

Hi Anne,

OK, here we go. It seems that Section 1 is the issue.

Article LIX - "Every charter, franchise or act of incorporation shall forever remain subject to revocation and amendment." This came out of the same 1917-18 Constitutional Convention as did the Initiative and Referendum and were voted on by the same People at the same time. We see our effort and language the epitome of the feelings at the time of the 1917-18 Constitutional Convention.

We will first focus on two cases that highlight the need to view Article 48 in the tenor and common language at the time of the 1917-18 Constitutional Convention. We cite *Yont vs. SoC* 275 Mass. 366 "An amendment to the Constitution is a solemn and important declaration of fundamental principles of government. It is characterized by terse statements of clear significance. Its words were employed in a plain meaning to express general ideas. It was written to be understood by the voters to whom it was submitted for approval. It is to be interpreted in the sense most obvious to the common intelligence. Its phrases are to be read and construed according to the familiar and approved usage of the language." We would like to Thank you Folks for including *Mazzone vs. AG*, 432 Mass. 515, 526 (2000)(citations omitted) which states "A constitutional amendment should be interpreted in the light of the conditions under which it was framed, the ends which it was designed to accomplish, the benefits which it was expected to confer and the evils which it was hoped to remedy."

Governor Samuel McCall started the Massachusetts Constitutional Convention of 1917-18 proceedings but first from wikipedia - "**Samuel Walker McCall**(February 28th, 1851 - November 4, 1923) was a Republican lawyer, politician, and writer from Massachusetts. He was for 20 years(1893-1913) a member of the United States House of Representatives and the 47th Governor of Massachusetts, serving three one year terms(1916-19). He was a moderately progressive Republican who sought to counteract the influence of money in politics." Also from wikipedia - "McCall was nominated again in 1915, with the Republicans deliberately courting the Progressive vote by calling for a State Constitutional Convention."

Governor McCall opened the proceedings at the Convention and mentioned "individual" - Volume 1 page 6 - "Certain fundamental rights of the individual are protected even against the encroachment of government itself. they are the rights which have been established in the long struggle of centuries between autocracy and liberty; they are the rights which are the very essence of freedom and which governments have at times been prone to invade. Among them are the right of free speech and of a free press, the right to worship God according to the dictates of one's own conscience, and the right to be heard by judges surrounded by every safeguard for the unbiased administration of justice."

The former Speaker of the House, the first to speak on the I and R, Mr. Walker, Volume 2 pages 21,22 - "Have we not heard of the condition in Pennsylvania? Was it different from New York? What about Quay and his Republican gang? Have we not heard of the conditions in Indiana? What about Taggart and his Democratic gang? Have we not heard of Cox of Ohio? Was not the great State of California in the actual control of a railroad corporation for years and years until they got hold of the initiative and referendum under the impetus of the progressive movement and unhorsed that railroad from its control of the California Legislature? No, Mr.

Chairman, this is not a condition peculiar to any one State..." Volume 2 page 23 - "For eight years, Mr. Chairman, I served in the House of Representatives. For four years I was a member on the Committee on Ways and Means and for one year I was Chairman of the Committee on Railroads, at a time when the fight over the Boston and Maine Railroad and New York, New Haven and Hartford Railroad Company was at its very height. For three years I was Speaker. I went through two speakership contests in this chamber. I served on an investigating committee to see whether improper means were used in the House to influence its members, and a result of that investigation one member of the House was expelled." ... Page 24 - "Mr. Chairman, I shall say the exact truth, neither more or less; and I say that the lobbyists who appear yearly on Beacon Hill, who are found in all or most of the legislative districts of the Commonwealth, - I will say that lawyers, with whom legislative practice is their principal business, and who are paid high salaries by the interests in this Commonwealth, - I will say that these men, and those who employ them, exercise at times an undue influence in the House and in the Senate, over certain matters, - at times a sinister influence. I say especially that when it comes to the election of a presiding officer in this chamber and in the Senate they exercise at times an undue influence, sometimes a controlling interest."

Associated Industries of Massachusetts vs. Attorney General 418 Mass. 287, "In other words, unless it is reasonably clear that a proposal contains an excluded matter, neither the Attorney General nor this court on review should prevent the proposal from appearing on the ballot. A challenge to a decision to allow a proposed initiative on the ballot is only the first opportunity to mount constitution-based attacks on the law." If there is an easement for the anticipated process that a ballot initiative for a law faces, should not a ballot initiative for an amendment, which faces much more intense scrutiny and procedure, receive more latitude?

