

SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

NO. SJC-13273

THOMAS COLPACK, CHRISTINE M. LIMOGES,
MICHAEL R. LIMOGES, JAMES GARRETT, and
STEPHEN GARRETT,
Plaintiffs-Appellants,

v.

MAURA HEALEY, in her official capacity as
Attorney General of the Commonwealth of Massachusetts,
and WILLIAM F. GALVIN, in his official capacity as
Secretary of the Commonwealth of Massachusetts,
Defendants-Appellees.

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

BRIEF OF AMICUS CURIAE
MASSACHUSETTS PACKAGE STORES ASSOCIATION

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April 29, 2022

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CORPORATE DISCLOSURE STATEMENT

The Massachusetts Package Stores Association is a Massachusetts Nonprofit Corporation. It has no shareholders or parent corporations and no publicly held corporation owns 10% or more of its stock.

INTERESTS OF AMICUS CURIAE

Since 1942, the Massachusetts Package Stores Association ("MassPack") has served as a trade organization whose membership consists primarily of Massachusetts owned off premises retailers of alcohol beverages. The membership are a mix of Massachusetts owned beer, wine, and spirits retail stores, wine specialty shops, convenience stores and markets. The commonality is that they all sell alcohol beverages off-premises, and they are Massachusetts owned and headquartered businesses. This commonality is reflected by MassPack's board of directors, who represent and are comprised of all the various sectors and geographic regions within the off-premises retail of alcohol beverages in Massachusetts.

MassPack was created to provide a unified voice for all Massachusetts owned and headquartered off premises retailers on legislative and regulatory matters, especially those relating to control of the

sale of alcohol and the maintenance of public welfare and safety. To uphold public safety, MassPack is also the primary administrator and provider of Beverage Alcohol Training (BAT) for beer, wine, and spirits store owners and employees across the state as an education and certification tool. MassPack provides training in many very important areas that are specific to off premises retail in Massachusetts. Examples include recognizing fake and altered ID's, handling intoxicated and problem customers, safe procedures for home delivery of alcohol, and preventing sales to legal customers who are intentionally buying for underage people. BAT certification courses are offered by MassPack throughout the year to any off-premises server of alcohol beverages. Certification is strongly recommended by MassPack to member stores so that they are better prepared to serve as gatekeepers against illegal sales of alcohol beverages.

MassPack's mission to educate and protect is particularly relevant, because the three-tier system of alcoholic beverage regulation has been repeatedly challenged and usurped for over a decade by primarily large corporate interests, most of which are

headquartered outside of Massachusetts. These disruptive interests have sought the deregulation of alcohol beverages retail that increases their revenues through blending the tiers, expanding their businesses, and undercutting the governing framework administered through Mass. Gen. Laws Chap. 138, which is legislatively intended to prevent marketplace control of alcohol beverage production and retail, and sustain public safety and welfare through strict regulation.

MassPack has over 750 members, including stores of all sizes and business models. Many members sell food and other items in addition to alcohol beverages. The common features to all MassPack members are headquarters and ownership in Massachusetts and that they all sell alcohol beverages off the premises. Markets and convenience stores comprise about 18.5% of the MassPack membership, and they have representation on the MassPack Board of Directors. These members have made material contributions to the strategic campaign in support of MassPack's efforts to restore balance to the marketplace.

The impact MassPack members have on the Massachusetts economy is material. In Massachusetts,

the direct retail sales of the beverage alcohol industry equate to over \$10.9 billion in total economic activity. John Dunham & Associates. 2018 Economic Impact Study of America's Beer, Wine, and Spirits Retailers. New York, July 2018. Establishments that sell alcohol off premises employ as many as 18,233 Massachusetts residents and generate an additional 60,759 jobs in supplier and ancillary industries. *Id.* Businesses selling alcohol in Massachusetts, along with their supplier and ancillary industries, pay over \$8 billion in wages and benefits each year. This amounts to an average of over \$42,000 in wages and benefits. *Id.* The package stores industry and its employees pay over \$1.08 billion in state and local taxes, and an additional \$1.84 billion in federal taxes. They also are part of a regulatory system that helps to secure over \$97 million in excise taxes collected in Massachusetts. *Id.*

MassPack and its members have a substantial interest in defending against this challenge to the Attorney General's certification of Petition 21-03. Although the challenge was brought against the Appellee, the Massachusetts Attorney General, MassPack is a supporter of Initiative Petition 21-03, "An

Initiative Petition for a Law Relative to 21st Century Alcohol Retail Reform" ("Petition 21-03"), and therefore the outcome of the Court's decision has a direct impact not only on MassPack's direct interests in whether the Petition is able to proceed in the legislative process, but also as to the potential impacts the Petition has on industry practices and operations pursuant to Mass. Gen. Laws Chap. 138.

DECLARATION REGARDING PREPARATION OF THE BRIEF

Pursuant to Mass. R. App. P. 17(c)(5), Amici declare that (a) no party or party's counsel authored this brief in whole or in part; (b) no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and (d) neither the amici nor their counsel represents or has represented one of the parties to this appeal in another proceeding involving similar issues, nor were or are either of them a party or a representative of a party in a proceeding or legal transaction that is at issue in this appeal.

