



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

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

September 6, 2023

John A. Griffin
2 Repton Place #2206
Watertown, MA 02472

Re: Initiative Petition No. 23-06, An Act Prohibiting Political Spending by Foreign-Influenced Corporations

Dear Mr. Griffin:

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 due to the operation of Article 48, The Initiative, Part II, § 2, ¶ 3, which excludes initiative petitions that are "inconsistent with . . . freedom of speech . . . and the right of peaceable assembly."

Description of Petition

The four-section petition would amend two sections of Chapter 55, which generally regulates campaign finance and political spending in Massachusetts state and local elections, to prohibit "foreign-influenced business entities" from making certain contributions and expenditures.

Section 1 would add definitions for the terms "business entity," "chief executive officer," "foreign-influenced business entity," and "foreign investor."

Section 2 would prohibit "foreign-influenced business entities" from making: (1) an independent expenditure; (2) an electioneering communication expenditure; (3) a contribution to an independent expenditure PAC; (4) a contribution to a ballot question committee; (5) an expenditure for the purpose of promoting or opposing a charter change, referendum question,



constitutional amendment, or other question submitted to the voters; and (6) a contribution or donation to any other person earmarked for such purposes. It would also require business entities to file a sworn statement with the Office of Campaign and Political Finance within seven days of making a contribution or expenditure targeted by the proposed law certifying that the business entity was not a foreign-influenced business entity on the date such expenditure or contribution was made. It would require business entities to provide a copy of this certification to any other person to whom the entity provides a contribution. And, it would allow the recipient to rely in good faith on the certification.

Section 3 is a severability provision.

Section 4 would have the proposed law take effect on August 1, 2025.

We reserve for discussion below a more specific description of certain parts of the petition that relate to the reasons we are unable to certify it.

The Proposed Law is Inconsistent with the Freedom of Speech and the Right of Peaceable Assembly

The proposed law would prohibit corporations that are one percent owned by a single foreign investor or five percent owned in the aggregate by multiple foreign investors, from making expenditures or contributing funds in support of or opposition to ballot questions. Because this prohibition would be inconsistent with the freedom of speech and the right of peaceable assembly, the measure is excluded from the initiative process by operation of Article 48. *See* Amend. Art. 48, The Init., Pt. II, § 2, ¶ 3 (“No proposition inconsistent with . . . freedom of speech . . . and the right of peaceable assembly” shall be the subject of an initiative petition”).

Freedom of speech is guaranteed by Article 16 of the Massachusetts Declaration of Rights. It provides: “The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this commonwealth. The right of free speech shall not be abridged.” The right of peaceable assembly is guaranteed by Article 19, which provides: “The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives, and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.”

The Supreme Judicial Court has established that corporations organized under the laws of Massachusetts possess the right under Article 16 to make expenditures toward ballot questions, referenda issues, constitutional amendments, and other questions submitted to the voters, at least insofar as the matter materially affects the property, business, or assets of the corporation. *See First Nat’l Bank of Boston v. Bellotti*, 362 Mass. 570 (1972) (“*Bellotti I*”); *First Nat’l Bank v. Bellotti*, 371 Mass. 773 (1977) (“*Bellotti II*”), *rev’d on other grounds*, 435 U.S. 765 (1978) (“*Bellotti III*”). This is because “Article 16 . . . guarantees corporations the right to speak on ballot questions ‘in circumstances where they seek to express their views to the public on referenda issues that materially affect them.’” *Assoc. Indus. of Mass. v. Att’y Gen.*, 418 Mass.

279, 288 (1994) (quoting *Bellotti I*, 362 Mass. at 585).¹

Because this proposed law would restrict the use of corporate funds to support or oppose any ballot question posed to the voters, it necessarily burdens the Article 16 right recognized in *Bellotti I* and *Bellotti II* and *Associated Industries of Massachusetts*, and strict scrutiny applies. *Bellotti I*, 362 Mass. at 590; *Assoc. Indus. of Mass.*, 418 Mass. 289 & n.8. To survive strict scrutiny, the proposed law must be narrowly tailored to achieve a compelling government interest. When deciding whether to certify that a petition contains only subjects not excluded from the initiative petition process, “[t]he Attorney General should consider not only whether a petition explicitly involves an excluded subject, but the factual impact of the proposal, if adopted.” *Assoc. Indus. of Mass.*, 418 Mass. at 286. The Attorney General “may consider facts that can be officially noticed, in addition to facts implied by the proposal itself.” *Id.*

