



# CITIZENS for Limited Taxation

*The Commonwealth Activist Network*

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Office of the Bar Counsel  
of the Board of Bar Overseers  
of the Supreme Judicial Court  
for the Commonwealth of Massachusetts

January 11, 2007

## **Request for Investigation**

I, Barbara C. Anderson, a citizen and registered voter of Massachusetts, and executive director of Citizens for Limited Taxation, which has used Article 48 of the state Constitution for three initiative petitions for constitutional amendments in the past, allege that thirty-four of the voters' elected representatives to the Massachusetts General Court, namely:

### STATE REPRESENTATIVES

- 1) House Speaker Salvatore DiMasi
- 2) Garrett Bradley
- 3) Arthur Broadhurst (former rep.)
- 4) Gale Candaras (now serving in the Senate)
- 5) Michael Costello
- 6) Robert DeLeo
- 7) James Fagan
- 8) Michael Festa
- 9) Colleen Garry
- 10) Rachel Kaprielian
- 11) Peter Koutoujian
- 12) Charles Murphy
- 13) James Murphy
- 14) Kevin Murphy
- 15) Eugene O'Flaherty
- 16) Robert Rice
- 17) John Rogers
- 18) Angelo Scaccia
- 19) Marie St. Fleur
- 20) William Straus
- 21) Walter Timilty
- 22) Stephen Tobin
- 23) David Torrisi
- 24) Eric Turkington
- 25) Steven Walsh

*Every Tax is a Pay Cut . . . A Tax Cut is a Pay Raise*

STATE SENATORS

- 1) Robert Antonioni
- 2) Stephen Baddour
- 3) Scott Brown
- 4) Stephen Buoniconte
- 5) Robert Creedon
- 6) Robert Havern
- 7) Steven Pangiatkos
- 8) Karen Spilka
- 9) Dianne Wilkerson

whose office address is the State House, Boston, MA 02133, and who have committed acts of misconduct as set forth in the Statement of Facts pages which follow.

I also allege that Governor Deval Patrick, a Massachusetts lawyer, aided and abetted this misconduct with a public statement that legislators should adjourn without voting on the marriage petition, thereby giving them his support in ignoring the Supreme Judicial Court's ruling on initiative petitions.

I request that the Office of the Bar Counsel investigate this misconduct.

I understand that a copy of this statement may be mailed to the attorneys for a reply. I do not request confidentiality and have already publicly stated my outrage at the behavior of these lawyers.

*Barbara Anderson*

Barbara C. Anderson  
for Citizens for Limited Taxation

## STATEMENT OF FACTS

A ballot committee calling itself the Committee for Health Care for Massachusetts filed 71,385 signatures on an initiative petition for a constitutional amendment on December 3, 2003 with the Office of the Secretary of State. Sufficient signatures having been certified by the Secretary, the petition was sent to the General Court, where it was on the agenda of the Constitutional Convention on July 14, 2004, awaiting its first required up or down vote.

Having received 153 Yea votes, the petition advanced to the next Legislature and a Constitutional Convention on July 12, 2006. If the required vote had been taken and it had not received at least 50 Yea votes, the petition it would have been properly rejected. If it had again received at least 50 Yea votes, it would have been on the 2006 ballot.

Instead, the majority of the ConCon voted to put the petition in a study, with 76 legislators objecting, and there it remained throughout the fall. The ConCon recessed until after the election, and then again to January 2, 2007.

Health Care for Massachusetts filed a lawsuit asking the Supreme Judicial Court, if the ConCon again failed to vote on the petition on January 2, to “declare that the amendment has met the material requirements of art. 48 presentation to the people for their approval or rejection” and “direct the Secretary of the Commonwealth to place the health care amendment on the ballot...at the 2008 statewide election”.

Though I was not a member of Health Care for Massachusetts, and do not support this petition, I was invited to sign on to the suit and did so. Citizens for Limited Taxation has used Article 48 to create both statutory and constitutional amendment petitions and is concerned about its continued existence as a tool for activist citizens. In the past, we have collected signatures on tax and “good government” issues, and progressed to a Constitutional Convention agenda, only to have our rights violated by arrogant legislators.

Another petition, on the gay marriage issue, was awaiting its first vote in the 2006 Constitutional Convention when the Convention recessed until January 2, 2007. Proponents went to court and on December 27, 2006, the Supreme Judicial Court ruled that “the members of the joint session have a constitutional duty to vote, by the yeas and nays, on the merits of all pending initiative amendments before recessing on January 2, 2007...the language of art. 48 is not ambiguous.”

The Constitutional Convention did vote on the marriage amendment on January 2, 2007. But an attempt to discharge the health care petition from committee for its required vote failed, 101-92.

