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The Repeal of Rent Control in Cambridge

Robert P. Moncreiff

In the November 8, 1994, state election, Massachusetts voters approved a question placed on the ballot by initiative petition passing a law that effectively outlawed rent control throughout the commonwealth. This law had its most dramatic effect in Cambridge, where a stringent rent control system had been in effect since 1970. The success of the petition was realized primarily through the grassroots efforts of a coalition of small-property owners in Cambridge who felt aggrieved by the city's rent control system. The use of a statewide vote on an initiative petition to enact a law with predominantly local effect created for its proponents a variety of legal and political problems. These were overcome one by one through lawsuits and volunteer efforts in which failure was repeatedly averted by slender margins. This article is a detailed account of that process.

Background

Rent control came to Cambridge in 1970 in the ferment of Lyndon Johnson's Great Society. The legendary city councillor and four-time mayor Edward A. Crane, its principal opponent among Cambridge political figures, predicted that if the city adopted rent control it would never get rid of it, and nearly a quarter of a century later there seemed every reason to believe that Crane was right. At all times after its adoption, it had the support of a majority of the city council. The city's traditional "good government" organization, the Cambridge Civic Association (CCA), whose endorsed candidates regularly constituted a majority of that body during the early 1990s, made support for rent control a condition of endorsement. The only significant change in the city's rent control system as originally adopted, through an ordinance approved in 1979, notably strengthened it by providing that any rental unit sold as a condominium to a buyer who was not the tenant on the effective date of the ordinance could not be occupied by the owner, but must remain a rental unit subject to rent control.

A ballot question that would have relaxed this limitation on condominium conversion was soundly defeated in the 1989 municipal election. A measure that imposed a surcharge on controlled rents to create a fund for improvements to substandard rental units had the support of all but one city councillor in the spring of 1991, but was rescinded

Robert P. Moncreiff, a retired lawyer, is of counsel to the Boston firm of Palmer & Dodge LLP, where he has spent his entire legal career. As a member of the Cambridge City Council in 1970, he voted to bring rent control to the city.

that summer when the five CCA-endorsed councillors withdrew their support under pressure from organized tenant groups. Then suddenly, at the end of 1994, rent control as Cambridge had known it was gone, repealed by a statewide vote on an initiative petition. This article chronicles how that startling reversal came about.

The story begins with the formation in 1987 of an organization in Cambridge called the Small Property Owners Association (SPOA). Native Cantabrigian David P. Sullivan and his wife, Aline, were instrumental in this endeavor. Until the mid-1980s they were not personally affected by rent control, since the first-floor rental unit in their two-family house on Huron Avenue in West Cambridge came under an exemption in the Cambridge rent control law for units in an owner-occupied two- or three-family house. In 1986, however, Sullivan bought from his elderly father three “ordinanced” condominiums in a six-unit building on nearby Chilton Street, so described because they were caught by the 1979 ordinance described above and could not be removed from the rent control system.

A year later he petitioned the rent control board to recover possession of one of these condominiums from the tenant so that it could be occupied by a daughter who was about to be married. Sullivan was proceeding under a provision of the law permitting recovery of possession by the landlord for occupancy by himself or members of his family. But the petition was denied on grounds that the Sullivans believed had no basis in the law, and only after two years and substantial concessions to the tenant were they able to recover possession. They came away from the experience with the clear impression that the law was being administered by a strongly pro-tenant staff that was hostile to landlords.

The Sullivans, soon finding that this view was shared by many small-property owners in Cambridge, concluded that these owners should organize to protect their rights. SPOA was the result. Owners of buildings with twelve or fewer rental units were solicited for membership, and by degrees the list grew until by the early 1990s more than a thousand members were paying modest dues to support a program of regular informational meetings, a monthly newsletter, and legal action on behalf of landlords.

Among the small-property owners who became active in the affairs of SPOA was Denise Jillson, who played the central role in the repeal of rent control. Jillson grew up and attended public schools in Somerville. In 1975 she married a Cambridge man and moved with him to Malden, where they began their family. Hoping that they could someday live in Cambridge, in 1986 they were able to buy a four-family frame house on Chester Street in North Cambridge, just off Massachusetts Avenue. The four units in the house were subject to rent control, but Jillson and her husband planned to take advantage of the provision in the law, noted above, allowing a landlord to recover possession of a rental unit for his own use, and to move into the largest of the four units. Like the Sullivans, they were frustrated by the staff of the rent control board and subjected to a long delay — for the benefit of a tenant who, Jillson says, was herself renting sleeping space in the unit to others — during which Jillson’s family had to live with relatives. Her frustration led to her participation in SPOA, and by 1992 Jillson was a co-chair of that organization.

We must now meet another central figure in the story of the repeal of rent control in Cambridge, Jon R. Maddox, a lawyer in his early forties. Maddox, a graduate of Brown University and the Suffolk Law School, in early 1993 was living with his wife and practicing law in a condominium at 9 Ellery Street in Cambridge. He had bought the unit some years earlier without realizing that it was an ordinated condominium that

could not be legally occupied by its owner. When he became aware of the problem, he placed the unit in a trust for the benefit of a family member, thus separating ownership from occupancy. But he continued to make mortgage payments and bear other costs that in the aggregate far exceeded the maximum permitted amount at which the unit could be rented under the rent control system, and he knew that his legal position was vulnerable.

Maddox's predicament, and the trust device employed to address it, were not uncommon in Cambridge buildings, and in late 1992 the staff of the rent control board initiated a campaign to identify ordinance-condominiums that were illegally occupied by their owners and to enforce the law. Maddox himself was never challenged, but 9 Ellery Street was known to be one of the buildings to be investigated, and he saw the handwriting on the wall. In March 1993 he attended a meeting of SPOA and shortly thereafter became a member.

At this time SPOA's principal activity, in addition to the regular informational meetings and newsletters, was the prosecution of a lawsuit the organization had filed a year earlier in the Massachusetts Superior Court against the city of Cambridge and its rent control board seeking to invalidate the rent control system on a variety of constitutional and other grounds. Maddox believed that in light of prior court decisions the SPOA lawsuit was hopeless, a view borne out by a Superior Court judge's dismissal of most of the claims in March 1993. SPOA intended to appeal this decision, and Jillson and the other SPOA leaders did not show much interest in Maddox's suggestion that the most promising way to defeat rent control was to seek its repeal by a statewide vote through the initiative procedure in the Massachusetts Constitution. He was, however, encouraged to draft something if he wished, which he promptly set out to do.

The Drafting and Certification of the Initiative Petition

The Initiative, that is, the power of a specified number of voters to submit laws to the people for approval or rejection, has been part of the Massachusetts Constitution since 1918.¹ It has been used by activists on many occasions to enact laws, some of them affecting the powers of cities and towns. A notable example was the adoption in 1980 of so-called Proposition 2½, placing a limitation on the taxes that can be assessed annually on a municipality's real and personal property. The question obviously arises why Jon Maddox was the first person in Cambridge or elsewhere to resort to this device to repeal rent control. Part of the answer may lie in the formidable logistical challenges of gathering the requisite number of signatures to place a measure on the ballot and to campaign for its adoption.

But the principal reason must be the instinctive sense of many lawyers and activists that it would be incongruous, and must therefore be impermissible, to repeal a local rent control system by a statewide vote of the people. Maddox did not have this mindset. He believed that the right of municipalities to maintain rent control systems is a question of state policy that may be addressed at any time, regardless of the number of municipalities that have such a system. In drafting his initiative petition, Maddox had to contend with language in the state constitution dealing with the issue of localized effect, but he was able to persuade both the Massachusetts attorney general and later, on grounds that more accurately reflected his own views, the Massachusetts Supreme Judicial Court, that what he proposed was constitutionally permissible.

Before an initiative petition goes on the ballot, the state legislature is given the op-

portunity to enact the law that the petition proposes, a requirement that affects the procedures specified for initiative petitions in the state constitution. The first step is the submission of the petition, signed by ten qualified voters, to the attorney general not later than the first Wednesday of the August before the legislative session into which it is to be introduced. For a measure to be considered by the legislature in its 1994 session and, if not passed, to go on the ballot at the state election in that year, the deadline for submission was August 4, 1993.

Not every measure can be the subject of an initiative petition; a section of the constitution specifies certain categories, called excluded matters, that cannot be. The purpose of this initial submission is to give the attorney general the opportunity to review the petition to determine that it is in proper form and contains no excluded matters. If the attorney general so concludes, he certifies his conclusion to the secretary of state with the petition, which must be filed with the secretary not earlier than the first Wednesday in September, in this case September 1, 1993. Without the certification of the attorney general, the petition is not accepted for filing by the secretary of state.

