating that their names appeared on the Marriage Petition despite having intended to sign only Brown Beauty’s

Bill. *See, e.g.*, App. 11a-17a. But for the public provision of the names associated with each petition, Massachusetts citizens would be left with no realistic way to determine whether they had been duped in the signature gathering process.

Additionally, beginning on February 21, 2002 and continuing through March 23, 2002, Save Our Horses, with MGLPC's assistance, mailed letters to 28,051 individuals listed as signers of the Marriage Petition but not Brown Beauty's Bill. App. 27a. The mailing informed these individuals that their names appeared on the Marriage Petition and asked whether they "intend[ed] to sign that petition (Petition E) or . . . Petition A, banning the slaughter of Massachusetts horses for human consumption." App. 12a. The letter requested: "If your name appears on the wrong petition, please fill out the form below and return to us immediately in the enclosed self-addressed stamped envelope." *Id.* By April 10, 2002, Save Our Horses "received written responses from over 1,000 voters residing in all parts of Massachusetts, stating that they had intended to sign only Petition A but were not listed as signers of Petition A, and that they had not intended to sign Petition E but were listed as signers of Petition E." App. 27a-28a; *see also, e.g.*, App. 11a-15a; App. 1a-2a ("Someone asked me to sign an initiative petition on the slaughter of Massachusetts horses, and I signed. No one said anything about an initiative petition on marriage. Months later I received a form letter from Save Our Horses. The letter said my name appeared on Petition E, the marriage initiative. I filled in the form to say I did not intend to sign the marriage petition and did not know why my name appeared there, and that I intended to sign only Petition A, the horse slaughter initiative.").

These outreach efforts, along with media reports, brought to light numerous fraudulent and deceptive tactics employed by signature gatherers in the Fall of 2001. Many individuals reported that signature gatherers showed them a clipboard containing the Brown Beauty's Bill petition but then turned that page and covered the words at the top of the next page while the individuals signed. *See* App. 4a; Aff. of Bethany Hughes in Supp. of Pls.' Mtn. for Prelim. Inj. at ¶¶ 4-5, *Arkuss v. Galvin*, CA No. 02-1318 A (Suffolk Super. Ct. Apr. 9, 2002) (Man who asked affiant to "sign an initiative petition against horse slaughter . . . had model horses and signs with pictures of horses. He only mentioned horse slaughter. . . . He kept hold of the clipboard and would not let me hold it. He kept the top part of the clipboard covered with a picture of a horse. He flipped through the pages on the clipboard to a page where he said I should sign, and I signed there."). While it is customary for signature gatherers to direct a signer to the appropriate page for her city or town, in this case voters were directed to an entirely different petition, a fraudulent bait and switch. *See* Aff. of Janet Drake in Supp. of Pls.' Mtn. for Prelim. Inj. at ¶¶ 6-8, *Arkuss v. Galvin*, CA No. 02-1318 A (Suffolk Super. Ct. Apr. 9, 2002) (explaining similar tactic and her discovery of the bait and switch when she demanded that she be allowed to hold the clipboard).

In addition to reported instances of bait and switch victimization, other petition signatories stated that although they explicitly declined to sign the Marriage Petition, they had learned via MGLPC's and Save Our Horses' outreach that their signatures nevertheless appeared on that petition. App. 7a. Some reported that although they signed only Brown Beauty's Bill or the Marriage Petition

their names somehow appeared on both petitions. App. 16a. Still others said their names appeared on the Marriage Petition despite not having signed *any* petition. App. 17a. And others reported being told by signature gatherers that the Marriage Petition was in fact a petition that would allow same-sex couples to marry, or of being instructed to sign Brown Beauty's Bill in two places and then learning via the MassEquality website that their name appeared on both petitions, or of being told that if they signed one petition they were required to sign all three.

Acting on behalf of MGLPC and its coalition partners, Amy Hunt, Sarah Bennett and William Conley followed up with individual interviews of voters who reported that their signatures wrongly appeared on the Marriage Petition. MGLPC then discussed these reports with Massachusetts legislators, *see, e.g.*, App. 35a-39a, whose action would ultimately be required before the Protection of Marriage Amendment would reach the 2004 ballot, *see* MASS. CONST. art. 48, pt. 4, §§ 4-5. During a day-long hearing on the initiative before the Legislature's Joint Committee on Public Service, numerous Massachusetts citizens testified regarding the forgery and deception associated with the 2001 signature gathering process. In its majority report opposing the Marriage Petition, the Committee referenced "concerns about the manner in which signatures were gathered for this ballot initiative" that "call[ed] into question the fairness and legitimacy of the process itself." COMMONWEALTH OF MASS. JOINT COMM. ON PUB. SERV., SB 2335, 2001-2002 Sess. (Apr. 24, 2002) (at App. 40a-42a).

Without public access to the names appearing on the petitions, citizens of Massachusetts and the Commonwealth's legislators would have remained in the dark about the serious questions of fairness and due process concerning the initiative process.<sup>3</sup> Indeed, absent public access to this information, individual citizens would not even be able to determine whether their signatures were correctly listed on petitions or whether they were victims of identity fraud.

This problem is not unique to Massachusetts. As stated in a recent report by the Ballot Initiative Strategy Center:

Since most states do not devote the time and resources necessary to fully review every signature qualifying a ballot initiative, the public should have timely access to all petition sheets after they have been submitted for verification instead of solely relying on a sample. The Secretary of State should also have a responsibility to release copies of signature petitions to the public in a timely manner to allow citizen groups to examine signatures submitted and monitor for fraud to ensure than an ini-

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<sup>3</sup> By way of additional example, in 1998 a petition to cut the Massachusetts state income tax would have reached the ballot with only eighty-one signatures more than required, if a coalition led by the Massachusetts Teachers Association and the Tax Equity Alliance for Massachusetts had not combed through the petition papers and notified the Secretary of State that it found scores of "legally dubious voter signatures." Frank Phillips, *Coalition Challenges State Tax-Cut Petition*, BOSTON GLOBE, Dec. 31, 1997, at A1.

tiative which fraudulently gathered signatures does not qualify for the ballot. . . . By requiring more accountability for signature gathering vendors and the circulators they hire, the public will be better able to support election officials in their efforts to protect the integrity of the initiative process and voters will be more confident that initiatives qualified in a way consistent with state law.