Since the Supreme Judicial Court had made it clear that an up or down vote is required on all initiative amendments, and legislators were told this by proponents of both petitions as well as many newspaper editorials, it is a sad fact that 102 legislators defied the court when they refused to discharge the petition. It is our contention that all of them violated their legislative oath of office to uphold the state Constitution. But 34 of them had also taken an oath when they were admitted to the Massachusetts Bar, swearing to uphold the Constitution as lawyers. These are the legislators listed above, who we think should fall

within the authority of the Board of Bar Overseers.

As of course you know, our legal system cannot function without a regard for the oaths taken by justices, witnesses, juries, and yes, lawyers. Legislators who swear to uphold the Constitution cannot ignore a ruling from the Supreme Judicial Court to vote on initiative petitions, as required by Article 48 of that Constitution.

Therefore we ask the Board of Bar Overseers to discipline the above legislator-lawyers with a public reprimand, so that Article 48 and orders of the Supreme Judicial Court regarding it will, in the future, be honored.

We would be remiss if we did not also note that the governor-elect, now the governor, of the Commonwealth, violated his own oath as a lawyer to uphold the Constitution of the Commonwealth when he attempted to influence the vote on the marriage amendment by publicly stating that legislators should adjourn without voting. Two days after urging this constitutional violation, he took another oath as governor to uphold the Constitution.

Our premise is that no one, including governors and legislators, is above the law and the constitution, and if they think themselves so, they should be set straight by the Board of Bar Overseers so that in the future, the Constitution and SJC rulings will be respected.

Thank you for your attention.

*Barbara Anderson*

Barbara Anderson  
For Citizens for Limited Taxation

**5 attachments:**

December 27, 2006 letter to legislators from Health Care for Massachusetts before the January 2 vote, noting their constitutional duty.

My Boston Globe column in defense of Article 48 of the Constitution, published December 23, 2006

January 2 statement by Governor-elect Deval Patrick

January 2 State House News Service coverage of debate on discharge, during which legislators are reminded of their constitutional duty.

January 2 State House News Service report on the ConCon debate.

# HEALTH CARE FOR MASSACHUSETTS CAMPAIGN

649 Massachusetts Avenue, Suite 8 ♦ Cambridge, MA 02139 ♦ (617) 868-1280

December 27, 2006

**Hand Delivered**

The Honorable «FIRST» «LAST»«JR»  
State House – Room «ROOM»  
Boston, MA 02133

Dear Representative «LAST»:

This letter is to ask you to help bring the Health Care Constitutional Amendment to the floor for an up or down vote at the January 2<sup>nd</sup> ConCon - and to make your vote "YES" if it does.

Yesterday, the Supreme Judicial Court issued a unanimous opinion stating that every constitutional amendment submitted to the Legislature by the people must get an up or down vote on the merits. The SJC said in part that the "...members of the joint session have a constitutional duty to vote, by the yeas and the nays, on the merits of ***all*** pending initiative amendments before recessing on January 2, 2007." Until this decision was issued there was room for a spirited debate over whether Article 48's constitutional mandate for "final action" could be met by taking procedural votes, like recessing, adjourning or sending amendments to a study committee. Now the SJC has set a crystal clear standard - an up or down vote on the merits for every initiative amendment.

We look forward to a vote on the Health Care Amendment on January 2<sup>nd</sup> and, of course, we hope that vote will be YES. A vote is required. But a YES vote is a commitment to finishing the health reform job you and your colleagues began so audaciously last April with the enactment of Chapter 58. Many challenges lie ahead for its implementation and financing. Recessions and budget cuts have caused repeals and rollbacks of previous major health reforms in the past. A YES vote will help prevent that from happening again. The Health Care Amendment will create a constitutional anchor to make sure that the momentum that has brought us this far is sustained for generations to come. The health and welfare of your constituents depends on it as does the vitality and competitiveness of our economy.

Please make sure the Health Care Constitutional Amendment comes up for a vote on January 2<sup>nd</sup> and, of course, we would ask you to make your vote YES.

Very truly yours,



Barbara Waters Roop, PhD, JD, Co-Chair



John D. Goodson, MD, Co-Chair

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

Paid for by The Committee for Health Care for Massachusetts ♦ 649 Massachusetts Avenue, Suite 8 ♦ Cambridge MA 02139

**The Boston Globe**  
**Saturday, December 23, 2006**

**A vote for democracy**  
**by Barbara Anderson**

Maybe you need to have been there.

Maybe you had to have been an Irish Democrat in 1918, feeling powerless against the Yankee Republican ruling class, fighting for a constitutional amendment that would give citizens like you the right to get signatures and put issues on the ballot.