SUMMARY OF ARGUMENT

MassPack submits this *Amicus* Brief in support of Appellee Attorney General's certification of Petition 21-03, as well as Appellee's motion to dismiss.

First, the Attorney General correctly certified Petition 21-03 as appropriate for the ballot because it contains “only subjects . . . which are related or which are mutual dependent.” Article 48, the Initiative, Part 2, Section 3. Despite Appellants’ contentions to the contrary, the provisions in Petition 21-03 all clearly serve the common purpose of altering certain restrictions on the number and allocation of retail alcoholic beverage licenses. This conclusion is supported by the text and purpose of the Petition, as well as by this Court’s recent precedent, including *Weiner v. Attorney Gen.*, 484 Mass. 687 (2020).

Second, the Court should dismiss Appellants’ suit because it is prejudicially late, and Appellants have not identified any good cause for their tardy filing. The Appellants were aware of Petition 21-03’s certification in September 2021, and had previous experience and familiarity with the initiative petition process. Despite this knowledge, Appellants waited until the last minute and have provided no explanation for their delay. No good cause has been shown, and this untimely challenge not only unduly burdens the Secretary, the Attorney General, and the

Court, it unfairly prejudices the proponents of the Petition who, unless the Legislature acts, must now expend significant resources on a second round of signature collection while the Court considers and decides this late-filed action. Permitting a late challenge like this one would have a chilling effect on the initiative petition process.

ARGUMENT

A. THE ATTORNEY GENERAL PROPERLY CERTIFIED PETITION 21-03 BECAUSE ITS COMPONENTS ARE OPERATIONALLY RELATED TO ITS COMMON PURPOSE.

As this Court reiterated recently in *Weiner v. Attorney General*, 484 Mass. 687 (2020), “the related subjects requirement is satisfied where ‘one can identify a common purpose to which each subject of an initiative petition can reasonably be said to be germane.’” This requirement is not to be “construed ... narrowly nor [does it] demand[] that popular initiatives be drafted with strict internal consistency.” *Oberlies v. Attorney Gen.*, 479 Mass. 823, 830 (2018), quoting *Mazzone v. Attorney Gen.*, 432 Mass. 515, 528-529 (2000).

Under existing law, retailers can receive two types of licenses for the sale of packaged alcoholic beverages for off-premises consumption: (1) a license

for the sale of "all alcoholic beverages," which includes hard liquor, and (2) a license for the sale of "wine and malt beverages" only. See Mass. Gen. Laws Chap. 138, § 15 (first paragraph, first sentence). Further, under existing law, there are statutory limits on the total number of licenses for the sale of packaged alcoholic beverages that any one person or entity may hold: no more than one per town, two per city, or nine statewide in the aggregate. Mass. Gen. Laws Chap. 138, § 15 (first paragraph, second sentence).

Petition 21-03 would accomplish its common purpose of changing certain restrictions on the number and allocation of licenses by increasing on a gradual basis the total number of Section 15 licenses ("all alcoholic" and "wine and malt beverages" combined) that any one person or business could own statewide.¹ Petition 21-03 would also effectuate this purpose by setting a cap on the number of these licenses that

¹ Under Petition 21-03, the statewide aggregate limit would be gradually increased over the course of several years. This limit would increase from nine to twelve on January 1, 2023 (IP-3, §§ 1 and 5), from twelve to fifteen on January 1, 2027 (IP-3, §§ 2 and 6), and from fifteen to eighteen on January 1, 2031 (IP-3, §§ 3 and 7).

could be "all alcoholic" in nature.² Both of these provisions are a "piece of the proposed integrated scheme." *Oberlies*, 479 Mass. at 832.

The Appellants argue that Petition 21-03 violates Article 48 because these provisions both lift and tighten the total statewide limits. Appellants' brief, p. 28. This argument is flawed because it is based on the false premise that the common purpose of Petition 21-03, or any petition like it, must be either a wholesale lifting of regulations or an across-the-board tightening. If this was the standard (which it is not), it would prevent citizens from proposing laws that take a measured approach at altering existing restrictions or creating new restrictions governing the operating of a particular industry.

This Court has repeatedly found the requisite relatedness in similar initiative petitions proposing structural changes to the laws governing the operation of a particular industry. See *Weiner*, 484 Mass. 692

² Of this aggregate statewide limit, under Petition 21-03 no person or entity would be permitted to hold more than seven "all alcoholic beverages" licenses unless that person or entity held more than seven such licenses as of December 31, 2022. (IP-3, § 5).

(food store alcohol licenses and package store licenses); *Oberlies*, 479 Mass. at 832 (imposing new requirements on health care facilities); *Hensley v. Attorney General*, 474 Mass. 651 (2016) (legalizing, regulating and taxing marijuana); *Abdow v. Attorney General*, 468 Mass. 478, 592 (2014) (prohibiting casino and slots gambling and abolishing pari-mutuel wagering on simulcast greyhound races).³

In addition, as this Court made clear in *Weiner* and *Oberlies*, it is permissible to include provisions in a petition that “anticipate[] and address[] a potential consequence” of the law itself while still remaining compliant with the relatedness requirement. This is precisely what the three remaining provisions in this proposed law seek to accomplish.