By late June of 1993, Jon Maddox had completed a draft of an initiative petition. When he called the office of the attorney general to determine how to go about submitting it, he was referred to Peter Sacks, the assistant attorney general who handles initiative petitions. In accordance with an informal procedure followed in the attorney general's office, Maddox was offered the opportunity to submit a draft of his proposed petition before the August 4 filing deadline in order to obtain an advance indication of any legal problem that might prevent its certification. On June 23, Maddox sent such a draft to Sacks. The law that it proposed was entitled "The Massachusetts Rent Control Prohibition Act" and its operative section provided tersely, "Rent control is hereby prohibited in Massachusetts." Sacks reviewed the draft and advised Maddox that he did not believe it could be certified, directing Maddox's attention to the clause in the excluded matters section of the constitution providing that no measure may be proposed by an initiative petition "the operation of which is restricted to . . . particular districts or localities of the commonwealth."²²

To understand the reasoning by which Sacks reached his conclusion, and the means by which Maddox met his objections, we must go back to the principles that govern the legal relationship between the commonwealth of Massachusetts on the one hand and its constituent municipalities — the cities and towns — on the other. For most of the life of the Massachusetts Constitution that relationship was governed by what lawyers know as Dillon's rule, a principle named after the author of a famous treatise on municipal law which, briefly stated, holds that a municipality has no power to make laws except such powers as have been granted to it by the state. A state statute granting such a power is called an enabling act or enabling legislation.

In 1966 the constitution was amended to modify Dillon's rule in part by giving Massachusetts cities and towns the power to make many kinds of laws without enabling legislation — called home rule power — but some categories of law remained subject to Dillon's rule, among them any "private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power."²³ One of the early legal questions raised when rent control came to Massachusetts in 1970 was whether this murky exception to the grant of home rule powers to municipalities meant that state enabling legislation was needed to permit municipalities to enact rent control laws. In a case decided in that year involving the validity of a rent control ordinance adopted by the town of Brookline without enabling legislation (*Marshal House, Inc. v.*

Rent Review & Grievance Board of Brookline, 357 Mass. 709), the Massachusetts Supreme Judicial Court ruled that enactment of rent control was not a home rule power and that state enabling legislation was required to authorize it.

Later in 1970 the Massachusetts legislature passed an enabling act setting forth a scheme of rent control that any municipality could adopt. Cambridge, Brookline, and Boston, among other municipalities, promptly adopted this scheme, but the 1970 enabling act, with a limited life, expired in 1976. Any municipality wishing to maintain rent control thereafter would have to obtain its own enabling act. Cambridge, Brookline, and Boston did so, and in 1993 all of them had rent control systems, though those in Brookline and Boston had been much weakened by “vacancy decontrol” provisions exempting a covered unit from the system after the tenant has moved out. The town of Amherst had a system of rent review, and the cities of Lowell, Waltham, and Somerville had enabling legislation authorizing them to enact rent control but had no system in place.

So as things stood when Jon Maddox sent Peter Sacks his first draft of an initiative petition in June 1993, the prohibition of rent control that it contained would have changed the rules for these seven municipalities but not for any others, for in the absence of enabling legislation and under the *Marshal House* case they were already prohibited from having rent control. Sacks believed that the limited effect of the Maddox draft to a mere seven municipalities in Massachusetts was fatal under the exclusion from the initiative process of any measure restricted to particular localities. The Maddox draft recited, as Maddox strongly believed, that “rent control is a matter of statewide concern,” but Sacks did not agree that this overcame its local effect.

It is the genius of his accomplishment that Maddox saw in the reason for Sacks’s conclusion the means for reversing it. If 344 of the state’s 351 cities and towns were without such enabling legislation, Maddox would draft a law that gave it to them. Obtaining a list of the states that had statutes relating to rent control, he began to comb through them seeking a model. He found it in Florida.⁴ That state, unlike most of the others on the list, does not prohibit local rent control entirely, but places severe restrictions on its adoption and content. It must be approved by the voters of a local entity after a public hearing by its governing body followed by a finding that there exists “a housing emergency so grave as to constitute a serious menace to the general public.” It must terminate in a year unless extended after a new hearing, finding, and vote. Units in luxury apartment buildings, defined as those with units whose average rent on January 1, 1977, was more than \$250, must be exempt. Maddox would use the Florida model, with some additions and refinements of his own, to propose a limited rent control system available to all Massachusetts municipalities, but prohibiting any other form of rent control.

Maddox submitted three successive drafts to Sacks. The first closely copied the Florida model but added the further requirement of a prior finding by the state legislature of an extreme statewide housing emergency. We do not have his response to this draft, but Sacks perhaps pointed out that this added precondition would prevent the proposed enabling act from conferring any new powers on municipalities until further legislative action, and thus would make no immediate change in the law. The second draft took a new tack, authorizing local rent control, but only if “compliance on the part of property owners is entirely voluntary and uncoerced.” Again there is no record of comment by Sacks, but this draft raises the question whether the law it purports to authorize, wholly lacking in coercive effect even for a limited period, is a law at all.

Maddox's final draft, which with a few minor word changes became the law proposed by the initiative petition, was sent to Sacks on July 14. Its title, the Massachusetts Rent Control Prohibition Act, left no doubt of its purpose, but it enabled any city or town to adopt rent control on the conditions that (1) after six months from the date of adoption, compliance by property owners was to be voluntary, (2) any rental unit owned by a landlord who owns fewer than ten units or having a fair market rent of more than \$400 a month was to be exempt, and (3) a municipality imposing such regulation was to compensate owners of controlled units from its general funds for the difference between the controlled rents and the fair market rents of such units. Any other form of rent control in Massachusetts was prohibited.⁵

Sacks was now tentatively persuaded that the operation of the proposed law, since it conferred on all Massachusetts municipalities new powers, however limited, would not be restricted to particular localities of the commonwealth, and he advised Maddox that, subject to considering comments from opponents, he believed it could be certified by the attorney general. Maddox reported this fact to SPOA's leaders and asked them to see to the collection of the ten signatures needed for filing. He expressed the hope that the signatures would come from a wide geographical area so as to lend color to the proposed law's statewide application, but the time was short, so the signatories — there were, fortunately for the proponents as it turned out, twelve of them — who included David and Aline Sullivan and Denise Jillson, were all from Cambridge and all active in SPOA. The initiative petition was filed with the attorney general on August 4, 1993.

It is the policy of the attorney general's office before certifying an initiative petition to solicit comments from organizations likely to be opposed. Accordingly, on August 4 the petition was distributed to the Cambridge Rent Control Board, the Campaign for Affordable Housing and Tenant Protections, a Cambridge-based activist tenant organization, the Boston Rent Equity Board, Greater Boston Legal Services, the Massachusetts Tenants Organization, the Brookline Rent Control Board, and the Massachusetts Law Reform Institute. Written comments on the petition were invited, and four of the organizations responded. All the replies insisted that the proposed law would have only local effect and therefore ran afoul of the particular localities limitation that Peter Sacks had originally thought fatal. Only one of the responses, from longtime Cambridge tenant activists William J. Noble and Michael Turk on behalf of the Campaign for Affordable Housing and Tenant Protections, addressed at any length the significance of the limited rent regulation system that the proposed law authorized for municipalities. It called this system "unworkable and meaningless" and commented that "it is tempting to conclude that these provisions were included . . . only to evade the 'particular districts and localities' exemption." This was, of course, perfectly true, but Sacks was not convinced that it was relevant to his legal analysis. On August 19, after reviewing the comments of the opponents, he advised that "to date we are not persuaded that the proposed law is one the operation of which is limited to particular cities and towns . . . [since] it apparently does confer some legal authority on cities and towns that they do not now enjoy. . . . The asserted unlikelihood that any city or town would actually choose to accept the proposed law does not change the fact that every city or town would gain the power to do so." On September 1, 1993, on Sacks's recommendation, attorney general Scott Harshbarger certified the petition, and on the same date it was filed with the secretary of state.

