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September 7, 2022

Thomas O. Bean
Verrill Dana LLP
One Federal Street, 20th Floor
Boston, MA 02110

Re: Initiative Petition No. 22-01: Initiative Petition for a Law Relative to Limiting
Political Contributions to Independent Expenditure PACs

Dear Mr. Bean:

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 laws.

Below, we describe the proposed law and then explain why we are unable to certify that the petition is consistent with the right to free speech embodied in Article 16 of the Declaration of Rights.

Description of Petition

This proposed law would impose a \$5,000 per-calendar-year limit on campaign contributions made by an individual to a political committee or entity that makes independent expenditures to advocate for or against particular candidates without cooperation or consultation with those candidates. This proposed law would go into effect on January 1, 2024.

The Petition is Inconsistent with the Rights of Free Speech

Article 48, the Initiative, Part 2, Section 2 provides, in pertinent part, that "No proposition inconsistent with any one of the following rights of the individual, as at present declared in the declaration of rights, shall be the subject of an initiative or referendum petition," including the freedom of speech. As explained below, the proposed law is inconsistent with these rights



protected by the state constitution because it would impinge on the freedom of speech. *Associated Indus. of Massachusetts v. Att’y General*, 418 Mass. 279, 283-84, (1994) (noting that Article 48 looks at inconsistency with rights under state constitution, not the federal constitution).

Article 16 of the Massachusetts Declaration of Rights provides, in relevant part, that the “right of free speech shall not be abridged.” Courts in Massachusetts interpret Article 16’s protections as being coextensive with, or broader than, the First Amendment to the United States Constitution. Courts across the country have uniformly held that limits on contributions to independent expenditure PACs – like those at issue in this proposed law – violate free speech protections. See, e.g., *SpeechNow.org v. FEC*, 599 F.3d 686, 695 (D.C. Cir. 2010); *New York Progress & Protection PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013); *Wisconsin Right to Life State Pol. Action Comm. v. Barland*, 664 F.3d 139, 154 (7th Cir. 2011).

Although Massachusetts courts have not specifically weighed in on the constitutionality of laws limiting campaign contributions made by an individual to a political committee or entity that makes independent expenditures to advocate for or against particular candidates without cooperation or consultation with those candidates, where the Supreme Judicial Court has recognized that courts in the Commonwealth interpreted the protections of free speech under the Declaration of Rights to be “comparable to those guaranteed by the First Amendment,” *Opinion of the Justices*, 418 Mass. 1201, 1212 (1994), it is clear that this proposed law would violate the free speech rights afforded by the state constitution.

For this reason, the Attorney General’s Office is unable to certify that Petition No. 22-01 complies with Article 48.

Very truly yours,



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

cc: William Francis Galvin, Secretary of the Commonwealth