Basically our understanding is that the Attorney General's job in this instance is to decide whether the petition language conforms with the "Excluded Matters" part of Article 48. There seems no role for the Attorney General to get involved with any other constitutional issues. As we stated previously, Article 48 needs to be looked at in a common reading understood at the time and in light of conditions when ratified.

We would cite Valparaiso University Law Review's Valpo Scholar Volume 38 #2 [2004], Art. 5, Symposium on Tomorrow's Issues in State Constitutional Law, How We Do It in Massachusetts, Roderick L. Ireland, page 410 - "The court echoed a similar historical perspective in *Commonwealth v. Blood* 507 N.E.2d 1029 (Mass. 1987), prohibiting the recording of conversations in a private home with the consent on only one party (in this case a police informant), which had been allowed in *United States vs White* 401 U.S. 745, 753(1971). The SHC stated that "[t]he vice of the consent exception is that it institutionalizes the historic danger that [Article] 14 was adopted to guard against (from below, *Blood*, 507 N.e.2d at 1033). It then described how British search policies were the source of much of the revolutionary sentiment in Massachusetts, and how Massachusetts had adopted Article 14 in 1780 as a specific response to unreasonable searches and seizures: "[T]he colonists' memory of the use and abuse of the writs was one of the reasons for the adoption...of constitutional safeguards regarding searches."

id(quotng Commonwealth v Cundriff, 415 N.E.2d 172(Mass. 1980), cert. Denied, 451 U.S. 973 (1981))

The Republican Governor McCall's campaign was based on money out of politics and the Initiative and Referendum, and he spoke about "individual" rights at the beginning of the Convention. The former Speaker of the House, Mr. Walker, tried to explain how bad things were in the Legislature without indicting himself at the beginning of the I and R debate

It should be obvious that there was a huge progressive movement at the time throughout the country resulting in the Initiative and Referendum in many States. Of the 22 Amendments coming out of the Convention, besides those addressing the Governor's office, most were for the People and against corporations. I lead with Article LIX - "Every charter, franchise or act of incorporation shall forever remain subject to revocation and amendment". From the Closing Address by the President, Volume 4, page 423, #12 - "This amendment makes certain that the people shall retain the right to revoke or alter the privileges granted to private corporations. The bare statement of this amendment carries with its own justification, and it will be approved by all who believe that it is unwise for the State ever to grant to private corporations privileges that cannot be revoked when the public good requires it." The vote on what turned out to be Article XLIX was 161,833 for and 79,387 against. Seemed to be really popular with the People.

Also, more Amendments from the Convention for the People. Article LX - Zoning, Article LVII - Woman notaries, Article LI - Preservation of landmarks, Article L - Public advertising restrictions, Article XLIX - Conservation, Article XLVIII - Initiative and Referendum, Article XLV - Absentee voting.

If it is felt that we did not touch on a relevant subject or did not delve deep enough on a matter please let us know and we will attempt to address it. We feel that it is established that the issue with our petition language is section 1. We have determined that the Attorney General is limited to Article 48 "Excluded Matters" and no other constitutional issues at this time. We seem to agree on *Mazzone v Attorney General* and we would also hope *Yont vs Secretary of the Commonwealth*.

There was Governor McCall who ran on money out of politics and the Initiative and Referendum opening the Convention and citing "individual" rights and then one of them, "the right to worship God according to the dictates of one's conscience." Then there is President Bates ending the Convention by describing #12, - "This amendment makes certain that the people shall retain the right to revoke or alter the privileges granted to private corporations.", which turned into Article 59.

To understand the intent of Article 48 we need to also understand the time, tenor and vocabulary of the time of the Massachusetts Constitutional Convention of 1917-18. While doing that it should become obvious that PassMassAmendment is the epitome of the efforts of the proponents of Progressive movement of that time. Our low budget approach reflects the General Provisions of article 48 basically pleading with the legislature to limit corporations and money in the petitioning process. Our language would seem to represent the aspirations of the People of that time. We ask that our petition language for a ballot initiative for an Amendment to the Massachusetts Constitution be certified.