

League of Women Voters of Massachusetts  
Study of the Ballot Question Process in Massachusetts

**Appendix 2:  
Massachusetts Laws, Regulations and Court Cases**

**Introduction**

This Appendix presents Massachusetts laws, regulations, and the results of court cases interpreting Article XLVIII of the Massachusetts Constitution.

The purpose of presenting the court cases is to provide insight into how the courts have interpreted key provisions of Article XLVIII of the Massachusetts Constitution from 1928 up through June 2018. These rulings resulted from requests initiated by the Legislature when seeking guidance from the Court as well as challenges initiated by individuals and/or organizations to various aspects of Article XLVIII.

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## Laws and Regulations

The following table summarizes the laws governing the citizen-initiated ballot question process in Massachusetts.

Title	Citation	Type of Law
Massachusetts State Constitution	Articles XLVIII, LXVII, LXXIV, LXXXI, CVIII	Constitution
General Provisions Relative to Primaries, Caucuses and Elections	c.50	MGL
Nominations, Questions to be Submitted to the Voters, Primaries and Caucuses	c.53	MGL
Disclosure and Regulation of Campaign Expenditures and Contributions	c.55	MGL
The State Ballot Law Commission	c.55B	MGL
Certification of Nomination Papers and Petitions	950/55.00	CMR
State Ballot Law Commission: Adjudicatory Proceedings	950/59.00	CMR
Office of Campaign and Political Finance	970/1.00-3.00	CMR

MGL: Massachusetts General Law, CMR: Code of Massachusetts Regulations

## Court Cases Interpreting Article XLVIII and Related Laws and Regulations

### Laying the Petition Before the Legislature

#### 291 Mass. 578 (Mass. 1935)

#### Opinion of the Justices to the Senate and the House of Representatives

#### Decision Summary

- ✓ **Proper vote of joint session on Constitutional Amendment may be reconsidered by voice vote of majority of members present. Thereafter, petition is still pending and could be submitted to another joint session.**

At a joint session of the Senate and the House of Representatives held according to Article XLVIII of the Amendments to the Constitution of the Commonwealth, an affirmative vote of more than one fourth of the members on an initiative petition for an amendment of the Constitution may be reconsidered by vote of a majority of the members present; a vote to reconsider would not be "an unfavorable vote" at a "stage preceding final action" within Article XLVIII, Part IV, § 4, and may be by voice vote; and after reconsideration, the petition still would be pending before that General Court for further action at either of its annual sessions, and could be submitted to another joint session of the two branches without further committee proceedings.

**370 Mass. 869 (Mass. 1976)****Opinion of the Justices to the Senate - Authority of the General Court****Decision Summary**

- ✓ **Governor must approve or veto a law proposed by initiative petition before first Wednesday in May, but not thereafter; Legislature may act on timely veto and a legislative substitute to an initiative petition before but not after first Wednesday of May.**

The Initiative, as amended by Articles LXXIV and LXXXI, upon enactment must be laid before the Governor for his approbation [873-874]; the Governor may approve or veto the proposed law before the first Wednesday of May, but not thereafter [874]; and the General Court may act on a timely veto before the first Wednesday of May, but not thereafter [875]. Under Article XLVIII of the Amendments to the Constitution, The Initiative III, Section 2, the General Court, before or after the first Wednesday of May, may act on a legislative substitute for a measure introduced by initiative petition.

**414 Mass. 31 (Mass. 1992)****Limits and Others v. President of the Senate & Others****Decision Summary**

- ✓ **Plaintiffs request Court to compel joint session of legislature to act on proposed initiative amendment concerning term limitations for elected officials - Court refused. Only remedy under Article XLVIII is for Governor to call joint session, if he or she so chooses.**

In this action the plaintiffs seek an order in the nature of mandamus and a declaration that the joint session must take final action on the proposed initiative amendment. A single justice reserved and reported the case to this court on the complaint and a statement of agreed facts. The case was submitted to the court on briefs. We (the Court) conclude that the plaintiffs are not entitled to relief in the nature of mandamus nor to a declaratory judgment. We, therefore, direct that judgment be entered in the county court dismissing the action. Article XLVIII provides a process for the amendment of the Constitution, with exceptions not here relevant, by means of an initiative petition. Article XLVIII, The Initiative, IV, as amended by Article LXXXI, Section 1, of the Amendments. The steps required for the presentation of the proposed initiative amendment to the joint session of the 1991-1993 General Court have been completed and need not concern us in this case. Since January 3, 1992, the proposed initiative amendment concerning term limitations for elected officials, which we shall call the initiative amendment (see Article XLVIII, The Initiative, IV, Section 1), has been on file with the Clerk of the House of Representatives. Article XLVIII requires that such a proposal be laid before a joint session of the Senate and House of Representatives for consideration no later than the second Wednesday in May. Article XLVIII, The Initiative, IV, Section 2. The President of the Senate presides at the joint session. The joint session considered the initiative amendment on Wednesday, May 13, 1992, and voted to place it at the end of its calendar. The joint session has reconvened and recessed on numerous occasions since May 13, 1992, without taking final action on the initiative amendment. Several attempts to bring the initiative amendment forward for further consideration have failed because, under the governing rules, an objection to such action has been successfully raised. The joint session met on December 16 (after the record in this action was prepared), took no final action on the initiative amendment, and recessed until December 21. On December 21 the joint session adjourned without taking final action on the initiative amendment. If a joint session fails to continue "from time to time until final action has been taken upon all amendments pending, the governor shall call such joint session or continuance thereof." Article XLVIII, The Initiative, IV, Section 2. An affirmative vote "of not less than one-fourth of all the members elected" is required to refer an initiative amendment to the next General Court. Article XLVIII, The Initiative, IV, Section 4. If an initiative amendment referred to the next General Court receives the affirmative votes of at least one-fourth of the members elected to serve in the next General Court, the proposal