Even assuming that the Commonwealth has a compelling interest in preventing foreign influence in state and local elections, this proposed law is not narrowly tailored to advance that interest. *See Mass. Coalition for the Homeless v. City of Fall River*, 486 Mass. 437, 443 (2020) (law not narrowly tailored unless “it chooses the least restrictive means to further the articulated interest”); *Assoc. Indus. of Mass.*, 418 Mass. at 290 (to satisfy strict scrutiny, “law [must be] . . . drawn narrowly enough to avoid certain unnecessary restrictions on constitutionally protected freedoms”).

This proposed law does not choose the least restrictive means to further its articulated interest as its definitions of “foreign-influenced business entity” and “foreign entity” are overly broad, sweeping in Massachusetts business entities that would be prohibited under the proposed law from making contributions and expenditures toward ballot questions that may materially affect them. The proposed law would define a “foreign-influenced entity” to include any business entity that meets any of the following criteria: (1) a single foreign investor holds, owns, controls, or otherwise has direct or indirect beneficial ownership of the entity’s equity, outstanding voting shares, membership units, or other applicable ownership interests; (2) two or more foreign investors, in the aggregate, hold, own, control, or otherwise have direct or indirect beneficial ownership of five percent or more of the entity’s equity, outstanding voting shares, membership units, or other applicable ownership interests; (3) a foreign investor participates directly or indirectly in the business entity’s decision-making process with respect to its political activities in the United States; or (4) the entity is directly or indirectly controlled by another business entity meeting criteria (1), (2), or (3).

The proposed law also defines “foreign investor” expansively, to include any person or entity that: (1) holds, owns, controls, or otherwise has direct or indirect beneficial ownership of a business entity’s equity, outstanding voting shares, membership units, or other applicable ownership interests; and (2) is (a) a government of a foreign country; (b) a foreign political party;

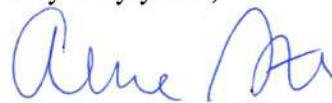
¹ While the Supreme Judicial Court relied on Article 16 in *Bellotti I*, in later cases the Court has referred to both Articles 16 and 19 when discussing a corporation’s right to engage in political spending. *See Bellotti II*, 371 Mass. at 792-93; *Assoc. Indus. of Mass.*, 418 Mass. at 288-89.

(c) an individual outside the United States who is not a United States citizen, national, or lawful permanent resident; (d) a business entity organized under the laws of, or having its principal place of business in, a foreign country; or (e) a business entity in which a person or entity meeting either (a)-(d) holds, owns, controls, or otherwise has directly or indirectly acquired a beneficial ownership of equity or voting shares in an amount equal to or greater than 50 percent of the total equity or outstanding voting shares. These broad definitions of “foreign-influenced business entity” and “foreign investor” would deprive a corporation organized under the laws of Massachusetts, with its principal place of business in Massachusetts, and a board of directors comprised of Massachusetts residents, of its Article 16 right to expend funds on ballot issues materially affecting the corporation’s interest, simply because a foreign investor owns one percent of the company. Further, the proposed law’s one-to-five-percent threshold would reach 98 percent of the publicly-traded companies in the S&P 500 and 28 percent of the firms listed on the Russell Microcap Index (for smaller publicly-traded companies).²

Because the proposed law is not narrowly tailored to serve a compelling government interest, we must conclude that the petition is inconsistent with the freedom of speech and peaceable assembly.³

For these reasons, we are unable to certify that Petition No. 23-06 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

² Michael Sozan, *Ending Foreign-Influenced Corporate Spending in Elections*, Ctr. for American Progress, <https://www.americanprogress.org/wp-content/uploads/sites/2/2019/11/ForeignSpending-report.pdf>, at pp. 42-44.

³ We have considered the extent to which other provisions of this proposed law might violate the free speech exclusion, but we do not discuss them here as the issue of Massachusetts corporations’ right under Articles 16 and 19 to make expenditures concerning ballot questions that materially affect them bars certification.