First, to ensure compliance by licensees with existing Section 15 requirements and to mitigate against any adverse consequences arising from the

³Indeed, the Court has also affirmed certification of initiatives that had much broader purposes than Petition 21-03. See *Hensley*, 474 Mass. at 657-658; *Massachusetts Teachers Ass’n. v. Secretary of Com*, 384 Mass. 209, 220 (1981) (limitations of various state and local taxes); *Albano v. Attorney General*, 437 Mass. 156, 161 (2002) (restricting the availability of marriage and denying benefits of marriage to same-sex couples).

gradual increase in the statewide limits on the combined number of licenses, under Petition 21-03, all in-store sales of alcoholic beverages by licensees would be required to be conducted through a face-to-face transaction between the customer and the licensee or an authorized employee of the licensee who has attained the age of 18 years. (IP-3, § 8). In-store automated or self-checkout sales of alcoholic beverages by such licensees would be prohibited. *Id.* This directly addresses and attempts to curb the potential negative consequences that could arise, which potentially include a broader access to underage individuals.

Second, because all transactions under Petition 21-03 would be required to be conducted face-to-face, the proposed law expands the list of acceptable forms of identification that retailers could reasonably rely on during this transaction. Allowing out-of-state licensees makes practical sense and is a reasonable way to address the everyday retail consequences of requiring face-to-face transactions.⁴ Moreover, this

⁴ Under existing law, a licensee and their employees may reasonably rely on several forms of identification for proof of a person's identify and age when selling alcoholic beverages for consumption off premises.

provision reasonably addresses the likelihood that with the increase in the limit on the total number of licenses, there will likely be an increase in the number of transactions at multi-channel retail locations.

Massachusetts is a state with five neighbor states at its borders. It is reasonable to expect that new licensees will most certainly open near the Massachusetts borders with Rhode Island, Connecticut, New Hampshire, New York, and Vermont. Impacts from Massachusetts tourism marketing through the "It's All Here" campaign by the Massachusetts Marketing Partnership should also be considered. See <https://www.massitsallhere.com/>. Massachusetts as a higher education state is another area that the Massachusetts Marketing Partnership is active toward promoting. See <https://www.mass.gov/orgs/massachusetts-marketing-partnership>. Therefore, cities and towns with

Mass. Gen. Laws Chap. 138, § 34B. These forms of acceptable identification include a Massachusetts driver's license, liquor purchase identification card, valid passport and military identification card. *Id.* Under Petition 21-03, this list would expand to also include a valid motor vehicle license issued by another state. (IP-3, §§ 10 and 11).

colleges and universities catering to out-of-state students will continue to be a prime location for expanded beer and wine licensees.

Finally, to further mitigate against any possible adverse consequences that could occur as a result of the increase on the statewide cap on retail licenses, Petition 21-03, if enacted, would increase the fine that the Alcoholic Beverages Control Commission ("ABCC") could accept from retailers facing license suspension by changing the definition of "gross profits" under Section 23 of chapter 138 of the General Laws. (IP-3, § 9). This provision will ensure that licensees with expanded influence - including large entities who have the resources to acquire a large number of licenses, will comply with the ABCC and Section 15 requirements.

Appellants incorrectly suggest that the provisions of Petition 21-03 would not lead to an increase in the number of Section 15 licenses statewide or to any of the associated risks that may require efforts to mitigate. See Appellants' Brief, pp. 8, 9, 15, 38. This argument incorrectly assumes that the quota system in Massachusetts is static. It

is not. The number of available off-premises licenses has been steadily growing.

During just the current legislative session, the Legislature has considered forty-eight separate Home Rule petitions that seek to expand the number of licenses at the municipal level.⁵ Governor Baker has already signed seven of these Home Rule petition into law, which has resulted in the creation of eight new licenses.⁶ Additional petitions are advancing through

⁵The following Massachusetts House and Senate Bills have been introduced to the 192nd General Court of the Commonwealth of Massachusetts: 2021 Mass. H.B. 380, 2021 Mass. H.B. 383, 2021 Mass. H.B. 387, 2021 Mass. H.B. 3715, 2021 Mass. H.B. 3740, 2021 Mass. H.B. 3741, 2021 Mass. H.B. 3811, 2021 Mass. H.B.3812, 2021 Mass. H.B. 3813, 2021 Mass. H.B. 3890, 2021 Mass. H.B. 3896, 2021 Mass. H.B. 3897, 2021 Mass. H.B. 3898, 2021 Mass. H.B. 3907, 2021 Mass. H.B. 3933, 2021 Mass. H.B.4065, 2021 Mass. H.B. 4086, 2021 Mass. H.B. 4116, 2021 Mass. H.B. 131, 2021 Mass. H.B. 4187, 2021 Mass. H.B. 4191, 2021 Mass. H.B. 4196, 2021 Mass. H.B. 4246, 2021 Mass. H.B. 4267, 2021 Mass. H.B. 4277, 2021 Mass. H.B. 4283, 2021 Mass. H.B. 4320, 2021 Mass. H.B. 4324, 2021 Mass. H.B. 4325, 2021 Mass. H.B. 4342, 2021 Mass. H.B. 4522, 2021 Mass. H.B. 4663, 2021 Mass. H.B. 4664, 2021 Mass. H.B. 4665, 2021 Mass. H.B. 4666, 2021 Mass. H.B. 4668, 2021 Mass. H.B. 4669, 2021 Mass. H.B. 4191, 2021 Mass. S.B. 227, 2021 Mass. S.B. 238, 2021 Mass. S.B. 246, 2021 Mass. S.B. 2477, 2021 Mass. S.B. 2488, 2021 Mass. S.B. 2501, 2021 Mass. S.B. 2511, 2021 Mass. S.B. 2556, 2021 Mass. S.B. 2566, and 2021 Mass. S.B. 2587.