BALLOT INITIATIVE STRATEGY CENTER, *BALLOT INTEGRITY: A BROKEN SYSTEM IN NEED OF SOLUTIONS* (July 2009); *see also McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 383 (1995) (Scalia, J., dissenting) (“It is not unheard-of for campaign operatives to circulate material over the name of their opponents or their opponents’ supporters (a violation of election laws) in order to attract or alienate certain interest groups. *See, e.g.*, B. FELKNOR, *POLITICAL MISCHIEF: SMEAR, SABOTAGE, AND REFORM IN U.S. ELECTIONS* 111-12 (1992) (fake United Mine Workers’ newspaper assembled by the National Republican Congressional Committee); *New York v. Duryea*, 76 Misc. 2d 948, 351 N.Y.S.2d 978 (Sup. 1974) (letters purporting to be from the “Action Committee for the Liberal Party” sent by Republicans).”).<sup>4</sup>

The findings of the Ballot Initiative Strategy Center and the 2001-2002 Massachusetts experience

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<sup>4</sup> Unlike *McIntyre*, of course, this case does not present the issue of whether the First Amendment protects anonymous leafleting. The petition process is part of an official governmental process, not an act of political leafleting, and there is no tradition of anonymity with respect to petition signatories.



demonstrate that public access to the names appearing on ballot initiatives plays a significant positive role in the functioning of the process by permitting citizen groups and members of the public to serve as watchdogs of the initiative process. Secretaries of State and other governmental entities simply lack the time and resources required either to verify the authenticity of every signature on every initiative petition or to determine whether voters were provided with the petition they intended to sign. Without the ability of organizations such as MGLPC and Save Our Horses to attempt to verify the authenticity and intent of petition signers, there is no realistic check on the legitimacy of the signature gathering process and no workable way for citizens to know if their signatures have been stolen in an attempt to put an initiative on the ballot. If fraud and deception such as that perpetrated in Massachusetts are not brought to light, the petition process would surrender its fundamental purpose as an authentic voice of the people.

In sum, the Petitioners' claim that the First Amendment provides petition signatories with a constitutional right to anonymity flies in the face of the core purpose of the First Amendment -- to protect the informed discussion of government affairs. Stated another way, the Petitioners have no right to deprive other citizens of their constitutional right to inform themselves of and petition the government with evidence of voter fraud in the petition process, yet that is an inevitable result of the Petitioners' position. Employing the tests of experience and logic used by the Court in analogous contexts demonstrates that there is no historical tradition of anonymity afforded to petition signatories and that public access to the names of signatories plays a positive

role in the functioning of the petition process. For all of these reasons, the First Amendment does not provide petition signatories with a constitutional right to anonymity.

**CONCLUSION**

For the foregoing reasons, the decision of the Ninth Circuit should be affirmed.

Respectfully submitted,

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April 1, 2010

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**APPENDIX A**

COMMONWEALTH OF MASSACHUSETTS  
SUFFOLK, ss. SUPERIOR COURT

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Civil Action No. 02-1318 A

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NEIL P. ARKUSS, CHRISTINE BOGOIAN, MARIE COE,  
ANITA CONSTANTINE-GAY, BETHANY HUGHES,  
RICHARD LEEMAN, CELINE SULLIVAN,  
*Plaintiffs*

v.

WILLIAM FRANCIS GALVIN,  
Secretary of the Commonwealth,  
*Defendant*

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**AFFIDAVIT OF MARIE COE**

State of Massachusetts )  
County of Berkshire ) ss.

Marie Coe, having been duly sworn, deposes and states:

1. I have personal knowledge of the matters stated in this Affidavit.
2. I am registered to vote in Pittsfield, Berkshire County, Massachusetts.
3. I signed a single ballot initiative petition one day in the Fall of 2001. I was at the Stop & Shop store on Merrel Road in Pittsfield.
4. Someone asked me to sign an initiative petition on the slaughter of Massachusetts horses, and I signed. No one said anything about an initiative petition on marriage.

2a

5. Months later I received a form letter from Save Our Horses. The letter said my name appeared on Petition E, the marriage initiative. I filled in the form to say I did not intend to sign the marriage petition and did not know why my name appeared there, and that I intended to sign only Petition A, the horse slaughter initiative. I mailed the form back to Save The Horses.

6. I resent the fact that I was deceived by the petitioner into signing Petition E on marriage when I thought I was signing Petition A on horse slaughter.

Signed under the pains and penalties of perjury this 9th day of April, 2002.

/s/ Marie Coe  
Marie Coe

Sworn to before me on April 9, 2002.

/s/ [Illegible]  
Notary Public  
My Commission Expires: May 15, 2005

**APPENDIX B**

COMMONWEALTH OF MASSACHUSETTS  
SUFFOLK, ss. SUPERIOR COURT

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Civil Action No. 02-1318 A

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NEIL P. ARKUSS, CHRISTINE BOGOIAN, MARIE COE,  
ANITA CONSTANTINE-GAY, BETHANY HUGHES,  
RICHARD LEEMAN, CELINE SULLIVAN,  
*Plaintiffs*

v.

WILLIAM FRANCIS GALVIN,  
Secretary of the Commonwealth,  
*Defendant*

---

**AFFIDAVIT OF ANITA CONSTANTINE-GAY**

State of Massachusetts )  
County of Plymouth ) ss.

Anita Constantine-Gay, having been duly sworn,  
deposes and states:

1. I have personal knowledge of the matters stated in this Affidavit.
2. I am registered to vote in Hingham, Plymouth County, Massachusetts.
3. I signed a single ballot initiative petition in late 2001 while I was waiting for my bus at the Quincy Center Station.
4. A young black man with a missing tooth followed me as I walked toward the spot for my bus, talking about horses being sold and killed for meat

He was carrying a clipboard with petitions. I saw the heading "Save The Horses" on the top page on the clipboard. I agreed to sign the petition.

5. Instead of giving me the clipboard, the man turned it to face me. He turned to the next page, even though the signature lines on the first page were not all filled. He held the clipboard with his thumb or fingers covering the words at the top of the page. I was about to ask to see the hidden words when my bus arrived. I quickly signed the petition and hurried to board my bus.

6. Later, I saw an article in the Boston Globe about petitioners using the horse slaughter petition to trick people into signing a different initiative petition relating to marriage.

7. After seeing the newspaper article, I received a form letter from Save Our Horses. I checked the spaces on the form to show I intended to sign the Horse Petition "A" only and did not intend to sign the Marriage Petition ("E") and did not know why my name appeared on it

8. I called both the Massachusetts Attorney General's office and the Secretary of the Commonwealth's office to report what had happened to me. The person at the Attorney General's office told me to call the office of Secretary Galvin. The young man I spoke with at the Secretary's office was very rude and snotty. He said he did not consider what had been done to me to be a criminal thing. He also said that if I was stupid enough to sign something when I did not know what it was it was my own fault.



5a

Signed under the pains and penalties of perjury  
this 5th day of April, 2002.

/s/ Anita Constantine-Gay  
Anita Constantine-Gay

Sworn to before me on April 5 , 2002.

/s/ Barbara M. Springsteen  
Notary Public  
My Commission Expires: July 9, 2004

**APPENDIX C**

COMMONWEALTH OF MASSACHUSETTS  
SUFFOLK, ss. SUPERIOR COURT

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Civil Action No. 02-1318 A

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NEIL P. ARKUSS, CHRISTINE BOGOIAN, MARIE COE,  
ANITA CONSTANTINE-GAY, BETHANY HUGHES,  
RICHARD LEEMAN, CELINE SULLIVAN,  
*Plaintiffs*

v.

