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

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Kirstin Beatty
149 Central Park Drive
Holyoke, MA 01040

Re: Initiative Petition Nos. 22-06 through 22-09: Initiative Petition[s] for a Law Relative to Non-Ionizing Radiation Limits for Technology and Wireless Facilities, Version H, P, and R; Initiative Petition for a Law Relative to Non-Ionizing Radiation Limits

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 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 the proposed laws comply 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 laws.

Below, we describe the proposed laws and then explain why we why we are unable to certify that the petitions "contain only subjects … which are related or which are mutually dependent," as required by Article 48, The Init., Pt. 2, § 3.

Description of Petitions

The law proposed by Initiative Petition No. 22-06 would require internet service providers, manufacturers of mobile phones and other wireless devices, carriers, personal wireless services, and wireless facilities to limit the emission of non-ionizing radiation, defined as radiation that cannot directly remove electrons from atoms or molecules, to "As Low as Reasonably Achievable" or As Safe as Reasonably Achievable" based on scientific standards and technological capabilities while preserving access to personal wireless services. The state Department of Telecommunications and Cable would be required to monitor and collect data on non-ionizing radiation emissions from wireless facilities and to support cities and towns in their review of wireless facility applications and regulation of wireless facility infrastructure. The proposed law would create within the Department a new Division of Non-Ionizing Radiation

Monitoring that would collect and publicly share data on non-ionizing radiation emission, including information on wireless facility antenna locations, their frequencies, and their peak power exposures; violations of federal and state exposure limits; and data on dropped calls and denial of service and would advise the public and other agencies on mitigation of non-ionizing radiation exposure.

The proposed law would set statewide requirements for cities and towns to apply to permitting and operation of wireless facilities, including annual testing of non-ionizing radiation levels, securing of insurance or escrowed funds to address claims of harm and environmental damage, and filing mapping data with the Division of Non-Ionizing Radiation Monitoring sufficient to allow for random audits. The proposed law would prohibit or restrict installation of new wireless facilities on public elementary and secondary school and higher education campuses as well as in state parks and state forests. The proposed law would require owners of wireless facilities to provide the city or town and the county engineer with information on how to turn off the facility's transmissions in the event such transmissions exceeded certain levels.

The proposed law would replace the existing Massachusetts Cancer Registry within the Department of Public Health with a broader disease registry, which would include (but not be limited to) malignant and benign brain-related tumors, cancers, primary infertility, early miscarriage, gestational age at birth, birth defects, developmental disabilities, neurologic disorders, and dementia. The Department would be required to conduct epidemiological investigations that include evaluation of pollution and non-ionizing radiation as causes of disease and to compile and publish data on disease incidence, age at onset, and mortality.

<u>The law proposed by Initiative Petition No. 22-07</u> would be the same as that proposed by Initiative Petition No. 22-06 except that (1) the requirement to reduce emission of non-ionizing radiation would apply only to internet service providers and manufacturers of mobile phones and other wireless devices but not to carriers, personal wireless services, and wireless facilities; and (2) the law would create a commission to consider mitigating effects of non-ionizing radiation on first responders while maintaining efficacy of first-responder services.

<u>The law proposed by Initiative Petition No. 22-08</u> would be the same as that proposed by Initiative Petition No. 22-06 except that it would create a commission to consider mitigating effects of non-ionizing radiation on first responders while maintaining efficacy of first-responder services.

<u>The law proposed by Initiative Petition No. 22-09</u> would be the same as that proposed by Initiative Petition No. 22-06 except that (1) the requirement to reduce emission of non-ionizing radiation would apply only to internet service providers and manufacturers of mobile phones and other wireless devices but not to carriers, personal wireless services, and wireless facilities; (2) the law would create a commission to consider mitigating effects of non-ionizing radiation on first responders while maintaining efficacy of first-responder services; and (3) the law would require limitation of non-ionizing radiation in primary and secondary schools and colleges, government offices and facilities, public safety agencies, medical centers, libraries, and public housing while maintaining access to telecommunications and broadband services.