There was a near crisis at the time of filing. Under the procedures of the secretary of state, each of the ten signatures required on an initiative petition must be accompanied

by a certificate from the local election officials, in this case the Cambridge election commission, establishing that the signer is a registered voter; and the signer must have written his or her name “substantially as registered.” When Denise Jillson and Jon Maddox appeared at the office of the elections division of the secretary of state on the seventeenth floor of the McCormack state office building at One Ashburton Place in Boston on the morning of September 1, 1993, with the petition to be filed, they did not have a certificate in support of the signature of one of the twelve signers, so it was not accepted. Another signer, registered to vote under the name Elizabeth A. O’Connell, had signed the petition Ann O’Connell, and her signature was disallowed. The other ten signatures were in order, but it was a tense moment. It was SPOA’s introduction to the highly technical requirements that must be met to place a law on the ballot by initiative petition. It was also the first of many close calls in a process, lasting more than a year, that was full of emotion for Jillson, Maddox, and their SPOA colleagues as they moved through one crisis after another before achieving final success early in 1995.

Jon Maddox had every reason to be pleased. He had understood from the beginning the political danger inherent in salvaging his petition by casting it in the form of an enabling act: if it authorized municipalities to adopt a rent control program with teeth, landlords and other opponents of rent control in cities and towns where there was none could be expected to oppose it. Because the attorney general had accepted as constitutionally sufficient an authorization of rent control that was hardly rent control at all, this danger had been avoided. But this circumstance carried with it a countervailing risk. The attorney general’s certification was subject to judicial review. Cambridge tenant activists William Noble and Michael Turk had called the petition’s rent control system “meaningless.” Many lawyers, including those against rent control, would have conceded that this was not a frivolous criticism. If the Massachusetts Supreme Judicial Court could be persuaded of the validity of this characterization, Maddox’s success with the attorney general would have been achieved at the cost of ultimate failure. When the certification was challenged, however, the court sustained the attorney general’s action without addressing this issue at all.

The Signature Drive

The next phase in the effort to place a law on the ballot by initiative petition is gathering the requisite number of signatures of registered voters for filing with the secretary of state. That number is specified in the Massachusetts Constitution as “three per cent of the entire vote cast for governor at the preceding biennial state election.”⁶ For measures to appear on the ballot in the 1994 state election the number was 70,286. A further constitutional requirement provides that not more than one-fourth of these signatures can come from any one county. This provision imposed a limit of 17,571 on the number of signatures from a single county that could be counted toward the required total. The signatures must be filed with the secretary of state not later than the first Wednesday in December — in 1993 it was December 1.

The period between the first Wednesday in September, when the petition is filed with the secretary of state, and the first Wednesday in December, when the supporting signatures must be filed, is thirteen weeks. But the proponents do not really have all that time to collect signatures. The initiative petitions on which the signatures are collected must first be printed in a form approved by the secretary of state. It was September 10, 1993, more than a week after the September 1 filing date, when the printed

petitions were ready. Before the signatures are filed with the secretary of state, they must be certified by local election officials as conforming to the voter registration records in the cities and towns in which the signers are registered to vote. The law provides that for this purpose signatures must be submitted to these officials not less than fourteen days (ten days in the case of Boston) before the last day for filing with the secretary of state. When the delay for printing petitions and the deadline for submitting signatures to local officials are taken into account, the proponents of the rent control petition had little more than nine weeks in which to collect the necessary signatures.

SPOA was woefully unprepared to meet this challenge. It had raised no money for the purpose; it had no office space and no volunteers beyond the dozen or so activists who had regularly conducted SPOA's ongoing program. But over the 1993 Labor Day weekend it got started. A mailing to the SPOA membership announced the certification of the petition and the beginning of the signature drive and solicited money and volunteers. A political committee, the Massachusetts Homeowners Coalition, referred to throughout the campaign as MHC, was formed and registered with the state office of campaign and political finance to receive contributions, make expenditures, and conduct the campaign. Denise Jillson resigned as cochair of SPOA to become its chairman, and Salim Kabawat, a former SPOA chair and signer of the petition, became its treasurer.

It is evidence of the strong libertarian strain in the campaign, deriving from the United We Stand America 1992 presidential candidacy of Ross Perot, that names like the American Dream and Let Freedom Ring were considered for the political committee during a long evening meeting in Jillson's kitchen before the more descriptive and politically effective if less exotic Massachusetts Housing Coalition was agreed upon. This decision was made on the advice of Dennis Dyer, a consultant based in Beverly, Massachusetts, who had volunteered to help organize the signature effort in the hope, later realized, that his firm, Northeast Legislative Strategies, would be retained to direct the campaign for votes if the petition got on the ballot.

By mid-September the MHC had rented office space on the second floor of a storefront at 2000 Massachusetts Avenue in North Cambridge, set up its first conference table — two wooden doors laid on sawhorses — and with its first volunteers mailed to every SPOA member a form of petition with instructions for obtaining signatures. By the end of September this naive beginning and MHC's other preliminary efforts had produced only a few hundred signatures. A mailing of petitions to all the members of the Massachusetts Rental Housing Association, a statewide organization of landlords with which SPOA had long-standing contacts, and the activities of a mushrooming corps of volunteers throughout the state had by the second week of October brought this total to only about 4,000. This was plainly insufficient progress, and Jillson knew that the effort needed professional help. She sought it from National Voter Outreach (NVO), an organization based in Carson City, Nevada, whose marketing flier had arrived unsolicited. She persuaded NVO to send, at its own expense, two representatives to Cambridge on October 11; a week later it became the professional adviser to the signature drive.

MHC raised some \$70,000 in cash from its inception through the end of 1993, but at this early stage it could not afford to retain NVO. For this purpose it had to look to the organized real estate industry in Massachusetts. Jillson had earlier made contact with Robert L. Nash, executive vice president of the Massachusetts Association of Realtors, the real estate industry's statewide organization, and Edward Shanahan, Nash's

counterpart at the Rental Housing Association, an arm of the Greater Boston Real Estate Board. Both men had expressed sympathy with the MHC effort, but neither offered help.

The fact is that the Massachusetts real estate industry, while solidly opposed to rent control, was skeptical that MHC's effort could succeed and fearful of the possible consequences if it failed. The effects of rent control had been largely neutralized in Boston and Brookline by vacancy decontrol, and the industry was resigned to accepting its continuation in Cambridge and trying to live with it. A failed campaign, the industry feared, might raise sleeping dogs and create a threat of rent control in municipalities where no such threat existed. Therefore the industry was not eager to be visibly associated with MHC's efforts. On the other hand, the industry felt an obligation to show some support. Dennis Dyer, who was involved in other potential ballot questions in collaboration with NVO, took advantage of this sentiment and arranged for NVO to contract with the Greater Boston Real Estate Board and its Rental Housing Association, each of which paid \$25,000 to NVO for providing volunteer training and other services to MHC.

The principal contribution to the training of volunteers was simple but effective. MHC had recruited hundreds of volunteers and sent them out to collect signatures, but many of them had not learned to avoid the entirely natural temptation of falling into lengthy explanation, and sometimes debate, of rent control with potential signers — “educating the public,” Jillson calls it. NOV taught that to obtain signatures in the required numbers this temptation must be avoided. Many voters are willing to sign an initiative petition simply to put an issue on the ballot for the voters to decide. Solicitors must take advantage of this willingness and spend no more than a minute or two with each prospect.

Volunteers were also trained in the importance of confining the signers of any one petition to voters in a single municipality to facilitate the local certification of signatures that is necessary before they can be filed with the secretary of state. A skillful volunteer working, say, at a town fair or a supermarket whose location attracts shoppers largely from only three or four municipalities might collect many signatures on each petition without mixing voters from more than one city or town. A less skillful collector or one working at a regional shopping mall might avoid mixing only by using a separate petition for each signature. The 25,000 petitions originally provided by the state were soon exhausted. MHC, at its own expense, reprinted petitions several times.

In addition to training volunteers, National Voter Outreach brought to the drive the established technique of paying people to collect signatures. Recruited through newspaper ads, which invited interested persons to appear at campaign headquarters at specified times, they were given petitions and clipboards and dispatched — often driven — to a shopping mall or other promising venue. Collectors received fifty cents per signature — a dollar in the drive's final stages — and NVO received a commission for each signature collected. MHC supplemented these efforts by recruiting, through employment agencies, additional paid collectors to work on weekends. Unlike NVO's fee for training volunteers, which was underwritten by the real estate industry, all the costs of the paid collectors, including NVO's commissions, were paid by MHC. Jillson estimates that as many as a third of the signatures collected in the drive were obtained by paid collectors.

The results of NVO's training and techniques became apparent only gradually, and in late October the prospects for success remained dim. Jillson remembers driving back

to Cambridge alone on a dismal October night — after an appearance on a radio talk show in a town near the Rhode Island border — overwhelmed by the sense that there was no way to reach the goal. “I could have cried a river,” she says. But like a good commander, she did not betray her pessimism to her troops. And gradually, with growing momentum, then dramatically as the filing date approached, things improved.