WILLIAM FRANCIS GALVIN,  
Secretary of the Commonwealth,  
*Defendant*

---

**AFFIDAVIT OF RICHARD LEEMAN**

State of Massachusetts )  
County of Norfolk ) ss.

Richard Leeman, having been duly sworn, deposes and states:

1. I have personal knowledge of the matters stated in this Affidavit.
2. I am registered to vote in Braintree, Norfolk County, Massachusetts.
3. I signed a single ballot initiative petition in late 2001 while I was on my way into the local Stop & Shop store.
4. A man in his 40's or 50's asked me to sign an initiative petition about horse slaughter. I said yes, and signed what I thought was the horse slaughter petition. The petition was on a clipboard the man was holding. I saw only one clipboard.

7a

5. After I signed, the man asked me to sign a petition about marriage. I told him no and walked away.

6. Many weeks later, I received a form letter from Save Our Horses. I checked a [illegible] on the form to show I intended to sign the Horse Petition "A" only. I checked another space on the form to indicate that I did not intend to sign the Marriage Petition ("E") and did not know why my name appeared on it. I then mailed the form back to Save Our Horses.

7. It is important for me that the initiative to prohibit slaughter of horses for human consumption should appear on the ballot.

Signed under the pain's and penalties of perjury this 11th day of April, 2002.

/s/ Richard Leeman  
Richard Leeman

Sworn to before me on April 11, 2002.

/s/ [Illegible]  
Notary Public  
My Commission Expires: 01/22/2004

**APPENDIX D**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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Civil Action No. 03-10704 PBS

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SARAH MCVAY PAWLICK and  
MASSACHUSETTS CITIZENS FOR MARRIAGE,  
*Plaintiffs,*

v.

THE NEW YORK TIMES COMPANY,  
*Defendant.*

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AFFIDAVIT OF TERRY KLEIN IN SUPPORT OF  
(I) DEFENDANT'S MOTION TO DISMISS OR IN  
THE ALTERNATIVE FOR SUMMARY JUDGMENT;  
AND (II) DEFENDANT'S SPECIAL  
MOTION TO DISMISS

I, Terry Klein, depose and state as follows:

1. I am an attorney with the firm of Bingham McCutchen LLC, counsel to the New York Times Company in this action.

2. Attached hereto as *Exhibit A* are certified corporate filings of the Globe Newspaper Company, Inc. and related entities that are on file with the Secretary of the Commonwealth of Massachusetts.

3. Attached hereto as *Exhibit B* is a true copy of a News Release issued by the Attorney General of Massachusetts entitled "Attorney General Cautions Voters: Be Careful in Signing Ballot Questions," dated November 16, 2001. (A copy of the News

Release also is available at the Attorney General's web site, <http://www.ago.ma.us/pressrel/ballots.asp>).

4. Attached hereto as *Exhibit C* is a Certification signed under the penalties of perjury by Assistant Attorney General Peter Sacks attaching materials submitted by representatives of an organization calling itself "Save Our Horses" both (i) via electronic mail to the Secretary of the Commonwealth of Massachusetts; and (ii) during a meeting with the representatives of the Attorney General's Office and the Elections Division of the Office of the Secretary of the Commonwealth on March 14, 2002.

5. Attached hereto as *Exhibit D* is a certified copy of the amended complaint filed by the plaintiffs in Suffolk Superior Court in the civil action entitled *Neil P. Arkuss, et al. v. William Francis Galvin*, Suffolk Superior Court Civil Action No. 02-1318-A.

6. Attached hereto as *Exhibit E* is a certified copy of the letter sent from the Massachusetts Citizens for Marriage to Secretary of the Commonwealth of Massachusetts, dated April 4, 2002.

7. Attached hereto as *Exhibit F* is a copy of an article published by The New York Times on April 7, 2002, under the headline "Drive to Ban Gay Marriage is Accused of Duping Signers."

8. Attached hereto as *Exhibit G* is a certified copy of the complaint filed in the Supreme Judicial Court by one of the plaintiffs in a civil action entitled *Sarah McVay Pawlick v. Thomas Birmingham and Secretary of the Commonwealth*, SIC No. 2002-0354.

9. Attached hereto as *Exhibit H* is a certified copy of the complaint filed in the Supreme Judicial Court by the plaintiffs in a civil action entitled

10a

Massachusetts Citizens for Marriage and *Sarah McVay Pawlick v. Secretary of the Commonwealth*, SJC No. 08966.

10. Attached hereto as *Exhibit I* are true copies of articles appearing in the Boston Globe that are cited in ¶¶ 15(a) - 15(r) of the plaintiffs' complaint in this action.

Signed under the penalties of perjury this 20th day of June 2003

/s/ Terry Klein  
Terry Klein

**APPENDIX E**

**CERTIFICATION**

I certify under the penalties of perjury that attached hereto are true and accurate copies of the following documents:

1. An electronic mail message forwarded to me on November 16, 2002, by Michelle Tassinari, Esq., legal counsel to the Elections Division of the Office of the Secretary of the Commonwealth of Massachusetts; and
2. Materials submitted to the Office of the Attorney General by Susan Wagner, of the organization calling itself "Save Our Horses," and her counsel, Lowell Finley, Esq., at a meeting between those individuals and representatives of the Office of the Attorney General (including myself) and of the Elections Division of the Office of the Secretary of the Commonwealth, on March 14, 2002. The materials were separated with labeled, tabbed dividers, copies of which are included in the appropriate places.

/s/ Peter Sacks  
Peter Sacks  
Assistant Attorney General

Date: June 16, 2003

As subscribed and sworn to before me on June 16, 2003.

/s/ Dena Elise Barisano, Notary Public  
Dena Elise Barisano

My commission expires: April 11, 2008



**SAVE OUR HORSES**

Unit 284, 1257 Worcester Road  
Framingham, MA 01701 (617) 363-2644  
www.saveourhorses.com  
E-mail info@saveourhorses.com  
Susan Wagner, Ballot Committee Chair

Dear Massachusetts Voter:

During the fall 2001 petition drive, signatures were gathered for initiatives for the 2002 Massachusetts ballot and for an amendment to the State Constitution for the 2004 ballot. **YOUR NAME appears on Petition E which bans domestic partner benefits and other protections for same sex couples, known as the so-called "Marriage" Petition (2004 ballot).** Did you intend to sign that petition (Petition E) or did you intend to sign **Petition A, banning the slaughter of Massachusetts horses for human consumption?** If your name appears on the wrong petition, please fill out the form below and return to us immediately in the enclosed self-addressed stamped envelope.

