



# THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

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September 6, 2023

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

Re: Initiative Petition No. 23-07, An Act to Increase Voter Participation, Access, and  
Choice in Elections  
Initiative Petition No. 23-08, An Act for Healthy Democracy

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 petitions, which were submitted to the Attorney General on or before the first Wednesday of August this year. I regret that we are unable to certify that these proposed laws comply 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 laws.

Below, we describe the proposed laws and then explain why we cannot certify them. We cannot certify Initiative Petition No. 23-07 or Initiative Petition No. 23-08 due to the operation of Article 48, The Initiative, II, § 3, which requires that the Attorney General certify that each petition "is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people at either of the two preceding biennial state elections," and "contains only subjects . . . which are related or which are mutually dependent."

We also cannot certify Initiative Petition No. 23-08 due to the operation of Article 48, The Initiative, II, § 2, ¶ 3, which excludes initiative petitions that are "inconsistent with . . . freedom of speech . . . and the right of peaceable assembly."

## Description of Initiative Petition No. 23-07

This proposed law would permit eligible citizens to register to vote at a polling place on the day of a general or primary election; in person at a local registrar's office before noon on the Friday before these elections; or by mail postmarked on or before the Friday before these

elections. The proposed law would require local registrars to permit in-person registration from 9:00 a.m. until noon on the Friday before an election, and would require that any eligible citizen still waiting in line at noon be permitted to register.

The proposed law would also allow a citizen who is eligible to register to vote to do so in person on Election Day at the polling place assigned to the ward or precinct in which they reside, provided that (a) the citizen can establish their identity, (b) prove their residence, and (c) affirm by written oath that they are a citizen who is eligible to vote and have not and will not cast any other ballot in that election. To prove their residency, the individual would be required to provide a valid photo identification or other documentation demonstrating the individual's name and address (including, but not limited to, documentation issued by the government or an institute of higher education; a residential lease; a government check or paycheck; or a utility, bank or wireless provider statement). The applicant who completes registration shall be permitted to vote in that election. If an individual was not able to present sufficient identification on Election Day, the proposed law would allow them to cast a provisional ballot, which would be counted only if the individual provides the required identification to local election officials within six days of a state or federal election or within two days of a federal or state primary or municipal election.

The proposed law provides that a voter would not be able to use election-day registration solely to change their political party affiliation on the day of a primary election.

The proposed law also provides that any individual who votes, attempts to vote, registers, or attempts to register knowing that they are not eligible to do so might be subject to criminal investigation and prosecution, with a conviction punishable by up to five years imprisonment or a fine of up to \$10,000, or both. Credible allegations of such illegal activity would result in an investigation by the Attorney General or the district attorney with jurisdiction.

The remainder of this proposed law contains the provisions of the law proposed by Initiative Petition No. 23-04, An Act to Establish a Nonpartisan Top Five Election System. I refer you to the "Description of Petition" section of my letter regarding Initiative Petition No. 23-04 for a description of those provisions.

Description of Initiative Petition No. 23-08

This proposed law includes the entirety of the law proposed by Initiative Petition No. 23-07 as well as the provisions of the law proposed by Initiative Petition No. 23-06, An Act Prohibiting Political Spending by Foreign-Influenced Business Entities. I refer you to the "Description of Petition" section of my letter regarding Initiative Petition No. 23-06 for a description of those provisions.