We must imagine a campaign headquarters frantic with activity every day from nine in the morning until after eleven at night, supervised at all times by one or more of Jillson’s key staff. After she came home from her full-time job and fed her family, she was there every evening until eleven as well as all day long every weekend. The staff was supported by a cadre of volunteers working from lists of sites and events — fairs and the like — where voters congregate in large numbers, dispatching volunteers, paid and unpaid, to these places with petitions, clipboards, and instructions, later receiving them back. The signatures had to be counted and the petitions segregated, first by municipality to facilitate submission for local certification, then by county to monitor compliance with the county distribution rule.

Denise Jillson was the unquestioned leader of and inspiration for this effort. At the beginning of the second week in November, with little more than a week remaining before signatures had to be dispatched to cities and towns for local certification, she took some accrued vacation days to devote full time to the effort. She also moved the headquarters across Massachusetts Avenue to the offices of Thayer & Associates on the fifth floor of the building at number 2067. She did this because she had become uneasy about the activities of National Voter Outreach, which was paying collectors to obtain signatures for other campaigns as well as MHC’s under circumstances that made it difficult to tell whose campaign funds were being used to pay for what signatures; and because she knew and trusted Douglas Thayer. Thayer is a co-owner with his father of Thayer & Associates, a real estate firm that manages in and around Boston some thirty properties containing approximately 2,000 rental units. One of the properties — a brick building located at 3-5-7 Arlington Street at the corner of Massachusetts Avenue in Cambridge — is owned by the Thayer family. It was, of course, subject to rent control, and Thayer had a long history as an active industry opponent of the Cambridge system. He had learned of the SPOA initiative petition when Jillson announced it in early August on David Brudnoy’s radio show, and that very night had called Jillson offering to help. She turned to him for the initial financial contribution to start the signature effort and for advice along the way. From the day in November when the Massachusetts Housing Coalition headquarters was moved into his offices, he became a day-to-day participant in MHC’s efforts, second in importance only to Jillson.

Many citizens do not know how, or even if, they are registered to vote, and therefore do not sign petitions “substantially as registered.” Others believe they are registered but have failed to change their registration after moving from one municipality, or one district within a municipality, to another. For any of these reasons, local registrars may fail to certify a signature. All organizations experienced in initiative campaigns know that signatures are lost during the certification process, and they compensate by gathering many more than are needed. A minimum rule of thumb is 20 percent more. With 70,286 certified signatures required, not more than 17,571 of which could come from a single county, Jillson knew she needed at least 85,000 signatures; she wanted 90,000 to 95,000 to be safe. By Sunday, November 14, only three days before the deadline for transmitting signatures for certification, the campaign had collected about

80,000. Jillson remembers spending that afternoon with Thayer and a few others in Thayer's office — quiet, because all the volunteers were out collecting signatures — worrying about where they were, regretting the time lost before signing on NVO and various other “what ifs,” experiencing acute uncertainty and apprehension as the roller coaster ride of the past weeks approached its end, waiting nervously for the results of the day's efforts to come in from the volunteers. She remembers, too, the excitement of that Sunday evening as volunteer after volunteer brought in petitions bearing signatures that, as the counting ended near midnight, totaled more than 8,000. Jillson knew that the campaign was back in business.

Monday and Tuesday of the following week were spent in organizing and packaging the petitions for transmission to cities and towns throughout Massachusetts. Those which were to go to distant municipalities where few signatures had been collected were sent by mail, with a return stamped self-addressed envelope. Those for the larger municipalities were organized into routes, to be delivered on Wednesday in trucks and automobiles driven by volunteers. These routes had to be retraced days later to pick up the certified petitions and bring them back to Cambridge. Meanwhile, signature collection continued in Boston, where delivery for local certification was not required until the following Monday, November 22. At the end of that week the municipalities from which certified petitions had not been returned were identified and the retrieval process was completed. By Wednesday, December 1, the deadline for filing the certified signatures with the secretary of state, all the petitions had been assembled and arranged by municipality and county, and that afternoon a caravan of volunteers, led by Jillson, took them to Boston and filed them. The afternoon ended at the Golden Dome, a bar near the State House, where Jillson and her troops toasted the results of their efforts and celebrated the camaraderie that had developed among them.

Jillson knew that it would be close, but she thought they had enough signatures. The office of the secretary of state has, of course, no basis for questioning the validity of any certified signature, but it does review the certification method. Its rules then required that three or more registrars from each city or town sign the certification; signatures certified by fewer than three were not accepted. Registrars are required to indicate the number of names certified on each petition. The secretary of state's office does not review this arithmetic in detail, but if it is apparent on cursory examination that the total recorded on a single petition plainly exceeds the number of signatures on the petition, the total is revised accordingly.

Of the signatures filed, 73,769 were acknowledged as received, comfortably in excess of the 70,286 needed. But the numbers of signatures received from Suffolk and Middlesex counties exceeded the maximum of 17,571 allowable under the county distribution rule by 2,300 and 1,543, respectively, a total of 3,843. This reduced the number of allowable signatures from the 73,769 acknowledged as received to 69,926 allowed. MHC had fallen 360 signatures short of the required number. On December 7, 1993, Denise Jillson was formally notified of this fact by John P. Cloonan, the director of elections in the office of the secretary of state.

Soon after the shortfall became known, Jillson received a telephone call from Barbara Anderson, whose organization, Citizens for Limited Taxation, has been through several initiative petition campaigns. Anderson knew that mistakes by local registrars are common when signatures for many initiative petitions — there were more than twenty in 1993 — are presented for certification in a short period, and she thought

MHC was close enough to justify legal action to validate additional signatures. She advised Jillson to consult William A. McDermott, Jr., a Boston lawyer who has made a specialty of election laws and procedures.

A meeting was promptly arranged with McDermott, who confirmed Anderson's view that litigation had a good chance of success. On December 15, 1993, he filed in the Massachusetts Superior Court in Boston, on behalf of Jillson and the nine other original signers of MHC's initiative petition, a complaint against the Massachusetts secretary of state alleging that enough signatures had been wrongly denied certification to overcome the shortfall. Two days later, a group of eleven rent control supporters from Cambridge, Boston, and Brookline filed suit in the same court to intervene on behalf of the secretary of state in opposition to the Jillson plaintiffs. The two suits were consolidated, and the legal battle was joined.

In litigation to establish the validity of disallowed signatures, the plaintiffs have an important procedural advantage. In a case decided in 1976 relating to the attempt of Eugene McCarthy to appear on the Massachusetts ballot that year as a candidate for president of the United States (*McCarthy v. Secretary of the Commonwealth*, 371 Mass. 667), the Massachusetts Supreme Judicial Court ruled that if signatures in excess of the required number have been filed with municipalities for certification, the Massachusetts secretary of state has the burden, when the proponents claim that a noncertified signature should have been certified, of establishing that certification was rightly denied, even though the secretary played no role in the original certification decision. To capitalize on this advantage, the Jillson plaintiffs had to identify uncertified signatures for which the secretary could not accomplish this burden in sufficient numbers to overcome the shortfall. In the meantime, their opponents were free to try to increase the shortfall by persuading the court to disallow signatures on the ground that they had been improperly certified.

To accomplish this task, MHC again drew upon the resources of its volunteers. A copying machine was brought to the office of the secretary of state, and all the petitions originally filed locally for certification outside Suffolk and Middlesex counties were copied, front and back, and segregated by cities and towns. Petitions from municipalities having substantial numbers of uncertified signatures were assigned to volunteers, whose job it became to obtain lists of registered voters and painstakingly compare them with disallowed signatures to establish a basis for asserting that the disallowance was not justified. Telephone books and city directories were also consulted, and where a signature was illegible, or an address did not correspond to the voting list, signers were called by telephone to establish that they had signed properly. Affidavits to that effect were prepared, and volunteers were dispatched to arrange to have them signed. The results of these efforts were brought to McDermott's office for evaluation and, if appropriate, for filing in court.

Trial of the case before Judge Martha B. Sosman did not begin until February 28, 1994, but meanwhile the Jillson plaintiffs won an important procedural victory. The law provides that when the required number of signatures on an initiative petition have been filed with the secretary of state on the first Wednesday in December, the petition is to be sent to the legislature at the beginning of its term the following January so that the legislature may begin its deliberation on the law proposed by the petition. Jillson had been advised on December 7, 1993, that the secretary, having determined that insufficient signatures had been filed, would not send the petition to the legislature. In early January the Jillson plaintiffs asked Judge Sosman to order the secretary to do so, and on

January 7 she issued such an order, ruling that it would not prejudice the opposition and that the Jillson plaintiffs had already established a likelihood of success in the litigation. The petition was thus before the legislature for consideration in the normal course.

