COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

SUFFOLK, SS. NO. SJC-13361

ROBERT HERRMANN, ET AL.,
Plaintiffs-Appellants,

v.

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

ON RESERVATION AND REPORT FROM THE SJC FOR SUFFOLK COUNTY

BRIEF OF THE DEFENDANTS-APPELLEES

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QUESTIONS PRESENTED

1. Can Plaintiffs obtain an advisory ruling from this Court on the propriety of the Attorney General's decision not to certify their petition, where they failed to gather the signatures required by Article 48 by the first Wednesday in December in the calendar year in which they submitted the petition to the Attorney General for review?
2. Did the Attorney General properly decline to certify the Plaintiffs' petition, which would cap political contributions to independent expenditure PACs, because it was inconsistent with the freedom of speech protection contained in Article 16 of the Declaration of Rights?

STATEMENT OF THE CASE

On June 29, 2022, Plaintiffs filed initiative petition 22-01 with the Attorney General's Office. R.A. 11, 53. Petition 22-01 proposed a law that would amend G.L. c. 55 to impose a $5,000 per-calendar-year limit on campaign contributions made by an individual to a political committee or entity that makes independent expenditures to advocate for or against particular candidates without cooperation or consultation with those candidates (such committees are often known as "independent expenditure PACs" or "SuperPACs"). R.A. 11, 53-54.

Article 48, the Initiative, Part 2, Section 2 provides, in pertinent part, that "[n]o proposition inconsistent with any one of the following rights of the individual, as at present declared in the declaration of rights, shall be the subject of an initiative or referendum petition," including "freedom of speech." Upon reviewing initiative petition 22-01, the Attorney General concluded that the proposed law could not be certified because it was inconsistent with the freedom of speech as protected under the state constitution. Plaintiffs were notified of this decision on September 7, 2022. R.A. 35-36.

Plaintiffs, two groups of the signers of initiative petition 22-01, waited almost two months and then filed two parallel suits challenging the Attorney General's determination with a goal of ultimately appealing any decision of this Court to the United States Supreme Court.[1] Consistent with this Court's longstanding practice and guidance, Defendants offered to move this Court jointly for entry of an injunction that would permit Plaintiffs to collect signatures immediately on their proposed law. R.A. 23, 64-5; *see Lockhart v. Att'y Gen.*, 390 Mass. 780, 781 (1984) (noting in challenge to decision declining to certify

[1] Although the two groups of Plaintiffs purport to have different theories as to why the proposed law does not interfere with free speech rights, their legal claims are the same, as is the relief sought: they seek an order that the petition be certified as compliant with Article 48, and they seek to have their claims litigated and adjudicated before having to gather any signatures from registered voters.

initiative petition that the Court had, "without opposition from the defendants, entered a preliminary injunction which directed that the Secretary of the Commonwealth release to the plaintiffs signature sheets containing a summary of the petition provided by the Attorney General" so that the petitioners could do so before litigating merits of dispute). If Plaintiffs were able to clear the Article 48 signature collection threshold by December 5, 2022, then, consistent with this form of preliminary injunction and the Court's practice, the parties could proceed to litigate – and the Court could then resolve – the constitutional issue at the heart of these suits. Plaintiffs, however, declined this offer, and collected no signatures in support of their proposed law.

In their overlapping Complaints,[2] Plaintiffs seek a declaration allowing them to choose, in an exercise of their sole discretion, to gather signatures during a future signature gathering window, having elected not to do so during this year's timeframe for doing so under Article 48, as well as a declaration that the Attorney General's decision not to certify this proposed law as complying with Article 48 was wrong. After these Complaints were filed, the Single Justice consolidated the two cases and reserved and reported two questions to this Court: (1) whether this

[2] The two separate complaints do not differ in the facts alleged or the claims made.

case is moot because petitioners failed to collect any signatures prior to December 5, 2022, to place this measure on the 2024 ballot; and (2) whether, if the matter is not moot, the Attorney General's decision declining to certify the proposed law because it was inconsistent with rights secured by the Massachusetts constitution was proper. R.A. 241-43.

SUMMARY OF THE ARGUMENT

Article 48 provides voters with a means of gathering popular support for a proposed law or constitutional amendment, to put that proposed law or constitutional amendment before the Legislature, and ultimately to put it on the statewide ballot. It is not a means of seeking advisory opinions from this Court on academic constitutional questions. Yet that is precisely what the Plaintiffs are asking this Court to do: to weigh in on a constitutional issue even though they have not collected signatures in support of their proposed law. Plaintiffs' litigate-first-signatures-later approach is contrary to the text, history, and structure of Article 48, and the Court should not indulge these tactics.

Instead, this Court should dismiss this suit as moot without reaching the underlying merits of the Plaintiffs' constitutional claims. The Court should do so because Plaintiffs failed to meet the December 5, 2022 signature collection deadline fixed by Article 48, and as a result, their petition is no longer viable. *See*

Lockhart, 390 Mass. at 782 (holding that Article 48 certification challenge "is moot because the required number of signatures was not obtained"). [pp. 13-16]. Plaintiffs' attempt to evade *Lockhart* and to revive their moot claims fails because it is inconsistent with the text and history of Article 48, conflicts with a commonsense understanding of the initiative petition process, would require the Court to adjudicate constitutional questions unnecessarily, and is at odds with the Court's longstanding practice for handling certification challenges. [pp. 16-24].

