COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

SUFFOLK, SS. NO. SJC-13273

THOMAS COLPACK & OTHERS,
Plaintiffs-Appellants,

v.

ATTORNEY GENERAL AND SECRETARY OF THE COMMONWEALTH,
Defendants-Appellees.

ON RESERVATION AND REPORT FROM THE
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

BRIEF OF THE APPELLEES ATTORNEY GENERAL AND SECRETARY OF THE COMMONWEALTH

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QUESTION PRESENTED

I. A law proposed by initiative petition would change the number and allocation of licenses for the retail sale of alcoholic beverages. Did the Attorney General correctly certify that the law proposed by the challenged initiative petition satisfies the "relatedness" requirement of Amendment Article 48 of the Massachusetts Constitution, where all its parts operationally relate to the common purpose of altering the restrictions on the number and allocation of licenses for the retail sale of alcoholic beverages to be consumed off the premises?

II. In the alternative, should the Court dismiss as tardy a complaint challenging the Attorney General's decision to certify an initiative petition that was filed more than two months after the timeline requested by this Court in *Dunn v. Attorney General*, 474 Mass. 675 (2016), without any showing of good cause?

STATEMENT OF THE CASE

This case presents a late-filed challenge to the Attorney General's certification of Initiative Petition 21-03, entitled "An Initiative Petition for a Law Relative to 21st Century Alcohol Retail Reform," which is presently on track to

appear on the November 2022 statewide election ballot.[1] Initiative Petition 21-03, much like one certified by the Attorney General in 2019, seeks to restructure the regulation of the retail sale of alcoholic beverages for consumption off premises in the Commonwealth. This Court previously considered – and rejected – a relatedness challenge to the Attorney General's certification of a similar 2019 petition in *Weiner v. Attorney General*, 484 Mass. 687 (2020). Although the proponents of Initiative Petition 21-03 have chosen to implement their proposed restructuring in a somewhat different manner than the proponents of the 2019 petition, the challenged petition is no less compliant with the requirements of Amendment Article 48. Any differences between the two proposed laws go to the details of the laws' approaches to license caps and age verification and reflect implementation choices that are immaterial to this Court's relatedness analysis. The Court, having already considered and rejected a relatedness challenge to the 2019 petition, should similarly reject this challenge to the Attorney General's certification of Initiative Petition 21-03.

[1] Although plaintiffs filed this suit on April 12, 2022, more than two months after the Court's suggested deadline suggested for doing so, the Secretary of the Commonwealth respectfully requests that this Court issue an order resolving this case by July 1, 2022, with opinion(s) to follow, if necessary, due to printing deadlines for the Information for Voters Guide.

I. Prior Proceedings.

On April 12, 2022, five registered voters filed a complaint in the county court seeking: (i) a declaration that the Attorney General erred in certifying that Initiative Petition 21-03 complies with Amendment Article 48 of the Massachusetts Constitution; (ii) an order quashing the Attorney General's certification; (iii) an order directing that the Secretary of the Commonwealth take no further steps to advance the petition; and (iv) an injunction barring the Secretary of the Commonwealth from placing Initiative Petition 21-03 on the general election ballot. RA 25-26.

In the county court, the defendants moved to dismiss the action as untimely and presenting no new issue of law or fact from this Court's decision in *Weiner*. RA 41-58. The county court reserved and reported the case without ruling on the defendants' motion to dismiss. RA 59-60.

II. Statement of Facts.

A. Procedural History of the Proposed Law.

Before August 4, 2021, at least ten registered voters filed with the Attorney General an initiative petition entitled "An Initiative Petition for a Law Relative to 21st Century Alcohol Retail Reform." RA 66. In keeping with the order in which she received it, the Attorney General numbered the petition 21-03. RA 67. On

September 1, 2021, the Attorney General certified to the Secretary of the Commonwealth that the petition was in proper form for submission to the people; that it was not, either affirmatively or negatively, substantially the same as any measure qualified for submission to the people at either of the two preceding biennial state elections; and that it contained only matters that are related or mutually dependent and not excluded from the initiative process under Amendment Article 48. RA 38.

Consistent with Article 48's requirements, in December 2021, the Secretary sent a letter informing the proponents of the petition that they had submitted a sufficient number of certified signatures to require him to transmit the measure to the Legislature. RA 68. On January 28, 2022, the Secretary transmitted the measure to the Legislature. RA 68.

If the Legislature does not enact the proposed law before May 4, 2022, the proposed law will be eligible to be placed on the statewide November election ballot, subject to the collection of 13,374 additional signatures between May and July. RA 17.

B. The Proposed Law.

Massachusetts law establishes two categories of licenses for the retail sale of alcoholic beverages: licenses to sell alcohol for consumption on the premises, as in

a restaurant, are governed by G.L. c. 138, § 12, and licenses to sell alcohol for consumption off the premises, as in a package store, are governed by G.L. c. 138, §§ 15 and 15A. *See Weiner*, 484 Mass. at 689 & n.4. The petition challenged in this case involves only the latter form of licensure. Petition 21-03, an "Initiative Petition for Law Relative to 21st Century Alcohol Retail Reform," would change the number and allocation of licenses for the retail sale of alcoholic beverages to be consumed off the premises. The proposed law would (1) increase the combined number of licenses for the sale of "all alcoholic beverages" and "wines and malt beverages" that each retailer could hold; (2) set the maximum number of "all alcoholic beverages" licenses that each retailer could hold; (3) require retailers to conduct face-to-face sales for alcoholic beverages; (4) increase the fine that the Alcoholic Beverages Control Commission ("ABCC") may accept in lieu of suspending any license issued under G.L. c. 138; and (5) expand the forms of identification that Chapter 138 licensees may reasonably rely on for identification and age verification. RA 28-30.

Specifically, Sections 1 through 3 of the proposed law would amend the second sentence of Section 15 of G.L. c. 138, the statute governing the retail sale of alcoholic beverages for off-premises consumption, to increase the statewide limits on the combined number of off-premises licenses (including licenses both

for “all alcoholic beverages” and for “wines and malt beverages”) that any one retailer could own or control from 9 to 12 licenses in 2023; from 12 to 15 in 2027; and from 15 to 18 in 2031. RA 28. Meanwhile, Section 4 of the proposed law would amend the same provision by setting a maximum number of “all alcoholic beverages” licenses that one retailer could own or control at 7 licenses, beginning on January 1, 2023. RA 28-29. However, the proposed law would permit a retailer to continue hold more than 7 such licenses if they were held prior to December 31, 2022. RA 28-29. Effectively, Sections 1 through 4 of the proposed law would allow retailers to own more total licenses for the retail sale of alcoholic beverages for off-premises consumption, but of those licenses, no more than 7 (or more, only for those retailers that currently own more than 7) may be “all alcoholic beverages” licenses.