⁶The following seven homerule petitions were signed into law as part of the 2021 Massachusetts Session Laws: 2021 Mass. Acts Ch. 36 (H.B. 3813), 2021 Mass. Acts Ch. 85 (H.B. 3896), 2021 Mass. Acts Ch. 53 (H.B.

the legislative process and are anticipated to be added in the coming months.

In addition, the number of available licenses has also increased and will continue to do so based on population growth in cities and towns. For example, this year Worcester added five additional off-premises licenses due to a population growth of 20,000 people.⁷ Also noteworthy is that Tewksbury added 2 section 15 licenses, Woburn added 1 section 15 license, Haverhill added 1 section 15 license, and Framingham added 1 section 15 license. All were increased due to population growth.⁸

3897), 2021 Mass. Acts Ch. 50 (H.B. 3898), 2021 Mass. Acts Ch. 116 (H.B. 4116), 2021 Mass. Acts Ch. 6 (S.B. 2566), and 2021 Mass. Acts Ch. 31 (H.B. 2587).

⁷See Kim Ring, *Roll out more barrels? Population boom brings additional liquor sales licenses to Worcester*, Worcester Telegram (January 25, 2022), <https://www.telegram.com/story/news/2022/01/25/population-boom-brings-additional-liquor-sales-licenses-worcester/6582230001>.

⁸See See Christopher Huffaker, *Tewksbury Gets 6 New Liquor Licenses Through Population Growth*, Patch (January 27, 2022), <https://patch.com/massachusetts/tewksbury/tewksbury-gets-6-new-liquor-licenses-through-population-growth>;

Jim Haggerty, *Woburn's population growth prompts 9th liquor license*, Daily Times Chronicle (November 29, 2021),

It is not accurate to suggest that Petition 21-03 will "have little practical impact." Appellants Brief, p. 9. If the voters approve Petition 21-03, there is little doubt that large entities, who hold the maximum number of Section 15 licenses under existing law, will acquire these additional available licenses as the maximum allowable number increases. The net effect will be an increase in the total number of off-premises stores statewide. Contrary to Appellants' mischaracterization about the state quota system, the net effect will be an increase in the total number of off-premises stores statewide.

The *Weiner* case is particularly instructive as it involved a petition (Petition 19-14) that, although

http://homenewshere.com/daily_times_chronicle/news/woburn/article_f6c62018-5125-11ec-8658-fb6f4fee6f7b.html;

Mike LaBella, *Population growth, mix-up means 2 more liquor licenses for Haverhill*, The Eagle Tribune (March 20, 2022), https://www.eagletribune.com/news/population-growth-mix-up-means-2-more-liquor-licenses-for-haverhill/article_cb7eb164-a48f-11ec-a4f0-e75f5ca0794d.html;

Lillian Eden, *Framingham Board of License Commissioners awards new all-alcohol license*, MetroWest Daily News (March 17, 2022), <https://www.metrowestdailynews.com/story/news/2022/03/17/wine-market-alcohol-new-liquor-store-shoppers-world-framingham-ma/7048930001>.

not identical, sought to make structural changes to the restrictions on the number and allocation of licenses for the sale of alcoholic beverages. The initiative in *Weiner* included several distinct parts, such as the creation of an entirely new class of licenses for food stores; an increase and eventual elimination of the existing cap on Section 15 package store licenses; identification verification provisions that would have permitted retailers to rely on out-of-state licenses; a mandate that retailers use ID scanning devices for alcohol beverages purchases; the creation of a separate fund for use by the Commission for implementation, administration and enforcement; and, requirements for the commission to maintain a ratio of investigators. Despite the amalgamation of these diverse provisions, this Court affirmed the Attorney General's relatedness certification. *Weiner*, 484 Mass. at 695.

Likewise, the *Hensley* case is also informative because it involved the certification of an expansive initiative that included numerous subjects related to the operation of one particular industry - marijuana. In *Hensley*, the Court affirmed the certification of an initiative containing fourteen comprehensive sections

to legalize the use of marijuana as well as detailed provisions "for the licensing, operation, and regulation of the various types of marijuana establishments." *Hensley*, 474 Mass. at 654. Notably, this included age verification provisions, as well as enforcement and excise tax provisions. *Id.* at 653-654.⁹ It also contained a provision allowing pre-existing medical marijuana licensees to convert to a recreational license. The Court held that the initiative "easily satisfies the related subjects requirement" because it "lays a detailed plan to legalize marijuana (*with limits*) for adult use and to create a system that would license and regulate the businesses involved in the cultivation, testing, manufacture, distribution, and sale of marijuana and that would tax the retail sale of marijuana to customers." *Id.* at 658 (emphasis added). Allowing medical marijuana centers to participate in commercial

