

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

David Paul Linsky, (BY REQUEST)

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to protect rights and privileges granted under the United States or Massachusetts Constitution.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>W. Bradford Chase, Jr.</i>	<i>24 Robinhood Road Natick, MA 01760</i>	

HOUSE No.

By Mr. Linsky of Natick (by request), a petition (subject to Joint Rule 12) of W. Bradford Chase, Jr. for legislation to protect the rights and privileges granted under the Constitution of the United States and the Massachusetts Constitutions from foreign jurisdictions. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to protect rights and privileges granted under the United States or Massachusetts Constitution.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 BE IT ENACTED BY THE GENERAL COURT OF THE COMMONWEALTH OF
2 MASSACHUSETTS:

3 The General Court finds that it shall be the public policy of this state to protect its
4 citizens from the application of foreign laws when the application of a foreign law will result in
5 the violation of a right guaranteed by the Constitution of this Commonwealth or of the United
6 States, including but not limited to due process, freedom of religion, speech, or press, and any
7 right of privacy or marriage as specifically defined by the Constitution of this Commonwealth.

8 The General Court fully recognizes the right to contract freely under the laws of this
9 Commonwealth, and also recognizes that this right may be reasonably and rationally
10 circumscribed pursuant to the Commonwealth’s interest to protect and promote rights and
11 privileges granted under the United States or Massachusetts Constitution, including but not
12 limited to due process, freedom of religion, speech, or press, and any right of privacy or marriage
13 as specifically defined by the Constitution of Massachusetts.

14 (1) As used in this act, “foreign law, legal code, or system” means any law, legal
15 code or system of a jurisdiction outside of any state or territory of the United States, including,
16 but not limited to, international organizations and tribunals, and applied by that jurisdiction’s
17 courts, administrative bodies, or other formal or informal tribunals. For the purposes of this act,
18 foreign law shall not mean, nor shall it include, any laws of the Native American tribes in this
19 state.

20 (2) Any court, arbitration, tribunal, or administrative agency ruling or decision shall
21 violate the public policy of this Commonwealth and be void and unenforceable if the court,
22 arbitration, tribunal, or administrative agency bases its rulings or decisions in the matter at issue
23 in whole or in part on any law, legal code or system that would not grant the parties affected by
24 the ruling or decision the same fundamental liberties, rights, and privileges granted under the
25 United States and Massachusetts Constitutions, including but not limited to due process, freedom
26 of religion, speech or press, and any right of privacy or marriage as specifically defined by the
27 Constitution of this Commonwealth.

28 (3) A contract or contractual provision (if capable of segregation) which provides for
29 the choice of a law, legal code or system to govern some or all of the disputes between the
30 parties adjudicated by a court of law or by an arbitration panel arising from the contract mutually
31 agreed upon shall violate the public policy of this State and be void and unenforceable if the law,
32 legal code or system chosen includes or incorporates any substantive or procedural law, as
33 applied to the dispute at issue, that would not grant the parties the same fundamental liberties,
34 rights, and privileges granted under the United States and Massachusetts Constitutions, including
35 but not limited to due process, freedom of religion, speech, or press, and any right of privacy or
36 marriage as specifically defined by the Massachusetts Constitution.

37 (4) 1. A. A contract or contractual provision (if capable of segregation) which
38 provides for a jurisdiction for purposes of granting the courts or arbitration panels ‘in personam’
39 jurisdiction over the parties to adjudicate any disputes between the parties arising from the
40 contract mutually agreed upon shall violate the public policy of this State and be void and
41 unenforceable if the jurisdiction chosen includes any law, legal code or system, as applied to the
42 dispute at issue, that would not grant the parties the same fundamental liberties, rights and
43 privileges granted under the United States and Massachusetts Constitutions, including but not
44 limited to due process, freedom of religion, speech, or press, and any right of privacy or marriage
45 as specifically defined by the constitution of this state.

46 2.B. If a resident of this state, subject to a personal jurisdiction in this state, seeks to
47 maintain litigation, arbitration, agency or similarly binding proceedings in this state and if the
48 courts of this state find that granting a claim of forum non conveniens or a related claim violates
49 or would likely violate the fundamental liberties, rights, and privileges granted under the United
50 States and Massachusetts Constitutions of the non-claimant in the foreign forum with respect to
51 the matter in dispute, then it is the public policy of this state that the claim shall be denied.

52 (5) Without prejudice to any legal right, this act shall not apply to a corporation,
53 partnership, limited liability company, business association or other legal entity that contracts to
54 subject itself to foreign law in a jurisdiction other than this state or the United States.

55 (6) This subsection shall not apply to a church, religious corporation, association, or
56 society with respect to the individuals of a particular religion, regarding matters that are purely

57 ecclesiastical, to include, but not be limited to, matters of calling of a pastor excluding members
58 from a church, electing church officers, matters concerning church bylaws, constitution, and
59 doctrinal regulations and the conduct of other routine church business, where 1) the jurisdiction
60 of the church would be final; and 2) the jurisdiction of the courts of this state would be contrary
61 to the First Amendment of the United States Constitution and the Constitution of this State. This
62 exemption in no way grants permission for any otherwise unlawful act under the guise of the
63 First Amendment protection.

64 (7) This statute shall not be interpreted by any court to conflict with any Federal
65 treaty or other international agreement to which the United States is a part to the extent that such
66 treaty or international agreement preempts or is superior to state law on the matter at issue.