The remaining sections of the proposed law address implementation details concerning the retail sale of alcoholic beverages for off-premises consumption. Sections 5 through 7 provide the effective dates of Sections 1 through 4, as described above. RA 29. Section 8 would amend G.L. c. 138, § 15, by adding a new paragraph that would require retailers to sell alcoholic beverages through face-to-face transactions. RA 29. It would prohibit the use of automated or self-checkout sales of alcoholic beverages by such retailers and require that the person

conducting the face-to-face transaction be at least 18 years old. RA 29. Section 9 would amend the twelfth paragraph of G.L. c. 138, § 23, which governs offers of compromise that the ABCC may accept in lieu of suspending a license for failure to comply with statutory or regulatory requirements. Instead of being based on a percentage of the gross profit from alcoholic beverage sales, a fine would be calculated based on the gross profit of all retail sales. RA 29. Sections 10 and 11 would amend the second paragraph of G.L. c. 138, § 34B, which outlines the forms of identification that a Chapter 138 licensee (or its agents or employees) may reasonably rely on for proving a person's identity and age when they purchase alcohol, to include valid out-of-state motor vehicle licenses. RA 29-30.

C. Initiative Petition 19-14 and *Weiner v. Attorney General*.

In 2019, a similar petition was submitted to and certified by the Attorney General. Initiative Petition 19-14 was entitled "An Initiative Petition for a Law Relative to the Sale of Beer and Wine by Food Stores" and, like Initiative Petition 21-03, it sought to alter the number and allocation of licenses for the retail sale of alcoholic beverages for consumption off the premises, albeit in a different manner than Initiative Petition 21-03. Specifically, the law proposed by Initiative Petition 19-14 would have added a new section to G.L. c. 138 creating a "food store license," which would allow some retail food stores to sell wine and malt

beverages for consumption off the premises. *Weiner*, 484 Mass. at 689. "Food store licenses" would not have been subject to existing local quotas or the per-entity limit on license ownership. *Id.* at 689-90.[2] Initiative Petition 19-14 would also have amended Section 15 of Chapter 138 to gradually increase and then eliminate the per-entity cap on ownership of off-premises licenses. *Id.* Associated with those provisions, which would have operated together to expand the number and allocation of licenses for the retail sale of alcoholic beverages to be consumed off-premises, Initiative Petition 19-14 also would have strengthened the existing age verification requirements in Chapter 138 and allocated additional funds for enforcement of liquor laws. *Id.* at 690.

Seven registered voters filed suit challenging the Attorney General's certification that Initiative Petition 19-14 complied with the requirements of Article 48. *Id.* at 688-89. This Court rejected their challenge, holding that the petition contained only related subjects and had appropriately been certified by the Attorney General. *Id.* The Court agreed with the Attorney General that "the various provisions of Initiative Petition 19-14 all relate[d] to a common purpose: 'the lifting of restrictions on the number and allocation of licenses for the retail sale of

[2] G.L. c. 138 sets limits both on the number of licenses that may be owned by a single entity statewide, and the number of licenses that may be issued by a particular municipality, based on population. G.L. c. 138, § 15.

alcoholic beverages to be consumed off the premises.'" *Id.* at 692. The Court concluded that the provisions to create and govern the new food store license, as well as those to gradually increase and then eliminate the per-entity ownership limit, "directly implement[] the measure's purpose." *Id.* With respect to the remaining provisions of the proposed law, pertaining to strengthening age-verification requirements and increasing funding for enforcement, the Court determined that they "do not directly lift restrictions on licensing, but 'anticipate[] and address[] a potential consequence' thereof." *Id.*, quoting *Oberlies v. Attorney General*, 479 Mass. 823, 832 (2018).

SUMMARY OF THE ARGUMENT

The Attorney General's decision to certify Initiative Petition 21-03 was proper because the petition contains only subjects "which are related or are mutually dependent" as required by Amendment Art. 48. This proposed law would alter the restrictions on the number and allocation of licenses for the retail sale of alcoholic beverages to be consumed off the premises. All aspects of the proposed law are designed to advance this common purpose. *See infra* at 18.

The proposed law would accomplish this goal by gradually increasing the total number of licenses for the retail sale of alcoholic beverages to be consumed off the premises – including both "wine and malt" licenses and "all alcoholic

beverages" licenses – that a single retailer could own. At the same time, the law would limit the number of "all alcoholic beverages" licenses that a single entity could own. *See infra* at 21-22.

The proposed law would also take several steps to refine the enforcement of the state's alcohol licensing rules to address possible consequences of the proposed increase in the number of licenses. The proponents could have anticipated that this increase in the total number of available licenses could result in more retailers selling alcohol for consumption off the premises, and that raising the cap on commonly held licenses may result in a greater concentration of licenses in the hands of retail chains that are simultaneously engaged in other businesses and have less knowledge about selling alcohol than specialized retailers. To address this concern, the proposed law would require that retail alcohol sales for off premises consumption occur by face-to-face transactions instead of at self-checkout stations and would alter the formula for calculating fines for violations of the law. Relatedly, the proposed law would allow the face-to-face transactions to rely upon not just Massachusetts identification but also out-of-state identification for age verification. *See infra* at 21-22.

Accordingly, all this proposed law's constituent parts drive toward its common goal. And just as this Court previously determined that a similar petition

satisfied the requirements of Article 48, *Weiner*, 484 Mass. at 689, so too does this proposed law. Therefore, the Attorney General's determination that the petition satisfies the relatedness requirement of Article 48 should be affirmed. *See infra* at 25-36.

Alternatively, the Court should dismiss this complaint because it was not timely filed. Late-filed litigation threatens to upset the orderly administration of the state election and confuse voters, and Plaintiffs offer no explanation, much less an explanation that constitutes good cause, for why they disregarded this Court's requested timeline for Article 48 challenges, as set forth in *Dunn*. *See infra* at 37.

ARGUMENT

Adopted in 1918, Article 48 created the initiative petition, a mechanism by which citizens may propose laws or constitutional amendments for approval by the voters on a statewide ballot. Amend. Art. 48, The Init., Pt. I. The first step in proposing such a measure is submission of an initiative petition signed by at least ten registered voters to the Attorney General for her review and certification that the petition meets the requirements of Article 48. *Id.* at Pt. II, § 3. A petition may not advance unless the Attorney General has certified that it "contains only subjects not excluded from the popular initiative and which are related or which are mutually dependent." *Id.*

The Attorney General certified that Initiative Petition 21-03 complies with Article 48, including that this petition meets the constitutional requirements for relatedness. The Court reviews that determination *de novo*. *See Weiner v. Attorney General*, 484 Mass. 687, 690 (2020). In conducting this review the Court acknowledges "the firmly established principle that art. 48 is to be construed to support the people's prerogative to initiate and adopt laws." *Carney v. Attorney General*, 451 Mass. 803, 814 (2008) (*Carney II*); *see also Buckley v. Secretary of the Commonwealth*, 371 Mass. 195, 199 (1976) (noting that Article 48 establishes "people's process").

Here, the Attorney General correctly certified that Initiative Petition 21-03 meets the requirements of Article 48.

