



MAURA HEALEY  
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

TEL: (617) 727-2200  
[www.mass.gov/ago](http://www.mass.gov/ago)

September 1, 2021

Kirstin Beatty  
149 Central Pk. Dr.  
Holyoke, MA 01040

Re: Initiative Petition No. 21-16, Initiative Petition for a Constitutional Amendment  
Relative to Public Knowledge of Conflicts of Interest of Government Officers and  
Candidates Thereof

Dear Ms. Beatty:

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 constitutional amendment complies with Article 48. Our decision, as with all decisions on certification of initiative petitions, is based solely on Article 48's legal standards and does not reflect the Attorney General's policy views on the merits of the proposed constitutional amendment.

Below, we summarize the proposed constitutional amendment and then explain why Article 48 precludes its certification. Article 48, the Initiative, Part 2, Section 2 provides in pertinent part that "[n]o measure that relates to ... the ... removal ... or compensation of judges ... shall be proposed by initiative petition[.]" As explained below, the proposed constitutional amendment relates to the removal and compensation of judges.

The petition contains two main sections; Section 1 contains the bulk of the substantive provisions in 12 subsections. Section 2 provides that if any of the proposed constitutional amendment's sections were to be declared invalid, the other parts would remain in effect.

Section 1, Section 1 defines key terms used in the proposed constitutional amendment, including "state officer." "State officer" is defined to mean "every person holding a position of public trust in or under an executive, legislative, or judicial office of the state." The section further makes explicit that state court judges are included within the definition of "state officer."



Section 1, Section 2 creates a new state agency tasked primarily with receiving, reviewing for compliance, and summarizing for the public the disclosures submitted by state officers pursuant to the proposed constitutional amendment. This section also gives this new agency the power to conduct audits into disclosures to determine their accuracy.

Section 1, Section 3 explains the disclosure requirements that apply to state officers. State officers would be required to file complete financial disclosures, two hard copies of income tax returns for the three most recent years in which a return was filed, and a disclosure of potential favoritism. State officers would also be required to sign a written consent allowing disclosure of redacted tax returns to the public.

Section 1, Section 4 requires state officers to provide disclosures not just for themselves but also for their spouse and “relatives within the second degree of consanguinity.” These family disclosures differ from those filed by the state officer herself in that (1) relatives within the second degree of consanguinity need not disclose a dollar figure for any information disclosed; (2) the family member may redact her name “unless there is a direct or indirect financial interest of the [family member] in matters under the influence of the officer.” Family members may redact sensitive information to the extent permitted for state officers.

Section 1, Section 5 provides that state officers must file their disclosures at the time they file nomination papers for their office. Write-in candidates must file disclosures within five days of accepting their nomination. Elected officers would also have to annually disclose their tax return by the last Tuesday in May.

Section 1, Section 6 requires the office created by Section 1, Section 2 to make certain information from disclosures publicly available, including (1) a list of all officers; (2) “initial summaries” of each officer’s disclosure; (3) “histories” of each officer; (4) “in-depth reporting” on each officer; and (5) upon request by a member of the public, redacted versions of the disclosures.

Section 1, Section 7 imposes Section 1, Section 3’s disclosure requirements on members of the U.S. House of Representatives and U.S. Senate from Massachusetts (as well as candidates for those offices) and on the Vice President and President of the United States (and candidates for those offices). Unlike state officers, candidates for U.S. Senate, Vice President, and President must file tax returns for the six most recent years in which they were required to file.

Section 1, Section 8 provides two avenues by which the provisions of this constitutional amendment could be made applicable to municipal officers: by the Legislature passing a statute to that effect, or, upon the Legislature granting a petition made to it by an individual municipality.

Section 1, Section 9 provides that officers must submit their disclosures under the pains and penalties of perjury. For state and federal officers, non-compliance results in removal of the candidate’s name from the ballot, and “no officer shall be allowed to continue his or her duties or

to receive compensation from public funds unless the officer has filed disclosures as required by this Article.”

Section 1, Section 10 permits the office created by this constitutional amendment to conduct audits to confirm the validity of individual disclosures.

Section 1, Section 10<sup>1</sup> directs the office created by this constitutional amendment to ensure the security of sensitive personal information redacted from disclosures.

Section 1, Section 11 provides that the office created by this constitutional amendment has the duty to report non-compliance with the requirements of this constitutional amendment to the public and to the relevant law enforcement authorities for possible enforcement. This section also directs the Legislature to create an “independent, non-partisan procedure allowing for appeal to the judicial branch ... to determine whether failure to report constitutes a potentially serious conflict of interest ... and which thus is grounds for removal.”

Section 1, Section 12 provides that “multiple avenues” should exist for whistleblowers to disclose information that an officer was required to disclose but did not.

Amended Art. 48, Init., pt. 2, § 2 states that “[n]o measure that relates to . . . the . . . removal . . . or compensation of judges . . . shall be proposed by an initiative petition[.]” Section 9, Paragraph 3 of the Petition contains the following provision: “Where within the purview or jurisdiction of the Commonwealth, no officer shall be allowed to continue his or her duties or to receive compensation from public funds unless the officer has filed disclosures as required by this Article” (hereinafter, the “penalty provision”). Section 1 of the Petition defines the term “officer” as including “all judges of the Massachusetts court system.”<sup>2</sup>

Since Massachusetts state court judges are “officers” for the purposes of the Petition and would presumably be “within the purview or jurisdiction of the Commonwealth,” the penalty provision would subject them to a loss of compensation and removal in the event they did not comply with the Petition’s disclosure requirements. Neither the penalty provision nor any other of the Petition’s provisions contain an exception for state court judges. Moreover, the penalty provision is critical to the effective implementation and enforcement of the Petition’s disclosure regime – especially with respect to state court judges, since state court judges do not appear on a ballot and therefore cannot have their name removed from the ballot. As a result, it cannot be said that the penalty provision only affects the removal and compensation of state court judges in an incidental or tangential way; rather, the penalty provision is a crucial to effectuating the Petition’s objective.

For this reason, the Attorney General’s Office is unable to certify that Petition No. 21-16 complies with Article 48.

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<sup>1</sup> Due to an apparent typographical error, the Petition includes two sections numbered Section 10 within Section 1.

<sup>2</sup> The Petition’s definition of “officer” includes “state officer,” which, in turn, includes “all judges of the Massachusetts court system.”

Kirstin Beatty  
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Very truly yours,



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

cc: William Francis Galvin, Secretary of the Commonwealth