⁹ Section 9(b) of the marijuana petition proposed the insertion of a new Chapter 94G, which contained an age verification provision that excluded from penalty any person who "reasonably verified that the recipient appears to be 21 years of age or older *by means of government-issued photographic identification containing a date of birth.*" Thus, the impact of this provision is that out-of-state licenses would be considered acceptable forms of identification for purchasing marijuana.

distribution "adequately related to this over-all detailed plan as it was one piece of the proposed integrated scheme." *Id.*

A comparison to *Weiner* and *Hensley* supports the conclusion that Petition 21-03 "easily satisfies the related subjects requirement of art. 48." *Id.* at 658. The purpose and features in *Weiner* were broader than the proposed law here. In *Weiner*, the petition created an entirely new class of food store liquor licenses with no statewide cap, while simultaneously altering the statewide ownership cap on the combined number of Section 15 licenses. Here, in contrast, the provisions simply reform existing laws by modifying the number and allocation of the statewide Section 15 caps. Similarly, the expansive initiative in *Hensley* was broader in both its form and its subjects. By comparison, here, Petition 21-03 relates to one segment of one industry.

In addition, as noted above, the remaining provisions of Petition 21-03 requiring face-to-face transactions, permitting reliance on out-of-state licenses, and increasing the potential fine for violations by licensees are operationally related because they "anticipate[] and address[] ... potential

consequence[s].” *Weiner*, 484 Mass. at 893 (quoting *Oberlies*, 479 Mass. at 832). This Court has consistently affirmed the Attorney General’s certification of proposed laws that contain provisions like these. *Weiner*, 484 Mass. at 893 (“Requiring age verification before every ... purchase might mitigate this danger [of underage purchases of alcohol]”); *Dunn v. Attorney General*, 474 Mass. 675, 681 (2016); *Oberlies*, 479 Mass. at 832-33 (workforce reduction ban was “operationally related” to nurse-patient staffing ratio).

Finally, the Appellants spend large parts of their brief attacking MassPack and suggesting that IP 21-03’s provisions do not line up with their own or what they perceive to be the public’s priorities for alcohol reform. Appellants’ Brief, pp. 10-14, 19-21, 33-34. They also repeatedly mischaracterize and contort statements by MassPack and its counsel. See e.g., *id.*, pp. 33-34 (relating to statements by counsel approving the AG’s proposed question title). These attacks and arguments are entirely irrelevant to the Court’s Article 48 analysis. As the Court has repeatedly made clear, it is not for Court or Attorney General to decide whether there were other ways in

which the petition may have been drafted or other features that could have been included to mitigate the effects. *Weiner*, 484 Mass. 694; *Massachusetts Teachers Ass'n*, 384 Mass. at 220 ("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").

"Neither the Attorney General nor th[e] Court is required to check common sense at the door when assessing the question of relatedness." *Oberlies*, 479 Mass. at 823 (internal citation and quotation omitted). Here, both common sense and legal precedent clearly support the Attorney General's conclusion that, taken together, the provisions of Petition 21-03 are substantially related and meet the requirements set forth in Article 48.

B. THE APPELLANTS' CHALLENGE TO PETITION 21-03 SHOULD BE DISMISSED AS UNTIMELY

The Appellants' last-minute challenge is prejudicially tardy without any good cause shown. For this reason, this represents a unique instance in which the Court should dismiss the Complaint.

1. The Appellants had full knowledge of the Petition for at least six months and a full opportunity to make a timely challenge.

Appellants have provided no justification for their unreasonable delay, nor can they. Appellants are a group of sophisticated businesspersons with financial interests in or related to the retail alcohol industry in Massachusetts. The group of Appellants also includes three individuals who have prior experience with legal challenges to initiative petitions. Specifically, three of the five Appellants were original signers and lead proponents of Initiative Petition 19-14 in *Weiner*.¹⁰

¹⁰ Initiative Petition 19-14 in *Weiner* was proposed and funded primarily by Cumberland Farms and other groups with interests in the convenience store industry. The lead plaintiff here, Thomas Colpack, is the Vice President, East Division at Cumberland Farms. Tom Colpack, *LinkedIn* (accessed April 29, 2022), <https://www.linkedin.com/in/tom-colpack-74830516>. Michael Limoges, another plaintiff here, is the Corporate Marketing Manager at Cumberland Farms. Michael Limoges, *LinkedIn* (accessed April 29, 2022), <https://www.linkedin.com/in/michael-limoges-7a943110>. Mr. Colpack and Mr. Limoges, as well as Christine Limoges (another plaintiff here), were all original signers of Petition 19-14 in *Weiner*. See Addendum, Petition 19-14 with Original Signatures. One of the other plaintiffs is Jim Garrett, Principal at Volta Oil and Treasurer to the New England Convenience Store and Energy Marketers Association (NECSEMA). See <https://www.necsema.net/board-of-directors.html>. Stephen Garrett, employed at Volta Oil and a relative of Jim Garrett, is the fifth and remaining plaintiff.

As these individuals were well aware, the opponents to their initiative in *Weiner* made a timely challenge to the initiative's certification on November 25, 2019, and the Court issued its decision six months later on May 26, 2020. Accordingly, the Appellants cannot reasonably contend that they did not have full knowledge of the process and the appropriate timing for challenging an initiative petition.