I. The Proposed Law Contains Only Subjects That Are Related Within the Meaning of Article 48.

The Attorney General's determination that the proposed law contains only "related" subjects follows directly from this Court's precedent, including this Court's determination two years ago that a similar petition met Article 48's relatedness requirement. *Weiner*, 484 Mass. at 687. In determining the limits of the types of laws that citizens could propose, the framers of Article 48 expressly declined to adopt a requirement that initiative petitions be limited to a single subject. *Id.* at 691. At the same time, however, they were concerned about the

possibility of voter confusion in the absence of such a limitation. *See Carney v. Attorney General*, 447 Mass. 218, 226-30 (2006) (*Carney I*). As a result, Article 48 strikes a balance by requiring that petitions contain only "subjects … which are related or which are mutually dependent." Amend. Art. 48, The Init., Pt. II, § 3; *see also Weiner*, 484 Mass. at 692. This Court has held that this means that an "initiative petition can address more than one subject if those subjects are related." *Albano v. Attorney General*, 437 Mass. 156, 161 (2002), citing *Mass. Teachers Ass'n v. Sec'y of the Commonwealth*, 384 Mass. 209, 219 (1981) (*MTA*). "[T]he related subjects requirement is met where one can identify a common purpose to which each subject of an initiative petition can reasonably be said to be germane." *Weiner*, 484 Mass. at 692 (internal citations and quotation marks omitted); *see also Opinion of the Justices*, 422 Mass. 1212, 1220 (1996).

As this Court has recognized, reading a petition's purpose too broadly would render the related subjects limitation meaningless, but reading it too narrowly would effectively enforce the "single subject" requirement that the Article 48 framers considered and rejected. *See MTA*, 384 Mass. at 219-21. Common purposes of suitably constrained scope have included "legaliz[ing] marijuana (with limits) for adult use," *Hensley v. Attorney General*, 474 Mass. 651, 658 (2016); "establish[ing] and enforc[ing] nurse-to-patient ratios in facilities in the

Commonwealth," *Oberlies v. Attorney General*, 479 Mass. 823, 831 (2018); and "lifting … restrictions on the number and allocation of licenses for the retail sale of alcoholic beverages," *Weiner*, 484 Mass. at 692. Unacceptably broad common purposes, on the other hand, have included "making government more accountable to the people," *Opinion of the Justices*, 422 Mass. at 1220-21; "promoting … more humane treatment of dogs," *Carney I*, 447 Mass. at 224; and "elementary and secondary education," *Gray v. Attorney General*, 474 Mass. 638, 647 (2016).

In assessing the relationship of the component parts of a proposed law to a "common purpose" and to each other, the Court has set forth two evaluative inquiries:

> 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, 474 Mass. at 680-81 (internal citations, quotation marks, and punctuation omitted); *see also Weiner*, 484 Mass. at 691-93. While "[t]here is no single 'bright-line' test for determining whether an initiative meets the related subjects requirement," these two evaluative inquiries frame whether an initiative meets the

relatedness requirement. *Weiner*, 484 Mass. at 691-93 (internal citations and quotation marks omitted).

A. The Proposed Law Has a Suitably Constrained Common Purpose: Altering the Restrictions on the Number and Allocation of Licenses for the Retail Sale of Alcoholic Beverages to be Consumed Off the Premises.

Here, the common purpose of all provisions of the proposed law is the alteration of the restrictions on the number and allocation of licenses for the retail sale of alcoholic beverages to be consumed off the premises. Although the petition seeks to accomplish its purpose in a different manner than the petition at issue in *Weiner*, the purpose remains nearly identical – and no less unified – than the one this Court concluded satisfied the Article 48 relatedness requirement. 484 Mass. at 692. If enacted, the proposed law would, over time, increase the total number of licenses for the retail sale of alcoholic beverages to be consumed off the premises – including both "wine and malt" licenses and "all alcoholic beverages" licenses – that a single entity could own. At the same time, the proposed law would limit the number of "all alcoholic beverages" licenses that a single entity could own, thereby reducing the concentration of "all alcoholic beverages" licenses in comparison to the total number of licenses. The law would address possible consequences of the increase in the number of licenses by requiring that retail alcohol sales for off-premises consumption occur by face-to-face transactions instead of at self-

checkout stations, by allowing those face-to-face transactions to rely upon not only Massachusetts identification but also out-of-state identification for age verification, and by altering the formula for calculating fines for violations of the law so that fines for larger retailers that sell more than just alcohol will be higher. Thus, what this "proposed initiative does in its various aspects or subjects," *MTA*, 384 Mass. at 221, is to change the restrictions on the number and allocation of licenses for the retail sale of alcoholic beverages to be consumed off the premises. That is this proposed law's common purpose.

In furthering this common purpose, the law would make changes to the operation of one segment of one industry: retail sale of alcoholic beverages for consumption off-premises. This scope is virtually identical to that of the proposed law approved by the this Court in *Weiner* (lifting of restrictions on the number and allocation of licenses for the retail sale of alcoholic beverages to be consumed off-premises), and similar to the scope of the proposed laws considered in *Abdow v. Attorney General*, 468 Mass. 478 (2014) (eliminating certain forms of legalized gambling), *Dunn* (keeping farm animals for food production), and *Oberlies* (implementing nursing staff levels at health care facilities). Accordingly, the common purpose of this proposed law is suitably narrow under Article 48.

Plaintiffs' argument to the contrary is inconsistent with this Court's precedent. The scope of this proposed law is narrower than the proposed law in *Weiner*, which complied with Article 48's requirements. The various provisions of the proposed law considered in *Weiner* advanced its common purpose – the lifting of restrictions on the number and allocation of licenses for the retail sale of alcoholic beverages to be consumed off the premises – by creating a new category of license for the sale of alcoholic beverages for off-premises consumption and imposing no limit on the number of such licenses that could be held by each retailer. *Weiner*, 484 Mass. at 689. Here, by contrast, the proposed law alters the state's alcohol licensing laws by adjusting the per-entity limits on licenses within the existing statutory framework; it does not create a new type of license. The scope of this proposed law is also narrower than that considered in *Hensley*, which comprehensively regulated all aspects of a new commercial marijuana industry. *See* 474 Mass. at 658. And it is unquestionably narrower than the scope of Proposition 2½'s limitation on a variety of state and local taxes, *MTA*, 384 Mass. at 220, and the proposal to restrict the availability of marriage, *Albano*, 437 Mass. at 161, both of which satisfied Article 48's relatedness requirement. Because it addresses only one segment of one industry, this proposed law cannot be said to include provisions addressing "two or more subjects that have only a marginal

relationship to one another." *See Abdow*, 468 Mass. at 499; *Carney I*, 447 Mass. at 224-232. Indeed, the proposed law leaves unaltered other segments of that industry, such as on-premises alcohol sales and the manufacturing and distribution of alcoholic beverages.

The scope of this proposed law bears little resemblance to those petitions that this Court has found unduly broad, such as "areas of broad public concern," *Anderson v. Attorney General*, 479 Mass. 780, 796 (2018); "elementary and secondary education," *Gray*, 474 Mass. at 649; "promoting the more humane treatment of dogs," *Carney*, 447 Mass. at 224; and making government more accountable, *Opinion of the Justices*, 422 Mass. at 1220.