Your swift response is vital to an investigation in determining the legitimacy of the initiative signature-gathering process during the 2001 petition drive. **The Horse initiative (for the 2002 ballot) depends on it.**

Sincerely,

/s/ Susan Wagner  
Susan Wagner

Susan Wagner, Chair, Save Our Horses

(To check your name on the public record for both petitions, visit [www.saveourhorses.com](http://www.saveourhorses.com))



✂.....Cut here and please mail immediately.....✂

**CHECK ALL THAT APPLY:**

- I intended to sign the Horse Petition “A” only.
- I did not intend to sign the so-called “Marriage” Petition (“E”) and don’t know why my name appears there.
- I intended to sign both petitions “A” and “E”

**PLEASE PRINT VERY CLEARLY:**

First Name: Pamela Last Name: Boucher

Address: REDACTED

City/Town REDACTED Zip REDACTED

Telephone: Redacted (Optional) E-Mail: Redacted

OPTIONAL COMMENTS: Is there anything about your interaction with the petitioner that you’d like to tell us about? Please name the town and location, if possible. (Use the back if necessary) \_\_\_\_\_

\_\_\_\_\_



**SAVE OUR HORSES**

Unit 284, 1257 Worcester Road  
Framingham, MA 01701 (617) 363-2644  
www.saveourhorses.com  
E-mail info@saveourhorses.com  
Susan Wagner, Ballot Committee Chair

Dear Massachusetts Voter:

During the fall 2001 petition drive, signatures were gathered for initiatives for the 2002 Massachusetts ballot and for an amendment to the State Constitution for the 2004 ballot. **YOUR NAME appears on Petition E which bans domestic partner benefits and other protections for same sex couples, known as the so-called "Marriage" Petition** (2004 ballot). Did you intend to sign that petition (Petition E) or did you intend to sign **Petition A, banning the slaughter of Massachusetts horses for human consumption?** If your name appears on the wrong petition, please fill out the form below and return to us immediately in the enclosed self-addressed stamped envelope.

Your swift response is vital to an investigation in determining the legitimacy of the initiative signature-gathering process during the 2001 petition drive. **The Horse initiative** (for the 2002 ballot) **depends on it.**

Sincerely,

/s/ Susan Wagner  
Susan Wagner

Susan Wagner, Chair, Save Our Horses  
(To check your name on the public record for both petitions, visit [www.saveourhorses.com](http://www.saveourhorses.com))

✂.....Cut here and please mail immediately.....✂

**CHECK ALL THAT APPLY:**

- I intended to sign the Horse Petition “A” only.
- I did not intend to sign the so-called “Marriage” Petition (“E”) and don’t know why my name appears there.
- I intended to sign both petitions “A” and “E”

**PLEASE PRINT VERY CLEARLY:**

First Name: NICHOLAS Last Name: ANGELOS  
Address: REDACTED  
City/Town REDACTED Zip REDACTED  
Telephone: 978 475-0436 (Optional) E-Mail: \_\_\_\_\_

OPTIONAL COMMENTS: Is there anything about your interaction with the petitioner that you’d like to tell us about? Please name the town and location, if possible. (Use the back if necessary) \_\_\_\_\_

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SUSAN WAGNER

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From: <saveourhorses@mindspring.com>  
To: <saveourhorses@mindspring.com>  
Sent: Monday, January 28, 2002 5:25 PM  
Subject: We've received your report. Thank you!

The following information was submitted through the site

First Name: Danielle  
Last Name: Borenstein  
E-mail: imagine@alumni.brandeis.edu  
Street Address: REDACTED  
City:  
Zip Code:  
Day Phone: (617) 787-4996  
Evening Phone: same

Problem: My name appears on the lists of both A and E, but I only signed the Horse Petition A.

Comments: There was nothing suspicious about the signature gatherer. I signed the petition outside the vegetarian food festival in Roxbury. I can say that my husband signed the petition the same day and his name didn't wind up on E, just A. Somehow I'm on both.

SUSAN WAGNER

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From: <saveourhorses@mindspring.com>  
To: <saveourhorses@mindspring.com>  
Sent: Tuesday, February 26, 2002 10:09 PM  
Subject: We've received your report. Thank you!

The following information was submitted through the site

First Name: theresa  
Last Name: caputo  
E-mail: wilddog71@hotmail.com  
Street Address: REDACTED  
City:  
Zip Code:  
Day Phone:  
Evening Phone:

Problem: I found my name listed on the so-called Marriage Petition E—and it shouldn't be!

Comments: To: Ms. Susan Wagner, I want you people to know that I, Theresa Caputo, received this letter in the mail on 2/26/02 concerning that my signature was written on one of these petition. I DID NOT sign any petition regarding petition "E" or petition "A" and please remove my name from any of these petitions for they are fraudulent. I am very upset about this that my name appeared on these petitions. Please notify me that my name has been removed from these two petitions. Thank you for my concern.

**APPENDIX F**

COMMONWEALTH OF MASSACHUSETTS  
SUFFOLK, ss. SUPERIOR COURT

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Civil Action No. 02-1318 A

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NEIL P. ARKUSS, CHRISTINE BOGOIAN, MARIE COE,  
ANITA CONSTANTINE-GAY, BETHANY HUGHES,  
RICHARD LEEMAN, CELINE SULLIVAN,  
*Plaintiffs*

v.

WILLIAM FRANCIS GALVIN,  
Secretary of the Commonwealth,  
*Defendant*

---

AFFIDAVIT OF JASON HAMPTON IN SUPPORT  
OF MOTION FOR PRELIMINARY INJUNCTION

I, Jason Hampton, being duly sworn, do say and  
depose as follows:

1. I am over the age of 18, not a party to this proceeding, and a resident of Lynn, Massachusetts.
2. I have personal knowledge of the facts recited herein.
3. For about 10 days immediately before Thanksgiving, 2001, I worked out of the Labor Ready office in Lynn, Massachusetts, collecting signatures on initiative petitions for the Ballot Access Company.
4. From the first day I worked for Labor Ready, collecting signatures for the Ballot Access Company, through November 21, 2001, the same handwritten message was on the whiteboard in the Labor Ready office. The message said that 100 people were needed

every day until Thanksgiving to collect signatures on petitions.

5. My first day working on the Ballot Access Company job, I collected signatures on only one petition, which was Petition E, the Marriage Amendment. I worked at Shaw's, near the North Shore Mall shopping center in Peabody. It was hard to get signatures. Many people said they opposed Petition E and argued with me about it.

6. On the second day and every day up to Thanksgiving, I collected signatures on both Petition A, the Horse Slaughter initiative, and on Petition E.

7. On the morning of the second day, a tall heavysset black man named Randy Morrison who said he worked for the Ballot Access Company, gave instructions to a group of us at the Labor Ready office on how to collect signatures. Derrick Lee, a white man in his thirties who said he was the President of the Ballot Access Company, was in the room the whole time.

8. Randy Morrison said it was easier to get signatures for the horse petition than the marriage petition. He told us to talk about the horse slaughter issue to "sell" people on signing Petition A. He gave us pre-prepared clipboards that had a picture of a horse colored like the American flag on the top, a copy of Petition A underneath that, and then a mix of Petition A and Petition E signature pages on the bottom. He said we should show people Petition A, but if they weren't paying attention to have them sign on one of the petitions underneath, most of which were Petition E. Ballot Access had prepared these clipboards so that there would be a mixture of the two, but most of them Petition E, with Petition A on top always.

9. I did not follow Randy Morrison's instructions and try to slip anyone the Marriage petition, or Petition E, when they said they wanted to sign Brown Beauty's Bill, or Petition A. It seemed to be illegal and it just didn't seem right to try to trick people.