Initiative Petition Nos. 23-07 and 23-08 Are Substantially Similar to Initiative Petition No. 19-10

These proposed laws do not meet the requirement of Article 48 that they are "not, either affirmatively or negatively, substantially the same as any measure which has been qualified or

submission or submitted to the people at either of the two preceding biennial state elections.” Art. 48, The Initiative, II, § 3. The “instant runoff using ranked-choice voting” portion of both measures is substantially the same as a measure that was submitted to the people at the 2020 biennial state election. I refer you to the section of my letter regarding Initiative Petition No. 23-04 for why that portion of these proposed laws do not meet this Article 48 requirement. Although these proposed laws add provisions related to voter registration and political spending by foreign-influenced business entities, because of the substantial similarity between the instant runoff using ranked-choice voting system proposed by these measures, and the ranked-choice voting system that was rejected by the voters in 2020, these measures would impermissibly force the voters to reconsider the same question—whether they want to create a system of ranked-choice voting—that they rejected within the last two biennial state elections. *See Bogertman v. Att'y Gen.*, 474 Mass. 607, 620-21 (2016) (purpose of requirement that measures not substantially similar is to prevent “the constant forcing of . . . questions which have been rejected”).

*Initiative Petition Nos. 23-07 and 23-08 Do Not Meet the Relatedness Requirement*

These proposed laws also do not meet the relatedness requirement of Article 48. Under that standard, a law must contain “only subjects . . . which are related or which are mutually dependent[.]” Art. 48, The Initiative, II, § 3. One must be able to “identify a common purpose to which each subject . . . can reasonably be said to be germane,” and the “general subject of [the] initiative petition” cannot be “so broad as to render the ‘related subjects’ limitation meaningless.” *Mass. Teachers Ass'n v. Sec'y of the Comm.*, 384 Mass. 209, 219 (1981). “[R]elatedness cannot be defined so broadly that it allows the inclusion in a single petition of two or more subjects that have only a marginal relationship to one another, which might confuse or mislead the voters, or which could place them in the untenable position of casting a single vote on two or more dissimilar subjects.” *Abdow v. Att'y Gen.*, 468 Mass. 479, 499 (2014). The Supreme Judicial Court poses “two questions to be considered in addressing the related subjects requirement”:

First, [d]o the similarities of an initiative petition’s provisions dominate what each segment provides separately so that the petition is sufficiently coherent to be voted on “yes” or “no” by the voters?

Second, does the initiative petition express an operational relatedness among its substantive parts that would permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy?

*Dunn v. Att'y Gen.*, 474 Mass. 675, 680 (2016) (internal quotation marks and citations omitted).

Neither of these proposed laws are sufficiently cohesive to be voted on “yes” or “no” by the voters. Initiative Petition No. 23-07, which provides for expanded voter registration, a top-five preliminary, and instant runoff using ranked choice-voting, contains three different and distinct policy proposals, with no “common purpose or unified public policy that the voters fairly could vote up or down as a whole.” *Anderson v. Att'y Gen.*, 479 Mass. 780, 798 (2018). One

policy would expand voter registration, permitting eligible citizens to register to vote at a polling place on the day of a general or primary election; in person at a local registrar's office before noon on the Friday before these elections; or by mail postmarked on or before the Friday before these elections. The second policy would restructure primary elections, such that they no longer serve as a political party's vehicle to nominate a candidate, but instead serve as a preliminary election beyond which only five candidates may proceed to the general election. The third policy would restructure general elections to provide for ranked-choice voting among the candidates on the ballot. Because they all relate to voting and elections, at a "conceptual level," these policies may be "interconnected," but the "related subjects requirement is not satisfied by a conceptual or abstract bond." *Gray v. Att'y Gen.*, 474 Mass. 638, 648 (2016).

It is even more challenging "to discern a common purpose or unified public policy" among the four "diverse subjects" proposed by Initiative Petition 23-08. *See Anderson*, 479 Mass. at 798. In addition to the three distinct policies in Initiative Petition No. 23-07—expanded voter registration, top-five preliminary, and ranked-choice voting—Initiative Petition No. 23-08 adds prohibitions on political spending by "foreign-influenced business entities." Only indirectly related to voting and the operation of elections, this distinct policy is "not related beyond the broadest conceptual level" with expanded voter registration, the top-five preliminary, and ranked-choice voting. *See id.*