Plaintiffs' focus on how the petition's proponents describe the law is misplaced. They cite the petition's original title – "An Initiative Petition for 21st Century Alcohol Reform" – and dispute the proponents' alleged claim that the proposed law would expand the availability of licenses for the off-premises sale of alcoholic beverages. But regardless of what title the proponents chose, or how they characterize the purpose of the proposed law, their views are not binding on the Attorney General or on this Court. *See Oberlies*, 479 Mass. at 831, n.8; *Carney I*, 447 Mass. at 220, n.7 and 224, n.19; *see also* G.L. c. 54, § 53 (title of ballot question to be prepared jointly by Attorney General and Secretary of the

Commonwealth). What matters for purposes of Article 48 certification is not whether the proponents have themselves announced a unified statement of purpose, but rather whether the petition's provisions are in fact all germane to any such purpose that is suitably constrained. *Oberlies*, 479 Mass. at 830; *MTA*, 384 Mass. at 219-20.

As the common purpose of this proposed law is appropriately constrained under Article 48, the question before the Court is whether all the provisions of the proposed law "can reasonably be said to be germane" to this appropriately constrained common purpose. *Weiner*, 484 Mass. at 691-92 (internal citations and quotation marks omitted). Because, as set forth below, the provisions of the proposed law are all reasonably germane to the law's common purpose, the Attorney General properly concluded that the proposed law meets the relatedness requirement of Article 48.

B. Each Section of the Proposed Law Serves the Common Purpose of Altering the Number and Allocation of Licenses for the Retail Sale of Alcoholic Beverages to be Consumed Off the Premises.

The proposed law satisfies this Court's first evaluative inquiry because the similarities of the law'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." *Dunn*, 474 Mass. at 680, quoting *Abdow*, 468 Mass. at 501; *see*

Weiner, 484 Mass. at 691-92. Each provision of the proposed law advances or facilitates its goal of altering the number and allocation of licenses for the retail sale of alcoholic beverages to be consumed off the premises.

The proposed law would alter the licensing scheme for the sale of alcoholic beverages for off-premises consumption in two respects. First, the proposed law would gradually increase the number of such licenses – both "wine and malt" licenses and "all alcoholic beverages" licenses combined – that an entity could hold within the Commonwealth. RA 28-29. Second, the proposed law would shift the ratio of "all alcoholic beverages" to "wine and malt" licenses by reducing the number of "all alcoholic beverages" licenses an entity could own from 9 to 7 (or to the number already held if higher than 7). *Id.* The net effect of both provisions would be to permit entities to hold more total licenses for the sale of alcoholic beverages for off-premises consumption, while constraining the number of those licenses that are "all alcoholic beverages" licenses. Both provisions – whether viewed collectively or individually – directly advance the proposed law's purpose of altering the number and allocation of licenses for the sale of alcoholic beverages for consumption off the premises.

The remaining provisions fall comfortably within what this Court has repeatedly held is the drafters' discretion in choosing which features to include – or

not include – in proposed laws in order to address its possible impacts. *See Weiner*, 484 Mass. at 694; *Oberlies*, 479 Mass. at 831-33; *Hensley*, 474 Mass. at 658-59; *Abdow*, 468 Mass. at 502-03. Increasing the total number of available licenses could well result in more retailers selling alcohol for consumption off the premises, and raising the cap on commonly held licenses could result in a greater concentration of licenses in the hands of retail chains that are simultaneously engaged in other businesses and have less knowledge about selling alcohol than specialized retailers. The drafters could have determined that their proposed law should preemptively address the possibility of increased improper alcohol sales by requiring that retail alcohol sales occur by face-to-face transactions rather than at self-checkout stations, and by altering the formula for calculating ABCC fines (when imposed in lieu of a license suspension), such that fines for larger chain retailers that sell a range of products would face steeper fines for infractions. Similarly, having provided for the elimination of self-checkout retail alcohol sales, the drafters might have foreseen less cause to limit the types of identification that could be accepted as proof of a customer's age, leading them to allow the face-to-face transactions to rely upon out-of-state identification for age verification in addition to Massachusetts identification.

The proposed law's provisions are thus reasonably germane to the common purpose of altering the number and allocation of licenses for the retail sale of alcoholic beverages to be consumed off the premises. In *Weiner*, this Court determined that the provisions of the 2019 petition that imposed new age verification and increased funding for enforcement were operationally related to the other provisions of the measure because they "anticipate[d] and address[ed] a potential consequence thereof." 484 Mass. at 692, quoting *Oberlies*, 479 Mass. at 832. This Court concluded that each provision was "one piece of a proposed scheme to lift restrictions on off-premises licenses for the retail sale of alcoholic beverages" and to mitigate the effects of that change. *Weiner*, 484 Mass. at 693. Here, the proposed scheme includes changes to the way retail sales of alcohol for off-premises consumption can be consummated and alters the method of calculating fines for noncompliance so as to raise the stakes for larger retailers. As in *Weiner*, these pieces are all part of an integrated scheme to effectuate a common purpose, and as in *Weiner*, these provisions are all related for purposes of Article 48.

Plaintiffs try to obscure this reality by improperly dissecting the proposed law into five component parts. Pl. Brief at pp. 14-19. But Plaintiffs' effort to separately list the ways in which each of the petition's provisions implement the

common purpose does not undermine the conclusion that all parts of the petition are related to its common purpose. *Albano*, 437 Mass. at 161 ("An initiative can address more than one subject if those subjects are related."). For example, the fact that the provisions pertaining to the per-entity limit on ownership of "wine and malt" licenses and "all alcoholic beverages" licenses, collectively, are different from the provision pertaining to the per-entity limit on ownership of "all alcoholic beverages" licenses does not make them unrelated, as they all operate to alter the availability and allocation of licenses for the retail sale of alcoholic beverages for off-premises consumption. Similarly, though one can separately list the remaining provisions relating to face-to-face sales transactions, permissible identification for age verification, and the manner of calculating fines in lieu of license suspensions for infractions, those provisions remain related to the common purpose of the petition because they are part of an integrated scheme and anticipate possible consequences of the licensing provisions.

Plaintiffs' focus on the allegedly "regressive" or self-interested motivations of the proponents in choosing which features to include in the proposed law does nothing more than reveal their policy disagreements with it – disagreements that have no bearing on the relatedness analysis. Plaintiffs contend that the local retail package stores represented by the proponent group stand to benefit

disproportionately from the proposed law, but "the enjoyment, by some, of an 'ancillary benefit' does not render the proposal's provisions unrelated." *Oberlies*, 479 Mass. at 834. "Nor is it necessary that all of an initiative's supporters share the same motivations." *Abdow*, 468 Mass. at 503. Whether the proposed law would unfairly benefit local package stores or unfairly handicap larger retail outlets is an argument that opponents can make to the voters about why they should vote against the proposed law – not a reason why the provisions of the proposed law are unrelated.