10. Because I had a truck, I served as a driver, taking other people hired at Labor Ready to various places in several other shopping malls where they would collect signatures.

11. Each day, Randy Morrison gave me a set of clipboards to hand out to each of the people riding in my truck. Every day, the clipboards he gave me had been set up the same way. Each one had a flyer with the color American flag horse picture on the top, a copy of Petition A under that, and then a mixture of A and E petitions underneath. I gave the clipboards out to the people riding in my truck.

12. Compared to my experience the first day circulating only Petition E, it was much easier to get people to sign Petition A than Petition E. Petition A was so popular that I made my own color copies of the American flag horse picture to attract people to the table.

13. One day a Hispanic woman who worked behind the counter in the Labor Ready office told me that she thought Petition A was just a front being used to collect signatures for Petition E.

14. Labor Ready charges companies a certain amount per hour for its workers. Labor Ready then pays the workers less than that amount for each hour they work. Someone from the company using the workers is supposed to sign off on time slips that show how many hours each person worked. We give those to Labor Ready, and Labor Ready writes us a check.



15. At the end of every day, Randy Morrison would check the petitions we brought in at the Labor Ready office. Derrick Lee was there while Randy did this. Randy would often say some of the sheets were no good because they had stray marks. Even though we were supposed to be paid for every hour we worked, Randy would write down less hours on someone's time slip if they didn't have very many signatures or if he said a lot of them were no good.

16. After Randy Morrison finished, Derrick Lee would sign the time slips and give them to the person behind the counter at Labor Ready.

17. Besides the other people hired from Labor Ready, I met four or five other men who said they flew to Massachusetts with Derrick Lee from Arizona to collect signatures. I saw them all staying together in the same room, Room 1, at the Carriage House in Lynn. They said they had collected petition signatures for Derrick Lee in Arizona and other states. They told me Derrick Lee was paying them by the signature, and they were getting a lot more for Petition E signatures than Petition A signatures.

Signed under the pains and penalties of perjury this \_\_\_\_\_ day of April, 2002.

/s/ Jason Hampton  
Jason Hampton

Sworn to before me on April 3, 2002

/s/ Illegible  
Notary Public  
My Commission Expires: 4/3/02

**APPENDIX G**

COMMONWEALTH OF MASSACHUSETTS  
SUFFOLK, ss. SUPERIOR COURT

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Civil Action No. 02-1318 A

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NEIL P. ARKUSS, CHRISTINE BOGOIAN, MARIE COE,  
ANITA CONSTANTINE-GAY, BETHANY HUGHES,  
RICHARD LEEMAN, CELINE SULLIVAN,  
*Plaintiffs*

v.

WILLIAM FRANCIS GALVIN,  
Secretary of the Commonwealth,  
*Defendant*

---

**AFFIDAVIT OF SUSAN WAGNER**

State of New York )  
County of Queens ) ss.

Susan Wagner, having been duly sworn, deposes and states:

1. I have personal knowledge of the matters stated in this Affidavit.

2. I am the Chair of Save Our Horses, the Massachusetts ballot question committee that is the sponsor of Petition A, "Brown Beauty's Bill, A 2002 Ballot Initiative to Ban the Slaughter of Massachusetts Horses for Human Consumption." A true and correct copy of Petition A, containing the Attorney General's summary of the proposed law, is attached hereto as Exhibit A.

3. In September of 2001, I executed on behalf of Save Our Horses a written contract with the Ballot

Access Company, LLC for collection of signatures of Massachusetts registered voters on Petition A. A true and correct copy of the contract is attached hereto as Exhibit B. In the contract, Save Our Horses agreed to pay the Ballot Access Company \$1.70 for each signature collected on Petition A. The Ballot Access Company agreed to collect at least 90,000 signatures on the petition.

4. The period in which Save Our Horses needed to collect at least 57,100 certifiable signatures of registered voters on Petition A if it was to qualify for the November 2002 ballot ran from the last week in September through the third week in November, 2001.

5. During the first week of October, 2001, I began to receive reports that signature gatherers working for the Ballot Access Company were simultaneously collecting signatures on Petition E, the so-called "Marriage Amendment." The Ballot Access Company had not disclosed to Save Our Horses during the negotiation of the contract that the company would simultaneously be circulating this other ballot question petition.

6. I found the reports about the Ballot Access Company's involvement with Petition E very troubling. I had seen press accounts indicating that Petition E was controversial with Massachusetts voters. I was concerned that by asking voters to sign Petition E, Ballot Access Company signature gatherers would drive away many Massachusetts voters who would otherwise sign Petition A.

7. Numerous people contacted Save Our Horses who said they had been asked to sign both petitions by the same person. These people told me that while they supported our ballot question, they would not

sign Petition A so long as the people carrying our petition were also carrying (and misrepresenting) Petition E, which these voters strongly opposed.

8. I phoned Derrick Lee, the owner of the Ballot Access Company, to register my concern. He acknowledged that his company was also collecting signatures on Petition E. He said that the sponsors of Petition E were paying more for each signature on Petition E than Save Our Horses was paying for signatures on Petition A. He also stated that opponents of Petition E were trying to prevent people from signing Petition E. I told him that carrying Petition E constituted a breach of his contract with Save Our Horses. I demanded that he stop his signature gatherers from carrying or soliciting signatures on Petition A and Petition E at the same time.

9. In e-mail messages dated October 6th and 13th, 2001, Derrick Lee declined to stop his signature gatherers from carrying or soliciting signatures on Petition A and Petition E at the same time. He said that some of his signature gatherers would continue to carry both petitions, but that they would pull Petition E off the table if there was any controversy about it at a signature gathering site. He also said that he would have one group of signature gatherers carrying only Petition E, the marriage petition.

10. Weeks went by, but I continued to receive reports of signature gatherers soliciting signatures for both Petition A and Petition E at sites where there was controversy over Petition E. I also began to receive more disturbing reports that signature gatherers were drawing people in by talking about the horse slaughter issue on Petition A, then tricking the people into signing Petition E when they said they wanted to sign Petition A.

11. On Friday, November 16, 2001, I received by fax from Peter Sacks of the Attorney General's office a copy of a news release issued by that office, bearing the same date. A true and correct copy of the news release, with the heading "ATTORNEY GENERAL CAUTIONS VOTERS: BE CAREFUL IN SIGNING BALLOT QUESTION PETITIONS," is attached hereto as Exhibit C. Based on "spot checks" conducted by the office, the Attorney General's news release included the following statement: "People gathering signatures may have deceptively placed a stack of petitions on a clipboard so that the petition on top, which is shown to voters to read, deals with one issue (such as the slaughter of horses), but the petitions underneath, which are given to voters to sign, may deal with a separate issue (such as marriage)."

12. On November 17, 2001, Derrick Lee told me that his signature gatherers had stopped carrying the marriage petition, Petition E. He said they would not gather any additional signatures for it until the signature drive for Petition A, the horse slaughter petition, was completely over, which would be the following weekend.

