

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 07-2159

ALAN S. NOONAN,
Plaintiff-Appellant

v.

STAPLES, INC.,
Defendant-Appellee

**APPELLANT'S OPPOSITION TO
MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE**

Alan S. Noonan, by his counsel, opposes the filing of the proposed amicus brief on the grounds that the constitutional issue briefed was neither raised in the trial court nor in Staples' appellate brief and was barely flagged in Staples' opposition to rehearing. This Court has already held the issue waived. *Noonan v. Staples*, No. 07-2159, slip op. at 15 n.10 (1st Cir. Feb. 13, 2009), citing *Johnson v. Mahoney*, 424 F.3d 83, 96 (1st Cir. 2005).¹

Respectfully submitted,

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¹Appellant respectfully suggests that the correct pinpoint citation in *Johnson v. Mahoney* is 93 n.10 rather than 96.

Certificate of Service

I certify that I have today served the foregoing on counsel for Appellee and counsel for Amici Curiae by fax and by mailing same, first class postage prepaid, to: Ariel D. Cudkowicz, Seyfarth Shaw, LLP, Two Seaport Lane, Suite 300, Boston, MA 02210 and to Robert A. Bertsche, Esq., Prince Lobel Glosky & Tye, LLP, 100 Cambridge Street, Suite 2200, Boston, MA 02110.

Date

Wendy Sibbison, Esq.