Maybe, at some point in your life, you had to care deeply about an issue that, no matter how strong your arguments to the power structure on Beacon Hill, you knew you had no chance to get passed by an indifferent Legislature.

Name the issue: taxation, animal rights, the environment, birth control, allowing Sunday sporting events, assistance for the elderly or the blind, veterans' preferences. Politicians and lobbyists had the power, and you had no chance.

You may have worked to elect new legislators who would help you with your issue; but the power of incumbency -- the fund-raising ability, the name recognition, the ability to do favors for constituents with government money -- was very hard to overcome.

So you were glad that, after intense debate, the state Constitution was amended with Article 48 at a Constitutional Convention, allowing initiative petitions for either laws or other constitutional amendments. You drafted your petition and took it to the attorney general, whose job is to ensure that you followed all the constitutional rules.

If you had, you could then take your issue to the streets, spending evenings at shopping malls and weekends at fairs, the town dump or the post office, collecting tens of thousands of required signatures over two months. Maybe you also raised money to pay a petition company to help you.

You delivered your signatures to local city and town halls, across the commonwealth, so that registrars and city/town clerks could identify the registered voters in their jurisdiction; then you returned two weeks later to pick them up and file them with the secretary of state.

You and your supporters attended a State House hearing on your petition, waiting until legislators testified first, because their time is more valuable than yours. If, seeing all the signatures, the Legislature was supportive, it became law. If not, you went back to the street corners, collected thousands more signatures, and finally were on the November ballot.

You raised money for media, trying to be competitive against usually better-funded establishment opponents. You debated them, wrote letters to the editor, visited editorial boards looking for support. In the end, having made your best case to the voters, you won, or you lost. But thanks to Article 48, you -- the average citizen, the committed activist -- had a chance.

If you won, you'd created a law. Nowadays, of course, legislators who didn't like it in the first place -- or they would have passed it themselves, saving you all that time, money, and trouble -- just repeal it or amend it to death. They resent the average citizen getting directly involved in his or her own government -- who do you think you are?

If instead of creating a new law, you want to amend the Constitution, you must do all of the above except get the second round of signatures to bypass the Legislature. A proposed constitutional amendment, with its tens of thousands of signatures, is sent to a Constitutional Convention, where the 200 House and Senate legislators are required by Article 48 to take a rollcall vote, up or down.

All constitutional amendments require voter approval to pass, and legislators can also file one for Constitutional Convention debate; but because they don't collect any signatures, they need the usual majority to move it to the ballot. Petitioners, because they worked so hard, get an advantage: you need only your thousands of signatures and 50 votes -- one-quarter of the legislators in the State House -- to move forward.

If you get this, you must wait two years for the next Constitutional Convention, get 50 votes again, then you're finally on the ballot -- where a majority of voters is required to pass your petition after an open, democratic ballot campaign. Then you win or you lose, but democracy itself always wins.

This is the way it works, when everyone follows the Article 48 rules. But when legislators violate their oath of office to uphold the Constitution, and refuse to vote in the Constitutional Convention, your petition just dies without voters ever expressing their opinion. This is what is happening right now with two citizen petitions: Health Care for Massachusetts, and the Marriage Amendment.

This is why proponents of both these petitions are asking the

Supreme Judicial Court to move their petitions forward to the ballot, bypassing the Legislature when it denies their civil rights.

Many of us who have "been there" on various issues wish them well.

**Tuesday, January 2, 2007**

**Governor-elect Deval Patrick's statement on today's Constitutional Convention**

"I believe that adults should be free to choose whom they wish to love and to marry. The SJC's decision in Goodridge affirms that basic human right, and I support it.

"Above all, this is a question of conscience. Using the initiative process to give a minority fewer freedoms than the majority, and to inject the state into fundamentally private affairs, is a dangerous precedent, and an unworthy one for this Commonwealth. Never in the long history of our model Constitution have we used the initiative petition to restrict freedom. We ought not start now.

"For practical reasons as well, it's time to move on. Whatever one's views of marriage equality, all can agree that we have far more pressing issues before the Legislature and the Commonwealth. It serves no public interest to focus more time and attention on this issue when there are under-served and under-performing schools, an infrastructure showing signs of sustained neglect, gun and gang violence on the rise, jobs and people leaving the state, a growing homeless population, soaring health care costs, a looming deficit and a score of other serious challenges crying out for the attention and the creativity of the government and the people. We cannot in good conscience ask these unmet needs to wait while a few individuals try to insert discrimination into our Constitution.

