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Luciana Iudiciani
360 Andover Street, Unit 2102
Danvers, MA 01923

Re: Initiative Petition No. 21-02, Petition to Ban Smoking in Multi Living Housing Units in the State of Massachusetts

Dear Ms. Iudiciani:

In accordance with the provisions of Article 48 of the Amendments to the Massachusetts Constitution, we have reviewed the above-referenced initiative petition, which was submitted to the Attorney General on or before the first Wednesday of August this year. I regret that we are unable to certify that the proposed law complies with Article 48. Our decision, as with all decisions on certification of initiative petitions, is based solely on art. 48's legal standards and does not reflect the Attorney General's policy views on the merits of the proposed law.

Below, we describe the proposed law and then explain why we cannot certify it because it does not "propose a law" in proper form for submission to the people, as required under Article 48. See Amend. Art. 48, The Init., Pt. II, § 3.

Description of Petition

This petition requests that smoking be prohibited in multiple-units housing developments. It adds that second-hand smoke has detrimental health effects and that the proposed law would apply to cigarettes, cigars, pipes, vaping devices, and cannabis.

The Proposed Law is Not in Proper Form for Submission to the Voters

The Attorney General's duty of certification under Amend. Art. 48 requires her to determine whether "the measure and the title thereof are in proper form for submission to the people." See Amend. Art. 48, The Init., Pt. II, § 3. An initiative petition that does not propose a law (or a constitutional amendment) is not in proper form for certification by the Attorney General. See Amend. Art. 48, The Init., Part II, § 1 ("An initiative petition shall set forth the full



text of the ... law ... which is proposed by the petition.”); Paisner v. Attorney General, 390 Mass. 593, 598-599 (1983) (to be in proper form for submission to the voters, initiatives under Article 48 must propose either a constitutional amendment or a law). For purposes of Article 48, the Supreme Judicial Court has described a law “as including a measure with binding effect, or as importing ‘a general rule of conduct with appropriate means for its enforcement by some authority possessing sovereign power over the subject; it implies command and not entreaty.’” Mazzone v. Attorney General, 432 Mass. 515, 530-31 (2000) (citing Opinion of the Justices to the House of Representatives, 262 Mass. 604, 605 (1928)).

This petition does not propose a law that voters could enact without further legislative implementation. Rather, it urges the enactment of legislation to ban smoking in multi-family residences. Initiative petitions brought under Art. 48 are not requests for the Legislature to act but rather are laws (or constitutional amendments) proposed by citizen-legislators. As such, they must be capable of enactment in the exact form in which they are presented to voters. This petition does not propose a law that voters could vote to enact without further legislative implementation. Thus, the measure does not meet the definition of a “law” set forth in Mazzone. It is simply a “nonbinding expression of opinion” and not a “law” that may be proposed via art. 48. See Paisner, 390 Mass. at 601.

For this reason, the Attorney General’s Office is unable to certify that Petition No. 21-02 meets the constitutional requirements for certification set by Amendment Article 48.

Very truly yours,



Anne Sterman
Deputy Chief, Government Bureau
617-963-2524

cc: William Francis Galvin, Secretary of the Commonwealth