13. I was not informed until months later that the Ballot Access Company had instructed its signature gatherers to "sell" voters on signing Petition A but trick them into signing Petition E instead. I never requested, condoned, agreed to, or acquiesced in such deception of voters.

14. Attached hereto as Exh. D is a true and correct copy of a letter dated December 20, 2001 from the office of the Secretary of the Commonwealth, concluding that Petition A had received only 54,526 allowable signatures out of the 57,100 required to qualify for the ballot.

15. Attached hereto as Exh. E is a true and correct copy of a letter dated December 20, 2001 from the office of the Secretary of the Commonwealth, concluding that Petition E had received 76,607 allowable signatures.

16. After we received in late December 2001 the Secretary of the Commonwealth's determination that Petition A had failed to qualify for the ballot, a volunteer attorney for Save Our Horses agreed to contact the attorney for Massachusetts Citizens for Marriage ("MCM"), the sponsor of Petition E, to request information concerning MCM's dealings with the Ballot Access Company. Attached hereto as Exhibits F and G, respectively, are copies of the letters from the Save Our Horses attorney to the MCM attorney, dated January 9, 2002, and the MCM attorney's reply, dated January 23, 2002, in which they refused to cooperate.

17. During January 2002, Save Our Horses obtained copies of the computer databases maintained by the Secretary of the Commonwealth, listing the names and addresses of every voter whose certified and allowed signature his office had counted in support of Petition A and in support of Petition E. Save Our Horses established a website linked to the two databases so that voters wishing to determine which list or lists their names were on could do so by entering their name and city or town.

18. Attached hereto as Exhibit H is a true and correct copy of a printout of the series of screens that are seen by a voter visiting the Save Our Horses Search Site. This example shows the results of entering the name and town of Plaintiff Celine Sullivan.

19. On January 21, 2002, Boston ABC affiliate WHDH-TV Channel 7 News ran a story titled "Real

Deal: Ballot Question Petitions.” A true and correct copy of the transcript of that story is attached hereto as Exhibit I.

20. After the Channel 7 News story aired, more than 100 people contacted Save Our Horses through the website, many of whom confirmed that they had intended to sign only Petition A but were not listed as signers of Petition A, and that they had not intended to sign Petition E but were listed as signers of Petition E. Attached hereto as Exhibit J is a true and correct copy of a printout of one such response.

21. In addition to the website, Save Our Horses sent a mailing to approximately half of the voters who might have been victims of “bait and switch” involving the two petitions. By comparing the official database of Petition A signers and the official database of Petition E signers, Save Our Horses identified approximately 56,000 voters who were listed as signers of Petition E but not of Petition A.

22. On February 21, 2002, Save Our Horses sent an initial mailing of a single-page information request form to 6,000 out of the 56,000, or approximately 11 percent of the total. A true and correct copy of the information request form is attached hereto as Exhibit K. 6,000 was the most Save Our Horses had money to pay for.

23. As additional funds became available, Save Our Horses sent a second mailing to a separate group of 2,438 people on March 15, 2002. A third mailing of 19,613 was sent on Friday, March 23, 2002.

24. As of the date of this affidavit, Save Our Horses has received written responses from over 1,000 voters residing in all parts of Massachusetts, stating that they had intended to sign only Petition A

but were not listed as signers of Petition A, and that they had not intended to sign Petition E but were listed as signers of Petition E. These responses are entirely voluntary and required each voter to take the time to fill in his or her name and address and mail in the form. True and correct copies of a representative sampling of four of these responses are attached hereto as Exhibit I.

25. As of the date of this affidavit, Save Our Horses continues to receive in the mail completed forms from voters in response to the mailings.

26. Attached hereto as Exhibit M is a true and correct copy of a Save Our Horses color leaflet. At the top of the leaflet is a stylized graphic of a horse in the red, white and blue stars and stripes of the American flag. Below the graphic is information about the issue of slaughter of horses for human consumption, and an appeal for support of Brown Beauty's Bill (Petition A). In late 2001, I personally observed signature gatherers hired by the Ballot Access Company collecting Massachusetts voter signatures on clipboards which had a copy of this leaflet as the top sheet of paper.

Signed under the pains and penalties of perjury this 10th day of April, 2002

/s/ Susan Wagner  
Susan Wagner

Sworn to before me on April 10th, 2002.

/s/ [Illegible]  
Notary Public  
My Commission Expires: 2/25/06



**APPENDIX H**

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL  
ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108-1598

[Logo]

TOM REILLY  
Attorney General

(617) 727-2200  
[www.ago.state.ma.us](http://www.ago.state.ma.us)

NEWS RELEASE

FOR IMMEDIATE RELEASE  
NOVEMBER 16, 2001

CONTACT: BETH STONE  
(617) 727.2543

**ATTORNEY GENERAL CAUTIONS VOTERS:  
BE CAREFUL IN SIGNING BALLOT  
QUESTION PETITIONS**

BOSTON—The Attorney General's Office has received several complaints about deceptive practices by some people gathering signatures on certain initiative petitions. Voters said they have been asked to sign a petition for a law to ban the slaughter of horses for human consumption, but when they indicated they want to sign that petition, they said they were given another, different petition to sign—one that proposes a constitutional amendment stating that only the union of one man and one woman shall be recognized as a marriage in Massachusetts.

After receiving those complaints this week, the Attorney General's Office did some spot checks which revealed that some voters may have signed a petition they did not support. Based on these complaints, the Attorney General advises the following:

–Carefully read and of paper being asked to sign. Make sure that you first read the summary of the proposal that is printed at the top of, or on the other side of, the paper you are signing. People gathering signatures may have deceptively placed a stack of petitions on a clipboard so that the petition on top, which is shown to voters to read, deals with one issue (such as the slaughter of horses), but the petitions underneath, which are given to voters to sign, may deal with a separate issue (such as marriage).

–Look for a large capital letter printed in the lower-right corner on both the front and back sides that identifies the ballot questions. The horse-slaughter petition is marked “A”; the marriage petition is marked “E.” Information about the letters used to identify other petitions is available from the Secretary of State’s Elections Division at 1-800-462-VOTE

–If you believe you may have been deceived into signing a petition and want to ensure that your name is not certified as a legitimate signer of the petition, immediately contact your local registrars of voters in writing. State that you want to ensure you are not counted as a signer of a particular petition, and identify that petition by its subject and, if possible by the letter printed in the lower-right corner. State that, if your signature appears on that petition, you want your signature withdrawn and not certified. Be sure to state your name, address and telephone number and be sure to sign the letter in the same manner as you would have signed your signature on a petition. Deliver the letter to your local registrars of voters’ office as soon as possible. This will maximize the chance that, if your signature is on a petition you did not wish to sign, your signature will not be counted.

**APPENDIX I**

COMMONWEALTH OF MASSACHUSETTS  
SUFFOLK, ss. SUPERIOR COURT

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Civil Action No. 02-1318 A

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NEIL P. ARKUSS, CHRISTINE BOGOIAN, MARIE COE,  
ANITA CONSTANTINE-GAY, BETHANY HUGHES,  
RICHARD LEEMAN, CELINE SULLIVAN,  
*Plaintiffs*

v.