Nor does it matter that the Plaintiffs can "conceive of a general purpose to which not every subject of [the proposed law] may be said to relate." *MTA*, 384 Mass. at 221. "The proper approach … is to … determine whether there is a common purpose to which each element is germane." *Id.* A proposed law presents a "unified statement of public policy" where its subjects "are presented in a way that permits a reasonable voter to make an intelligent up or down choice." *Oberlies*, 479 Mass. at 833, citing *Abdow*, 468 Mass. at 503. Here, a voter may support or not support the increased overall availability of licenses held by large retailers for the sale of alcoholic beverages for off-premises consumption, and that support may or may not be affected by the petition's limit on the number of such licenses that may be "all alcoholic beverages" licenses. Asking voters to make an

"intelligent up or down choice" on that proposed alteration to the retail alcohol market alongside additional provisions facilitating implementation of that market alteration would not "place them in the untenable position of casting a single vote on two or more dissimilar subjects."[3] *Abdow*, 468 Mass. at 499. As with the proposed law in *Weiner*, this proposed law's provisions satisfy the first evaluative inquiry under Article 48's relatedness requirement.

C. All Provisions of the Proposed Law Operationally Relate to Altering the Number and Allocation of Licenses for the Retail Sale of Alcoholic Beverages to be Consumed Off the Premises.

The proposed law also satisfies this Court's second evaluative inquiry because it "express[es] 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." *Oberlies*, 479 Mass. at 832 (alteration in original), quoting *Abdow*, 468 Mass. at 501. Operational relatedness exists where the parts of a proposed law work together to achieve or support a common goal. *See Weiner*, 484 Mass. at 692-93; *Dunn*, 474 Mass. at 681-82. As described above, all parts of this proposed law work together to implement an alteration in the number and

[3] Nor does the fact that voters may favor some provisions and not others transform the preferred provisions into impermissible "logrolling": the framers of Article 48 included the relatedness requirement to constrain petitions and guard against such potential abuse. *Carney I*, 447 Mass. at 226-229.

allocation of licenses for the retail sale of alcoholic beverages for off-premises consumption. Those provisions that do not directly regulate the number and allocation of such licenses address the implementation and potential consequences of these alterations – by regulating how the retail sale of alcoholic beverages may take place and the method by which retailers may verify a customer's age, and by changing the formula by which ABCC calculates fines to be paid in lieu of suspending a retailer's license.

So long as the proposed law's "provisions share a common purpose and are related in the accomplishment of that purpose," the operationally related requirement is met. *Dunn*, 474 Mass. at 682. Moreover, this Court's case law on relatedness teaches that the provisions of a proposed law may be directed to "anticipat[ing] and mitigat[ing] the foreseeable consequence[s]" of a proposal, and provisions that preemptively address foreseeable consequences of, or plausible objections to, the main thrust of the law are operationally related to the whole. *Weiner*, 484 Mass. at 692; *see also Dunn*, 474 Mass. at 681 (prohibition on sale of out-of-state products aimed at protecting in-state regulated farmers from being underpriced); *Oberlies*, 479 Mass. at 832 (restrictions on workforce reduction related as mechanism for guiding implementation of staffing ratios); *Mazzone v. Attorney General*, 432 Mass. 515, 529 (2000) (funding mechanism related to drug

treatment program). Most relevant here, in *Weiner*, the proposed law added new procedures to prevent the sale of alcohol to minors and new resources for the enforcement of alcohol laws. 484 Mass. at 690-92. This Court held that the age-verification and increased funding provisions were operationally related to the licensing provisions because retail stores newly permitted to sell alcohol might have "less experience … in the sale of alcoholic beverages," and thus lower ability to prevent alcohol sales to minors. *Id.* at 692. The age-verification and increased funding provisions were, as this Court explained, reasonably viewed as addressing and mitigating this negative consequence of the licensing provisions. *Id.*

The same is true here: all provisions of the proposed law either directly further the common purpose of the proposed law or address possible consequences of that common purpose. As described above, Sections 1 through 7 of the proposed law directly pertain to the number and allocation of licenses for the retail sale of alcoholic beverages for off-premises consumption. And Sections 8 through 11 address potential consequences of Sections 1 through 7, just as the age-verification and enforcement funding provisions of the *Weiner* petition did: by requiring that retail alcohol sales be conducted face-to-face, by addressing the type of identification retailers can rely upon for proof of a customer's age, and by modifying the formula used to calculate fines imposed by the ABCC in lieu of

license suspensions. Also, just like the provisions of the *Weiner* petition, these provisions either pertain to the number of licenses directly, or "anticipate[] and mitigate[] the foreseeable consequences of lifting restrictions on licenses," and are therefore "operationally related to the other provisions of the measure." *Weiner*, 484 Mass. at 692-93. Provisions that address the impact of other parts of the proposed law "form[] part of the proposal's 'unified statement of public policy.'" *Oberlies*, 479 Mass. at 832.

The fact that the petition expands the availability of certain licenses while constraining the availability of others does not, as Plaintiffs contend, mean that the petition "would predominantly cut in the opposite direction" of its common purpose, where the common purpose is the alteration of a particular segment of the market and addressing potential consequences of that alteration. RA 8. But in any event, it bears no significance for this Court's inquiry here: whether the provisions of the petition are all germane to a unified purpose. *See Hensley*, 474 Mass. at 658-659 (petition "easily satisfie[d] the related subjects requirement of art. 48" where it both set forth a plan to legalize marijuana and set limits on that legalization). The Court "has not construed [the relatedness] requirement narrowly nor demanded that popular initiatives be drafted with strict internal consistency." *Mazzone*, 432 Mass. at 528-29.

Plaintiffs are wrong to say that the proponents' decision as to which features to include in their proposed law undermines the provisions' operational relatedness. "It is not for the courts to say that logically and consistently other matters might have been included or that particular subjects might have been dealt with differently." *MTA*, 384 Mass. at 220. Nor must "an initiative petition be a comprehensive piece of legislation that would entirely cover its field." *Abdow*, 479 Mass. at 503. That the proposed law includes more than one provision does not render it unrelated: a voter who favors the expansion in per-entity license ownership for "wine and malt" licenses but is unhappy that the proposed law would not similarly expand the availability of "all-alcoholic beverages" licenses may vote "no" on the proposed law. Any proposed law containing more than one provision creates the possibility that a voter may like one or more provisions while disliking others. But so long as the proposed law does not place the voter "in the untenable position of casting a single vote on two or more *dissimilar* subjects," it meets the relatedness requirement of Article 48. *Abdow*, 468 Mass. at 499 (emphasis added).