must be submitted to the people at the next State election. Article XLVIII, The Initiative, IV, Section 5. A joint session of the General Court held under Article XLVIII, The Initiative, IV, Section 2, should take "final action . . . upon all amendments pending" before it. The only remedy set forth in Article XLVIII for the failure of a joint session to act is a direction to the Governor to call a joint session or a continuance of a joint session if the joint session fails in its duty. Article XLVIII provides no judicial remedy.

Article XLVIII does not require final action by any specified time. *Opinion of the Justices*, 291 Mass. 578, 586 (1935). The time within which the joint session must act on the initiative amendment continues until January 5, 1993, when the term of the current General Court will end. Article X of the Amendments. See *Lamson v. Secretary of the Commonwealth*, 341 Mass. 264, 273 (1960). The joint session has not yet failed to comply with the direction of Article XLVIII that it take final action. See *Opinion of the Justices*, supra (final action "must be taken at some time"). Cf. *Lamson v. Secretary of the Commonwealth*, supra at 270 (reapportionment case) ("No default in the obligation has occurred so long as the [legislative] session continues"). The joint session has not failed to perform a duty that could justify issuing an order to act. In circumstances in which a person or entity has not yet failed to perform a duty, an action in the nature of mandamus is premature. *Boucher v. Salem Rebuilding Comm'n*, 225 Mass. 18, 20-21 (1916). For reasons we are about to set forth, we need not consider whether the decision of the joint session to adjourn without taking final action on the initiative amendment might lead us to conclude that, as a practical matter, this action is no longer premature.

## Legislative Funding of Laws Passed by Initiative Petitions

**436 Mass. 144; 763 N.E. 2d 6 (Mass. 2002)**

**Bates v. Director of the Office of Campaign Finance**

### Decision Summary

- ✓ **Confirming following Article XLVIII provision "...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."**

Relative to the Massachusetts Clean Elections Law: Article XLVIII, The Initiative, V, S. 1, of the Amendments to the Massachusetts Constitution, providing that "[n]o measure 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," is unambiguous in its constitutional command that, for as long as a law enacted by way of initiative has not been repealed, the Constitution requires that the Legislature appropriate the funds necessary to its operation.

## Prohibited Subject Matters

**297 Mass. 582 (Mass. 1937)**

**Opinion of the Justices to the Senate & House of Representatives**

### Decision Summary

- ✓ **Initiative to restrict motor vehicle fees for highway purposes violates Article XLVIII prohibition against a "specific appropriation."**

A proposed amendment to the Constitution restricting the use of certain revenues derived from motor vehicle registration fees, licenses and gasoline excise taxes to highway purposes would be a "specific appropriation" under Part II, S. 2, of that part of Article XLVIII of the Amendments to the Constitution captioned "The Initiative," and therefore could not be proposed by an initiative petition.

**384 Mass. 620 (Mass. 1981)****SLAMA v. Attorney General****Decision Summary**

- ✓ **City of Boston's attempt through initiative petition to establish set asides from state treasury and place in local treasuries to be used as they saw fit violated Article XLVIII prohibition against "specific appropriation."**

The city of Boston lacked standing, either in its own right or in a representative capacity, to seek a judgment ordering the Attorney General and the State Secretary to perform certain constitutionally prescribed functions with respect to an initiative petition. A proposed law which would set aside money from the Commonwealth's treasury and place it in local personal income tax and local sales and use tax funds, which each city and town might employ as it chose, made a "specific appropriation" from the treasury, as comprehended by Article XLVIII of the Amendments to the Constitution of the Commonwealth, and thus was not an appropriate subject for an initiative petition.

**447 Mass. 189 (Mass. 2006)****Schulman v. Attorney General****Decision Summary**

- ✓ **Confirmed this constitutional amendment petition requiring Commonwealth and its political subdivision to define marriage only as the union of one man and one woman did not constitute a reversal of a judicial decision, something prohibited by Article XLVIII.**

In an action challenging the Attorney General's certification, pursuant to Article XLVIII, The Initiative, Part II, s. 3, of the Amendments to the Massachusetts Constitution, as amended by Article LXXIV of the Amendments, of a petition that, if successful, would amend the Constitution by providing, prospectively, that "the Commonwealth and its political subdivisions shall define marriage only as the union of one man and one woman," thereby overruling the rule of constitutional law announced in *Goodridge v. Department of Pub. Health*, 440 Mass. 309 (2003), this court concluded that the petition does not constitute a "reversal of a judicial decision" that is excluded from the initiative process by Article XLVIII, The Initiative, Part II, s. 2, of the Amendments to the Massachusetts Constitution.