The Appellants also cannot reasonably contend that they did not have notice of Initiative Petition 21-03 or the Attorney General's certification decision in September 2021. Even prior to making its certification decision, the Attorney General alerted all known potential opponents to it and asked for any comments or objections to certification. Matthew T. Durand, Counsel for EG America (Cumberland Farm's parent company), was part of this process and provided comments to the Attorney General in August 2021. ¹¹

Rather than comply with Justice Wendlandt's instruction to include in their filings "an

¹¹Matthew T. Durand also notably serves with Jim Garrett on the Board of Directors to the NECSEMA. See *Board of Directors*, NECSEMA (accessed April 28, 2022), <https://www.necsema.net/board-of-directors.html>.

explanation for the apparent tardy filing of this action,” the Appellants merely argue that there was no deadline for them to file their action. In prior pleadings, they suggested that their action is not untimely because they filed it “as expeditiously as possible” Appellants’ Opposition to Motion to Dismiss, p. 12; *Dunn*, 474 Mass. at 686, n.9. Appellants’ underlying understanding of the initiative petition process and deadlines, as well as their knowledge of Petition 21-03 by at least September 2021 (and likely earlier in August 2021), clearly demonstrate that their challenge was not filed “as expeditiously as possible.” Whether Appellants’ late filing was intentional and strategic or not, they should not be relieved from this inexcusable delay.

2. Allowing late challenges like this, where there is no legitimate basis for the tardy filing, causes prejudice to the petitioners, and will likely have a chilling effect on the initiative petition process.

Appellants’ inexcusably late filing has caused prejudice to Petition 21-03’s proponents.¹² In the

¹²As the Court pointed out in *Dunn*, late challenges like this also create the potential for interference with the responsibilities of the Secretary, impose unnecessary burdens on the Attorney General and Court, and risk “voter confusion and additional costs for the

event the legislature declines to enact Petition 21-03 by May 3, 2022, the proponents have fifty (50) days (from May 4, 2022 until June 22, 2022) to gather an additional 13,374 signatures from qualified voters and file these signatures with local registrars for certification.¹³ The proponents must then file them with the Secretary by July 6, 2022.

Because of the Appellants' late filing, the Court scheduled expedited briefing and a hearing on May 4, 2022. Due to printing deadlines for the information for Voter Guides, the Secretary and Attorney General requested that the "Court issue an order resolving this case by July 1, with an opinion to follow if necessary." RA 43.

If entertained by the Court, the Appellants' late challenge will put the proponents in the position of having to expend the significant logistical and monetary resources necessary to gather the required

Commonwealth." *Dunn*, 474 Mass. at 687. For this reason, the Court in *Dunn* agreed that February 1 would be a reasonable deadline to file challenges and noted that "it is not unfair to ask those who object to the Attorney General's certification . . . to 'speak now or forever hold your peace.'" *Id.*

¹³ See Article 48, the Initiative, Part 2, Section 3; see also <https://www.sec.state.ma.us/ele/elepdf/State-Ballot-Question-Petitions-03-2021.pdf>

signatures and have them certified before the Court decides this issue. Even if the Court can meet the Commonwealth's requested deadline of a July 1 Order, it will be too late because of Article 48's strict deadlines.

The Court previously warned against filing late challenges like this one. *Dunn*, 474 Mass. 675, 687; *Hensley v. Att'y Gen.*, 474 Mass. 651, 671 (2016) (warning litigants against filing late challenges to yes/no statements). Despite this warning, and despite their knowledge of Petition 21-03 and their experience with this initiative petition process, the Appellants sat on their hands for over six months. This represents one of the rare cases where dismissal is appropriate.

If opponents to initiative petitions are allowed to file late challenges, without good cause shown, it will have a chilling effect on the initiative petition process. Opponents will be emboldened to intentionally and strategically wait until mid-April to file challenges to ensure that the proponents need to expend considerable resources on the second round of signature collection and certification while certification challenges are still pending. Equally,

proponents of future bills may decline to participate because of the prospects of these strategically filed late challenges and the costs associated.

In sum, equitable considerations support the dismissal of this Complaint due to the inexcusable delay. Dismissal would also be consistent with the "firmly established principle that art. 48 is to be construed to support the people's prerogative to initiate and adopt laws." *Abdow v. Attorney Gen.*, 468 Mass. 478, 487 (2014), quoting *Carney v. Attorney Gen.*, 451 Mass. 803, 814 (2008).

CONCLUSION

For the foregoing reasons, MassPack respectfully requests that the Court enter a judgment declaring that the Attorney General's decision to certify Initiative Petition 20-03 was in compliance with the requirements of art. 48 or otherwise grant the Attorney General's Motion to Dismiss.

Respectfully submitted,

MASSACHUSETTS PACKAGE STORES
ASSOCIATION, et al.,
By its attorney

/s/ Damien C. Powell

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CERTIFICATE OF COMPLIANCE

Pursuant to Mass. R. App. P. 16(k), the undersigned certifies that, to the best of the amicus curiae's ability, this brief complies with the Rules of Appellate Procedure that pertain to the filing of briefs, including:

Mass. R. App. P. 17;
Mass. R. App. P. 20; and
Mass. R. App. P. 16 (as applicable).