Plaintiffs also argue that because the proposed law does not alter the municipal quotas that govern how many licenses may be granted by each city or town, the proponents are disingenuous in claiming that the proposed law will

expand the availability of licenses for the retail sale of alcoholic beverages to be consumed off the premises. *See supra* at 14, n. 2; Pl. Br. at pp. 14-15. But that argument has no relevance to the Court's relatedness analysis. "When determining whether an initiative meets the requirements of art. 48, [this Court] exercise[s] 'restraint in deciding whether a measure would or would not have the legal effect intended.'" *Oberlies*, 479 Mass. at 835, quoting *Abdow*, 468 Mass. at 507. Moreover, Plaintiffs offer no facts as to whether municipalities have or have not exhausted their quota of licenses. Nor do they address the logical reality that the number of licenses issued will regularly fluctuate as businesses open or close, routine changes are made to the quotas by virtue of special legislation, and population shifts. Whether, and to what degree, the proposed law could result in the issuance of additional licenses is a dynamic condition, not a certain conclusion. Plaintiffs are free to make their case to the voters that this proposed law is a bad one – either because it will not, in fact, result in additional licenses being granted, or because it unfairly favors smaller retail package stores. But those are both policy arguments about the merits of the proposed law, not reasons why the proposed law fails to meet Article 48's relatedness requirement.

II. In the Alternative, the Court Should Dismiss the Complaint as Untimely.

Alternatively, as the Defendants raised in their motion to dismiss before the county court, the Court should reject Plaintiffs' claim on the ground that it is inexcusably untimely. Despite the Court's guidance as to the appropriate schedule on which to initiate these challenges, and even though the Attorney General certified this petition and the proponents gathered sufficient signatures for the petition to advance in December 2021, Plaintiffs inexplicably waited until April 12, 2022 to bring their challenge to the Attorney General's certification. The Court has cautioned that delays like this not only prejudice the ability of this Court to manage its docket and give due consideration to the issues raised, but also unsettle the administration of an orderly election. *See Dunn*, 474 Mass. at 686-87.

In *Dunn*, the Court recognized the importance of an orderly schedule for launching Article 48 certification challenges. 474 Mass. at 686-87. As the Court observed, many steps need to be taken to ensure that voters can cast an informed vote on a citizen petition in November, and the Court's decision whether the Attorney General's certification decision was proper is hardly the last step in that process. Among other things, the Secretary is responsible for distributing an Information for Voters Guide describing initiative petitions in advance of an election. Art. 48, Gen. Prov., pt. IV, as amended by Art. 108; G.L. c. 54, § 53. This

guide includes the text of the proposed measures, the Attorney General's summaries, the ballot question titles prepared by the Attorney General and the Secretary, the one-sentence statements describing the effect of a "yes" or "no" vote, statements prepared by the Secretary of Administration and Finance concerning the fiscal consequences of each measure for State and municipal government finances, and arguments for and against each measure. *See* art. 48, General Provisions, IV, as amended by art. 108; G.L. c. 54, §§ 53, 54. The printing deadline for the guide usually falls in early July. *See Dunn*, 474 Mass. at 686. Accordingly, when a suit like this is filed, the Court "endeavors to decide the case before the July printing deadline to avoid the need for the printing of the guide to be postponed or redone." *Id.* This is why the Court has advised litigants to file sooner rather than later: "if adequate time is to be allowed for the parties to brief the issues and agree on a statement of facts, if required, and for the county court or this court to review the case, hear argument, and issue a decision before the printing deadline, there should be a deadline for the filing of a complaint challenging an Attorney General's certification decision." *Id.*

Accordingly, the Court in *Dunn* "strongly urge[d] plaintiffs to file such challenges" by February 1 of an election year. *Id.* at 687. "As in a marriage ceremony," the Court remarked, "it is not unfair to ask those who object to the

Attorney General's certification of an initiative petition to 'speak now or forever hold your peace.'" *Id.* The Court advised plaintiffs who failed to heed this deadline "that such delay may make it impossible for this court to render a decision before the guide is distributed, and may risk causing voter confusion and additional costs for the Commonwealth if the court were to conclude that the Attorney General erred in certifying an initiative petition." *Id.*; *see also J & R Inv., Inc. v. City Clerk of New Bedford*, 28 Mass. App. Ct. 1, 8 (1989) (explaining that "[a]lthough there is no statutory or other clearly defined time limit within which an action in the nature of mandamus must be brought, one may not delay unreasonably.").

That Plaintiffs here sat idly by while other Article 48 suits have played out is not just inconvenient; Plaintiffs' tactics have threatened the orderly administration of the November election and have jeopardized this Court's ability to adjudicate this case. In short, Plaintiffs' delay has set off the very "mad scramble," *Hensley*, 474 Mass. at 671, that this Court has sought to avoid.

Plaintiffs offer no explanation – much less an explanation that constitutes good cause – for their delay. Rather, they simply state that they "regret the circumstances" of their untimely filing, without specifying what those "circumstances" are. Pl. Br. at 50. Instead, Plaintiffs attempt to blame the Attorney General for their own shortcomings, complaining that she has not posted any

deadline for certification challenges on her website. *Id*. at 51, n. 5. But it is not the Attorney General's job to advise potential adversaries in litigation as to the state of the law, and Plaintiffs' claimed ignorance of *Dunn* is no excuse. *See Leach v. Leach*, 238 Mass. 100, 103 (1921) (noting that "a plaintiff was not aided by ignorance of the statute of limitations applicable to his claim because every citizen is bound to know that at his peril") (citations omitted). Nor is Plaintiffs' reference to supposed delays in preparing the ballot question titles and one-sentence statements for initiative petitions material to this case. The schedule for titles and one-sentence statements, unlike certification challenges, is governed by statute, G.L. c. 54, § 53, and, in any event, Plaintiffs do not currently challenge the yes/no statements or title for this initiative petition.

For the reasons discussed in Section I, Plaintiffs' challenge to the certification of Initiative Petition 21-03 should be rejected on its merits. Their unjustified failure to bring this challenge in a timely manner provides an additional basis for dismissing their complaint.

CONCLUSION

For the foregoing reasons, the Court should order dismissal of the complaint, either because (1) the Attorney General properly certified Initiative Petition No. 21-03 or (2) the complaint is not timely.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Anne Sterman, hereby certify that the foregoing brief complies with all of the rules of court that pertain to the filing of briefs, including, but not limited to, the requirements imposed by Rules 16 and 20 of the Massachusetts Rules of Appellate Procedure. The brief complies with the applicable length limit in Rule 20 because it contains 7731 words in 14-point Times New Roman font (not including the portions of the brief excluded under Rule 20), as counted in Microsoft Word (version: Word 2016).

/s/ Anne Sterman
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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2022, I filed with the Supreme Judicial Court and caused to be served by email on counsel for Appellants the attached Brief of the Appellees Attorney General and Secretary of the Commonwealth:

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ADDENDUM

AMENDMENT ARTICLE 48: INITIATIVE AND REFERENDUM

(as amended by amend. arts. 67, 74, 81, 108; Referendum provisions omitted for brevity)

I. DEFINITION

Legislative power shall continue to be vested in the general court; but the people reserve to themselves the popular initiative, which is the power of a specified number of voters to submit constitutional amendments and laws to the people for approval or rejection; and the popular referendum, which is the power of a specified number of voters to submit laws, enacted by the general court, to the people for their ratification or rejection.

THE INITIATIVE.

II. INITIATIVE PETITIONS.

Section 1. Contents

An initiative petition shall set forth the full text of the constitutional amendment or law, hereinafter designated as the measure, which is proposed by the petition.