**451 Mass. 803 (Mass. 2008)****Carney v. Attorney General****Decision Summary**

- ✓ **Petition to ban parimutuel dog racing state-wide, not just in existing locations. Thus, it was not a local matter excluded by Article XLVIII.**

The Attorney General properly certified a proposed initiative petition to ban parimutuel dog racing, where the petition would eliminate the possibility of dog racing not only in places where it was currently in effect or authorized, but also throughout the Commonwealth, and thus was not a local matter excluded from the initiative process under Article XLVIII of the Amendments to the Massachusetts Constitution. This court concluded that the Attorney General properly certified, pursuant to Article XLVIII of the Amendments to the Massachusetts Constitution, that a proposed initiative petition to ban parimutuel dog racing would not necessarily effect a regulatory taking of the plaintiffs' tangible property (i.e., real property and facilities at a dog racing track), where the facts available to the Attorney General at the certification stage did not permit an adequate determination of the potential residual use of the plaintiffs' property or of the diminution in the property's value as a result of the proposed regulation [813-814]; further, the plaintiffs failed to demonstrate a

compensable property interest in certain intangible property (i.e., their expectation of renewal of their racing licenses) that would be affected by the proposed initiative petition.

### Single Purpose (Related Matters) Requirement

#### **432 Mass. 515; 736 N.E. 2d 358 (Mass. 2000)**

##### **Mazzone v. Attorney General**

###### **Decision Summary**

- ✓ **Attorney General certified that petition is in the proper form, and that it includes only subjects that are related or mutually dependent and that are not excluded by Article XLVIII.**

The plaintiffs challenge the Attorney General's certification, pursuant to Article XLVIII, The Initiative, Part II, s. 3, of the Amendments to the Massachusetts Constitution, as amended by Article LXXIV of the Amendments, of Initiative Petition 99-10, "An Act to expand the scope of the commonwealth's drug treatment program and provide funding through fines for drug violations and the forfeiture of assets used in connection with drug offenses." The plaintiffs also seek to enjoin the Secretary from placing the measure on the ballot in the November 2000, election.

The Attorney General certified that the petition is in the proper form, and that it includes only subjects that are related or mutually dependent and that are not excluded by Article XLVIII from the initiative process. He also prepared a written summary of the petition, all as required by Article XLVIII, The Initiative, Part II, s. 3, and forwarded both his certification and summary to the Secretary. As of the first Wednesday of May 2000, the General Court had neither enacted the measure nor proposed substitute legislation. Art. XLVIII, The Initiative, Part V, s. 1, as amended by Article LXXXI, s. 2, of the Amendments. Article XLVIII, The Initiative, Part III, s. 2. See Opinion of the Justices, 370 Mass. 869, 871-872 (1976).

#### **447 Mass. 218 (Mass. 2006)**

##### **Carney v. Attorney General**

###### **Decision Summary**

- ✓ **Petition violated relatedness limitation of Article XLVIII. Expanding existing criminal sanctions against cruelty to animals has no meaningful operational relationship to abolishing parimutuel dog racing.**

In an action challenging the Attorney General's certification, pursuant to Article XLVIII, The Initiative, Part II, s. 3, of the Amendments to the Massachusetts Constitution, as amended by Articles LXXIV, LXXXI, and CVIII, of the Amendments, of an initiative petition, this court concluded that the petition violates the relatedness limitation of Article XLVIII, in that the petition's proposal to expand existing criminal sanctions against cruelty to animals bears no meaningful operational relationship to the petition's proposal to establish laws that would abolish the established, highly regulated enterprise of parimutuel dog racing, and the aggregation in the petition of two very different sets of laws that the voters must accept or reject would operate to deprive voters of their right under Article XLVIII to enact a uniform statement of public policy through exercising a meaningful choice in the initiative process.

**474 Mass. 675; 54 N.E. 3d 1 (Mass. 2016)****Dunn v. Attorney General****Decision Summary**

- ✓ **Confirmed petition prohibiting confinement of egg laying hens, calves raised for veal and breeding pigs on commercial farm in a cruel manner and related prohibition of sales from such operations did not violate related subject requirement of Article XLVIII.**

In an action challenging the Attorney General's certification of an initiative petition, pursuant to Article XLVIII, The Initiative, II, § 3, of the Amendments to the Massachusetts Constitution, as amended by Article LXXIV of the Amendments, this court concluded that the provisions of the petition prohibiting the confinement of egg-laying hens, calves raised for veal, and breeding pigs on a commercial farm in a cruel manner and prohibiting the sale by any business within the Commonwealth of eggs, veal meat, and pork meat that the business owner or operator knows or should know was produced from animals so confined did not violate the related subjects requirement of Article XLVIII, where both the farm provision and the sales provision shared a common purpose of preventing farm animals from being caged in overly cramped conditions and complemented each other in the means of accomplishing this common purpose; further, this court concluded that the brief statement of purpose in the proposed measure did not render it unfit for submission to the voters. Statement that actions challenging the Attorney General's certification of an initiative petition, pursuant to Article XLVIII, The Initiative, II, § 3, of the Amendments to the Massachusetts Constitution, as amended by Article LXXIV of the Amendments, should be commenced in the county court by February 1 of an election year. This court did not reach the question whether the one-sentence statements jointly written by the Attorney General and the Secretary of the Commonwealth describing the effect of a "yes" or "no" vote on a ballot question was clearly misleading, where no petition seeking amendment of the statements, pursuant to G. L. c. 54, § 53, had been filed and this court therefore lacked jurisdiction.