The Supreme Judicial Court has recognized that an initiative may propose an integrated scheme in service of a unified statement of public policy. *E.g., Colpack v. Att'y Gen.*, 489 Mass. 810, 821 (2022) (petition sufficiently related where petition presented "integrated scheme" whose provisions served common purpose of expanding number of alcohol licenses while taking steps to mitigate negative effects of the expansion); *Oberlies v. Att'y Gen.*, 479 Mass. 823, 831 (2018) (petition sufficiently related where anticipated and addressed potential consequence of other provisions); *Hensley v. Att'y Gen.*, 474 Mass. 651, 658-59 (2016) (petition sufficiently related where petition laid out integrated scheme to legalize marijuana). But here, in both Initiative Petition No. 23-07 and Initiative Petition No. 23-08, the proposals in the measures "exist independently" of one another. *See Gray*, 474 Mass. at 648. Expanded voter registration will not affect "in any way" the operation of the top-five preliminary or ranked choice voting. *See id.* Ranked-choice voting at the general election is not dependent upon a non-partisan, top-five preliminary election. Nor is a top-five preliminary election (in which ranked-choice voting is not used to determine the up-to-five candidates that will proceed to the general election) dependent upon ranked-choice voting in the general election. And prohibitions on political contributions and expenditures by "foreign-influenced business entities" exist entirely independently of expanded voter registration, the top-five preliminary election, and ranked-choice voting. *See id.*

In addition, the Supreme Judicial Court has repeatedly emphasized the framers' intent—reflected in the Debates of the 1917-18 Constitutional Convention—that the relatedness requirement serves to prevent logrolling, or the hitching of one policy idea to another, in the hope that the popularity of one may result in the enactment of the other. As noted above, ranked-choice voting was separately proposed to the people in 2020 and did not pass. This proposed law

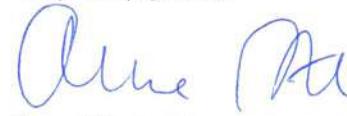
would add, in Initiative Petition No. 23-07, expanded voter registration and a non-partisan top-five preliminary, and in Initiative Petition No. 23-08, prohibitions on political spending by foreign-influenced business entities, possibly popularizing either measure by adding additional, distinct policy proposals. *See Anderson*, 479 Mass. at 799 (petition subjects not related where they lacked a “common purpose . . . beyond the broadest conceptual level” and included income tax that “by itself, has been the subject of five prior initiative petitions”); *Abdow*, 468 Mass. at 501 (significant to relatedness that portion of proposed law in *Carney* “was identical to an initiative petition that had been submitted to, and narrowly rejected by, the voters six years earlier”); *Carney v. Att'y Gen.*, 447 Mass. 218, 232 (2006) (petition provisions did not offer voters “meaningful choice to express a uniform public policy” particularly where voters had recently rejected one of petition’s policy proposals). Article 48 does not permit such “logrolling,” which is the “legislative practice of including several propositions in one measure or proposed constitutional amendment so that the legislature or voters will pass all of them, even though these propositions might not have passed if they had been submitted separately.” *See Carney*, 447 Mass. at 219 n.4. Consistent with Article 48, voters should not be placed in the “untenable position” of either supporting or rejecting several different policies, one of which they declined to adopt when it was submitted to them separately within the last two biennial state elections. *See Anderson*, 479 Mass. at 799-800.

*Initiative Petition No. 23-08 is Inconsistent with the Freedom of Speech and the Right of Peaceable Assembly*

Initiative Petition No. 23-08 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 Art. 48, The Initiative, II, § 2, ¶ 3* (“No proposition inconsistent with . . . freedom of speech . . . and the right of peaceable assembly” shall be the subject of an initiative petition). I refer you to my letter regarding Initiative Petition 23-06 for why this measure is excluded from the initiative process by operation of Article 48.

For these reasons, we are unable to certify that Initiative Petition Nos. 23-07 or 23-08 meet the constitutional requirements for certification set by Amendment Article 48.

Very truly yours,



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cc: William Francis Galvin, Secretary of the Commonwealth