If the Court nonetheless decides to address the merits of the constitutional claims presented by this suit, the Court should affirm the Attorney General's decision declining to certify this proposed law as compliant with Article 48 because it is inconsistent with the free speech rights protected by Article 16 of the Declaration of Rights. Applying *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010), courts have uniformly held that the federal Constitution protects the contributions that Plaintiffs seek to limit with their proposed law. And since Article 16 cannot provide less protection than that which is provided by the First Amendment, the proposed law is inconsistent with the rights guaranteed by Article 16. Accordingly, the Attorney General's refusal to certify this proposed law was proper. Plaintiffs' ruminations on irrelevant topics – notably, the alleged policy

merits of their proposed law and their speculation about what the U.S. Supreme Court might do in the future – do not alter this conclusion. [pp. 32-43]

ARGUMENT

I. Plaintiffs' Suits are Moot Because, Having Failed to Meet the First Signature Collection Deadline, Their Petition is No Longer Viable.

A. Plaintiffs' Suit is Moot under this Court's Precedent.

Before this Court can reach the merits of the Plaintiffs' claims, it must first consider whether the instant action poses an "actual controversy" such that declaratory relief is available. General Laws c. 231A, § 1 provides that the court may "on appropriate proceedings make binding declarations of right, duty, status and other legal relations sought thereby, either before or after a breach or violation thereof has occurred in any case in which an actual controversy has arisen." "It is the general rule that courts decide only actual controversies," and Massachusetts adheres to this rule by refusing to "decide moot cases." *Metros v. Sec'y of the Commonwealth*, 396 Mass. 156, 159 (1985). "Courts decline to [decide] moot cases because (a) only factually concrete disputes are capable of resolution through the adversary process, (b) it is feared that the parties will not adequately represent positions in which they no longer have a personal stake, (c) the adjudication of hypothetical disputes would encroach on the legislative domain, and (d) judicial

economy requires that insubstantial controversies not be litigated." *Wolf v. Comm'r of Pub. Welfare*, 367 Mass. 293, 298 (1975).

An actual controversy arises only where there is a "real dispute caused by the assertion by one party of a legal relation, status or right in which he has a definite interest, and the denial of such assertion by another party also having a definite interest in the subject matter, where the circumstances attending the dispute plainly indicate that unless the matter is adjusted such antagonistic claims will almost immediately and inevitably lead to litigation." *School Comm. of Cambridge v. Superintendent of Sch. of Cambridge*, 320 Mass. 516, 518 (1946). Importantly, this actual controversy requirement is "predicate of jurisdiction." *Wells Fargo Fin. Mass., Inc. v. Mulvey*, 93 Mass. App. Ct. 768, 770 (2018). Accordingly, "declaratory relief is reserved for real controversies and is not a vehicle for resolving abstract, hypothetical, or otherwise moot questions." *Libertarian Ass'n of Massachusetts v. Sec'y of Com.*, 462 Mass. 538, 547 (2012); *see also Massachusetts Ass'n of Indep. Ins. Agents & Brokers v. Commissioner of Ins.*, 373 Mass. 290, 292-293 (1977); *Dep't of Cmty. Affs. v. Mass. State Coll. Bldg. Auth.*, 378 Mass. 418, 422 (1979) ("A mere difference of opinion or uncertainty over the meaning to be ascribed a statute does not, without more, rise to the level of a justiciable controversy."). While the Court may consider a moot

question under narrow exceptions – where "[it] is of public importance, worthy of decision by an appellate court, and is capable of repetition yet evading review," *Harmon v. Commissioner of Correction*, 487 Mass. 470, 472 (2021) – the Court is "particularly reluctant to answer constitutional questions which have become moot." *Matter of Sturtz*, 410 Mass. 58, 60 (1991); *Lockhart*, 390 Mass. at 784 ("We are aware of no case in which this court has been willing to answer a constitutional question that was moot. This practice is consistent with the long tradition of not unnecessarily deciding constitutional questions."); *Blake v. Massachusetts Parole Bd.*, 369 Mass. 701, 707 (1976) (explaining importance of "'judicial restraint,' especially regarding purported constitutional claims.").

This Court has held that a challenge to the Attorney General's refusal to certify an initiative petition as compliant with Article 48's prerequisites becomes moot when petitioners fail to timely collect enough signatures to place the measure on the ballot. *See Lockhart*, 390 Mass. at 782 (concluding that Article 48 certification challenge "is moot because the required number of signatures was not obtained"). This rule is absolute. *Id.* at 782-84 (declining to apply exceptions to mootness doctrine). And this prohibition exists for good reason: not only do courts refuse to entertain otherwise moot questions that implicate the constitution, but

circumstances in the future might change, including that "plaintiffs or others might file a similar initiative petition" during another cycle. *Id.* at 784-85.

Plaintiffs' suits should, therefore, be rejected under *Lockhart*. They have not collected any signatures in support of this initiative petition, and since the constitutional deadline for doing so has passed, the initiative petition is ineligible to appear on the statewide ballot. Accordingly, the Complaints should be dismissed for want of an actual controversy.

B. Plaintiffs Cannot Revive Their Claims Through an Ahistorical Contortion of Article 48's Requirements.

Plaintiffs' attempt to escape this inevitable result conflicts with the plain text, history, and structure of Article 48 for three reasons. First, the text and history of Article 48 plainly contemplate that petitioners will gather signatures in the same year in which they submit the petition for Attorney General certification. Second, Plaintiffs' proposal conflicts with a commonsense understanding of the initiative petition process and would require this Court to adjudicate constitutional questions unnecessarily. Third, Plaintiffs' approach is inconsistent with this Court's longstanding practice for handling certification challenges.

1. The Text of Article 48, Read in the Historical Context of the Annual Election Cycle in Place When Article 48 Was Ratified, Requires that Petitioners Gather Signatures Immediately.