The eight-week trial that began on February 28, during which Judge Sosman ruled on hundreds of signatures that the Jillson plaintiffs claimed should have been certified and hundreds more that their opponents claimed should not have been, was contentious. Both sides hired handwriting experts. In perhaps the most dramatic episode, the Jillson plaintiffs offered into evidence an affidavit of their expert stating that in his opinion several signatures in Quincy, which had been correctly identified by the opponents as forgeries, had been forged by one of the eleven persons appearing in opposition. The trial ended on April 22, 1994, when Judge Sosman, having found that the Jillson plaintiffs had established signatures exceeding the required number by 34 and that the opponents had no further signatures to challenge, entered judgment in favor of the Jillson plaintiffs. The opponents filed an appeal, but it had not been heard when, in January 1995, legislation was enacted that made the case academic. The Massachusetts Housing Coalition had, again by the slimmest of margins, overcome another obstacle.

The Massachusetts Constitution provides that if the legislature does not enact the proposed law before the first Wednesday in May (in 1994 this was May 4, and the legislature did not do so), the proponents may complete action on the petition by filing with the secretary of state not later than the first Wednesday of July — July 6 in 1994 — additional signatures of qualified voters “equal in number to not less than one half of one per cent of the entire vote cast for governor at the preceding biennial state election.” In 1994 this number was 11,714. The signatures were quickly collected by the experienced MHC volunteers and filed on July 1. On that day Jillson was notified that the signature requirement had been satisfied.

The Appeal from the Attorney General’s Certification

Ordinarily, filing the second round of signatures completes the requirements for getting an initiative question on the ballot. But nothing was ordinary in the Massachusetts Housing Coalition’s experience, and there remained an additional hurdle for the organization. This was the defense of an appeal, filed in the Supreme Judicial Court on March 8, 1994, by the city of Cambridge and six of its registered voters, challenging the legality of the attorney general’s certification of MHC’s petition. Jillson and the other nine original signers of the petition joined the case as intervenors.

Incensed that the city should be supporting the litigation with taxpayer money, MHC sent a delegation to meet with city manager Robert W. Healy and tell him so. The legal issue had been settled by the attorney general, they argued, and it was unfair for the city to force MHC, already bearing the legal expense of the signature litigation and facing the cost of a statewide ballot campaign in the fall, to incur further legal expense to defend a point it regarded as settled. Healy replied that he thought the city had the duty to test the legality of a certification decision that might overturn the rent control system which had been at the heart of the city’s housing policy for more than twenty years.

Since the facts in the case were not in dispute, it was submitted to the court on an agreed statement of facts, briefs, and an oral argument. Peter Sacks, in his brief for the attorney general, essentially repeated the argument that he had accepted in recommending certification of the petition: that by enabling all cities and towns in Massachusetts to adopt a system of rent control not previously authorized, however limited in

scope, the operation of the petition was not restricted to particular localities and thus did not contain an excluded matter despite its special impact on Cambridge and the other municipalities with rent control systems. The Boston law firm Hill & Barlow, representing the city, countered by arguing that the effect of the petition was essentially local and that the form of rent control authorized for all Massachusetts municipalities was "illusory."

Lead counsel for the Jillson intervenors was the Boston firm of Sherburne, Powers & Needham, which, through its partner Philip S. Lapatin, regularly represents the Greater Boston Real Estate Board. Working with this firm as a volunteer was Charles Fried, a former solicitor general of the United States and a professor at the Harvard Law School, now a justice of the Massachusetts Supreme Judicial Court, who was a strong opponent of rent control. The brief filed by this team of lawyers emphasized a line of reasoning entirely different from that adopted by Peter Sacks. Rent control, it was argued, is a matter of statewide, not local concern. This is the teaching of the 1970 *Marshal House* case referred to above, which ruled that the permission of the state through enabling legislation was required before a municipality could adopt rent control. The brief quoted from the court's opinion in that case.

It cannot be said that rent control has only local consequences. Whether an emergency exists in one community may be affected by conditions in neighboring areas. Regulation of rents in one community may have impact elsewhere on land use, new housing construction, the mortgage market, conveyancing practices, the adequacy and use of recording systems, and other similar matters.

It must follow, the brief argued, that if rent control has such nonlocal consequences as to require enabling legislation to adopt it, it cannot be excluded from the initiative process on the ground that it has only local effect. Sherburne, Powers, and Charles Fried wrote,

It is a strange kind of ratchet that would require consent of the people of the Commonwealth as a whole before a locality may impose rent control, but then that would foreclose, in the name of local autonomy, that same general authority from thinking better of it and withdrawing the consent wherever it had previously been granted.

This line of reasoning may prove no more than that the legislature could have banned rent control throughout the state, since it does not address the further question whether, in light of the particular localities limitation for initiative petitions, the same action can be taken through the initiative process. But it certainly offered the court an alternative basis for sustaining the attorney general's certification without having to address the troublesome issue of whether the limited form of rent control offered to municipalities by the petition was "illusory."

The case, argued before the court on May 5, 1994, was decided the following July 14. The court upheld the attorney general's certification, adopting the reasoning put forth by Sherburne, Powers, and Charles Fried rather than that of Peter Sacks (*Ash v. Attorney General*, 418 Mass. 344). The opinion of Chief Justice Paul J. Liacos for the court concludes as follows:

The rent control ban contained in the act, by its terms, applies to every municipality in the Commonwealth. Although it may appear to be a purely local issue, it is not. . . .

The Massachusetts Constitution (home rule amendment) has reserved the power to regulate the landlord-tenant relationship to the Legislature to the exclusion of municipal governments . . . It is within the power of a municipality to enact a rent control program only when the Legislature has explicitly delegated that power to the municipality. Thus, rent control is an issue of Statewide concern (p. 348).

It follows from this reasoning that an initiative petition which did no more than ban rent control in Massachusetts outright, as Jon Maddox's original draft had done, would have been constitutional. The opinion is thus a glorious vindication of Maddox's original analysis.

The Fall Election Campaign

Following its success in the litigation to meet the requirements for the first round of signatures, but before the second round of signatures had been collected and while the appeal from the attorney general's certification of the initiative petition was still pending, the Massachusetts Housing Coalition had begun preparation for the fall campaign for what was now to be called Question 9. When political consultant Dennis Dyer had volunteered to advise MHC during its initial signature drive, it had been in the expectation that if the question reached the ballot, his firm, Northeast Legislative Strategies, would be retained to manage the election campaign. In June 1994, MHC entered into a contract with the firm for this purpose. In August, campaign headquarters were established in Wakefield.

Dyer is an experienced political adviser who knows his business. Even before the results of polling and focus groups were available, he knew that a successful campaign would have to convey a positive message to voters; the resentment that the MHC volunteers felt from their own treatment under rent control was not transferable to an electorate that had not endured the same experiences. It is a commonplace among political professionals that voters on initiative questions, when in doubt, tend to vote no — to do nothing — rather than take a chance on a yes vote. MHC's campaign had to give the voters something on which they could vote yes. Dyer's skill was evident early, when he persuaded his future clients to adopt a name containing a warm and positive term like "homeowners" rather than a libertarian slogan after the fashion of Ross Perot. A considerable part of Dyer's job was to keep the campaign focused positively when the instincts of the volunteers were otherwise.

A telephone poll completed for the campaign in the spring of 1994 produced the important finding that women were more likely to support rent control than men. The latter could be moved by arguments about protecting property rights and about the bad economics of rent control; women were more concerned about fairness and helping people. This insight produced the central message that Dyer conceived for the campaign: that rent control is a well-intentioned but failed policy that unfairly benefits affluent tenants at the expense of property owners of modest means struggling to pay their mortgages. A yes vote would correct this injustice. The libertarian call to get government out of people's homes would be sounded, but it would be secondary.