Section 2. Excluded matters

No measure that relates to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal, recall or compensation of judges; or to the reversal of a judicial decision; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the commonwealth; or that makes a specific appropriation of money from the treasury of the commonwealth, shall be proposed by an initiative petition; but if a law approved by the people is not repealed, the general court shall raise by taxation or otherwise and shall appropriate such money as may be necessary to carry such law into effect.

Neither the eighteenth amendment of the constitution, as approved and ratified to take effect on the first day of October in the year nineteen hundred and eighteen, nor this provision for its protection, shall be the subject of an initiative amendment.

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: The right to receive compensation for private property appropriated to public use; the right of access to and protection in courts of justice; the right of trial by jury; protection from unreasonable search, unreasonable bail and the law martial; freedom of the press; freedom of speech; freedom of elections; and the right of peaceable assembly.

No part of the constitution specifically excluding any matter from the operation of the popular initiative and referendum shall be the subject of an initiative petition; nor shall this section be the subject of such a petition.

The limitations on the legislative power of the general court in the constitution shall extend to the legislative power of the people as exercised hereunder.

Section 3. Mode of Originating

Such petition shall first be signed by ten qualified voters of the commonwealth and shall be submitted to the attorney-general not later than the first Wednesday of the August before the assembling of the general court into which it is to be introduced, and if he shall certify that the measure and the title thereof are in proper form for submission to the people, and that the measure 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 that it contains only subjects not excluded from the popular initiative and which are related or which are mutually dependent, it may then be filed with the secretary of the commonwealth. The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a fair, concise summary, as determined by the attorney-general, of the proposed measure as such summary will appear on the ballot together with the names and residences of the first ten signers. All initiative petitions, with the first ten signatures attached, shall be filed with the secretary of the commonwealth not earlier than the first Wednesday of the September before the assembling of the general court into which they are to be introduced, and the remainder of the required signatures shall be filed not later than the first Wednesday of the following December.

Section 4. Transmission to the General Court

If an initiative petition, signed by the required number of qualified voters, has been filed as aforesaid, the secretary of the commonwealth shall, upon the assembling of the general court, transmit it to the clerk of the house of representatives, and the proposed measure shall then be deemed to be introduced and pending.

III. LEGISLATIVE ACTION. GENERAL PROVISIONS.

Section 1. Reference to Committee

If a measure is introduced into the general court by initiative petition, it shall be referred to a committee thereof, and the petitioners and all parties in interest shall be heard, and the measure shall be considered and reported upon to the general court with the committee's recommendations, and the reasons therefor, in writing. Majority and minority reports shall be signed by the members of said committee.

Section 2. Legislative Substitutes

The general court may, by resolution passed by yea and nay vote, either by the two houses separately, or in the case of a constitutional amendment by a majority of those voting thereon in joint session in each of two years as hereinafter provided, submit to the people a substitute for any measure introduced by initiative petition, such substitute to be designated on the ballot as the legislative substitute for such an initiative measure and to be grouped with it as an alternative therefor.

IV. LEGISLATIVE ACTION ON PROPOSED CONSTITUTIONAL AMENDMENTS.

Section 1. Definition

A proposal for amendment to the constitution introduced into the general court by initiative petition shall be designated an initiative amendment, and an amendment introduced by a member of either house shall be designated a legislative substitute or a legislative amendment.

Section 2. Joint Session

If a proposal for a specific amendment of the constitution is introduced into the general court by initiative petition signed in the aggregate by not less than such number of voters as will equal three per cent of the entire vote cast for governor at the preceding biennial state election, or if in case of a proposal for amendment introduced into the general court by a member of either house, consideration thereof in joint session is called for by vote of either house, such proposal shall, not later than the second Wednesday in May, be laid before a joint session of the two houses, at which the president of the senate shall preside; and if the two houses fail to agree upon a time for holding any joint session hereby required, or fail to continue the same from time to time until final action has been taken upon all amendments pending, the governor shall call such joint session or continuance thereof.

Section 3. Amendment of Proposed Amendments

A proposal for an amendment to the constitution introduced by initiative petition shall be voted upon in the form in which it was introduced, unless such amendment is amended by vote of three-fourths of the members voting thereon in joint session, which vote shall be taken by call of the yeas and nays if called for by any member.

Section 4. Legislative Action

Final legislative action in the joint session upon any amendment shall be taken only by call of the yeas and nays, which shall be entered upon the journals of the two houses; and an unfavorable vote at any stage preceding final action shall be verified by call of the yeas and nays, to be entered in like manner. At such joint session a legislative amendment receiving the affirmative votes of a majority of all the members elected, or an initiative amendment receiving the affirmative votes of not less than one-fourth of all the members elected, shall be referred to the next general court.

Section 5. Submission to the People

If in the next general court a legislative amendment shall again be agreed to in joint session by a majority of all the members elected, or if an initiative amendment or a legislative substitute shall again receive the affirmative votes of at least one-fourth of all the members elected, such fact shall be certified by the clerk of such joint session to the secretary of the commonwealth, who shall submit the amendment to the people at the next state election. Such amendment shall become part of the constitution if approved, in the case of a legislative amendment, by a majority of the voters voting thereon, or if approved, in the case of an initiative amendment or a

legislative substitute, by voters equal in number to at least thirty per cent of the total number of ballots cast at such state election and also by a majority of the voters voting on such amendment.

V. LEGISLATIVE ACTION ON PROPOSED LAWS.

Section 1. Legislative Procedure

If an initiative petition for a law is introduced into the general court, signed in the aggregate by not less than such number of voters as will equal three per cent of the entire vote cast for governor at the preceding biennial state election, a vote shall be taken by yeas and nays in both houses before the first Wednesday of May upon the enactment of such law in the form in which it stands in such petition. If the general court fails to enact such law before the first Wednesday of May, and if such petition is completed by filing with the secretary of the commonwealth, not earlier than the first Wednesday of the following June nor later than the first Wednesday of the following July, a number of signatures of qualified voters equal in number to not less than one half of one per cent of the entire vote cast for governor at the preceding biennial state election, in addition to those signing such initiative petition, which signatures must have been obtained after the first Wednesday of May aforesaid, then the secretary of the commonwealth shall submit such proposed law to the people at the next state election. If it shall be approved by voters equal in number to at least thirty per cent of the total number of ballots cast at such state election and also by a majority of the voters voting on such law, it shall become law, and shall take effect in thirty days after such state election or at such time after such election as may be provided in such law.

Section 2. Amendment by Petitioners

If the general court fails to pass a proposed law before the first Wednesday of May, a majority of the first ten signers of the initiative petition therefor shall have the right, subject to certification by the attorney-general filed as hereinafter provided, to amend the measure which is the subject of such petition. An amendment so made shall not invalidate any signature attached to the petition. If the measure so amended, signed by a majority of the first ten signers, is filed with the secretary of the commonwealth before the first Wednesday of the following June, together with a certificate signed by the attorney-general to the effect that the amendment made by such proposers is in his opinion perfecting in its nature and does not materially change the substance of the measure, and if such petition is completed by filing with the secretary of the commonwealth, not earlier than the first Wednesday of the following June nor later than the first Wednesday of the following July, a number of signatures of qualified voters equal in number to not less than one half of one per cent of the entire vote cast for governor at the preceding biennial state election in addition to those signing such initiative petition, which signatures must have been obtained after the first Wednesday of May aforesaid, then the secretary of the commonwealth shall submit the measure to the people in its amended form.