WILLIAM FRANCIS GALVIN,  
Secretary of the Commonwealth,  
*Defendant*

---

**AFFIDAVIT OF MICHELLE K. TASSINARI**

I, Michelle Tassinari, do hereby depose and state as follows:

1. I am the Legal Counsel in the Elections Division for the Secretary of the Commonwealth (the "Secretary"). I have held this position since March 2000. Prior to that, I was Assistant Legal Counsel in the Elections Division since January 1998.

2. Through my work at the Secretary's office, I have become very familiar with the initiative petition process in Massachusetts, including the procedures by which (1) petitions and signatures are reviewed and certified by local registrars, (2) information is inputted into the Commonwealth's Central Voter Registry, and (3) petitions and signatures are reviewed and approved by the Secretary.

3. When petitions in support of a particular initiative measure are submitted to the registrars of

the various cities and towns in the Commonwealth, the registrars are charged with the task of reviewing all of the signatures and “certifying” those that they can reasonably identify to be that of a registered voter in the city or town.

4. The registrars are instructed to, but may not always, enter all certified signatures on the petitions into the Commonwealth’s Central Registry of Voters (CVR). The CVR is a statewide computer system connecting each city and town in the Commonwealth, the Registry of Motor Vehicles, and the office of the Secretary of the Commonwealth. The CVR contains a state-wide list of all registered voters in the Commonwealth, as well as records relating to which voters signed which nomination papers and petitions.

5. After they review and certify signatures on petitions supporting a particular measure, the registrars return the petitions to the proponents of the measure or other persons authorized to receive certified petitions. When receiving initiative petitions, the Elections Division reviews each signature sheet for extraneous marks.<sup>1</sup> Additionally, the Elections Division sorts initiative petitions into counties to comply with the “county distribution rule.”<sup>2</sup> Only those petitions that are ultimately submitted to the Secretary, and those certified signatures that are ultimately approved by the Secretary, become the official petition/signatures in support of a particular

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<sup>1</sup> This review is conducted in accordance with the mandates set forth in G. L. c. 53, § 22A, as outlined in *Walsh v. Secretary of the Commonwealth*, 430 Mass. 103 (1999) and *Hurst v. State Ballot Law Commission*, 427 Mass. 825 (1998).

<sup>2</sup> Pursuant to Amend. Art. 48 of the Massachusetts Constitution, no more than one-quarter of the certified signatures may come from any one county.

measure. The number of certified signatures per sheet is already written on the back of each sheet by the local registrars. The Secretary does not make a review of individual signatures.

6. In the fall of 2001, proponents for a law entitled “Brown Beauty’s Bill, A Ballot Initiative to Ban the Slaughter of Massachusetts Horses for Human Consumption” (the “Horse Petition”) submitted petition sheets containing signatures to the local registrars. Thereafter, by December 5, 2001, the proponents of the Horse Petition submitted petitions bearing 54,818 signatures to the Secretary. *See* Pls. Exhibit 1(D).

6. With respect to the Horse Petition, the number and identity of signatures that were turned into the Secretary differs from the number and identity of signatures that were inputted by the local registrars into the CVR. As discussed in the following paragraphs, this is true for at least two reasons.

7. First, it is almost certainly the case that some individuals signed the Horse Petition, but their signatures were not “certified” by the local registrars and, as such, their names do not appear on the CVR as signing the Horse Petition. Pursuant to the Code of Massachusetts Regulations (950 C.M.R. 55.00) governing the certification of signatures by local registrars, the registrars cannot certify signatures for various reasons, including because the signature is illegible, it was placed on a petition for the wrong city or town, the address is incorrect, or it was received too late.

8. Second, certain signatures on the Horse Petition were “certified” by the local registrars and turned into the Secretary but were not, in fact, inputted into the CVR. This is evident from a comparison of (1) the number of Horse Petition signatures for each county

that were turned into the Secretary with (2) the number of Horse Petition signatures for each county that were inputted into the CVR. Such a comparison, which was prepared by myself, is attached hereto as Exhibit A. Exhibit A shows that, in five counties (Essex, Hampden, Norfolk, Plymouth, and Suffolk), the number of certified signatures that were turned into the Secretary exceeds the number of certified signatures as reflected in the CVR. As a result of this discrepancy (as well as other factors), the only way to ultimately determine whether an individual truly did not sign the Horse Petition is to review the actual petitions that were submitted to the Secretary.

9. It is my understanding, based on conversations that I have had with counsel for the plaintiffs and with Susan Wagner, the chairperson of Save Our Horses, that the “official database” that Susan Wagner refers to in paragraph 21 of her affidavit (and from which Save Our Horses obtained voter information for their mailing) is the Commonwealth’s Central Voter Registry. *See* Pls. Ex. 1, ¶ 21.

10. I am not aware of any instances in which the State Ballot Law Commission has found “good cause” to waive the requirement in 950 C.M.R. 59.03(20A) that the Commission will not admit into evidence voter affidavits to resolve the question of what a voter did or did not intend to sign.

Signed under the pains and penalties of perjury this 17th day of April, 2002.

/s/ Michelle K. Tassinari  
Michelle K. Tassinari

35a

**APPENDIX J**

[MGLPC LOGO]

Massachusetts Gay & Lesbian Political Caucus  
P.O. Box 246  
State House  
Boston, MA 02133  
(617) 262-1565

March 6, 2002

The Honorable Paul J. Donato  
House of Representatives  
State House, Room 443  
Boston, MA 02133

Dear Representative Donato:

As you know, signatures on an anti-gay initiative petition were acquired all around Massachusetts, in large part through fraudulent means. The deception included a loosely organized bait and switch scheme involving a second petition to ban horse slaughter. Voters who intended to sign one petition were instead slipped the papers for the anti-gay one. Signatures were copied. People were told lies.

In the coming months, we hope for the opportunity to have a dialogue with you about the substance of the ballot question. We look forward to that. In the meantime, we believe we already share some important common ground with you: an interest in fairness and integrity.

Attached you'll find a "Constituent Alert" that we hope you will send (either as an email or a letter) to some of the people you represent. You need not agree with us on the issue – or even have a firm position yet – in order to help protect three things we all hold dear that are under direct attack:

**1. Trust in our democratic institutions and processes.**

Whatever you may think of the initiative petition process, it's clear that it was abused here. The anti-gay group paid dearly for signatures, escalating the bounty to \$1.50 per signature. The signature-gathering firm they hired had a well-documented pattern of corruption and forgery elsewhere, particularly in its home state of Arizona. Employees have been imprisoned. Here in Massachusetts, cases of fraudulently obtained signatures continue to be discovered and documented, and the scandal has been exposed in the press.