Article 48 imposes strict requirements for petitioners to place an initiative petition on the statewide ballot. The process requires not only that petitioners demonstrate a certain level of popular support across two separate signature gathering periods in the same legislative session, *see Bogertman v. Att'y Gen.*, 474 Mass. 607, 611 (2016) (discussing timeframes for signature gathering), but also that they show that their proposed law has broad geographical support, *see Lincoln v. Sec'y of Com.*, 326 Mass. 313, 316-17 (1950) (discussing county distribution requirement, noting its "purpose is to make certain that the petition has substantial support throughout the Commonwealth before submitting the question to popular vote"). Moreover, Article 48 fixes a strict timeline for petitioners to demonstrate that their proposed law has the necessary popular support to appear on the statewide ballot. And, as discussed below, Article 48 was written against the backdrop of annual state elections, rendering Plaintiffs' contorted interpretation of Article 48's text ahistorical. Plaintiffs here, however, want to ignore Article 48's requirements – particularly relating to the timing of signature gathering – in the hopes of obtaining a decision from this Court on a constitutional question without first having demonstrated the popular support required by Article 48.

The first sentence of Amend. art. 48, II, § 3, "Mode of Originating," as amended by Amend. art. 74, § 1, provides that petitioners must submit a proposed law to the Attorney General for certification "not later than the first Wednesday of the August before the assembling of the general court into which it is to be introduced." Section 3 then instructs that when a petition has been certified, it should be filed with the Secretary "not earlier than the first Wednesday of the September before the assembling of the general court into which they are to be introduced," whereupon petitioners need to collect a first round of signatures "as will equal three per cent of the entire vote cast for governor at the preceding biennial election" for filing with the Secretary "not later than the first Wednesday of the following December." *Id.*; Amend. Art. 48, The Initiative, V, § 1, as amended by Amend. Art. 81, § 2. Moreover, the framers of Article 48 specified that proponents of an initiative petition should demonstrate sufficient public support not just in the quantity of signatures but also the geographic distribution, requiring that "no more than one-fourth of the certified signatures on any petition shall be those of registered voters in any one county." Amend. Art. 48, General Provisions, II. Once that first round of signatures has been completed, then the matter is placed before the General Court, but if the Legislature "fails to enact such law before the first Wednesday of May," then petitioners must collect a second

round of signatures to appear on the ensuing ballot. *See* Amend. art. 48, V, "Legislative Action on Proposed Laws," § 1, as amended by art. 81, § 2. Again, the framers were specific and deliberate as to both the quantity and timing of those signatures: "[t]hose signatures must total not less than one half of one per cent of the entire vote cast for governor at the preceding biennial state election…which signatures must have been obtained after the first Wednesday of May aforesaid." Article 48 thus envisions a single process taking place in one contiguous period of time starting with the submission of the proposed law to the Attorney General and proceeding uninterrupted through the certification process, the first signature gathering period, the time for legislative action, the second signature collection period, and then, ultimately, the election.

Plaintiffs' proposal, which would give petition proponents the exclusive discretion to pause this process for at least a year before gathering signatures, ignores critical context surrounding the ratification of Article 48. The framers of Article 48 could not possibly have contemplated a schedule in which petitioners can submit a petition for certification in one year and then wait to gather signatures in another year, because when Article 48 was debated and ratified, state elections occurred annually. *See In re Opinion of the Justices.*, 243 Mass. 605, 607 (1923) (discussing since-changed laws pertaining to annual State elections); *Attorney*

General v. Campbell, 191 Mass. 497, 498-99 (1906) (same). Only after Article 48's enactment did statewide elections become a biennial occurrence, *see Lyons v. Sec'y of Commonwealth*, 490 Mass. 560, 561 & n.3 (2022) (discussing biennial State elections), meaning that the framers of Article 48 certainly could not have contemplated the expansive, discretionary timeline proposed by the Plaintiffs.

In fact, the framers had in mind the opposite approach. The annual election calendar that existed at the time Article 48 was enacted was unique to Massachusetts and it factored prominently in the framers' discussions. *See* Debates in the Massachusetts Constitutional Convention, 1917-1918, Vol. II ("Debates") at 233 ("Here in Massachusetts we have retained the annual system of elections"), at 667 ("we are among the few States that still have annual elections"), at 673 ("I am sure I am correctly informed that there is no State in the Union that has any form of initiative and referendum and also has annual elections"). The framers believed that frequent, annual elections were an essential feature for representative democracy in the Commonwealth because they made elected representatives more

responsive to voters.[3] The initiative petition furnished voters another means of expressing popular will by giving them a hand in the legislative process.[4]

The initiative petition process created by Article 48 was tied to this annual calendar for electing representatives. As relevant here, the signature gathering procedure implemented by Article 48 envisioned a two-step process. *See Bogertman*, 474 Mass. at 611. In the first step, a small group of petitioners could

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[3] *See* Debates at 93 ("Under the present system the principal, the people, the majority of the people, elect certain delegates to act as their representatives, and they say to them: 'We will give you a free hand for a year, and if we don't like what you have done during that year we will call you back and choose other agents and other representatives.'"), at 104 ("Under the present system the relationship is simply this: That the principals, the majority of the people, have authorized their agents or representatives to act for them with a free hand for one year, with the idea that at the expiration of that year if they have not carried out the wishes of their sovereign principals those agents can be got rid of.").