"I favor ending this petition initiative promptly. If adjournment can accomplish that, so be it. If the Constitutional Convention chooses to vote on the merits, I want to be utterly clear that I believe a vote to advance this question to the 2008 ballot is irresponsible and wrong. Given the significant challenges we face on so many other fronts, I would be deeply disappointed in such a vote. It would do nothing more than condemn us all to more years of debate and expense on a matter that is legally and practically settled."

Posted by the Boston Globe City & Region Desk at 11:50 AM

STATE HOUSE   
NEWS SERVICE

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**CONSTITUTIONAL CONVENTION - TUESDAY, JAN.  
2, 2006**

Senators were welcomed through the center doors at 2:03 pm.

**HEALTH CARE AMENDMENT:** There was no objection to taking out of turn item 3 on page 10, an initiative petition relative to the provision of health care.

Sen. Tolman said, Back in July they didn't think were going to get this opportunity. But today we celebrate the great job the House and the Senate did putting together I believe it's chapter 52 on health care for all the residents. In that same vein, we have an amendment before us which is very specific to that same common goal. And I'm going to read it to you. The senator then read the amendment, which called it the obligation and the duty of the Legislature. This will ensure that no resident lacks comprehensive and adequately financed coverage, including prescription drug and other devices. We have an opportunity to take that very question and put it before the people for a vote. We are saying we are committed to health care.

The chair interrupted the senator and said, I presume the intent of the speaker is to discharge the bill from committee. Would you make a motion?

The senator asked unanimous consent to move the bill out of committee. We already did that.

The chair said, No, we have not. But we will do so at your request.

The senator said, So moved, Mr. President.

The president said there would be a two-thirds vote required and 15 minutes of debate.

Sen. Tolman said, We need two thirds to move this amendment forward, and it would provide - it's an ally of

Chapter 52 which we passed. If we pass this amendment, you can rest assured we are on the move to assure that there will be equitable financed health care. We have to find a better way of providing health care. It's a roll call anyway, so it's all set.

Sen. Moore said, I hope the committee is not discharged. This Legislature produced what has been called by the secretary of health and human services in Washington a landmark. Many other states are copying the ideas. The plan that has been enacted by the legislature is now being implemented. We are in fact producing some further changes to this legislation. I expect some further tinkering. Until we get it where we feel more comfortable, it would be premature to adopt this as a constitutional amendment. Even more important is to what role the federal government will play. We cannot do it alone, we've said that from the beginning. We do need the continued involvement of the federal government. We have reports from the incoming administration of a potential billion-plus deficit, if that's accurate. My concern is that because the language is there it would present many opportunities for litigation because someone doesn't get a certain level of care they think is important. I would hope that we would not take action on this time, that we leave the matter on the special committee of the convention, to make sure that this is something where the formula would work. I think the people are happy, from the polls that have been taken. I would hope that member would continue to place faith in the work of themselves and their new colleagues tomorrow.

Rep. Walrath said, There's certainly concern about whether or not this amendment is ready to be adopted. The amendment itself would require that it be the obligation of the Legislature to enact and implement laws to ensure that no resident lacks coverage. I think the argument the Senate chair put before us are a reason we have to look at this again. The amendment is quite broad and it's worded such that I'm sure the actual interpretation would be determined by the court. If a change would be needed, the complexity of health care almost guarantees that there need to be some changes. If it were a constitutional amendment, that would be four years before a change could take place. We've had progress large and small. There are certainly a lot of uncertainties here. And with the bill certainly the best in the nation, I think we should do our very best to make sure that that works.

Sen. Jehlen said, I want to compare the recent action on health care reform to the years we spent trying to reform

education. We would change the formula, we would change the requirements. It was only in 1993 that we maintained the commitment. Even with the guarantee, we slipped back during bad times. I believe the constitutional right is a good idea and would provide a backstop and would enable us to maintain our commitment. This is a procedural vote, to get it out of committee.

Sen. Montigny said, I know the time is short, but there should be some commendation. I think it is appropriate to say we've done great things. But as someone who's been involved in most major health care expansions and minor ones over the last few years here, we have all failed. We spend more money than any state in the country and we still have thousands of people uninsured. If I polled everyone in this room, I believe they would put health care at the top of the list in terms of concerns expressed to them by their constituents. There were smiles today at the announcement it would take two-thirds because everyone knows that will be difficult.

I'll just conclude by thanking you for the podium and imploring my colleagues to vote the matter out of the committee.

Sen. Tolman said, You know, earlier today we passed an amendment to put before the public. Amendment's very controversial. But the fact is we're putting it before the public. The court ruled that the members of the joint session have a constitutional duty to vote the yeas and nays on the merits of all pending initiative petitions. We're not asking you to vote on the actual health care amendment. What I'm asking you to do is discharge the bill out of committee.