The Measures Do Not Meet the Relatedness Requirement.

The proposed laws do not meet the relatedness requirement of Art. 48. Under that standard, a proposed law must contain "only subjects . . . which are related or which are mutually dependent[.]" Art. 48, Init., pt. 2, § 3. "[O]ne [must be able to] identify a common purpose to which each subject . . . can reasonably be said to be germane," and that "general subject of [the] initiative petition [must not be] so broad as to render the 'related subjects' limitation meaningless." Massachusetts Teachers Association v. Secretary of the Commonwealth, 384 Mass. 209, 219 (1981); see also Oberlies v. Attorney Gen., 479 Mass. 823, 831 & n.8 (2018) (petition met relatedness requirement where common purpose of all parts was to "establish and enforce nurse-to-patient ratios" in health-care facilities); Opinion of the Justices, 422 Mass. 1212, 1220-21 (1996) (while "governmental accountability" is too broad and general a subject to satisfy relatedness requirement, "legislative accountability" would satisfy requirement, if all parts of petition related to that theme.)

The Supreme Judicial Court has synthesized its formulations of the relatedness test into a two-part inquiry:

> First, 'do the similarities of an initiative'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. Attorney Gen., 474 Mass. 675, 680-681 (2016). The same year, the Court noted that the relatedness requirement cannot be met by a "conceptual or abstract bond" between the features of a petition and that "separate public policy issues" may not permissibly be joined in a single petition. See Gray v. Attorney Gen., 474 Mass. 638, 648-49 (2016).

Here, the expanded disease registry proposed by all four petitions bears no meaningful operational relationship to the common purpose of the remaining sections, all of which are aimed at reducing human exposure to non-ionizing radiation. Under the expanded disease registry, collection of data pertaining to non-ionizing radiation would be one option among several paths available to epidemiologists investigating causes of the enumerated diseases. Examination of epidemiological data could lead to a hypothesis, for example, that low birth weight in Northern Franklin County is caused by chemical pollution in a particular river. While valuable, this finding would have nothing to do with the presence, absence, or effect of non-ionizing radiation. Even if a causal connection were some day identified between exposure to non-ionizing radiation and the incidence of one or more of the diseases listed on the expanded registry, nothing in the proposed laws would require that any additional or different action be taken as a result. Implementation of the other provisions of the proposed laws would not be affected by epidemiological findings from the expanded disease registry. The provisions creating the

expanded registry are therefore analogous to the financial-disclosure provision that was insufficiently operationally connected to the nurse-staffing provisions of Initiative Petition No. 17-08 to allow certification of that petition. See Oberlies, 479 Mass. at 835-836.

All parts of a law proposed by initiative petition must bear a "meaningful operational relationship" to one another so as to "permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy." Carney, 447 Mass. at 218, 220, 231. "It is not enough that the provisions in an initiative petition all 'relate' to some same broad topic at some conceivable level of abstraction[;] [t]o clear the relatedness hurdle, the initiative petition must express an operational relatedness among its substantive parts." Id. at 230-31.

With respect to these petitions, while it might be argued that the disease-registry provisions would operate consistently with the exposure-reduction provisions by providing evidence of harm caused by non-ionizing radiation, this link appears too theoretical to consolidate the petition into the "unified statement of public policy" required to meet Article 48's relatedness requirement. See Carney, 447 Mass. at 218, 220, 231. Any adequate description of the common purpose of the proposed laws would be extremely broad, such as "harm reduction" or "disease prevention." Common purposes of such breadth do not meet the relatedness requirement. See Opinion of the Justices, 422 Mass. at 1220-21 (where "[o]ne could imagine a multitude of diverse subjects all of which would 'relate'" to a particular common purpose, that common purpose is too broad for Article 48).

Because of the presence of the expanded disease registry in these four proposed laws, we must conclude that they do not meet the relatedness requirement of Article 48 and we are unable to certify that the proposed laws meet the constitutional requirements of Amendment Article 48.

Very truly yours,

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

cc: William Francis Galvin, Secretary of the Commonwealth