[4] *See* Debates at 104 ("All we propose is to change that relationship in this way: So that the sovereign, the majority of the voters, whom the minority admit are the sovereign, shall have the power, through a method of appeal, to reverse the action of the agents, the representatives, when they see fit. In other words, we apply to the government the same principles, the same powers, that the principal has over his agent in every ordinary business. It is just exactly the way that we, in our law offices, authorize a man to do a particular job. We do not say: 'You can go ahead and do this job, and if we don't like the way you have done it we will fire you.' We say: 'Go ahead and do the job, and keep in touch with us. Take it off our hands. Do the work. But of course we reserve our right to change what you have done at any time.' That is the way that buildings are built. You do not give a contractor and architect a free hand to go ahead and build the building, and then say you will get another builder if you do not like the way he built the building. You maintain always the right of the principal to change the act of the agent. That is the difference in theory that we are discussing in this amendment.").

get a proposed law to the Attorney General for preclearance review, whereupon a first round of signature gathering would begin. *See id.* If the appropriate number of signatures were collected, the proposed law would be placed before the Legislature for action. *See id.* Article 48's framers gave the Legislature a role before a second round of signature collection began for two reasons. First, they hoped that the Legislature would enact the proposed law without further pause.[5] Second, they also believed that this period for Legislative consideration would spark contemporaneous education and debate on the proposed law.[6] If the Legislature refused to act, however, a second round of signature collection would begin. *See Bogertman*, 474 Mass. at 611.

Critically, Article 48's framers thought that this process – from the initial petition's submission through the election – would take place within one (then annual) election cycle for proposed laws (or two cycles for constitutional amendments). As one framer observed, "[t]hat is the essential thing, and therefore after this petition has been signed, then we provide that the thing shall be held in

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[5] *See* Debates at 31 ("What is the purpose of dividing the signatures in that way? It is to give a chance for the legislative body to act.").

[6] *See* Debates at 32 (explaining that the matter should be "taken to the Legislature," so that it can be "delayed, talked over the Commonwealth, literature sent, arguments *pro* and *con*. We do intend to see to it so far as we can that the citizens of this Commonwealth be instructed before they are called upon to decide the question.").

abeyance for two years in regard to a constitutional amendment, or one full year in regard to a law." *See* Debates at 32.

Plaintiffs' approach would undermine the structure of Article 48 and subvert the purpose of the two-step signature collection process (in addition to requiring this Court to issue essentially advisory opinions on constitutional questions, as discussed *infra*). When the first ten signers of an initiative petition submit their proposal to the Attorney General for review but then embargo it, neither the Legislature nor the electorate can play its part in the Article 48 process. The Legislature cannot act on a proposed law until it is submitted to it for consideration. The voters cannot express their support for a proposed law or properly debate it until it is submitted to them for signature. Thus, although the language of Article 48 could be myopically construed to allow the submission of a question to the Attorney General in the calendar year prior to signature gathering, the structure of Article 48 and the historical context in which it was enacted demonstrate that such a schedule undermines the constitutional design. Article 48 was not designed as a vehicle for petitioners to put academic questions before the Court while thwarting the Legislature's and the electorate's access to the petition; it was designed to give voters the chance to work with the Legislature on the annual election cycle to make laws. Plaintiffs' expansive reading of the schedule

set forth in Article 48 is not faithful to Article 48's text or intent where the framers unquestionably designed the process against the backdrop of a yearly election cycle.

2. This Court's Rule Against Deciding Constitutional Questions Unnecessarily Counsels Against Allowing Plaintiffs to Litigate the Merits of the Attorney General's Decision Without a Live Petition.

There are also important prudential reasons to dismiss this case as moot. As an initial matter, Plaintiffs' proposal, which would seek to have this Court adjudicate the merits of important constitutional issues without knowing whether the petition has the required public support to appear on the ballot, runs headlong into the Court's longstanding practice of avoiding reaching constitutional issues unnecessarily. *See Lockhart*, 390 Mass. at 784 ("We think it is significant that in none of the cited cases, in which we have decided a moot issue, was that issue a constitutional one."). Plaintiffs put forth no good reason to depart from this rule and to obligate this Court to issue what would be essentially an advisory opinion on the constitutionality of a proposed law that may never appear on the ballot for want of sufficient public support.

Furthermore, adopting Plaintiffs' rule would likely increase requests for adjudication of constitutional matters in the abstract, unsupported by a viable Article 48 petition. During each two-year election cycle going back to 1999, the

Attorney General has reviewed and issued certification determinations on between 13 and 33 petitions, and only a small number of legal challenges (both to the Attorney General's decision to certify and not to certify petitions) have been perfected through the gathering of sufficient signatures to reach the ballot:

Year	**Petitions Received**	**Petitions Not Certified**	**Challenges Perfected**[7]
2021	30	13	3
2019	16	4	1
2017	28	7	2
2015	35	10	5
2013	33	5	1
2011	31	8	1
2009	30	5	0
2007	13	0	1
2005	16	1	2
2003	14	3	0
2001	27	9	1

[7] These numbers include challenges to both petitions that were certified and petitions for which certification was denied. While information concerning the number of petitions received but not certified is not publicly collected in a readily accessible manner, this information is on file with the Attorney General's Office.

1999	33	5	1

As is evident from these data, relatively few petitions filed each year go on to gain sufficient signatures and culminate in a live appeal of the Attorney General's determination. If petitioners were able to secure judicial review of the Attorney General's certification decisions without having to satisfy the signature gathering requirement of Article 48, the full Court could easily receive ten or more additional Article 48 challenges in each two-year cycle (including a number of additional challenges in even-numbered years like this suit) and be forced to expend judicial resources resolving hypothetical constitutional questions and issuing advisory opinions. Moreover, groups will be incentivized to game the system by seeking even-year certification of multiple initiatives, knowing that if they are denied certification on their preferred version, they can challenge that decision without having to expend effort on signature gathering, and all without prejudice to which election the question will be put forth.