At 5:43 pm, the clerk began calling the roll.

BY A VOTE OF 92-101, AMENDMENT NOT REPORTED OUT OF COMMITTEE.

- END -

DISCLAIMER: Bill texts and histories are available at [www.state.ma.us/legis/legis.htm](http://www.state.ma.us/legis/legis.htm). All votes are voice votes, unless otherwise noted. Bills ordered to third reading have been given initial approval. To engross a bill is to pass it and send it to the other branch. The last of three votes taken on bills that reach the governor's desk is the vote on enactment. So, it's third reading (initial approval), engrossment (passage) and enactment. The News

**LAWMAKERS NIX PETITION GUARANTEEING  
HEALTH CARE ACCESS**

**By Jim O'Sullivan and Priscilla Yeon  
STATE HOUSE NEWS SERVICE**

STATE HOUSE, BOSTON, JAN. 2, 2007....An effort to enshrine in the state constitution guarantees of affordable and comprehensive health coverage died in the Legislature Tuesday, with legislators reluctant to impose statutory prods on themselves while they experiment with a first-in-the-nation law.

Lawmakers voted, by a count of 101 to 92, to keep bottled in a special committee the citizen-driven amendment, which advocates said would have anchored the moves toward universal health care contained in a landmark reform law passed last year.

The petition, had it been approved, would have been marked as a referendum on the 2008 ballot, because the Legislature voted to advance it during the 2003-2004 Constitutional Convention.

Disappointed activists said legislators, who earlier had voted to advance a petition banning gay marriage that had followed the same channels, were ignoring their constitutional obligations. Health Care For Massachusetts Campaign co-chair Barbara Roop said, "It's very sad that the Legislature feel they have the choice to obey the Constitution whenever it's convenient to them."

By keeping the plan in committee, lawmakers today avoided a vote on the question itself, which was put before state government with the signatures of tens of thousands of supporters.

Asked if officials from Health Care for Massachusetts planned to continue pursuing the pending lawsuit filed with the Supreme Judicial Court requesting the Legislature to vote on the amendment today or place the petition before the voters on the 2008 ballot, Roop said she is reviewing all the options available.

"It's certainly not an easy suit to pursue," she said, pointing to the recent SJC ruling, arising from the gay marriage petition battle, that there is no judicial remedy to enforce a vote even though legislators have a constitutional duty to vote on citizen petitions.

Two of the authors of the milestone health care expansion - Sen. Richard Moore (D-Uxbridge) and Rep. Patricia Walrath (D-Stow) - spoke against the measure during the convention, urging lawmakers to allow its implementation before putting it to a popular vote

Moore and Walrath lead the committee that had custody of the petition. Walrath said that the adoption of the constitutional amendment would restrict legislators from quickly making inevitable tweaks to the reform, forcing them instead to adhere to the difficult constitutional amendment process, which takes at least four years.

"Do we really want to subject each legislative move to improve health care coverage to a statewide referendum?" Walrath said during her floor speech.

By a 153-41 vote in a July 2004 Constitutional Convention session, nearly two years before the health care reform became law, House and Senate members advanced the measure. But in July 2006, lawmakers voted 118 to 76 to reroute the proposal to a special committee of the Constitutional Convention, a step supporters acknowledged represented a serious blow to the petition's chances.

That step pushed the petition beyond the reach of the November ballot, and when the Constitutional Convention returned two days after the election, it was with the universal health care amendment buried at the bottom of the calendar.

- END

**OFFICE OF THE BAR COUNSEL**  
BOARD OF BAR OVERSEERS OF THE SUPREME JUDICIAL COURT  
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January 17, 2007

PERSONAL AND CONFIDENTIAL

Ms. Barbara C. Anderson  
143 Village Street  
Marblehead, MA 01945

RE: BBO File No(s). B1-07-0004CV

Dear Ms. Anderson:

We have received your correspondence. All correspondence is docketed and processed in the order received. The case has been assigned to Attorney Constance Vecchione for initial review.

You are advised that in accordance with Supreme Judicial Court Rule 4:01 (20) these proceedings will be kept confidential by this office.

Very truly yours,

OFFICE OF THE BAR COUNSEL

/elk

**OFFICE OF THE BAR COUNSEL**  
BOARD OF BAR OVERSEERS OF THE SUPREME JUDICIAL COURT  
99 High Street  
Boston, Massachusetts 02110  
(617) 728-8750  
Fax: (617) 482-2992  
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January 18, 2007

Ms. Barbara C. Anderson  
143 Village Street  
Marblehead, MA 01945

RE: BBO File No(s). B1-07-0004

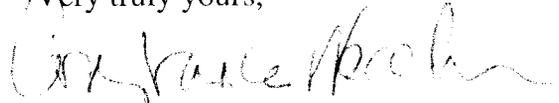
Dear Ms. Anderson:

I have reviewed your allegations of misconduct regarding certain legislators and Governor Deval Patrick.