**474 Mass. 651; 53 N.E. 3d 639 (Mass. 2016)****Hensley v. Attorney General****Decision Summary**

- ✓ **Confirmed petition for legalizing recreational marijuana (with limits) did not violate related subjects requirement of Article XLVIII.**

In an action challenging the Attorney General's certification of an initiative petition, pursuant to Article XLVIII, The Initiative, II, s 3, of the Amendments to the Massachusetts Constitution, as amended by Article LXXIV of the Amendments, this court concluded that the provisions of the petition satisfied the related subjects requirement of Article XLVIII, where the petition laid out 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 of marijuana to consumers; and where the possible participation of medical marijuana treatment centers was adequately related to this over-all detailed plan. This court concluded that the summary prepared by the Attorney General as part of her certification of an initiative petition fairly and concisely permitted an average voter to understand that marijuana contains a chemical that gives it intoxicating effects and may vary in potency, and that all marijuana is being proposed for legalization; further, this court concluded that the summary was not constitutionally inadequate despite its failure to include a fair and neutral statement that marijuana products included edible products, where the summary differentiated between marijuana and marijuana products (and stated that the latter are to be consumed), and where the summary was not the only source of information for voters; further, this court concluded that the summary did not misrepresent the effect of the measure on medical marijuana treatment centers.

This court ordered changes to the title of a ballot question and the one-sentence 'yes' statement prepared jointly by the Attorney General and the Secretary of the Commonwealth pursuant to G. L. c. 54, § 53. Request that the Attorney General and Secretary of the Commonwealth prepare ballot question titles and one-sentence 'yes' and 'no' statements pursuant to G. L. c. 54, § 53, no later than twenty days before February 1 of an election year, so that challenges to the title and one-sentence statements may be commenced in the county court in concert with challenges to the constitutionality of an initiative and proceed at an orderly pace.

**479 Mass. 780; SJC - 12422 (Mass. June 17, 2018)**

**Anderson v. Attorney General**

#### Decision Summary

- ✓ **Court held Attorney General should not have certified the petition because it contained unrelated subjects and/or which are not mutually dependent in violation of Article XLVIII. Petition involved flat tax rate; prioritizing spending on public education; and creating a new (millionaires) tax and prioritizing revenues from this new tax for transportation.**

In an action challenging the Attorney General's certification, pursuant to Article XLVIII, The Initiative, II, § 3, of the Amendments to the Massachusetts Constitution, as amended by Article LXXIV of the Amendments, of an initiative petition containing three provisions on three distinct subjects presented as a single ballot question (i.e., amending the flat tax rate mandated by Article 44 of the Amendments to the Massachusetts Constitution to impose a graduated income tax on certain high-income taxpayers, prioritizing spending for public education by earmarking revenues raised by the new tax, and prioritizing spending for transportation by earmarking revenues raised by the new tax), this court concluded that the Attorney General should not have certified the petition as "in proper form for submission to the people," where the petition did not contain only subjects "which are related or which are mutually dependent," given that the provisions could exist independently, and examination of the diverse subjects of the petition disclosed no operational relatedness among its substantive parts and no common purpose or unified public policy that the voters fairly could vote up or down as a whole. [786-802]

#### Signature Collection

**339 Mass. 749 (Mass. 1959)**

**Newman vs. Secretary of the Commonwealth**

#### Decision Summary

- ✓ **Signature collectors failed to include statement, signed under penalty of perjury, that each person whose name appeared on petition was signed in person as required by regulations. Secretary of Commonwealth not obligated to provide new signature pages.**

A petition seasonably filed with the Secretary of the Commonwealth for a referendum on a law under Article XLVIII of the Amendments to the Massachusetts Constitution, The Referendum, bearing the signatures and addresses of the requisite number of certified registered voters, but not containing a statement, signed under the penalties of perjury by the circulator of the petition, that each person whose name appeared thereon signed it in person, failed to comply with M.G.L. c. 53, Section 22B, inserted by St. 1938, c. 191, and the Secretary was under no duty to provide blanks for the use of subsequent signers.

**348 Mass. 23 (Mass. 1964)****Molesworth & Others vs. State Ballot Law Commission & Another****Decision Summary**

- ✓ **Signature collectors for referendum petition when gathering subsequent signatures not required to state that they personally observe the signing of the petition.**

The limitation in the last sentence of G. L. c. 53, Section 7, as amended through St. 1963, c. 210, on the number of signatures on nomination papers to be received by the Secretary of the Commonwealth is not "apt" with respect to a referendum petition and is not made applicable thereto by Section 22A, as amended through St. 1948, c. 596. That registrars of voters in certifying signatures on a sheet for subsequent signers of a referendum petition did not comply with the provision of G. L. c. 53, Section 22A, as amended through St. 1948, c. 596, that they should receipt for the sheet when received and obtain a receipt for it when delivered did not require exclusion of the certified signatures on the sheet in determining the total number of signatures to the petition. [27] G. L. c. 53, Section 22B, as amended through St. 1961, c. 344, does not require that the one executing the jurat on a sheet for subsequent signers of a referendum petition personally observe them sign their names on the sheet, and his failure to do so does not disqualify their signatures.