Plaintiffs' approach would also allow for an easy end-run around the constitutional restrictions on this Court's authority to issue advisory opinions. *See Answer of the Justices*, 364 Mass. 838, 841 (1973) ("[T]he Constitution does not permit us to answer even important questions unless they are presented to us in the context of 'solemn occasions.'"). Under Plaintiffs' theory, any group of just ten

would-be petitioners could file petitions and secure constitutional rulings – in effect, advisory opinions – from the Court as part of pre-filing research and political strategy for a subsequent year's petition, or indeed for any other reason. If Plaintiffs are right, this Court would be required to answer constitutional questions whenever asked to do so by ten citizens who have signed a petition and obtained a certification decision from the Attorney General. Plaintiffs' proposal thus undermines the constitutional design of Article 48, by allowing petitioners to abuse this process to flood the Court's docket with attempts to get advisory rulings on their proposed laws or amendments. In addition, their argument offends the separation of powers that limits this Court's ability to issue advisory opinions to anyone but the legislature, governor, or governor's council (and, even then, only "upon important questions of law, and upon solemn occasions"). *See* Mass. Const. Amend. Art. LXXXV.

Hearing and deciding these constitutional questions in a vacuum would waste judicial resources, expend the Court's resources in service of the strategic political calculations of potential Article 48 petitioners, and lead to the unnecessary adjudication of hypothetical controversies that have no immediate impact on any party.

3. Plaintiffs' Litigate-First-Signatures-Later Approach Is at Odds with this Court's Longstanding and Appropriate Practice.

This Court should also reject Plaintiffs' entreaty to delay signature collecting to a future year because doing so would be inconsistent with this Court's developed practice for handling Article 48 cases. As Plaintiffs acknowledge in their Complaints, *see* R.A. 27, 67, this Court has entered the Defendants' proposed injunction in similar cases on multiple occasions, requiring parties to gather signatures before requiring this Court and the parties to expend resources on litigating constitutional issues.[8] Indeed, this Court's decision in *Lockhart* endorses this approach. In *Lockhart*, the Court declined to review a challenge to Attorney General's decision not to certify an initiative petition that had become moot upon the petitioners' failure to gather the necessary signatures. 390 Mass. at 785. The Court noted that, should the constitutional issues raised by the Attorney General's decision not to certify the petition reappear, "they need not evade review before

[8] Plaintiffs call the Court's attention to two older cases from when the Court was not routinely deciding multiple Article 48 cases each election cycle – *Slama v. Attorney General*, 384 Mass. 620 (1981) and *Paisner v. Attorney General*, 390 Mass. 593 (1983) – in which the propriety of the Attorney General's certification denial was litigated prior to signatures being gathered. Those examples, which are only two of many certification challenges this Court has considered, are not instructive on Article 48's temporal requirements where there is no contention that a mootness argument was raised or considered by the Court.

they become moot." *Id*. In other words, *Lockhart* supports the idea that proponents of initiative petitions who fail to gather signatures in a timely matter should have their cases dismissed as moot before the Court has to grapple with constitutional issues.

The Court's decision in *Dunn v. Attorney General*, 474 Mass. 675 (2016), also sets out the Court's endorsement of the calendar that Plaintiffs now seek to subvert. As the Court observed, initiative petitions are "typically" submitted to the Attorney General for review "in an odd-numbered year, i.e., in the year before an election year." *Id*. at 685. From there, the "Attorney General usually determines whether a measure proposed by initiative meets the requirements of art. 48 by the first Wednesday in September, i.e., about one month later." *Id*. "Decisions not to certify," the Court noted, "are usually challenged within days" by the law's proponents, while decisions to certify "are usually challenged" by the law's opponents "after it is known whether the proponents have gathered enough additional signatures by the first Wednesday in December to move forward with the process." *Id*. The Court set forth this standard timetable for Article 48 litigation to avoid situations where a litigant could attempt to game the system; in *Dunn*, the Court was concerned that delayed litigation would risk causing voter confusion and additional costs for the Commonwealth. *Id*. Here, however, Plaintiffs seek to game

the system in the opposite direction, filing an initiative petition in an even-numbered year to force this Court to address constitutional questions that Plaintiffs find interesting without first having demonstrated the contemporaneous popular support demanded by Article 48.

Plaintiffs' position that they may choose when they intend to introduce their proposed measure before the Legislature, thereby choosing when signatures must be gathered, also suffers from several practical problems. At what point in time must petition proponents fix their intent as to which legislative session they are working towards? Must they notify the Attorney General, Secretary, or this Court, for purposes of determining whether litigation over certification or any other matter is moot or ripe? Having declared their intended schedule, may they change that decision? What if not all ten signers agree as to the intended schedule and strategy, just as these ten signers do not all agree on which arguments to advance in favor of certification? That none of these procedural questions is answered in the text of Article 48 only further illustrates that the framers did not contemplate, and could not have contemplated, the schedule the Plaintiffs propose. And that none of these questions is addressed in Plaintiffs' brief illustrates the impracticality of the schedule they have invented from whole cloth.

The Court should not indulge Plaintiffs' challenge to the well-worn and sensible calendar for Article 48 litigation. This process exists for a reason: it permits the Court to decide ripe constitutional issues as part of the people's process for direct democracy. Plaintiffs offer no valid reason for departing from this Court's practice for managing Article 48 litigation, and because their approach has several inherent flaws, the Court should reject it.

4. Alternatively, the Court Should Decline to Address the Merits of Plaintiffs' Suit Unless and Until They Collect the Signatures Required by Article 48.

Even if the Court were to accept Plaintiffs' position that Article 48 allows them to collect signatures on an initiative petition at some future point, this Court can still avoid upsetting its longstanding and prudent practice for addressing certification challenges like this one – particularly those that raise constitutional issues – by deferring action on this litigation until after the petitioners demonstrate the necessary popular support for their proposed law. Specifically, the Court can either dismiss this case without prejudice or stay this case until after petitioners collect the first round of signatures required by Article 48.