This message is clearly reflected in the literature developed for the campaign. The principal handout told the stories of four small-property owners who had suffered under rent control. Barbara Pilgrim, an older black woman who supports herself and her invalid husband, was not permitted to collect rents that cover her mortgage and other costs

“even though,” the handout says, “one of her tenants can afford to winter in Florida and summer on the Cape.” Another black woman, Val Jean Cox, was told that she forfeited the exemption from rent control for her owner-occupied, three-family house when she had to move out temporarily to stay with her gravely ill mother in another city. Vinny Bologna and his young family were not permitted to live in a house he had renovated, but instead “they are crowded into [a] one-bedroom apartment and forced to rent out the house.” Helen and Peter Petrillo were told that they had lost their exemption as a three-family, owner-occupied building when they allowed their daughter and her family to move in after their daughter’s house burned down. The photographs of these property owners that accompanied their stories gave, as Denise Jillson said, “a face and heart to the campaign.” This handout material was included, with more detail on the effects of rent control, in the press kits that went to media editorial boards all over the state.

The libertarian emphasis was used mainly in visual material, where the more extensive message of fairness was not feasible. Thus there were bumper stickers showing a house in black and white with a red legend over it saying “Get Gov’t Out.” The campaign was able to make particularly effective use of yard signs in the same format, which were placed in large numbers throughout the state with the help of the industry’s extensive network of realtors and small-property owners.

The campaign could not afford statewide mailings, but representatives attended regular meetings of small-property owners throughout the state, and material was handed out as widely as the corps of volunteers would permit at shopping malls and other venues where large crowds gather. Meetings were held — usually with the persuasive Jillson present — with the editorial boards and key reporters of newspapers throughout the state. In the end, of all the state’s newspapers, only *The Boston Globe* and *The Patriot Ledger* opposed Question 9.

Only limited use could be made of the electronic media for lack of funds, but Dyer made the most of what he had. Media advertisements were carefully targeted to programs known to be watched by women. Dyer knew that money spent on talk show hosts like Jerry Williams, who were addressing an audience already likely to support Question 9, was largely wasted. He is critical of a Boston-based group supporting Question 9 for having spent a large amount of money for this purpose that could in his view have been used to better effect.

Dyer believes that when the theme of a campaign has been established, it should be repeated over and over again without deviation. Changing the message causes confusion among voters and invites the no vote that they tend to cast when they are unsure. The schedule of campaign activities was set up in advance on a day-by-day basis, and Dyer insisted that it be adhered to, subject only to modifications required by financial constraints. Jillson was entirely convinced that Dyer’s strategy and methods were right, but many of her MHC colleagues were not. Some thought the campaign literature was too weak in failing to attack prominent and well-compensated people who live in rent-controlled apartments, like Cambridge mayor Kenneth Reeves. Others bridled at the discipline Dyer imposed and thought him a petty dictator. During the campaign, the regular Sunday evening informational meetings of volunteers became what Thayer calls therapy sessions, as he and Jillson worked to keep the campaign in line with Dyer’s strategy.

They were rewarded by a narrow victory on November 8, when Question 9 carried the state by 1,034,594 votes to 980,723, or 51 percent to 49 percent. The question

was defeated in Cambridge, by 58 percent to 42 percent, and in Boston, but only by about 4,800 votes. It won in the other large counties in the eastern part of the state, especially Middlesex, where Boston's suburban voters delivered a plurality of almost 50,000. It fared worst in the western counties, whose distance from Boston caused the campaign message to be diluted.

On election night a potluck supper was arranged at the VFW Post on Huron Avenue, where volunteers could follow the returns on television. By midnight victory seemed assured, and most went home to bed. But some stayed on until all the returns were in, then celebrated by forming a small caravan to drive by the houses of Cambridge Civic Association city councillors and blow their car horns.

MHC's Resources

The success of Question 9 at the polls is not the end of the story, but before it continues, a brief look at the resources that made it possible for MHC to achieve its victory is in order. First, money. MHC raised and spent something over a million dollars, of which about 60 percent was spent on the Question 9 campaign in the summer and fall of 1994. The balance went largely to the expenses of the first signature campaign in the fall of 1993 (primarily the fees and expenses of National Voter Outreach) and the litigation that followed it (primarily the fees of counsel and handwriting experts). While about 75 percent of the contributions amounted to \$300 or less, implying wide grassroots support, the financial reports filed suggest that the real estate industry probably accounted for more than 75 percent of the dollars.

Real estate money was less important during the first signature drive. The Greater Boston Real Estate Board and its Rental Housing Association each contributed \$25,000 to this effort, and the Massachusetts Association of Realtors underwrote expenses of about \$10,000. But some \$70,000 came from other sources, much of it in small contributions and loans from SPOA members and supporters. After this drive, however, even before the successful conclusion of the litigation establishing additional signatures, the real estate industry supplied most of the money. The financial records show that approximately \$500,000 came from some fifty trade organizations and property owners and managers in contributions of \$4,000 or more. At least half again that amount must have come from similar sources in smaller contributions.

There is no question that such financial support was essential to the success of Question 9 (the Cambridge-based opponents of Question 9 appear to have raised and spent less than \$200,000), but it would be a serious mistake to believe that money alone produced the result. The indispensable ingredient was the corps of volunteers and their leaders. By the end of the campaign the network of volunteers was statewide — some recruited in parts of the state far from Cambridge by the leadership of the Massachusetts Rental Housing Association. But from the beginning and throughout, the core was in Cambridge. It is obviously not possible in a narrative of this kind to identify all the key volunteers and their activities. But some generalizations are possible.

With limited exceptions, these people did not belong to the ranks of the academics and professionals who, drawn by Harvard, MIT, and the other educational institutions of greater Boston, came to Cambridge from elsewhere and constitute the backbone of the CCA constituency. Most of them never supported CCA candidates. In the great divide that has characterized Cambridge politics since long before rent control came to the city, these people are the so-called independents.

Many of these volunteers had had unhappy personal experiences with rent control. But what angered and galvanized all of them was what they universally perceived as condescending indifference to their concerns by CCA city councillors and by the city's rent control apparatus and advocates for tenants, many of them students working in university-funded clinical programs. The resentment these people felt led to astonishing volunteer efforts. By the end of the campaign, they had become a disciplined army, fiercely loyal to their cause and bound together by the emotions of a shared experience in a camaraderie that is palpable to the observer.

Denise Jillson was the army's leader. Douglas Thayer, whom she identifies as a co-leader, contributed much to the Question 9 effort through his dedication, good judgment, and experience and contacts in the real estate industry, but he is the first to acknowledge Jillson's primary role. Jillson is a person of strong resolve and focus in her causes, which she pursues with calm persistence. Amy Miller, the very capable reporter for the *Cambridge Chronicle*, has written of her that she has "that kind of gentle voice that builds bridges."⁸ She seems wholly without vanity. When a group of her colleagues gave her birthday presents in the winter of 1994, she wrote them a note in which she said, "I should be thanking you for entrusting me with a wonderful and important project. . . . Remember, when we win, it belongs to everybody." She was careful to communicate with her troops. The regular Sunday evening meetings that took place throughout the campaign were well attended. Only at the end, when events were unfolding very fast on Beacon Hill and timely communication was not feasible, was there some erosion of confidence. Jillson's performance was extraordinary. The success of Question 9 could not have been achieved without her.

The Constitutional Challenge to the Ballot Procedure

The approval of Question 9 by the voters was not the end of the 1994 activity relating to rent control. Before the 1994 legislative session ended, the legislature passed and the governor signed a measure that protected disadvantaged tenants for a limited time after January 1, 1995. But before examining this development, a look at a legal challenge to the constitutionality of the ballot procedure itself is in order, since the pendency of this challenge affected what was happening on Beacon Hill.

The Massachusetts Constitution as it relates to initiative petitions provides that "[a] fair, concise summary . . . of . . . each law submitted to the people, shall be printed on the ballot." A form of ballot is included which says, "Do you approve of a law summarized below?" followed by boxes for a yes or no vote; and below that are the words "(Set forth summary here)."⁹ When this language came into the constitution, Massachusetts voters marked printed paper ballots. In more recent years, however, voting machines have become the norm, especially in larger municipalities. They are of two basic kinds: machines on which the voter expresses a choice by pushing a lever; and electronic voting systems, by which choices are expressed by marks read by optical scanning devices, or on punch cards, either directly or through marking units that cannot be removed from the voting booth.

To meet the constitutional requirement of a fair summary printed on the ballot for questions offered by initiative petition, the secretary of state was authorized, when it was not feasible to include a summary on a voting machine, to prepare separate ballots for initiative questions on which the summary could appear. But this eliminated the

advantages of faster tabulation made possible by voting machines, so in 1994 the legislature amended the law to read as follows:

When the state secretary shall determine that it is not feasible for the summary of any question or questions submitted to the people to appear on the voting machine, he shall prepare separate sheets of paper containing such summary and provide such sheets for each polling place . . . and one such sheet shall be furnished to each voter as he prepares to cast his vote by the use of such a machine.¹⁰

The obvious question is whether this procedure conforms to the requirements of the constitution.

