THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

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

September 1, 2021

Harold Hubschman
11 Linden Pl. #2
Brookline, MA 02445

Re: Initiative Petition No. 21-26, Initiative Petition for a Law Relative to Zero Emission Vehicles, Zero Emission Home Heating Systems, and Home Solar Powered Electricity [Version D]

Dear Mr. Hubschman:

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 Article 48's legal standards and does not reflect the Attorney General's policy views on the merits of the proposed law.

Below, we summarize the proposed law and then explain why Article 48, the Init., Pt. 2, § 3, which requires that a proposed law "contain[] only subjects . . . which are related or which are mutually dependent," precludes its certification. As explained below, though all provisions of the proposed law relate to offering tax credits and point of sale rebates for the purchase of eligible electric vehicles, for converting "legacy high emission vehicles" to electric vehicles, and for the purchase and installation of eligible home improvement systems (including eligible high efficiency heat pumps, eligible solar power systems, and eligible energy storage systems) to reduce carbon emissions, the proposed law requires that the eligible electric vehicles and eligible home improvement systems be "manufactured in the United States by workers who are represented by a labor organization." Accordingly, the petition cannot reasonably be viewed as "contain[ing] a single common purpose and express[ing] a unified public policy." Anderson v. Att'y Gen., 479 Mass. 780, 791 (2018).

Sections 3 through 8 of Petition No. 21-26 all pertain to incentivizing a taxpayer, who replaces/converts their legacy high emission vehicle with/to an electric vehicle, while Sections 9 through 13 pertain to incentivizing a taxpayer, who purchases and installs an eligible home improvement system. Sections 2, 14, 15, and 16 of the proposed law establish the ground rules for (1) collecting and distributing the zero emission universal funds, and (2) claiming tax credits and point of sale rebates. Finally, Sections 17 through 21 are housekeeping provisions regarding

administering, improving upon, reporting on, and implementing the proposed law.

Section 1 of the proposed law defines what would qualify as an "eligible purchase." Specifically, to be eligible for a tax credit or point of sale rebate under the proposed law, the eligible purchase must be a product "manufactured in the United States by workers who are represented by a labor organization."

While both the advancement of electric vehicles and zero to low emission home improvement systems relate to a common purpose, namely, incentivizing taxpayers to reduce carbon emissions, the concomitant obligation that the eligible electric vehicles and eligible home improvement systems be "manufactured in the United States by workers who are represented by a labor organization" directly joins "alluring" provisions to "controversial" provisions in a way that would likely confuse the average voter. Carney v. Att'y Gen., 447 Mass. 218, 228-29. That is, the measure includes "alluring" provisions like tax credits and point of sale rebates with "controversial" measures like requiring products to be manufactured not only in America but also by workers represented by a labor organization. Conceptually, reducing carbon emissions in furtherance of Massachusetts' climate change goals is distinct from an established preference for union labor and domestically manufactured goods such that they are "separate public policy issues." Gray v. Att'y Gen., 474 Mass. 638, 648-49 (2016).

The "related subjects requirement [of Art. 48, Init., pt. 2, § 3, as amended by art. 74] is not satisfied by a conceptual or abstract bond," however, and at an "operational level," this petition joins a proposed policy of increasing access to and demand for zero emissions products with a proposed policy of rejecting international trade standards and favoring unionized labor. See Gray, 474 Mass. at 648-49. The inclusion of these distinct and vast concepts in a single petition prevents voters the opportunity to assess a "unified statement of policy." Id. at 649. Rather, as in Gray, "because the issues combined in the petition are substantively distinct, it is more likely that voters would be in the 'untenable position of casting a single vote on two or more dissimilar subjects,' which is the specific misuse of the initiative process that the related subjects requirement was intended to avoid." Id. (quoting Abdow v. Att'y Gen., 468 Mass. 478, 499 (2014), and citing Carney, 447 Mass. at 229-31). Further, these two concepts do not complement each other. That is, a preference for U.S. made products and union labor services does not necessarily encourage the purchase or installation of zero emissions products. Similarly, incentives to purchase and install zero emissions products does not necessarily encourage a preference for U.S. made products or union labor. See -Anderson v. Att'y Gen., 479 Mass. 780, 798 (2018); see also Dunn v. Att'y Gen., 474 Mass. 675, 680 (2016). Neither is the condition practically designed to increase supply of the contemplated eligible products available for purchase by taxpayers wishing to take advantage of the tax credits and rebates. Id. The relationship between the two concepts is too tenuous to establish operational relatedness under Supreme Judicial Court precedent and, therefore, the two concepts are not mutually dependent.

Anderson described Gray as holding that "it would be unfair to place voters in the untenable position of casting a single vote on two dissimilar subjects, which each happened broadly to pertain to aspects of educational reform." Anderson, 479 Mass. at 797. If it appeared on the ballot, this petition would do the same thing by asking voters to "cast a single vote on two

dissimilar subjects, which each happen[] broadly to pertain to aspects of" zero emission products. For this reason, we are unable to certify that Petition No. 21-26 contains only subjects "which are related or which are mutually dependent," as required by Art. 48, Init., pt. 2, § 3.

Finally, although this did not affect our certification analysis, we note for your reference that Petition No. 21-26 appears to contain some drafting and reference errors. For example:

- Section 1 of the petition does not define "eligible high efficiency heat pump," which is used to define an eligible home improvement system.
- Sections 6 and 7 of the petition require a legacy high emission vehicle be converted to an electric vehicle in order to obtain a Section 8 tax credit or point of sale rebate. Section 8, however, requires the legacy high emission vehicle be converted to a battery electric vehicle to qualify for the tax credit or point of sale rebate. This mistake is cause for confusion since the conversion requirement under Section 8 is more restrictive (i.e., to a battery electric vehicle) than under Sections 6 and 7 (i.e., to a battery electric vehicle or a plug in hybrid electric vehicle).
- Section 10 of the petition provides a low income taxpayer with "a point of sale rebate at the time of purchase" of an eligible heat pump or eligible solar power system. There is, however, no provision in the petition requiring the low-income taxpayer to install the heat pump or solar power system. This presents a problem insofar as there is no emission reduction unless and until the eligible home improvement system is installed. In our opinion, this is an implementation choice that limits the effectiveness of the proposed law in achieving its purpose of reducing carbon emissions.
- There is a disconnect between Sections 1 and 13 of the petition. Section 1 defines an "eligible home improvement contractor" as the party "to install the eligible home improvement system." Section 13 requires the purchase and installation of an eligible home improvement system as being necessary to qualify for a tax credit. Neither Section 13 nor any other provision in the petition requires an eligible home improvement system to be installed by an eligible home improvement contractor to qualify for the tax credit.
- Section 19 of the petition lists five data points that must each be included within three different data categories in the Secretary's quarterly spreadsheet report. The numbering scheme for the data points is defective.

For the reasons discussed above, the Attorney General's Office is unable to certify that Petition No. 21-26 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