**388 Mass. 83; 445 N.E. 2d 590 (Mass. 1983)****Batchelder v. Allied Stores International, Inc.****Decision Summary**

- ✓ **Initiative Petition signature gathering legally permitted in shopping malls, subject to reasonable regulations adopted by mall owners.**

A person seeking signatures in connection with access to the ballot in a public election has a right under Article 9 of the Massachusetts Declaration of Rights to do so, in a reasonable and unobtrusive manner, in the common areas of a large shopping mall, subject to reasonable regulations adopted by the mall owner.

**407 Mass. 949; 556 N.E. 2d 366 (Mass. 1990)****Capezzuto v. State Ballot Law Commission****Decision Summary**

- ✓ **Petitioners failed to comply with Article XLVIII requirement of ten qualified voter signatures; only nine, including the drafter, had full text available when they signed.**

An initiative petition lacked proper subscription by ten qualified voters, as required by the Amendments to the Massachusetts Constitution, Article XLVIII, The Initiative, II, Section 3, and thus was improperly certified by the Attorney General, where only the drafter and eight of the other voters whose signatures were submitted could be deemed to have had before them the full text of the proposed law for examination and consideration.

**427 Mass. 825; 696 N.E. 2d 531 (Mass. 1998)****Hurst v. State Ballot Law Commission****Decision Summary**

- ✓ **Placement of required summary and names and addresses of first ten signature at top of signature gathering form but below title deemed acceptable.**

The State Ballot Law Commission correctly concluded that the placement of the required summary of a challenged law and the names and addresses of the first ten signers at the top of the petition forms used to collect signatures, but below the caption or title thereon, did not violate Article XLVIII of the Amendments to the

Massachusetts Constitution. Petition forms that bore extraneous preprinted or hand-stamped information about the organization challenging a particular statutory provision, or to which were added highlighting or underlining to emphasize certain portions of the required summary of the challenged law, were not "exact copies" of the original petition blank provided by the Secretary of State for the purpose of collecting signatures and, thus, violated G. L. c. 53, s. 22A, and Article XLVIII of the Amendments to the Massachusetts Constitution; however, in circumstances in which the challengers had reason to believe the hand-stamping complied with s. 22A, the signatures on those petitions were not invalidated.

**428 Mass. 116; 696 N.E. 2d 531 (Mass. 1998)**

**Hurst v. State Ballot Law Commission**

**Decision Summary**

- ✓ **Challengers to a referendum did not comply with discovery rules.**

The State Ballot Law Commission correctly ruled that challengers to a certain referendum did not comply with the commission's discovery rule, 801 Code Mass. Regulation. s. 1.01(8)(f), as modified by 950 Code Mass. Regulations. 59.03(18) (1993), and thus failed to challenge with particularity certain signatures contained in petition forms in support of the referendum; as a result, the signatures were valid.

**430 Mass. 103 (Mass. 1999)**

**Walsh v. Secretary of the Commonwealth**

**Decision Summary**

- ✓ **Test for determining whether a copy of an initiative petition form used to collect signatures is valid is whether it is an "exact copy" of the original form provided by the Secretary of the Commonwealth.**

This court declined to reconsider or modify the holding of *Hurst v. State Ballot Law Comm'n*, 427 Mass. 825, 830 (1998), and stated that the appropriate test for determining whether a copy of an initiative petition form is valid is whether it is an "exact copy" of the original form provided by the Secretary of the Commonwealth. The "exact copy" requirement of G. L. c. 53, s. 22A, applicable to copies of blank initiative petition forms provided by the Secretary of the Commonwealth in accordance with Article XLVIII, The Referendum, 111, s. 4, of the Amendments to the Massachusetts Constitution, is not a severe encroachment or a direct restraint on the right to propound a petition or to have a signature counted, and the State interest in preventing misleading petitions and advocacy outweighs any minimal burden on petition proponents to adhere to the requirement.

**311 Mass. 643 (Mass. 2011)**

**Compton v. State Ballot Law Commission**

**Decision Summary**

- ✓ **Validated signature by individual who had relocated to a new MA town more than six months after had signed petition in town where he had previously resided and was a registered voter. No fraud found.**

Under statutory provisions directed by Section 3 of Article XLVIII of the Amendments to the Constitution, The Initiative, II, respecting certification by registrars of voters of signatures upon an initiative petition, the registrars are bound to rely upon their records as kept according to statute and are not required to investigate outside those records whether persons registered as voters are legally registered as such.

The signature of one of the first ten signers of an initiative petition was not "placed thereon by fraud" within G. L. (Ter. Ed.) c. 53, Section 22A, as amended, where he signed more than six months after he had changed his domicile to another city from the one in which he was registered as a voter and in which his name as such was certified on the petition by the registrars of voters, but he signed without intent to deceive or commit a fraud

and without other wrongful purpose and in ignorance of his true legal status as a voter, and there was no "intentional fraud or purpose to deceive" on the part of the other sponsors of the petition.