On November 29, 1994, a group of registered voters filed suit in the Massachusetts Superior Court alleging that the procedure does not so conform. The court was asked to declare the vote on all the ballot questions null and void and, pending final decision, to restrain the secretary of state from certifying the results of certain of the ballot questions, including Question 9. Judge Hiller B. Zobel entered such a restraining order, accompanied by a brief opinion expressing his belief that the plaintiffs had a strong case. An appeal was immediately taken by the secretary of state to the Massachusetts Appeals Court, which left the restraining order in effect as to Question 9. The case then proceeded to the Supreme Judicial Court. There Justice Herbert P. Wilkins also continued the restraining order in effect. The case was argued before that court on December 22, and on December 27 the court announced, without opinion, its decision in favor of the secretary of state. The court's written opinion by Justice Wilkins explaining its reasons followed on March 9, 1995 (*Tobias v. Secretary of the Commonwealth*, 419 Mass. 665). In it the court declined to be bound to a literal reading of the constitution, finding instead that the procedure prescribed "fulfills the basic purpose of having each voter capable of informing him or herself concerning the questions on which that voter may vote" (p. 676).

The outcome was not a surprise, but no one could be certain of it during the weeks that transitional legislation was pending on Beacon Hill. Judge Zobel's opinion had looked strongly in the other direction, and as will be clear to any reader of the opinion of the Supreme Judicial Court, the court had to repudiate earlier decisions of its own that interpreted the ballot provisions of the constitution very narrowly. This uncertainty influenced legislative strategy on both sides.

If the law proposed by Question 9 were lost by an adverse court decision in the ballot case, there would be no law to override the Cambridge rent control statute unless the legislature passed one. The supporters of Question 9 knew that if they could get transitional rent control legislation acceptable to them, Cambridge's existing rent control system would be at an end whatever happened in the ballot case. This was an important part of their motivation in seeking such legislation.

The Passage of Transitional Legislation

During the summer and fall of 1994, as the November 8 vote on Question 9 approached, a consensus was developing among responsible owners and managers of rental properties that some transitional arrangements would be needed to protect vulnerable tenants if Question 9 passed. As early as July, the Alliance for Change, the city's new political organization offering an alternative to the Cambridge Civic Association

and reflecting the views of the city's real estate interests, had proposed the establishment of a city-funded rent subsidy program to "provide housing subsidies for lower-income and elderly rent control tenants adversely affected by any change to our current rent control system." This was to be accompanied by a "pledge" by landlords to disadvantage tenants that rent increases would not exceed inflation while such a program was being put into effect. A rent subsidy program and the accompanying pledge never materialized, but the fears of responsible representatives of the real estate industry — that an irresponsible minority would promptly evict low-income and elderly tenants, attracting widespread media attention with unpredictable political consequences — persisted, and other means of preventing this were considered.

Jillson and Thayer were aware of and sympathetic to this thinking, but as the proponents of a ballot question that would for all practical purposes have terminated rent control in Cambridge entirely, they were careful to distance the Massachusetts Housing Coalition from any proposals resulting from it. Meanwhile it was necessary to prepare for the legislative activity they knew lay ahead. MHC, which had been created to raise and expend funds for the initiative petition, could not legally do the same for this legislative activity. MHC's continued existence could be for no purpose other than to retire its debt. A new organization called Massachusetts Homeowners Coalition II (MHC II), was formed to raise and expend funds for the upcoming legislative effort. It ultimately raised about \$80,000, which it spent primarily on the fees of consultants and lobbyists. Dennis Dyer's firm was kept on to supervise legislative strategy. The Boston lobbying firm of Coyne, Kennedy & Kerr — William Coyne was the key player — was retained. William McDermott, MHC's counsel in the signature litigation, acted as counsel for MHC II. Jillson and Thayer were ready with their team of advisers when the legislative phase began.

On November 20, after more than a week of turmoil at City Hall, the Cambridge City Council passed a home rule petition asking the legislature to extend, with certain exceptions, the protection of rent control for five years in units occupied by elderly tenants and families with children whose income did not exceed 90 percent of the median for the Boston metropolitan area. MHC II did not like this proposal for several reasons. The maximum tenant income requirement for continued protection was, they thought, too high. The five-year period was too long. And the petition had been carefully drafted to permit the city council to reimpose the existing rent control system if Question 9 were nullified in the pending ballot litigation or for any other reason. MHC's first transitional priority was to kill the Cambridge proposal. This was accomplished when the proposal passed in the state Senate by only two votes and was vetoed by the governor.

It was then time for the real estate interests to put forward their own proposal, and on December 16, 1994, Robert L. Nash, the executive vice president of the Massachusetts Association of Realtors, sent Governor Weld draft legislation that would have extended rent control protection to tenants with incomes of not more than 60 percent of the median for the Boston metropolitan area through 1995 for condominiums and units in buildings with three units or less and through 1996 for all other units, subject to vacancy decontrol in the meantime. The Nash proposal was never introduced as such into the legislature, but it set forth the basic position of MHC II and the real estate industry in the negotiations with tenant advocates that followed.

The position of tenant advocates was expressed in a bill introduced in the House by representative John E. McDonough and passed by it on December 27, the day the Supreme Judicial Court announced its decision upholding the constitutionality of the

ballot procedure. This measure, which participants in the negotiations referred to as the McDonough bill, differed from the Nash proposal in two important respects: it extended rent control protection to certain categories of tenants in all units for two years and, far more significantly, it extended protection not only to low-income tenants but to all tenants sixty-two and over and disabled tenants regardless of income. These differences became the battleground in the negotiations that followed.

Before the differences were resolved, there were other developments that together created the complex and dramatic environment in which their resolution took place. The first of these was a revolt among some of the SPOA leadership. These people had been aware of the desire within the real estate industry for transitional arrangements to protect vulnerable tenants if Question 9 prevailed, but they had not realized the extent to which Jillson and Thayer had allied MHC II with industry efforts to that end. In late December, Jillson, who with Dennis Dyer and the lobbyists and lawyers for MHC II had been participating with representatives of the real estate industry in necessarily confidential strategy sessions and in negotiations with tenant advocates, felt she had to give SPOA an idea of what was going on. When she did so, some of SPOA's leaders, including cochairperson Linda Levine, Jon Maddox, and David and Aline Sullivan, who saw no reason for any compromise when total victory had been won at the polls, were angry at what they viewed as Jillson's secretive collaboration with the enemy. Throughout the final legislative negotiations, Jillson had to fight a rearguard action against those who had been her closest allies.

Circumstances were further complicated by what was going on in the Supreme Judicial Court. The court had ruled on December 27 that the ballot procedure established for the initiative questions was legal, but it had been careful to state that the ruling did not extend to the question of whether the procedure had in fact been followed. The plaintiffs in the case asserted that they could show departures from the prescribed procedure (for example, failure to furnish a copy of the separate printed summary to every voter) widespread enough to cast doubt on the outcome of certain ballot questions where the result was close, including Question 9. They wanted a trial on these issues, and they asked the court to continue in effect the restraining order against the implementation of Question 9 until such a trial could be completed, possibly a matter of several months.

In considering the issuance of a restraining order of this kind, a court weighs the likelihood of the moving party's success at trial against prejudice to the other party if the order is issued. On December 29, Justice Wilkins, aware of the legislative process in progress on Beacon Hill, extended the restraining order through January 3, the last day of the legislative session, noting that "the plaintiffs have a difficult, but not impossible, task of demonstrating that departures from the prescribed procedures were reasonably likely to have affected the result of Question 9." No one knew what Justice Wilkins would do if the question of extending the order came before him again after the legislature had failed to act, but it was certainly possible that the proponents of Question 9 could be facing a long delay in its implementation and the prospect, however unlikely, that it would be nullified altogether. These risks increased the pressure on them to accept a legislative solution.

One further event influenced the endgame on Beacon Hill. Governor Weld had originally signaled support for the McDonough bill if it was backed by the interests that had supported Question 9. These interests, spoken for by Nash and Jillson, promptly made it clear that the McDonough bill did not have their support, and the governor

stated publicly that he would not sign any measure that they did not accept. "If they are satisfied, I am satisfied," he said. "I am almost a spectator here."¹¹

So this is where matters stood as the participants entered the final days of the 1994 legislative session. On the one hand, the real estate interests did not have the votes in the legislature to pass the Nash proposal; on the other hand, the governor had promised to veto the McDonough bill. Thus each side could prevent the enactment of a law unacceptable to it, but neither had the power to achieve acceptable legislation without the cooperation of the other. Yet both sides had reason to want a legislative solution. The real estate interests still feared possible abuses by irresponsible landlords, with attendant publicity and resulting political risk; and the threat of continuation of the ballot litigation persisted. Tenant interests wished to protect vulnerable tenants from the threat of sudden rent increases and evictions.