**2. The autonomy of your constituents, their "ownership" of their names.**

The company gathering signatures on the anti-gay petition stole signatures in many ways, from illegal acts that rise to the level of election fraud...to unethical behavior that outrages voters just the same. At [www.massequality.org](http://www.massequality.org), voters can learn about the different scams used in this case, and search for their names instantly on the public record of the anti-gay petition. People have a right to know if their names were stolen. In our experience, their position on the actual ballot question makes them no more or less forgiving of this outrage.

**3. Basic human rights of families in your districts.**

At home, in your districts, you have supporters whose families and friends are at risk of being placed outside the law, permanently, by Constitutional fiat. The anti-gay group behind this extreme ballot initiative has publicly called for a "culture war." They are seeking to take away the right of a minority group to



engage their government in any dialogue about essential progress and protections for their families. This measure will mandate a “No” to any request a gay person makes to his or her government on behalf of his or her family. Its power will trump all legislators, all voters, all courts and all acts of governmental entities past, present and future.

**About the “Constituent Alert” we hope you will send**

As you know, you’ll be voting on this anti-gay initiative (H4840) this year in a Constitutional Convention. We look forward to speaking with you in advance of that. In the meantime, we hope you’ll consider helping with this important task – in service to the people and ideals you represent.

The attached sample message explains the extraordinary case of this anti-gay signature collecting process, and directs your constituents to **www.massequality.org**. There, they can check the public record in seconds to see if they were among the victims of fraud or forgery. We can’t imagine the people you represent would not be grateful to you for this information. No one should have this happen to their good names, regardless of the issue.

We hope you’ll agree that it’s important to spread the word, educate your constituents about the website, and enable victims to come forward. No bad thing can come from bringing fresh air into what was a polluted process.

On November 17, 2001, just after Attorney General Reilly issued an advisory to voters about this signature collecting scam, the anti-gay advocates responded this way in a press release: “We have made it clear that we will not accept petitions gathered

under false circumstances.” It is now clear that they did accept those petitions, every last one – and then submitted them to the Secretary of State. While it’s plainly impossible to find all the victims of fraud and forgery, it’s important to try.

The attached “Constituent Alert” email is only a sample, provided for your convenience. We realize you may wish to change it or personalize it as you see fit, and that a letter may be your preferred vehicle. If you have not yet visited **[www.massequality.org](http://www.massequality.org)** yourself, we urge you to do so.

**History records what we do at moments such as these.**

The anti-gay activists are seeking to nullify the right of gay and lesbian citizens to engage in civil rights discussions, on behalf of their families, with any governmental entity in Massachusetts. No American should be silenced in this way.

That said, we do know that people of goodwill disagree on all issues, including this one. We welcome legitimate debate with anyone who opposes or misunderstands us – in this case, those who assert that the state is somehow served well by protecting some families and destabilizing others. Our outrage at being part of this ugly debate is exacerbated by the illegitimate means used to force it upon us. We are grateful for any help you might offer.

Sincerely,

Gary Daffin and Arline Isaacson  
Co-Chairs

enclosure: sample Constituent Alert

Dear Constituent:

Could your name have been used without your knowledge on an anti-gay initiative petition? According to reports around Massachusetts, the answer is “yes.”

On November 17, 2001, the Massachusetts Attorney General issued a voter warning about illegal and unethical signature gathering tactics in this case. In the last month, the scandal has been exposed by the Boston Globe, Boston Herald, Metro-West Daily News, Springfield Union-News, Hampshire Daily Gazette, Berkshire Eagle, and WHDH-TV “7 News” investigative reporter Hank Phillippi Ryan.

Despite this attention, the news hasn’t reached the vast majority of voters. This is why I’m writing to you today. You can find out instantly if you were a victim of fraud or forgery. Just visit **www.massequality.org** to search for your name before you log off – or, call 617-859-0325.

The website and easy search system were built by a coalition of human rights organizations and local leaders in gay and lesbian civil rights that oppose this initiative. Certainly there will be debate about this initiative but regardless of how any of us feel about it, there is no debate about this: your good name and your signature belong to you. No one has the right to co-opt your name and use it without your permission to advance their cause.

I encourage you to check **www.massequality.org** (or call 617-859-0325), first and foremost to see if you, your friends or your family were victims of this fraud.

Thank you.

40a

**APPENDIX K**

SENATE . . . . . No. 2335

The Commonwealth of Massachusetts

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MAJORITY REPORT

on the

INITIATIVE PETITION

of

BRYAN G. RUDNICK

for an

INITIATIVE AMENDMENT

TO THE CONSTITUTION

RELATIVE TO THE

PROTECTION OF MARRIAGE

(see House, No. 4840)

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April 24, 2002.

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## MAJORITY REPORT

It is the majority opinion of the Legislature's Joint Committee on Public Service to oppose this initiative petition.

The supporters of House 4840 claim that they intend to harm no one, only to protect marriage. In reality, this measure will make it illegal—in fact, unconstitutional—for thousands of Massachusetts citizens to receive health insurance, bereavement leave, medical leave, hospital visitation, survivor benefits, and other basic legal protections that families and children need. Because this amendment is inconsistent with the principles on which our Constitution is based, a majority of the members of the Joint Committee on Public Service agree that this initiative should not pass and we urge you to vote no.

This amendment includes language that would deny present and potential benefits and protections to thousands of citizens. The prohibition would apply under any circumstances, no matter how compelling the needs for those protections, or how detrimental the consequences to the families and children who lack them. The amendment would make it unconstitutional for some of our citizens to leave work to care for a sick child or to have the right to visit that sick child or a loved one in the hospital, to make medical decisions for them if they are incapacitated, or to include them in their health insurance.

The amendment would make it illegal for some police officers or rescue workers killed in the line of duty to leave survivor benefits to a longtime partner—or even for the survivor to have the unquestioned right to make funeral arrangements. These problems would be as insurmountable for senior

citizens as for younger people. This would be constitutionally required and permanent.

A constitutional amendment that bars a segment of society from enjoying the rights and privileges afforded to others is discrimination. Discrimination sanctioned under law is wrong and unacceptable. In addition, it raises issues under the United State Constitution.

The effects of this amendment would be far reaching. It would be bad for business and bad for labor. Massachusetts would not only allow discrimination, but require it, forbidding employers from granting key benefits to their employees, hampering employers' efforts to recruit and retain workers by offering fair, competitive benefits, and making it unconstitutional to bargain collectively for important employee rights and benefits. Furthermore, concerns about the manner in which signatures were gathered for this ballot initiative call into question the fairness and legitimacy of the process itself.

Ours is a distinguished history and we believe that the Constitution of the Commonwealth of Massachusetts should be a document of which all of our citizens can be proud. We urge you to vote no on House 4840.

The following members of the committee signed the report:

Harriette L. Chandler  
 Brian S. Dempsey  
 Brian A. Joyce  
 Anne M. Gobi  
 Susan C. Fargo  
 David M. Torrasi  
 Jo Ann Sprague  
 Paul C. Demakis

Barry R. Finegold  
 Rachel Kaprielian  
 Karen Spilka  
 Robert A. Havern  
 Walter E Timilty  
 Steven C. Panagiotakos  
 David M. Naugle