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Harold Hubschman
11 Linden Place, #2
Brookline, MA 02445

Re: Petition No. 26-13: Initiative Petition for a Law Relative to Reducing the State-Personal Income Tax Rate from 5% to 4%

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 laws.

Below, we describe the proposed law and then explain why we are unable to certify it by operation of Article 48, Part II, Section 3, which requires that the Attorney General certify that each petition "contains only subjects . . . which are related or which are mutually dependent."

Description of Petition

The proposed law would, over a period of three years, lower the tax rate on (1) personal taxable income consisting of interest and dividends, and (2) other personal taxable income, including wages and salaries, by amending G.L. c. 62, §§ 4(a)(2) and 4(b). Both tax rates were 5.00% for tax year 2026. The proposed law would lower both tax rates to 4.67% for tax year 2029, 4.33% for tax year 2030, and 4.00% beginning in tax year 2031. By operation of current law, this proposed law would also lower the tax rate on personal income consisting of most long-term gains, excluding long-term capital gains from the sale or exchange of collectibles.

The proposed law would eliminate the tax on personal taxable income from long-term capital gains from the sale or exchange of collectibles by striking out G.L. c. 6, § 4(a)(1). That tax rate was 12% for tax year 2026.

By striking out G.L. c. 6, § 4(a)(1), the proposed law would also eliminate the tax on personal taxable income from short-term capital gains. That tax rate was 8.5% for tax year 2026.

The Measure Does Not Meet the Relatedness Requirement

The proposed law does not meet the relatedness requirement of Article 48. Under that standard, the 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." *Massachusetts Teachers Ass 'n v. Secretary 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. Attorney 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. Attorney Gen., 474 Mass. 675, 680 (2016) (internal quotation marks and citations omitted). "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 that would permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy." *Carney v. Attorney Gen.*, 447 Mass. 218, 230-31 (2006). Article 48's relatedness requirement is designed to bar petitions from joining "alluring" provisions to "controversial" provisions so as to confuse the average voter. *Id.* at 228-29. It does not permit "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." *Id.* at 219 n.4.

Here, there is no "meaningful operational relationship" between eliminating taxation of income from short-term capital gains and long-term capital gains from the sale or exchange of collectibles by striking G.L. c. 62, § 4(a)(1), and amending G.L. c. 62, §§ 4(a)(2) and 4(b), to gradually reduce the tax rates for income from interest and dividends and wages and salaries from their current tax rate of 5.00% to 4.00% by January 1, 2031. Voters who favor decreasing the tax rate that applies to their income from their wages or salaries and any income from interest and dividends, "should be permitted to register that clear preference without also being required to favor eliminating" entirely taxation of short-term capital gains or long-term capital gains from the sale or exchange of collectibles. *See Carney*, 447 Mass. at 231. While all provisions of the law serve a common purpose of lowering taxes, "the related subjects requirement is not satisfied by a conceptual or abstract bond." *See Gray v. Attorney Gen.*, 474 Mass. 638, 648 (2016). Here, "at the operational level," the petition joins a proposed policy of gradually decreasing by one percentage point the tax rate for personal income from wages, salaries, interest and dividends, with the proposed policy of eliminating any tax liability for personal income from short-term capital gains and long-term gains from the sale or exchange of collectibles, which are "separate public policy issues." *Id.* at 648-49.

The subjects of this petition are also not mutually dependent because they could "exist independently" of one another. *Id.* at 648. While G.L. c. 62, § 4(a)(2) and (b) currently provide that interest and dividend income and wages and salary income shall be taxed at the same rate, § 4(a)(1) is independent of those provisions. Amending § 4(a)(2) or (b) does not require any change to § 4(a)(1), and vice versa. These provisions could not be said to "complement each other in the means of accomplishing" a common purpose. *See Dunn*, 474 Mass. at 681.

For these reasons, the Attorney General's Office is unable to certify that Petition No. 26-13 complies with Article 48.

Very truly yours,

Anne Sterman

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Chief, Government Bureau
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cc: William Francis Galvin, Secretary of the Commonwealth