### Geographic Distribution Requirement

#### **375 Mass. 85; 375 N.E. 2d 1175 (Mass. 1978)**

##### **Massachusetts Public Interest Research Group & Others v. Secretary of the Commonwealth**

###### **Decision Summary**

- ✓ **County-distribution in Article XLVIII does not violate equal protection clause of 14th Amendment to US Constitution.**

A corporation organized under G. L. c. 180 had no standing in an action seeking relief against the enforcement of the county-distribution requirement of Article XLVIII of the Amendments to the Massachusetts Constitution. [90-91] Where it appeared doubtful whether Article XLVIII of the Amendments to the Massachusetts Constitution would have been adopted without the county-distribution provision, that provision, if unconstitutional, would not be severable from the rest of the article. The county-distribution rule embodied in Article XLVIII of the Amendments to the Massachusetts Constitution does not impinge on any fundamental interest, and, therefore, the strict scrutiny standard of equal protection review is not applicable to the rule. The county-distribution rule embodied in Article XLVIII of the Amendments to the Massachusetts Constitution does not violate the equal protection clause of the Fourteenth Amendment to the United States Constitution.

### Initiative Petitions Affecting Particular Town, City or Other Political Subdivision

#### **413 Mass. 21 (Mass. 1992)**

##### **Thompson & Another v. Attorney General & Another**

###### **Decision Summary**

- ✓ **Initiative Petition to promote recycling did not violate Article XLVIII prohibition against petitions affecting a particular town, city or other political subdivision.**

The Attorney General correctly certified a certain initiative petition where the proposed measure, seeking to promote packaging reduction and recycling, was not restricted to a particular town, city or other political subdivision or to particular districts or localities of the Commonwealth as proscribed by Article XLVIII, The initiative, II, Section 2, of the Amendments to the Massachusetts Constitution, as amended by Article LXXIV of the Amendments.

#### **474 Mass. 607; 53 N.E. 3d 627 (Mass. 2016)**

##### **Bogertman v. Attorney General**

###### **Decision Summary**

- ✓ **Confirmed petition to award additional licenses for slot parlors state-wide did not violate Article XLVIII prohibition against petitions affecting any particular town, city or other political division.**

SJC-12063 -An initiative petition that sought to amend G. L. c. 23K to authorize the Gaming Commission to award on additional license for a slot machine parlor did not violate the prohibition in Article XLVIII of the Amendments to the Massachusetts Constitution against "local matters" being proposed by initiative petition, where the subject matter area of the initiative petition (gaming) is one regulated by the State and is plainly an issue of statewide concern; where nothing in the language of the proposed law explicitly referred to or restricted its operation to any particular town, city, or other political division, or to particular districts or localities of the Commonwealth; where there was nothing of which this court could take judicial notice

indicating that the language of the initiative petition contained terms that, by fair implication, were geographically descriptive of territorial divisions of the Commonwealth, thereby restricting its application to local matters; where the claim that the initiative petition excluded all cities and towns without sufficient developable acreage to meet the size requirements of the proposed law was not persuasive; and where the Attorney General conducted an adequate factual inquiry concerning the initiative petition's alleged inclusion of excluded local matters.

An initiative petition that sought to amend G. L. c. 23K to authorize the Gaming Commission to award an additional license for a slot machine parlor did not violate the prohibition in Article XLVIII of the Amendments to the Massachusetts Constitution against being substantially the same, either affirmatively or negatively, as any measure that has been qualified for submission or submitted to the people at either of the two preceding biennial State elections, where a question that had been rejected by the voters in the November, 2014, election had asked whether the voters wanted to prohibit casinos, slots parlors, and wagering on simulcast greyhound races, while the initiative petition asks whether the voters want to permit the licensing of a second slots parlor adjacent to a horse racing track; and where there was no actual overlap.

### Fair and Concise Statement by Attorney General

**384 Mass. 209; 424 N.E. 2d 469 (Mass. 1981)**

**Massachusetts Teachers Association v. Secretary of the Commonwealth**

#### Decision Summary

✓ **Error in Attorney General's Summary minor/Not only source of voter Information.**

The exercise of discretion by the Attorney General in preparing a summary of an initiative proposal, as required by Article XLVIII, The Initiative, II, Section 3, and Article XLVIII, General Provisions, III, is to be given weight in any judicial analysis of the fairness and adequacy of a summary. A statement in a summary of an initiative proposal that "[t]he proposal would limit the amount of money required to be appropriated for public schools to that amount voted upon by the local appropriating authority" was a concise and fair summary of provisions of the proposal which would eliminate the fiscal autonomy of school committees and the right to enforce judicially that autonomy.

The Attorney General's failure to mention in the summary of an initiative proposal a provision giving a municipality the right to revoke acceptance of certain General Laws it had previously accepted was the omission of a minor subject where the proposal contained numerous provisions aimed at setting limitations on State and local taxation and where the Legislature had already passed a provision similar to that omitted from the summary.

A provision of an initiative proposal which would authorize a municipality, by vote of a majority of those voting, to reduce the statutory limit on the assessment of local property taxes to a rate below 2 1/2% was not a major change in the law in relation to the provisions of the proposal considered as a whole, and the Attorney General's omission of any reference to that provision from the summary of the proposal was reasonable.

In the absence of a successful challenge to the constitutionality of the provisions of an initiative measure, this court declined to analyze the propriety of the omission from the Attorney General's summary of a reference to the measure's severability clause.