VI. CONFLICTING AND ALTERNATIVE MEASURES.

If in any judicial proceeding, provisions of constitutional amendments or of laws approved by the people at the same election are held to be in conflict, then the provisions contained in the measure that received the largest number of affirmative votes at such election shall govern.

A constitutional amendment approved at any election shall govern any law approved at the same election.

The general court, by resolution passed as hereinbefore set forth, may provide for grouping and designating upon the ballot as conflicting measures or as alternative measures, only one of which is to be adopted, any two or more proposed constitutional amendments or laws which have been or may be passed or qualified for submission to the people at any one election: provided, that a proposed constitutional amendment and a proposed law shall not be so grouped, and that the ballot shall afford an opportunity to the voter to vote for each of the measures or for only one of the measures, as may be provided in said resolution, or against each of the measures so grouped as conflicting or as alternative. In case more than one of the measures so grouped shall receive the vote required for its approval as herein provided, only that one for which the largest affirmative vote was cast shall be deemed to be approved.

[Provisions governing Referendum omitted]

GENERAL PROVISIONS.

I. IDENTIFICATION AND CERTIFICATION OF SIGNATURES.

Provision shall be made by law for the proper identification and certification of signatures to the petitions hereinbefore referred to, and for penalties for signing any such petition, or refusing to sign it, for money or other valuable consideration, and for the forgery of signatures thereto. Pending the passage of such legislation all provisions of law relating to the identification and certification of signatures to petitions for the nomination of candidates for state offices or to penalties for the forgery of such signatures shall apply to the signatures to the petitions herein referred to. The general court may provide by law that no co-partnership or corporation shall undertake for hire or reward to circulate petitions, may require individuals who circulate petitions for hire or reward to be licensed, and may make other reasonable regulations to prevent abuses arising from the circulation of petitions for hire or reward.

II. LIMITATION ON SIGNATURES.

Not more than one-fourth of the certified signatures on any petition shall be those of registered voters of any one county.

III. FORM OF BALLOT.

A fair, concise summary, as determined by the attorney general, subject to such provision as may be made by law, of each proposed amendment to the constitution, and each law submitted to the people, shall be printed on the ballot, and the secretary of the commonwealth shall give each question a number and cause such question, except as otherwise authorized herein, to be printed on the ballot in the following form:

In the case of an amendment to the constitution: Do you approve of the adoption of an amendment to the constitution summarized below, (here state, in distinctive type, whether

approved or disapproved by the general court, and by what vote thereon)?

YES____
NO_____

(Set forth summary here)

In the case of a law: Do you approve of a law summarized below, (here state, in distinctive type, whether approved or disapproved by the general court, and by what vote thereon)?

YES____
NO_____

(Set forth summary here)

IV. INFORMATION FOR VOTERS.

The secretary of the commonwealth shall cause to be printed and sent to each person eligible to vote in the commonwealth or to each residence of one or more persons eligible to vote in the commonwealth the full text of every measure to be submitted to the people, together with a copy of the legislative committee's majority reports, if there be such, with the names of the majority and minority members thereon, a statement of the votes of the general court on the measure, and a fair, concise summary of the measure as such summary will appear on the ballot; and shall, in such manner as may be provided by law, cause to be prepared and sent other information and arguments for and against the measure.

V. THE VETO POWER OF THE GOVERNOR.

The veto power of the governor shall not extend to measures approved by the people.

VI. THE GENERAL COURT'S POWER OF REPEAL.

Subject to the veto power of the governor and to the right of referendum by petition as herein provided, the general court may amend or repeal a law approved by the people.

VII. AMENDMENT DECLARED TO BE SELF-EXECUTING.

This article of amendment to the constitution is self-executing, but legislation not inconsistent with anything herein contained may be enacted to facilitate the operation of its provisions.

VIII. ARTICLES IX AND XLII OF AMENDMENTS OF THE CONSTITUTION ANNULLED.

Article IX and Article XLII of the amendments of the constitution are hereby annulled.

M.G.L.A. 54 § 53

§ 53. Mailing lists of voters; copies of measures, summaries, ballot question titles, statements and arguments to voters; public examination; petition for amendment

Effective: January 1, 2015
Currentness

<[Section impacted by 2020, 45, Secs. 1 and 1A, as amended by 2020, 92, Secs. 1 to 3, effective March 23, 2020 and 2020, 92 Secs. 15 to 17 effective June 5, 2020 relating to postponing municipal elections in order to address disruptions caused by the outbreak of COVID-19.] >

The election commissioners in the city of Boston, at least twenty-four days, and the registrars of voters in every other city or town, at least ninety days, before the biennial state election, shall cause to be sent to the state secretary mailing lists of the voters whose names appear on the latest voting lists of their respective cities and towns, prepared as required by section fifty-five of chapter fifty-one and indicating, so far as practicable, those addresses that appear to be group residential quarters, with the number of registered voters residing at each such address, and shall promptly furnish him with subsequent additions to and corrections in such lists. The secretary shall cause to be printed and sent to all residential addresses and to each voter residing in group residential quarters, with copies of the measures to which they refer, a summary prepared by the attorney general, a ballot question title prepared jointly by the attorney general and state secretary, fair and neutral 1-sentence statements describing the effect of a yes or no vote prepared jointly by the attorney general and the state secretary, a statement of not more than 100 words prepared by the secretary of administration and finance regarding the fiscal consequences of the measure for state and municipal government finances and, as provided in section 54, arguments for and against measures to be submitted to the voters under Article XLVIII of the Articles of Amendment to the Constitution. The secretary shall make available for public examination a copy of the ballot question titles, 1-sentence statements describing the effect of a yes or no vote and fiscal effect statements and shall publish them in the Massachusetts register by the second Wednesday in May. Any 50 voters may petition the supreme judicial court for Suffolk county to require that a title or

statement be amended; provided, however, that the petition shall be filed within 20 days after the publication of the title and statement. The court may issue an order requiring amendment by the attorney general and the state secretary only if it is clear that the title, 1-sentence statement or fiscal effect statement in question is false, misleading or inconsistent with the requirements of this section.

The secretary shall also cause to be printed and sent in like manner any question to be placed on the ballot at a biennial state election for the purpose of ascertaining the will of the people upon a particular subject provided that such question is received by the secretary on or before the first Wednesday of July preceding such election. Any such question shall be presented as set forth in this section for measures submitted under Article XLVIII of the Amendments to the Constitution, provided that the publication and judicial review procedures set forth herein shall be inapplicable where questions are received by the secretary on or after the first Wednesday in May. This section shall not apply to a question of public policy filed in accordance with section nineteen of chapter fifty-three.