While I recognize that you are likely to disagree, this office does not view the actions you describe by the legislators or the governor as constituting misconduct under the Massachusetts Rules of Professional Conduct. A legislator's vote is a political act and, absent crime or fraud, the vote of a legislator who happens to be a lawyer is not subject to the rules of professional conduct. This position is consistent with the principles of Art. 21 of the Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts in the Massachusetts Constitution. Similarly, the fact that the governor happens to be an attorney does not make his expressions of opinion a violation of those same rules.

This file has accordingly been closed without disciplinary action. Enclosed please find a copy of a letter from the Chair of the Board of Bar Overseers advising you of your right to have this decision reviewed by a member of the Board.

Very truly yours,



Constance V. Vecchione  
Bar Counsel

CVV/tf  
Enclosure

# BOARD OF BAR OVERSEERS

*of the Supreme Judicial Court*

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CAROL WAGNER  
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ASSISTANT GENERAL COUNSEL  
PAUL M. REZENDES

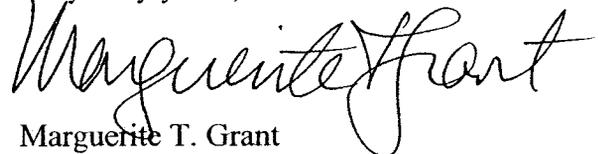
Dear Claimant:

As indicated by the enclosed letter, your grievance has been closed after investigation by the Office of Bar Counsel. This letter is written to inform you of your right, under the Rules of the Board of Bar Overseers, to request review of that decision by a member of the Board. The Board has a staff of its own and functions independently of the Office of Bar Counsel.

If you are dissatisfied with Bar Counsel's decision regarding your grievance, you may request that an independent review be made of the decision by a member of the Board. In that event, Bar Counsel will transmit your file to the office of the Board. Upon concluding his or her review, the Board member may conclude that Bar Counsel was correct in closing the file. If so, that will end the matter, since the Supreme Judicial Court has held that there is no appeal from a decision by the Board not to bring disciplinary charges against an attorney. Binns v. Board of Bar Overseers, 1 Mass. Att'y. Disc. R. 27, 28 (1976). Alternatively, the reviewing Board member may direct Bar Counsel to bring disciplinary charges or to reopen the file for further investigation.

If you wish the Board to review your complaint, you must file a written request no later than fourteen (14) days after the date of the enclosed letter from the Office of Bar Counsel. Your request for Board review should be sent to Office of Bar Counsel, Review Department, 99 High Street, Boston, Massachusetts 02110.

Very truly yours,



Marguerite T. Grant  
Chair

## **Declaration of Rights, and Frame of Government, as the Constitution of the Commonwealth of Massachusetts**

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**Article XXI.** The freedom of deliberation, speech and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever. [See Amendments, Art. XLVIII, The Initiative, II, sec. 2.]

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### **Article XLVIII The Initiative II. Initiative Petitions**

Section 1. *Contents.* - An initiative petition shall set forth the full text of the constitutional amendment or law, hereinafter designated as the measure, which is proposed by the petition.

**Section 2. *Excluded Matters.*** - No measure that relates to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal, recall or compensation of judges; or to the reversal of a judicial decision; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the commonwealth; or that makes a specific appropriation of money from the treasury of the commonwealth, shall be proposed by an initiative petition; but if a law approved by the people is not repealed, the general court shall raise by taxation or otherwise and shall appropriate such money as may be necessary to carry such law into effect.

Neither the eighteenth amendment of the constitution, as approved and ratified to take effect on the first day of October in the year nineteen hundred and eighteen, nor this provision for its protection, shall be the subject of an initiative amendment.

No proposition inconsistent with any one of the following rights of the individual, as at present declared in the declaration of rights, shall be the subject of an initiative or referendum petition: The right to receive compensation for private property appropriated to public use; the right of access to and protection in courts of justice; the right of trial by jury; protection from unreasonable search, unreasonable bail and the law martial; freedom of the press; freedom of speech; freedom of elections; and the right of peaceable assembly.

No part of the constitution specifically excluding any matter from the operation of the popular initiative and referendum shall be the subject of an initiative petition; nor shall this section be the subject of such a petition.

The limitations on the legislative power of the general court in the constitution shall extend to the legislative power of the people as exercised hereunder.