An error in the Attorney General's summary of an initiative proposal was considered minor and not significantly misleading where the error would have had a limited, not a Statewide, influence on voters and where the summary was not the only source of voter information on the widely debated proposal.

**474 Mass. 651; 53 N.E. 3d 639 (Mass. 2016)****Hensley v. Attorney General****Decision Summary**

- ✓ **Regarding recreational marijuana petition confirmed Attorney General summary fairly and concisely permitted average voter to understand marijuana contains varying potent intoxicating chemicals. Summary deemed adequate even though no fair and neutral statement included. Noted, summary is not only source of information for voters.**

In an action challenging the Attorney General's certification of an initiative petition, pursuant to Article XLVIII, The Initiative, II, § 3, of the Amendments to the Massachusetts Constitution, as amended by Article LXXIV of the Amendments, this court concluded that the provisions of the petition satisfied the related subjects requirement of Article XLVIII, where the petition laid out 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 of marijuana to consumers; and where the possible participation of medical marijuana treatment centers was adequately related to this over-all detailed plan.

This court concluded that the summary prepared by the Attorney General as part of her certification of an initiative petition fairly and concisely permitted an average voter to understand that marijuana contains a chemical that gives it intoxicating effects and may vary in potency, and that all marijuana is being proposed for legalization; further, this court concluded that the summary was not constitutionally inadequate despite its failure to include a fair and neutral statement that marijuana products included edible products, where the summary differentiated between marijuana and marijuana products (and stated that the latter are to be consumed), and where the summary was not the only source of information for voters; further, this court concluded that the summary did not misrepresent the effect of the measure on medical marijuana treatment centers. This court ordered changes to the title of a ballot question and the one-sentence 'yes' statement prepared jointly by the Attorney General and the Secretary of the Commonwealth pursuant to G. L. c. 54, § 53. Request that the Attorney General and Secretary of the Commonwealth prepare ballot question titles and one-sentence 'yes' and 'no' statements pursuant to G. L. c. 54, § 53, no later than twenty days before February 1 of an election year, so that challenges to the title and one-sentence statements may be commenced in the county court in concert with challenges to the constitutionality of an initiative and proceed at an orderly pace.

**Information for Voters****419 Mass. 665; 646 N.E. 2d 1054 (Mass. 1995)****Tobias v. Secretary of the Commonwealth****Decision Summary**

- ✓ **Court confirmed Secretary of Commonwealth, in certain circumstances, may prepare separate sheets of paper containing ballot summaries and provide to polling places for use by voters.**

The court concluded that the system described in G. L. c. 54, Section 35A, as amended through St. 1994, c. 129, pursuant to which the Secretary of the Commonwealth may in certain circumstances prepare separate sheets of paper containing ballot summaries and provide such sheets to polling places for use by voters, is not contrary to the form of ballot provision of Article XLVIII, General Provisions, III, as amended by Article LXXIV of the Amendments to the Constitution of the Commonwealth.

## Procedural and Miscellaneous Issues

### 262 Mass 603 (Mass. 1928)

#### Opinion of the Justices to the House of Representatives

##### Decision Summary

- ✓ **Court deemed petition was neither a “law” nor a “measure” under Article XLVIII.**

A proposed act pending in the Legislature, which provides that at the next State election there should be placed upon the official ballot in each congressional district the question, "Shall the senators from this commonwealth and the representative in congress from this district be requested to support a constitutional amendment to repeal the eighteenth amendment to the constitution of the United States known as the prohibition amendment?" and that the vote thus to be taken should not be regarded as an instruction to the senators and representatives but as the opinion and will of the people, proposes neither a "law" nor a "measure" within the provisions of The Initiative in Article XLVIII of the Amendments to the Constitution of the Commonwealth.

### 320 Mass. 230 (Mass. 1945)

#### Bowe vs. Secretary of the Commonwealth

##### Decision Summary

- ✓ **A “perfecting” amendment offered by initiators of the petition acceptable, given that all other steps in process conformed to Article XLVIII requirements.**

An amendment by the initiators of a law proposed by the Initiative, merely striking out an erroneous statutory reference in the proposed law and duly certified by the Attorney General, all in accordance with Article XLVIII of the Amendments to the Constitution, The Initiative, V, Section 2, was "perfecting in its nature" and did not materially change the substance of the proposed law; and thereafter the proposed law must be dealt with as changed by the amendment.

The law proposed by the Initiative as an amendment of a certain section of the General Laws by striking out the first sentence thereof and substituting therefore a new first sentence whose language ignored a previous amendment of that section by the General Court whereby a certain provision had been transferred from the second sentence to the first sentence, if enacted, would not include the provision so transferred.

There is no statutory provision for a review of the checking by registrars under G. L. (Ter. Ed.) c. 53, Section 7, as amended by St. 1943, c. 334, Section 3; Section 22A, as amended by St. 1943, c. 51, of the names of voters signing a petition in initiative proceedings seeking enactment of a proposed law, except the limited review for forgery or fraud provided by said Section 22A; the Attorney General and the Secretary of the Commonwealth must accept the certification of the registrars when it is presented to them.

