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

Study Report

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1 Introduction
Every two years, Massachusetts voters may be called upon to vote whether or not to enact new laws, amend the Constitution, or repeal recently passed laws through ballot questions. Ballot questions have been around since the formation of the Commonwealth, but the process for allowing citizens to initiate laws, amendments, and repeals has only been in effect for the past 100 years. The 1919 state election was the first time citizen-initiated ballot questions appeared, as a result of an amendment to the Massachusetts Constitution (Article XLVIII) in 1918.

1.1 Background
Prior to 1919, the passage and repeal of laws was solely in the hands of the Massachusetts Legislature and the Governor. Only the Legislature could initiate constitutional amendments, although the citizens had to approve them through ballot questions. Article XLVIII provides for a process whereby citizens can initiate a proposed law or constitutional amendment, or a referendum to repeal a recently passed law through a ballot question.

At their inception, each of the fifty states established a representative democracy. In a “representative democracy” citizens elect others to represent them in the running of the government. Twenty-six states created an additional option for their citizens, a legal mechanism known as “initiative and referendum.” The initiative and referendum mechanism allows citizens, as opposed to a state legislature, to enact statewide laws and/or constitutional amendments, and/or to repeal laws. Thus, it provides citizens with the legal right, through ballot measures, to a direct say in their government, making it a form of “direct democracy.”

In 1918 Massachusetts voters approved Amendment Article XLVIII of the state Constitution to provide an initiative and referendum mechanism. The Article has been amended four times and is augmented by state laws and regulations that govern the process. From 1919 to 2016 there have been 103 citizen-initiated measures on the Massachusetts ballot on a variety of issues.

In the United States today, 26 states, including Massachusetts, have an initiative and/or referendum process. The process is common west of the Mississippi (18 of 24 states), and much less common east of the Mississippi (8 of 26), with Maine being the only other state in New England with the process. No federal law governs the initiative and referendum process. It is governed by state law, and every state is different.

1.2 Article XLVIII: Framers’ Intent
In the United States several factors contributed to the initiative and referendum movement, including reform movements by populists (those who distrusted government) and progressives (those whose goal was to improve the government), those frustrated with inaction by their state government and those who believed, for any number of reasons, that their governments were not serving the will of the people.

The resolution that ultimately became Article XLVIII was subject to a close vote as to whether to even bring it to the Constitutional Convention for debate (7 of the 15 members of the Standing Initiative and Referendum Committee dissented to its moving forward). The debate was one of the longest, if not the longest, ever in a Massachusetts Constitutional Convention, resulting in an official written record of almost 1100 pages.

The dissenters provided many multi-faceted and well-articulated reasons for their dissent of the “majority plan” to create an initiative and referendum process they described as: “In essence a complete subversion of Massachusetts’ form of government and abandonment of what the framers of Massachusetts and US Constitutions held to be absolute necessities and fundamentals of American democracy.” Concerns included: the initiative is not reserved to “the people” but to small groups; the
voters will not be sufficiently informed; debate before the legislative body is impossible in direct legislation; no amendment of compromise is possible; social unrest and discontent do not justify the adoption of the majority plan; and there is no sufficient evidence of real popular demand for the majority plan.

The supporters established their reasons for support with the following opening remark: “Very real evils have grown up in Massachusetts representative form of government and the initiative and referendum mechanism will, at least in part, cure those evils.”

1.3 The LWVMA Study

The study of the ballot question process in Massachusetts was proposed by the League of Women Voters of Needham and submitted to LWVMA during program planning in early 2017. The proponents pointed out that LWVMA has no position on ballot questions. Because ballot question procedures are different in every state, there was also no possibility for a concurrence with another state’s study.

League members and others who have been involved with ballot questions have observed aspects of the ballot question process that would be worth studying, thus enabling LWVMA to have positions on the process in Massachusetts. If the League decides that changes would be worth implementing, it could propose steps to advocate for such changes.

The study was approved by the membership at the 2017 LWVMA Convention on April 29. The LWVMA board appointed the study committee on August 26, 2017.

The final scope of this LWVMA study is to

- Review the Massachusetts laws and regulations that govern statewide citizen-initiated ballot questions (initiative and referendum process),
- Consider the consequences of current laws and regulations, and
- Propose concrete next steps that LWVMA could take to enact change, if the study results in recommended change.

1.4 Sources


All webpages accessed August 2, 2018
2 Types of Ballot Questions in Massachusetts

Ballot questions may be statewide, within legislative districts, or within municipalities or regions. The types are presented in this section, but the LWVMA study only focuses on the statewide citizen-initiated ballot questions (Section 2.1), which are presented in more detail in Section 3.

2.1 Statewide Citizen-Initiated Ballot Questions

Article LXVIII, an amendment of the Massachusetts Constitution, provides an initiative and referendum process for three distinct types of statewide citizen initiatives that may become ballot questions. Statewide ballot questions are placed on the general election ballot in November of even-numbered years. Massachusetts has what is referred to as an "indirect" initiative process, meaning the Legislature has an opportunity to take action in the process.

2.1.1 Initiative Petition for a Law

The purpose of this initiative petition is to submit a proposed new law to voters for their approval or rejection or to repeal or amend a particular section of an existing law. A group of 10 Massachusetts qualified voters prepares a petition proposing a new law or revisions to an existing law, and collects signatures in support. The Legislature has the opportunity to act on the petition. If the Legislature does not act and additional signatures are collected, voters decide whether it will become law or not. The process, from submission to vote, takes 15 months (Table 2.1). Since 1919, there have been 80 ballot questions resulting from initiative petitions for a law (36 approved; 45%).