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*Reproduced and provided by Citizens for Limited Taxation*  
Source: <http://www.mass.gov/legis/const.htm>

**Declaration of Rights, and Frame of Government,  
as the Constitution of the Commonwealth of  
Massachusetts**

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**Chapter VI.**

**OATHS AND SUBSCRIPTIONS; INCOMPATIBILITY OF AND  
EXCLUSION FROM OFFICES; PECUNIARY QUALIFICATIONS;  
COMMISSIONS; WRITS; CONFIRMATION OF LAWS; HABEAS  
CORPUS; THE ENACTING STYLE; CONTINUANCE OF  
OFFICERS; PROVISION FOR A FUTURE REVISAL OF THE  
CONSTITUTION, ETC.**

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Article I. [Any person chosen governor, lieutenant governor, councillor, senator or representative, and accepting the trust, shall before he proceed to execute the duties of his place or office, make and subscribe the following declaration, viz.--

"I, *A. B.*, do declare, that I believe the Christian religion, and have a firm persuasion of its truth; and that I am seised and possessed, in my own right, of the property required by the constitution as one qualification for the office or place to which I am elected."

And the governor, lieutenant governor, and councillors shall make and subscribe the said declaration, in the presence of the two houses of assembly; and the senators and representatives first elected under this constitution, before the president and five of the council of the former constitution, and forever afterwards before the governor and council for the time being.]

And every person chosen to either of the places or offices aforesaid, as also any person appointed or commissioned to any judicial, executive, military, or other office under the government, shall, before he enters on the discharge of the business of his place or office, take and subscribe the following declaration, and oaths or affirmations, viz.--

["I, *A. B.*, do truly and sincerely acknowledge, profess, testify and declare, that the Commonwealth of Massachusetts is, and of right ought to be, a free, sovereign and independent state; and I do swear, that I will bear true faith and allegiance to the said commonwealth, and that I will defend the same against traitorous conspiracies and all hostile attempts whatsoever: and that I do renounce and abjure all allegiance, subjection and obedience to the king, queen, or government of Great Britain, (as the case may be) and every other foreign power whatsoever: and that no foreign prince, person, prelate,

state or potentate, hath, or ought to have, any jurisdiction, superiority, pre-eminence, authority, dispensing or other power, in any matter, civil, ecclesiastical or spiritual, within this commonwealth, except the authority and power which is or may be vested by their constituents in the congress of the United States: and I do further testify and declare, that no man or body of men hath or can have any right to absolve or discharge me from the obligation of this oath, declaration, or affirmation; and that I do make this acknowledgment, profession, testimony, declaration, denial, renunciation and abjuration, heartily and truly, according to the common meaning and acceptation of the foregoing words, without any equivocation, mental evasion, or secret reservation whatsoever -- So help me, **God.**"]

"I, *A. B.*, do solemnly swear and affirm, that I will faithfully and impartially discharge and perform all the duties incumbent on me as : according to the best of my abilities and understanding, agreeably, to the rules and regulations of the constitution, and the laws of this commonwealth -- So help me, **God.**"

Provided always, that when any person chosen or appointed as aforesaid, shall be of the denomination of the people called Quakers, and shall decline taking the said oath[s], he shall make his affirmation in the foregoing form, and subscribe the same, omitting the words [*"I do swear," "and abjure," "oath or," "and abjuration"* in the first oath; and in the second oath, the words] *"swear and,"* and [in each of them] the words *"So help me, God;"* subjoining instead thereof, *"This I do under the pains and penalties of perjury."*] [See Amendments, Art. VI.]

And the said oaths or affirmations shall be taken and subscribed by the governor, lieutenant governor, and councillors, before the president of the senate, in the presence of the two houses of assembly; and by the senators and representatives first elected under this constitution, before the president and five of the council of the former constitution; and forever afterwards before the governor and council for the time being: and by the residue of the officers aforesaid, before such persons and in such manner as from time to time shall be prescribed by the legislature. [See Amendments, Arts. VI and VII.]

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**Article VI.** Instead of the oath of allegiance prescribed by the constitution, the following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military under the government of this commonwealth, before he shall enter on the duties of his office, to wit:

"I, *A. B.*, do solemnly swear, that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the constitution thereof. So help me **God.**"

*Provided*, That when any person shall be of the denomination called Quakers, and shall decline taking said oath, he shall make his affirmation in the foregoing form, omitting the word "swear" and inserting instead thereof the word "affirm;" and omitting the words "So help me **God**," and subjoining, instead thereof, the words "This I do under the pains and penalties of perjury." [see Constitution, Chapter VI, Art. I].