This complex situation worked itself out over the last days of 1994 and the first of 1995. Progress was slow until Tuesday, January 3, 1995, the last day of the legislative session. Negotiations continued all through the afternoon and evening of that day. Representative McDonough was the principal participant on behalf of tenants. The central actors for the landlord interests were Nash and Edward Shanahan, representing the principal real estate trade organizations, Lapatin as their counsel, Coyne and William Delaney, Jr., the lobbyists representing, respectively, MHC II and the town of Brookline, and of course, Jillson. The evening grew later, and failure seemed likely. But as midnight neared, agreement was reached.

On the crucial issue of the required income level for elderly and disabled tenants, the negotiators split the difference: income of not more than 80 percent of the median for the Boston area would be required for protected status. The landlord interests got what they wanted on the issue of time limits, more in the case of small owner-occupied buildings than in the Nash proposal. The protected categories of tenants would enjoy continued rent control through 1995 if they lived in a condominium, in a building with three units or less, or in an owner-occupied building with more than three but not more than twelve units. Protection would expire for all other units at the end of 1996. During the period of protection, landlords could raise rents by 5 percent a year and could in any event collect as rent up to 30 percent of the combined incomes of all persons residing in a unit. All other forms of rent control were prohibited.

At two minutes before midnight, the president of the Senate brought down his gavel to complete the enactment process, and the following morning Governor Weld signed the compromise into law as Chapter 282 of the Acts of 1994. The statute applied to all cities and towns in Massachusetts having rent control without the necessity of local acceptance. It superseded the law enacted by Question 9, and thus made academic the pending case involving the ballot procedure.

There were many people observing the drama in the State House that night, including most of the original signers of the initiative petition, whom Jillson had asked to come. After all the emotion, they were slow to drift out into the clear, crisp winter night, and it was almost one o'clock before Jillson left. She and Salim Kabawat had been offered a ride to Cambridge by Dennis Dyer. As he went out to bring around his car, they lingered, tired but satisfied in the warm glow of the State House, sitting on a landing of the chandeliered marble staircase that leads from the upper floors of the building to the lobby. A woman neither of them knew passed them, walking down. At the next landing she looked back and asked, "Denise Jillson?" Jillson nodded. The woman said nothing more, but turned and continued down the staircase.

The Aftermath

There is universal agreement among those knowledgeable about housing policy in Cambridge that it will be years before the full effect of the repeal of rent control on the city's housing profile and demography is clear. By the end of 1995, however, a year after the repeal, some early consequences were apparent, and this account closes with a summary of them.

First, the effect of the transitional legislation. In early 1995, the Cambridge Rent Control Board invited tenants entitled to do so to establish so-called protected status by filing a form verifying their income level and, if applicable, age and disability. The board's records show that at the end of 1994, when rent control ended, there were approximately 16,200 controlled units in Cambridge. As of December 31, 1995, tenants in only 1,523 of these units (9.4%) had established protected status.

No one is quite sure why this number is so low. To be sure, the income eligibility limit is strict. For a tenant occupying a unit alone it is \$21,550 (\$27,950 if the tenant is elderly or disabled). For a family of four the limit on the income of all family members is only \$30,800 (\$39,900 if any family member is elderly or disabled). Moreover, it is widely assumed that many tenants entitled to protected status did not bother to establish it because their landlords did not raise their rents beyond the modest levels permitted by Chapter 282. But even with these explanations, the dramatically low percentage of formerly controlled units whose tenants established protected status gives credence to the assertion of opponents of rent control that it had become an entitlement program for middle- and upper-income tenants.

The end of rent control prompted the city to review its existing housing programs to determine whether additional initiatives should be undertaken. For many years the city's community development department has administered programs to increase housing available for low- and moderate-income residents, primarily through the acquisition and rehabilitation of substandard properties by not-for-profit entities with financial support from the city. These programs have been financed largely with federal funds, but partially with moneys contributed by the city in the form of fines collected in rent control enforcement proceedings and, to a limited extent, budget appropriations. Total expenditures have amounted to some \$2 million a year and resulted in adding fifty to one hundred units a year to the affordable housing stock.

In the spring of 1995 the city council approved a recommendation by the city manager that an additional \$2 million be appropriated for this purpose in each of the next ten years. In addition, the community development department stepped up efforts to help tenants to become home buyers through financial counseling, encouraging loans from Cambridge banks on favorable terms and in some cases assisting with closing and rehabilitation costs. In the municipal election campaign in the fall of 1995, it became apparent that some city councillors were prepared to support the expenditure of substantially more city money — as much as \$10 million a year — for housing purposes.

The fall election provided the first indication of the effect of the end of rent control on the city's politics. In the 1990s the CCA has been the dominant force, regularly electing its endorsed candidates as a majority of the city council by comfortable margins. After the 1993 election, the non-CCA councillors had caused the defection of Mayor Reeves from the CCA by joining with him to elect him as mayor, and in 1995 CCA councillor Jonathan Myers did not seek reelection. These circumstances, together

with the expectation that many tenants who had supported CCA-endorsed candidates had left the city, led the CCA's rival, the Alliance for Change, to believe that a candidate endorsed by it could win the seat vacated by Myers. The presence in the race on the Alliance ticket of James C. McSweeney, who had come closest of all the defeated candidates to election in 1993, encouraged this belief. But it was not to be. Myers's seat was handily won by CCA-endorsed candidate Henrietta Davis, a four-term member of the school committee, making her first run for the city council. The total vote was down from 1993 by more than 13 percent, but the CCA incumbents, excluding Reeves, who ran without endorsement from either the Alliance or the CCA, received 17 percent more number one votes than in the prior election. Fewer votes transferred from defeated CCA-endorsed candidates were therefore needed by them to reach the quota required under the city's proportional representation system, making more transfers available for Davis. The conclusion to be drawn from all this is that the end of rent control does not seem to have altered significantly the political profile of Cambridge.

Finally, as 1995 came to an end, an attempt to reverse the effect of Question 9 by putting rent control on the ballot again in the 1996 state election expired with no more than a whimper. In August the attorney general was persuaded to certify as complying with the state constitution a measure entitled "Community Empowerment Act," which authorized among many other things the imposition of rent control by municipalities. Proponents of Question 9 filed suit challenging the certification on the grounds that the constitution does not permit an initiative petition to appear on the ballot if it proposes a measure "substantially the same as any measure which has been qualified for submission or submitted to the people at either of the two preceding biennial state elections."¹² But the lawsuit became moot when the proponents of the Community Empowerment Act failed to organize a meaningful signature drive and did not submit any signatures to the secretary of state by the December 6 filing deadline.

The collapse of this effort seemed almost an anticlimax, for rent control, which had dominated political debate in Cambridge since 1970, had already virtually disappeared as a political issue in the city in the aftermath of Question 9. There was no mention of it in the platform of the CCA in the fall election, and it was largely ignored by the candidates. This sudden silence — astonishing, really, in light of the high-decibel acrimony that surrounded the issue for so many years — suggests that the supporters of rent control are, for the foreseeable future at least, content to accept its repeal. ■

Notes

1. Massachusetts Constitution, Amendment 48, Initiative.
2. *Ibid.*, part 2, section 2.
3. *Ibid.*, Amendment 89, section 7.
4. *Florida Statutes Annotated*, section 166.043 (West 1987).
5. Initiative 93-19, "An Act to Prohibit Rent Control in Massachusetts Except Where Voluntary, Following an Initial 6-Month Period."
6. Massachusetts Constitution, Amendment 48, Initiative, part 5, section 1.
7. *Ibid.*
8. Amy Miller, "Local Mom Led Drive to Kill Rent Control," *Cambridge Chronicle*, December 29, 1994, City Side, 1.
9. Massachusetts Constitution, Amendment 48, General Provisions, part 3.
10. 1994 Massachusetts Acts 129.
11. Donna Sue Wong and John Ellemont, "Bill Extending Rent Control under Attack," *Boston Globe*, December 29, 1994, 57.
12. Massachusetts Constitution, Amendment 48, Initiative, part 2, section 3.