Declining to adjudicate this suit until the initiative petition's supporters first gather the signatures required by Article 48 would have two benefits. First, this approach would keep with the Court's practice of avoiding decisions on

constitutional questions unless necessary. *See Lockhart*, 390 Mass. at 784. Where petitioners have not yet collected signatures and demonstrated that this initiative petition enjoys some measure of popular support such that it might become law, the Court should conclude that this suit is not ripe and either dismiss it or stay it until the petitions satisfy Article 48's signature prerequisite. *See Massachusetts Gen. Hosp. v. C.R.*, 484 Mass. 472, 488 (2020) ("We do not, however, decide constitutional questions unnecessarily or prematurely"); *Beeler v. Downey*, 387 Mass. 609, 613 n.4 (1982) (this court must "fulfill[ ] its duty to avoid unnecessary decisions of serious constitutional issues"). Second, deferring this case until petitioners collect signatures will better align this certification challenge with the Court's established practice for managing these types of cases. By either dismissing this case or staying it, this Court can put this suit on the standard calendar for certification challenges, thus avoiding the pitfalls of Plaintiffs' litigate-first-signatures-later tactics, *see supra* at 28-31, and ensuring that all initiative petitions are treated equally by this Court.

II. The Attorney General Appropriately Declined to Certify Petition 22-01 Because It Is Inconsistent with Free Speech Rights Secured by Article 16 of the Declaration of Rights.

If, however, this case is not moot (or if the Court decides in its discretion to address the constitutional question), it should uphold the Attorney General's

decision. The Attorney General is required by Article 48 to certify, among other things, that petitions submitted to her contain only matters not excluded from the initiative process. *Yankee Atomic Elec. Co. v. Sec'y of Com.*, 402 Mass. 750, 750-52 (1988). Among the matters excluded from the initiative process are proposed laws that are "inconsistent with...the freedom of speech" "as at present declared" in the Massachusetts Declaration of Rights. *Id.* at 752 & n.5. Article 16 of the Declaration of Rights, as amended by Amend. Art. 77, provides, in relevant part, that "[t]he right of free speech shall not be abridged." This constitutional provision broadly protects political speech in the Commonwealth, and no initiative petition may appear on the ballot that is inconsistent with these rights. *See Associated Indus. of Massachusetts v. Att'y Gen.* ("*AIM*"), 418 Mass. 279, 283 (1994) (explaining that Article 48 prohibits initiative petitions that are inconsistent with free speech rights in the Declaration of Rights); *Bowe v. Sec'y of the Com.*, 320 Mass. 230, 250 (1946). Here, the Attorney General declined to certify this petition because it violates the free speech rights secured by the state constitution. *See Bowe*, 320 Mass. at 249-50 (rejecting initiative petition that substantially barred labor union from expending funds to favor or oppose a political candidate or a question submitted to the people as being inconsistent with Article 16 and Article 19).

Plaintiffs devote much of their brief to the policy merits of their proposed law and their speculation about what the U.S. Supreme Court might do if presented with this issue as a matter of federal law. Pl. Brief, pp. 45-73. But these arguments miss the point, because neither the Attorney General's decision whether this proposed law meets the requirements of Article 48 nor this Court's review of this decision is guided by the merits of what this proposed law would do or what the U.S. Supreme Court might potentially say in the future about federal law. The question before this Court is narrow: whether the proposed law restricting donations to independent expenditure PACs is inconsistent with the freedom of speech as at present declared in the Commonwealth's Declaration of Rights. As explained below, the answer to that question is "yes."

A. Whether the Proposed Law Addresses an Excluded Matter Is a Question of State Law, as Informed by Federal Law.

Article 48 mandates, and this Court has emphasized, that the Attorney General's determination whether the proposed law addresses an excluded matter is a question of state constitutional law. As this Court explained in *Bowe*, "what we must decide is not whether the proposed law would abridge these freedoms as they exist under the Federal Constitution, but whether the proposed law would abridge them as they exist under the Massachusetts Constitution, for, if it would, Amendment [Article] 48 excludes the proposed law from the popular initiative."

Bowe, 320 Mass. at 250-51; *see also AIM*, 418 Mass. at 285 (holding that "[o]ur task is purely a State constitutional one, limited to the special function that this court has in reviewing an Attorney General's certification under art. 48, The Initiative, II, § 3," and noting that in certification challenges arising under Article 48, "[w]e are presented with no question under the Constitution of the United States").

In the area of free speech, federal cases interpreting the First Amendment are informative in assessing the rights contained in the Declaration of Rights because this Court has historically "interpreted the protections of free speech and association under our Declaration of Rights to be 'comparable to those guaranteed by the First Amendment.'" *1A Auto, Inc. v. Dir. of Off. of Campaign & Pol. Fin.*, 480 Mass. 423, 440 (2018) (quoting *Opinion of the Justices*, 418 Mass. 1201, 1212 (1994)). This is because the First Amendment sets a floor for the level of protection afforded to free speech rights under Article 16.[9] *See* Scott L. Kafker, *State Constitutional Law Declares Its Independence: Double Protecting Rights During a Time of Federal Constitutional Upheaval*, 49 Hastings Const'l L.Q. 115,

[9] Moreover, this Court has emphasized that the right of free speech under Article 16 of the Declaration of Rights is generally coextensive with the federal constitution. *See Massachusetts Coalition for the Homeless v. City of Fall River*, 486 Mass. 437, 440 (2020); *In re Opinion of the Justices to the Senate*, 430 Mass. 1205, 1209 n.3 (2000).

137 (2022) (explaining that "states cannot provide less protection of individual rights under their state constitutions than that provided by analogous provisions under the federal Constitution without violating the federal Constitution."); *see also 1A Auto*, 480 Mass. at 440. Thus, to the extent that the right to make unlimited contributions to independent expenditure organizations has thus far been deemed an individual federal constitutional right, no state constitutional principle can undermine it. *See* Kafker, *supra*, at 136 ("The [Supreme] Court identifies a national baseline of protection of individual rights that permits individual states to build upon this baseline."). And, indeed, in *1A Auto*, this Court undertook a First Amendment analysis and concluded that the ability "to make unlimited independent expenditures *as well as unlimited contributions to independent expenditure PACs*" constitutes "a significant form of political expression," *i.e.*, an individual federal constitutional right. *1A Auto*, 480 Mass. at 436-37 (emphasis added).