### 357 Mass. 564 (Mass. 1970)

#### Cohen vs. Attorney General

##### Decision Summary

- ✓ **Only General Court can call a Constitutional Convention. Initiative Petition process not available to call one.**

The General Court is the sole voice to ascertain the will of the people on the matter of calling a constitutional convention. Article XLVIII of the Amendments to the Constitution does not authorize enactment by the initiative process of a measure requiring that there appear on the official ballot to be used at a State election a question whether a convention be called to amend the Constitution of the Commonwealth.

**373 Mass. 898; 367 N.E. 2d 793 (Mass. 1977)****Answer of the Justices to the House of Representatives 1977****Decision Summary**

- ✓ **Court refused to respond to Legislature's request for opinion on constitutionality of petition to limit corporate contributions to ballot question campaigns. At time, pending US Supreme Court case addressing the issue.**

The Justices did not believe a request by the House of Representatives for answers to questions pertaining to a pending bill, entitled "An Act limiting the amount corporations can contribute to influence ballot questions," which would substantially amend G. L. c. 55, Sections 6, 7, and 8, and add a new Section 8A, presented a proper instance in which to render advice due to the pendency of the issue of the constitutional validity of the underlying restriction on corporate contributions in c. 55, Section 8, before the Supreme Court of the United States in the case of *First Nat'l Bank v. Attorney Gen.*, 371 Mass. 773 (1977), in which the Supreme Judicial Court considered issues similar to issues raised by the pending bill.

**387 Mass. 549 (Mass. 1982)****Backman vs. Secretary of the Commonwealth****Decision Summary**

- ✓ **Governor permitted to call joint session of the Legislature rather than each individually to deliberate on proposed constitutional amendment.**

The Governor, with the advice of the Council, violated no specific or necessarily implicit requirement of the State Constitution by calling a joint session of the General Court to continue deliberation on a proposed constitutional amendment, without first calling the two branches of the General Court into session as a Legislature pursuant to his powers under Part II, c. 2, Section 1, Article 5, of the State Constitution and, where the members of the General Court in joint session accepted the Governor's call and acted on various matters, this court did not disturb the procedure under which the joint session was convened.

**418 Mass. 279; 636 N.E. 2d 220 (Mass. 1994)****Associated Industries of Massachusetts v. Attorney General****Decision Summary**

- ✓ **Proper certification of initiative petition to restrict use of corporate funds to support or oppose a ballot question even though not reasonably clear whether certain rights protected by Massachusetts Declarations of Rights could be affected.**

The Attorney General properly certified an initiative petition proposing to restrict the use of corporate funds to support or oppose a ballot question, where it was not reasonably clear on the record presented to the Attorney General that there could not be a compelling State interest in the imposition of a restriction on the use of corporate funds on ballot questions to justify the proposed law's burdening of both corporate expressive activity and corporate associational rights protected by Articles 16 and 19, respectively, of the Massachusetts Declaration of Rights.

**442 Mass. 1212 (Mass. 1996)****Opinion of the Justices to the House of Representatives****Decision Summary**

- ✓ **Language in petition regarding term limits had been on a ballot question in one of the two preceding biennial state elections - therefore prohibited under Article XLVIII.**

An initiative petition pending before the General Court violated Article XLVIII, The Initiative, 11, s. 3, of the Amendments to the Constitution where the petition contained a certain provision that was not "related" to the subject of the initiative. An initiative petition pending before the General Court that would reduce legislative compensation if enacted proposed a law and did not intrude on the right of the Legislature to appoint its own officers and to determine its own rules of proceedings. Language in an initiative petition pending before the General Court that proposed to alter the language of G. L. c. 3, s. 9, regarding term limits violated Article XLVIII, The Initiative, II, s. 3, as amended by Article LXXIV, s. 1, where G. L. c. 3 had been a ballot question presented to the voters and enacted in one of the "two preceding biennial state elections."

**425 Mass. 424; 681 N.E. 2d 842 (Mass. 1997)****League of Women Voters v. Secretary of the Commonwealth****Decision Summary**

- ✓ **Petition for term limits unconstitutional because it includes qualifications for public office in addition to those already in the Constitution.**

This court concluded that St. 1994, c. 230, which the people approved as an initiative petition at the November 8, 1994, election under Article XLVIII of the Amendments to the Constitution of the Commonwealth, in its effect concerns and prescribes qualifications for elective office and is not simply a measure regulating elections.

Where Article XLVIII of the Amendments to the Constitution of the Commonwealth restricts the people from enacting, by statutory initiative, qualifications for those public offices for which the Legislature itself may not enact qualifications, St. 1994, c. 230, a so-called term limits statute approved by the people as an initiative petition under Article XLVIII, is unconstitutional insofar as it prescribes qualifications for elective office in addition to those qualifications that appear in the Constitution. Before us is a reservation and report, on the pleadings and a statement of agreed facts, of a challenge to the constitutionality of chapter 230 of the Acts of 1994 (chapter 230), which the people approved as an initiative petition at the November 8, 1994, election under Article XLVIII of the Amendments to the Constitution of the Commonwealth. Chapter 230 purports (a) to limit the number of consecutive terms for which a public officer may be listed on primary and general election ballots to serve in the same public office and (b) to eliminate the pay, perquisites, and privileges of certain public officers if reelected after serving a number of consecutive terms specified in chapter 230. The plaintiffs contend that a statute adopted by the people pursuant to the initiative process may not legislate qualifications for those public officers in addition to those qualifications that appear in the Constitution.