The undersigned hereby certifies that compliance with Mass. R. App. P. 20(a)(3)(E) was achieved by using monospaced font, Courier New 12-point font, 10 characters per inch, with fewer than 35 non-excluded pages.

/s/ Damien C. Powell
Damien C. Powell, Esq.
BBO # 664200

CERTIFICATE OF SERVICE

I, Damien Powell, on behalf of the Amicus Curiae, Massachusetts Package Stores Association, hereby certify pursuant to Mass. R. App. P. 13(e), that on this 29 day of April, 2022, I have made service of a copy of the

following document filed in Massachusetts Supreme
Judicial Court Case No. SJC-13273, entitled *Thomas
Colpack, et al. v. Attorney General, et al.*:

**BRIEF OF AN AMICUS CURIAE IN SUPPORT OF
DEFENDANTS/APPELLEES**

SUBMITTED BY: MASSACHUSETTS PACKAGE STORES ASSOCIATION

The document was served via efileMA, email, and/or
First Class Mail, upon counsel of record for all parties,
or if the party has no attorney then I made service
directly to the self-represented party to the following
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ADDENDUM

- Petition 19-14 with Original Signatures

AN INITIATIVE PETITION FOR A LAW RELATIVE TO THE SALE OF BEER AND WINE BY FOOD STORES

Be it enacted by the People, and by their authority:

SECTION 1. Chapter 138 of the General Laws is hereby amended by inserting, after section 15B, the following sections:-

Section 15C. Adoption and enforcement of age verification policies by licensees

(a) Every licensee under sections 15 and 15D shall adopt and enforce an age verification policy for the prevention of the unlawful sale of alcoholic beverages to persons under twenty-one years of age, which policy shall require the presentation of a valid and reliable form of identification by all customers for all purchases of alcoholic beverages, regardless of the actual or apparent age of the customer.

(b) For purposes of this section, a reliable form of identification shall include those forms of identification upon which a licensee may reasonably rely for purposes of the second paragraph of section 34B, and such other forms of identification for which the licensee has adopted reasonable measures by which to verify the validity and authenticity thereof.

(c) Nothing in this section shall prohibit a licensee from adopting and enforcing additional age verification policies beyond those required herein, nor in any way limit the applicability of section 69, nor otherwise be construed as affirmatively requiring the sale of an alcoholic beverage to any customer who presents a valid and reliable form of identification.

(d) The commission shall, after notice and hearing under chapter 30A, promulgate regulations to implement this section.

Section 15D. Grant of additional licenses to food stores for the sale of beverages not to be drunk on the premises

(a) Local licensing authorities that have been authorized to grant licenses under section 15 are hereby authorized to grant an additional class of licenses, known as a food store license, for the sale of wines and malt beverages not to be drunk on premises.

(b) Except as otherwise provided in this section, a food store license shall in every way be treated as a license granted under section 15 and shall be subject to all the laws and regulations applicable thereto.

(c) No food store license shall be granted under this section unless the premises to which the license applies is a permanent non-mobile location within the geographic jurisdiction of the

local licensing authority, meets the definition of a “food store” under section 184B of chapter 94, and meets the definition of a “retail food store” under section 3(o)(1) of the federal Food and Nutrition Act of 2008 as amended through Public Law 115-334.

(d) The amount of any initial or renewal fee for a food store license shall be determined by the local licensing authority, provided that such fee shall not exceed seventy-five percent of the amount of any initial or renewal fee established by the local licensing authority for a license granted under section 15.

(e) In addition to any fees imposed under subsection (d) of this section, an applicant for a new food store license or for the transfer of a food store license shall pay a fee in the amount of \$500 to the commission after approval of the application but before the issuance of the new or transferred license, provided that such fee shall be in the amount of \$5,000 when the issuance of said food store license would result in the applicant owning or controlling more than five food store licenses in the commonwealth.

(f) The number of food store licenses that may be granted under this section shall be determined at the sole discretion of each local licensing authority, which shall be in addition to the number of licenses otherwise authorized to be granted under sections 15 and 17, and which shall not be included as a license for purposes of determining the number of licenses allowed to be issued under said sections 15 and 17. Without limitation to the foregoing general provisions of this subsection, the number of food store licenses that may be granted shall not be subject to the second sentence of section 15.

(g) A food store license shall permit the sale of wines and malt beverages only, and shall not permit the sale of all alcoholic beverages, provided that nothing in this section shall prohibit a food store from applying for a new license or the transfer of a license for the sale of all alcoholic beverages under section 15, subject to all the provisions of this chapter applicable to the issuance thereof, the granting of which shall require the surrender or conversion of any food store license that may have been issued under this section for the same premises.

(h) The commission shall, after notice and hearing under chapter 30A, promulgate regulations to implement this section.

SECTION 2. Section 15C of said chapter 138, as enacted by section 1 of this Act, is hereby amended by striking out subsections (a) and (b) and inserting in place thereof the following subsections:-

(a) Every licensee under sections 15 and 15D shall adopt and enforce an age verification policy to prevent the unlawful sale of alcoholic beverages to persons under twenty-one years of age, which policy shall require:

(1) the presentation of a valid and reliable form of identification by all customers for all purchases of alcoholic beverages, regardless of the actual or apparent age of the customer; and

(2) the verification of such identification by means of a point-of-sale barcode scanner or such other comparable technology as may be approved by the commission, provided that the commission may establish alternative measures of verification for those forms of identification upon which a licensee may reasonably rely for purposes of the second paragraph of section 34B but which are not capable of verification by technological means that are both commercially available and practically applied for the intended use.