In this way, federal law informs this Court's analysis under Article 16, but only the federal law currently in place – not the federal law Plaintiffs may hope or predict might come to pass in the future. Plaintiffs' brief focuses almost entirely on divining what the current Justices of the U.S. Supreme Court might hypothetically do if presented with this proposed law. These speculative arguments are of no

value to this Court in resolving the question presented by this suit, which involves the current state of the law. And, as described below, the current state of the law uniformly supports the Attorney General's decision.

B. The Proposed Law Addresses an Excluded Matter Because it Is Inconsistent with Current Law Regarding Freedom of Speech.

The current state of federal law in this area, which sets the baseline for individual rights below which state law cannot go, makes clear that the Attorney General's refusal to certify Plaintiffs' petition was correct. In *Citizens United*, the Supreme Court struck down a federal statute barring independent corporate expenditures for electioneering communications, holding that the statute violated the First Amendment. In so doing, the Court declared that the government has no valid anti-corruption interest in limiting independent expenditures by corporations. *Citizens United*, 558 U.S. at 357-61. This, the Court held, is because "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." *Id.* at 357. Thus, under controlling Supreme Court doctrine, anti-corruption rationales do not justify limiting independent expenditures under any level of scrutiny. *See also Fed. Election Comm'n v. Cruz*, 142 S. Ct. 1638, 1652 (2022) (noting that the Court has "consistently rejected attempts to restrict campaign speech" based on governmental interests other than prevention of *quid pro quo* corruption or its appearance, such as "reduc[ing] the

amount of money in politics," "level[ing] electoral opportunities by equalizing candidate resources," and "limit[ing] the general influence a contributor may have over an elected official.").

Of particular relevance here, federal courts since *Citizens United* have consistently held that limits on *contributions* to independent expenditure PACs violate the free speech rights secured by the First Amendment to the federal constitution, determining that the reasoning of *Citizens United* leads inexorably to the conclusion that if anti-corruption rationales cannot justify limiting independent expenditures themselves, they also cannot justify limiting contributions that will be used for independent expenditures.

A uniform chorus of federal decisions thus supports the conclusion that the Plaintiffs' proposed law is inconsistent with the baseline free speech rights under the First Amendment:

- *SpeechNow.org v. Fed. Election Comm'n*, 599 F.3d 686, 696 (D.C. Cir. 2010) (en banc). In *SpeechNow.org*, the Court concluded that a provision of the Federal Election Campaign Act limiting contributions by individuals to political committees that make only independent expenditures violated the First Amendment, reasoning that the government had no legitimate interest in limiting contributions to

independent expenditure-only organizations. It explained, "[i]n light of [*Citizens United*]'s holding as a matter of law that independent expenditures do not corrupt or create the appearance of quid pro quo corruption, contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption. The Court has effectively held that there is no corrupting 'quid' for which a candidate might in exchange offer a corrupt 'quo.'" *Id.* at 694-95.

- *New York Progress & Protection PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013). The Second Circuit enjoined a law that prevented donations to an independent expenditure committee, noting that in the wake of *Citizens United*, courts across the country have unfailingly struck down laws of this nature.
- *Texans for Free Enterprise v. Tex. Ethics Comm.*, 732 F.3d 535, 538 (5th Cir. 2013). The Fifth Circuit concluded that a law banning contributions to an independent expenditure PAC was "incompatible with the First Amendment."
- *Wisconsin Right to Life State Pol. Action Comm. v. Barland*, 664 F.3d 139, 154 (7th Cir. 2011). The Seventh Circuit invalidated a Wisconsin

campaign finance law that "limit[ed] contributions to committees engaged solely in independent spending for political speech" because there is no "valid governmental interest sufficient to justify imposing limits on fundraising by independent-expenditure organizations" under *Citizens United*.

- *Long Beach Area Chamber of Com. v. City of Long Beach*, 603 F.3d 684, 696 (9th Cir. 2010). The Ninth Circuit determined that a law limiting contributions to independent expenditure PACs did not "raise the specter of corruption or the appearance thereof" and thus were invalid under the First Amendment. *See also Thalheimer v. City of San Diego*, 645 F.3d 1109, 1121 (9th Cir. 2011) (enjoining provision that restricted both the fundraising and spending of independent political committees).
- *Republican Party of New Mexico v. King*, 741 F.3d 1089, 1097 (10th Cir. 2013). The Tenth Circuit invalidated restrictions on uncoordinated spending for independent-expenditure-only political committees, explaining that the "absence of a corruption interest breaks any justification for restrictions on contributions for that purpose."

Indeed, as one federal court observed, "[f]ew contested legal questions are answered so consistently by so many courts and judges." *New York Progress & Prot. PAC*, 733 F.3d at 488.

This long line of cases establishing the First Amendment baseline for free speech rights supports the Attorney General's determination that Plaintiffs' proposed law is inconsistent with Article 16 as it is presently understood. Plaintiffs' conjecture about what a future U.S. Supreme Court might do if called upon to revisit these federal authorities does not change this conclusion.

