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Bulldog Investors General Partnership v. Massachusetts
Brief Amici Curiae Of CATO Institute,
Competitive Enterprise Institute, et al.,
In Support Of Petitioners

by [Cato Institute](#) on 3/5/2012

The Massachusetts Uniform Securities Act prohibits general solicitation and advertising by anyone offering unregistered securities, ostensibly for the purpose of furthering state and federal disclosure schemes. Yet this ban on public communications has been applied so broadly that it has undermined those purported disclosure goals. For instance, the ban has prevented individuals who have no interest in investing in any security — such as journalists, academics, students, and others who are not wealthy or financially sophisticated — from receiving truthful, non-misleading information about hedge funds. In *Bulldog Investors v. Massachusetts*, an investment company maintained an interactive website that provided information about its products. Because Bulldog was not registered in Massachusetts, however, the State filed an administrative action against the firm, demanding it take down its online content. In response, Bulldog joined a group of other firms and individuals — including some who have no interest in investing but wish to read the website information — in a lawsuit claiming that the Massachusetts ban violates their First Amendment rights. The Supreme Judicial Court of Massachusetts upheld the ban, so the plaintiffs have asked the U.S. Supreme Court to take the case. Cato, along with the Competitive Enterprise Institute and a group of journalists and academics, filed an amicus brief supporting that request and arguing that the Massachusetts law is an unconstitutional ban on free speech. We show that the state's claim that the ban furthers a larger federal regulatory scheme ignores the judgment of many federal officials (from both parties) who have concluded that such bans undermine these goals. The state's alleged disclosure interest is just a pretext for coercing companies to register in Massachusetts, and is therefore an unconstitutional attempt at circumventing federal preemption. But even if the ban furthers a legitimate state interest, it is so broad that it has substantially chilled both truthful, non-misleading commercial speech and noncommercial speech alike. A law so repugnant to the First Amendment cannot stand.

Please see full brief below for more information.