**Article VII.** No oath, declaration or subscription, excepting the oath prescribed in the preceding article and the oath of office, shall be required of the governor, lieutenant governor, councillors, senators or representatives, to qualify them to perform the duties of their respective offices.

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*Reproduced and provided by Citizens for Limited Taxation*

Source: <http://www.mass.gov/legis/const.htm>



CITIZENS  
for  
Limited Taxation  
*The Commonwealth Activist Network*

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Office of Bar Counsel  
Review Department  
99 High Street  
Boston, Massachusetts 02110

January 22, 2007

Thank you for responding so very promptly to our concern about the state Constitution. I have received your January 17 letter acknowledging receipt of our complaint packet, and your January 18 letter denying our claim.

I would like someone to spend a little more time considering our concern about legislative lawyers' violation of their oaths of office and its effect on respect for the Supreme Judicial Court and the state Constitution, so I am requesting an independent review by a member of the Board of Bar Overseers of this decision.

Many citizens must be surprised to learn that "a legislator who happens to be a lawyer is not subject to the rules of professional conduct," and that the governor-elect (at the time he exhorted the Legislature to violate the Constitution) is permitted to break his oath as an attorney to uphold the Constitution, not to mention the similar oath he intended to take when sworn in as our next governor.

Therefore I would appreciate a clarification for those who deplore the unfortunate refusal of the Legislature to vote on an initiative petition for a constitutional amendment.

In seeking this clarification, I hope that the following questions can and will be answered by the review Board member.

Was the SJC correct in its unanimous decision in 448 Mass. 114 (2006), *Doyle vs. Secretary of the Commonwealth* (emphasis mine): "The members of the General Court are the people's elected representatives, and each one of them has taken an oath to uphold the Constitution of the Commonwealth. Those members who now seek to avoid their lawful obligations, by a vote to recess without a roll call vote by yeas and nays on the merits of the initiative amendment (or by other procedural vote of similar consequence), ultimately will have to answer to the people who elected them"?

Are legislators who take an oath both as legislators and members of the bar, but who then knowingly and overtly violate the Constitution, always immune from complaint and remedy from the Board of Bar Overseers? Could not action by the Board constitute a means of informing "the people who elect them" that such legislators have behaved badly?

Did those lawyer-legislators in fact disregard and violate the SJC's decision that a vote of the yeas and nays must be taken on the merits of an initiative amendment, because the legislators took an oath to uphold the Constitution?

Or was that decision inapplicable to those same lawyer-legislators? Do lawyer-legislators, unlike other citizens, have a special right to randomly choose which of the court's decisions to

*Every Tax is a Pay Cut . . . A Tax Cut is a Pay Raise*

respect?

The SJC has stated that it has no remedy if the Legislature refuses to act. Remedies have been proposed and one lawsuit on this is pending; but why would not the SJC have remedy at least with lawyer-legislators through its Board of Bar Overseers?

What is the relevance of your (OBC) reference in your letter of January 18 to Article 21, by which you argue that a legislator's vote is a political act and therefore not subject to rules of professional conduct? No one is discussing any legislator's vote; it is the *lack* of a vote that is the problem about which we complain.

Article 21 protects legislative "*deliberation, speech and debate*," while our complaint targets a legislative *action*, or more accurately, *inaction*, in its *refusal* to deliberate, speak and debate.

I realize there is no further appeal after this one. But in the future, when Article 48 of the Massachusetts Constitution is studied and referenced, it will be somewhere recorded that Citizens for Limited Taxation went as far as possible to save it from legislative assault and judicial indifference to its effective repeal by lawyer-legislators who violated their oaths to defend it.

Thank you for your attention. I look forward to a fair hearing on our appeal.

Sincerely,



Barbara C. Anderson  
for Citizens for Limited Taxation  
143 Village Street  
Marblehead, MA 01945

# BOARD OF BAR OVERSEERS

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February 15, 2007

## PERSONAL AND CONFIDENTIAL

Ms. Barbara C. Anderson  
143 Village Street  
Marblehead, MA 01945

RE: BBO File No(s). B1-07-0004CV

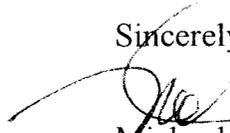
Dear Ms. Anderson:

This will acknowledge receipt of your recent letter requesting a review of Bar Counsel's decision to close the matter referenced above.

Please be advised that a member of the Board of Bar Overseers has reviewed the file in this matter and Bar Counsel's decision to close the file. Based on that review, it is the opinion of the Board member that Bar Counsel has properly closed the file.

This matter is closed and will remain closed. I thank you for your cooperation throughout the process.

Sincerely yours,



Michael Fredrickson  
General Counsel

mf/elk  
cc: Bar Counsel