Moreover, this Court's decisions arising under the First Amendment and Article 16, appropriately respecting the federal baseline for free speech rights established by the Supreme Court, also support the Attorney General's certification decision. For example, this Court has expressed skepticism of laws that would make it harder for people to engage in political speech through campaign contributions. *See Opinion of the Justices*, 418 Mass. at 1212 (opining that a bill that would have placed aggregate limits on total contributions that candidates could receive in nonelection years violated the First Amendment). Similarly, this Court has observed that laws that impose limitations on the ability of people or organizations to use funds to speak out on political issues burdens expressive activity protected by Article 16. *AIM*, 418 Mass. at 288-89. And in the Article 48

context specifically, this Court has further held that this protection of political speech includes some protection of funding such speech, reasoning that "if all use of money were to be denied [to political organizations] the result would be to abridge even to the vanishing point any effective freedom of speech, liberty of the press, and right of peaceable assembly." *Bowe*, 320 Mass. at 252. Plaintiffs do not even cite *Bowe* or seriously attempt to address these decisions from this Court.

Plaintiffs' reliance on *1A Auto, Inc. v. Dir. of Off. of Campaign & Pol. Fin.*, 480 Mass. 423 (2018) is misplaced. *1A Auto*, in fact, supports the Attorney General's conclusion that the proposed law is inconsistent with the rights enshrined in Article 16. As noted above, this Court emphasized that the ability to make unlimited contributions to independent expenditure PACs was political speech. *1A Auto*, 480 Mass. at 436-37; *see also id.* at 459 (Budd, J., concurring) (explaining that entities "have a First Amendment right to make unlimited independent expenditures throughout the Commonwealth to influence directly the thoughts and opinions of the voters and the public at large").

In short, the Attorney General properly concluded that the proposed law limiting contributions to independent expenditure PACs addressed a matter excluded from the initiative by Article 48. This proposed law seeks to limit sharply contributions that would be used solely for independent expenditures on political

speech. Every court to have considered a similar question has concluded that such laws violate the free speech guarantee of the First Amendment under current law. *See supra* at 38-41. This Court's decisions have consistently held that Article 16's protections of free speech must be at least as robust as the First Amendment's and therefore dictate the same result here. *See 1A Auto*, 480 Mass. at 440. Accordingly, the Attorney General's decision declining certification was appropriate and her decision should be affirmed.

CONCLUSION

For the foregoing reasons, the Attorney General and the Secretary of the Commonwealth request that this Court dismiss these Complaints as moot or, in the alternative, conclude that the Attorney General properly certified Initiative Petition No. 22-01 and order dismissal of the Complaints.

Respectfully submitted,

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Date: January 24, 2023

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 7,261 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: Office 365).

/s/ Anne Sterman_____
Anne Sterman
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2023, I filed with the Supreme Judicial Court and served on counsel for the Appellants the attached Brief of the Appellees Attorney General and Secretary of the Commonwealth.

_/s/ Anne Sterman_____
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ADDENDUM

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: SJ-2022-0409

ROBERT HERRMANN, LARS MIKKELSEN, JOSHUA REDSTONE, and GRAEME SEPHTON

vs.

ATTORNEY GENERAL AND SECRETARY OF STATE
OF THE COMMONWEALTH OF MASSACHUSETTS

ORDER ALLOWING MOTION TO CONSOLIDATE
AND RESERVATION AND REPORT

This matter came before the court, Wendlandt, J., on a complaint seeking declaratory relief from the Attorney General's decision not to certify Initiative Petition 22-01, entitled "Initiative Petition for a Law Relative to Limiting Political Contributions to Independent Expenditure PACs." The plaintiffs are a group of registered voters who signed the initiative petition in June 2022. A second group of voters who signed the initiative petition has filed a separate complaint in this court seeking to challenge the Attorney General's decision as well. See SJ-2022-0410. The parties to each matter have since filed a joint motion to consolidate. In light of the overlapping subject matter and legal issues at stake in both complaints, the parties' joint motion to consolidate is hereby ALLOWED.

The defendants have also filed an omnibus motion to dismiss

each complaint on the grounds that there is no live controversy for this court to adjudicate. Specifically, the defendants argue that art. 48 of the Amendments to the Massachusetts Constitution requires the plaintiffs to collect and submit voter signatures in support of Initiative Petition 22-01 by December 5, 2022. Because the plaintiffs have not sought to collect signatures, and thus will not meet this requirement, the defendants contend that the underlying complaints will become moot after December 5th. In their omnibus opposition to the motion, the plaintiffs assert, inter alia, that art. 48 prohibits the collection of signatures for Initiative Petition 22-01 until September 2023, at which point the signatures will become due on or before December 6, 2023. The plaintiffs' opposition further requests that the complaints be reserved and reported for consideration by the full court.

Because the plaintiffs' complaints and the defendants' omnibus motion to dismiss each raise novel legal arguments, it is hereby ORDERED that the consolidated matter be reserved and reported to the full court for determination both as to the merits of the defendants' omnibus motion to dismiss and, if necessary, the merits of the plaintiffs' complaints.

The record before the full court shall consist of the following:

(1) all papers filed in SJ-2022-0409 and SJ-2022-0410;

(2) the docket sheets for SJ-2022-0409 and SJ-2022-0410; and

(3) this court's reservation and report.

The clerk of the county court shall assemble and transmit the record to the full court.

The plaintiffs shall be deemed the appellants, and the defendants shall be deemed the appellees. The parties' briefs should address the merits of each of the legal issues raised in the plaintiffs' complaints, as well as the defendants' omnibus motion to dismiss. The parties shall also jointly prepare and file in the full court a comprehensive statement of agreed facts necessary to resolve the legal issues raised by the complaints and the motion to dismiss.

Oral argument shall take place in February 2023, or such other time as the full court may order. The parties shall consult with the clerk of the Supreme Judicial Court for the Commonwealth concerning the briefing schedule before the full court. The matter shall proceed in all respects in conformance with the Massachusetts Rules of Appellate Procedure.

By the Court,

/s/ Dalila Argaez Wendlandt
Dalila Argaez Wendlandt
Associate Justice

Entered: December 2, 2022

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.