

# HOUSE . . . . No. 595

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By Messrs. Casey of Boston and Mitchell of Fall River, petition of Bernard P. Casey and John R. Mitchell relative to limiting service charges when passes are used for admission to certain exhibitions and to horse and dog races. Legal Affairs.

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## The Commonwealth of Massachusetts

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In the Year One Thousand Nine Hundred and Thirty-Eight.

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AN ACT TO LIMIT THE AMOUNT COLLECTED FOR A SERVICE CHARGE, SO CALLED, WHEN A PASS IS USED FOR ADMISSION TO CERTAIN EXHIBITIONS AND TO HORSE AND DOG RACING MEETINGS.

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

1 Chapter one hundred and forty of the General Laws  
2 is hereby amended by inserting after section one hun-  
3 dred and eighty-two A, as appearing in the Tercen-  
4 tenary Edition, the following new section:—

5 *Section 182B.* No person conducting any theatri-  
6 cal exhibition, public show, public amusement or  
7 exhibition, horse or dog racing meeting, for admis-  
8 sion to which a pass is issued, shall charge more than  
9 ten cents for a service charge, so called, for the use of  
10 such pass. Violations of this section shall be punished  
11 by a fine of not more than five hundred dollars.

The House of Representatives of the United States of America, in Congress assembled, do hereby certify that the following is a true and correct copy of the report of the Committee on the Judiciary, in relation to the case of *John Doe*, as shown by the records of the said House.

### The Constitutionality of the Act

In the year 1862, the Congress of the United States passed an act, the title of which was "An Act to amend the several Acts relating to the duties on the importation of certain foreign goods, and to provide for the collection of the duties thereon." The act was signed by the President of the United States, and it was the duty of the Executive Department to execute the same. It was, however, alleged that the act was unconstitutional, and that the President was bound to withhold it from the public. The question was presented to the Supreme Court of the United States, and the Court, by a majority of five to four, held that the act was constitutional, and that the President was bound to execute the same. The majority opinion was delivered by Chief Justice Roger Taney, and it was based on the following grounds: First, that the act was within the power of Congress, as granted by the Constitution; second, that the act was not repugnant to any of the provisions of the Constitution; and third, that the act was necessary and proper for the execution of the powers granted to Congress. The dissenting opinion was delivered by Justice Samuel Miller, and it was based on the following grounds: First, that the act was not within the power of Congress, as granted by the Constitution; second, that the act was repugnant to the provisions of the Constitution; and third, that the act was not necessary and proper for the execution of the powers granted to Congress. The Supreme Court's decision was affirmed by the United States Circuit Court of Appeals for the District of Columbia, and the act was finally executed by the Executive Department.