(b) For purposes of this section, a reliable form of identification shall include only those forms of identification containing such features and attributes as may be required to enable verification by the licensee under subsection (a)(2) of this section, provided that the commission may enact additional criteria to further define a reliable form of identification.

SECTION 3. The first paragraph of section 15 of said chapter 138, as amended by sections 3 and 6 of chapter 193 of the Acts of 2011, is hereby further amended by striking out, in each instance, the phrase “more than 9” and inserting in place thereof, in each instance, the following phrase:- more than 12

SECTION 4. The first paragraph of said section 15 of said chapter 138, as amended by section 3 of this Act, is hereby further amended by striking out, in each instance, the phrase “more than 12” and inserting in place thereof, in each instance, the following phrase:- more than 15

SECTION 5. The first paragraph of said section 15 of said chapter 138, as amended by section 4 of this Act, is hereby further amended by striking out, in each instance, the phrase “more than 15” and inserting in place thereof, in each instance, the following phrase:- more than 18

SECTION 6. The first paragraph of said section 15 of said chapter 138, as amended by section 5 of this Act, is hereby further amended by striking out the second sentence in its entirety.

SECTION 7. Subsection (f) of section 15D of said chapter 138, as enacted by section 1 of this Act, is hereby amended by striking out the second sentence in its entirety.

SECTION 8. There shall be established and set upon the books of the commonwealth a separate fund which, subject to appropriation, shall consist of all monies required to be paid into the state treasury under sections 27 and 62 of said chapter 138 and which, subject to appropriation, shall be expended by the commission first for the implementation of this Act and second for the ongoing administration and enforcement of said chapter 138 generally.

SECTION 9. The commission shall, subject to appropriation, maintain a ratio of at least one investigator per 250 outstanding licenses issued under sections 15 and 15D of said chapter 138.

SECTION 10. Section 3 of this Act shall take effect on January 1, 2021.

SECTION 11. Sections 2 and 4 of this Act shall take effect on January 1, 2022.

SECTION 12. Section 5 of this Act shall take effect on January 1, 2023.

SECTION 13. Sections 6 and 7 of this Act shall take effect on January 1, 2024.

SECTION 14. Except as otherwise provided, this Act shall take effect on December 15, 2020.

We, the undersigned qualified voters of the Commonwealth of Massachusetts, have read and subscribe to the foregoing INITIATIVE PETITION FOR A LAW RELATIVE TO THE SALE OF BEER AND WINE BY FOOD STORES, agree to be one of the original signers thereof, and hereby submit it for approval by the people:

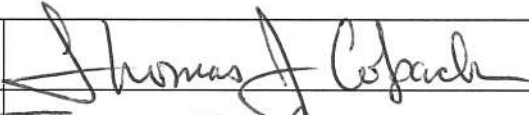
SIGNATURE:	Lauren Jett
PRINTED NAME:	Lauren Jett
ADDRESS:	101 South HUNTINGTON #101
CITY STATE ZIP:	BOSTON MA 02130

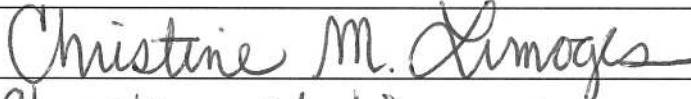
SIGNATURE:	Matthew Durand
PRINTED NAME:	MATTHEW DURAND
ADDRESS:	101 SOUTH HUNTINGTON AVE #101
CITY STATE ZIP:	BOSTON, MA 02130

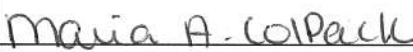
SIGNATURE:	
PRINTED NAME:	
ADDRESS:	
CITY STATE ZIP:	

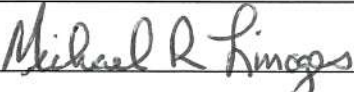
SIGNATURE:	
PRINTED NAME:	
ADDRESS:	
CITY STATE ZIP:	

We, the undersigned qualified voters of the Commonwealth of Massachusetts, have read and subscribe to the foregoing INITIATIVE PETITION FOR A LAW RELATIVE TO THE SALE OF BEER AND WINE BY FOOD STORES, agree to be one of the original signers thereof, and hereby submit it for approval by the people:

SIGNATURE:	
PRINTED NAME:	Thomas J. Corpack
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SIGNATURE:	
PRINTED NAME:	Christine M. Limoges
ADDRESS:	11 Robin Road
CITY STATE ZIP:	Easthampton MA 01027

SIGNATURE:	
PRINTED NAME:	Maria A Colpack
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SIGNATURE:	
PRINTED NAME:	Michael R Limoges
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SIGNATURE:	<i>Thomas R Cacciola Jr.</i>
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SIGNATURE:	<i>Michael P. Durand</i>
PRINTED NAME:	Michael P. Durand
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SIGNATURE:	<i>Lynn M.T. Durand</i>
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