2.1.2 Initiative Petition for a Constitutional Amendment

The purpose of this initiative petition is to submit to the voters for approval or rejection a proposed amendment to the Massachusetts constitution. A group of 10 Massachusetts voters prepares a petition proposing an amendment to the constitution and collects signatures in support. At least 25 percent of senators and representatives (50 of 200) in each of two successive joint legislative sessions must vote to allow the proposed amendment to appear on the ballot. Voters then decide whether the constitution will be amended through a ballot question. The process, from submission to vote, takes at least 39 months (Table 2.1). Since 1919, there have been 3 ballot questions resulting from initiative petitions for a constitutional amendment (2 approved; 67%).

2.1.3 Referendum Petition on an Existing Law

The purpose of a referendum petition is to have a law recently enacted by the Legislature repealed by the voters. A group of 10 objectors to the law must collect signatures within 90 days of the bill being signed by the governor, and the referendum is placed on the next state election ballot. The process takes less than two years (Table 2.1). Since 1919, there have been 20 ballot questions resulting from referendum petitions on an existing law (10 successfully repealed; 50%). Once on the ballot this type of question is called a “Referendum on an Existing Law.”

2.2 Statewide Legislature-Initiated Ballot Questions

2.2.1 Constitutional Amendments from the Legislature

A constitutional amendment may start in the Legislature, but must be approved by the voters. The proposed amendment must be approved in each of two consecutive joint legislative sessions by majority vote (of 200 House and Senate members). If two separate consecutive joint sessions approve the proposal, it goes before the voters as a ballot question at the next general election. Since 1919, there have been 63 ballot questions resulting from legislative constitutional amendments (53 approved; 84%).
2.2.2 Advisory Questions from the Legislature
The Legislature may also initiate a question to measure the will of the people with a non-binding advisory ballot question. Since 1919, there have been 13 legislative advisory ballot questions (8 approved; 61.5%).

2.2.3 U.S. Constitutional Amendment Questions
Federal constitutional amendments may also be put to the Massachusetts voters at a statewide election for their nonbinding opinion in a statewide ballot question. When a proposed amendment to the federal constitution is submitted to the Massachusetts Legislature for ratification, M.G.L. c.53 § 18 declares it to be the policy of the Commonwealth that the opinion of the voters statewide be taken relative to the “wisdom and expediency” of ratification. Since 1919, there have been three such questions in Massachusetts.

<table>
<thead>
<tr>
<th>Table 2.1. Massachusetts Statewide Ballot Measures 1919 – 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of Question</td>
</tr>
<tr>
<td>Initiative Petition for a Law</td>
</tr>
<tr>
<td>Initiative Petition for a Constitutional Amendment</td>
</tr>
<tr>
<td>Legislative Constitutional Amendment</td>
</tr>
<tr>
<td>Referendum Petition on an Existing Law</td>
</tr>
<tr>
<td>Legislative Advisory Question</td>
</tr>
<tr>
<td>U.S. Constitutional Amendment (Advisory)</td>
</tr>
</tbody>
</table>

Source: [http://www.sec.state.ma.us/ele/elebalm/balmover.htm](http://www.sec.state.ma.us/ele/elebalm/balmover.htm)

2.3 District and Municipality Ballot Questions
The purpose of a public policy petition is to submit instructions to the senator or representative from a district on a non-binding question of public policy. Citizen-initiated district public policy questions are conducted within legislative districts with the intent to direct state legislators of the will of the people on a specific question. The Secretary of the Commonwealth’s Office governs these types of questions.

Ballot Questions can be initiated within a municipality (city or town) or within a region (e.g. regional school districts). These questions are governed by state laws, and city and town charters and bylaws.
2.4 Sources

- Tassinari, Michelle, Chief Legal Counsel/Director of Elections - Secretary of Commonwealth’s Office. Personal communication, December 19, 2017.

All accessed August 2, 2018

2.5 Legal References

- Articles XLVIII, LXVII, LXXIV, and LXXXI of the Amendments of the Massachusetts Constitution. https://malegislature.gov/Laws/Constitution
- Massachusetts General Laws (MGL) Chapter 53, section 22A. https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVIII/Chapter53/Section22A

All accessed April 9, 2018
3 The Initiative and Referendum Process in Massachusetts

3.1 Initiative Petition for a Law
See Table 3.1 for the complete list of steps and timing of initiative petition for a law.

3.1.1 Prior to Submission
The process starts with a proponent preparing a proposed law and identifying at least ten qualified voters to sign in support of the proposed law. The initiative petition for a law may also be used to propose a law seeking to repeal or amend a particular section of an existing law. The Attorney General’s office welcomes the chance to review draft petitions on an informal, non-binding basis and will make suggestions for changes to avoid certification problems if the draft petitions are submitted prior to the first Wednesday in August. There is no requirement to seek or accept the advice of the Attorney General.

3.1.2 Submission to Attorney General and Secretary of the Commonwealth
Once the text of the proposed law is ready, the proponent completes the appropriate original petition for an initiative petition for a law and obtains the signatures of ten qualified Massachusetts voters. Each of the ten “original signers” must obtain certificates of registration. The petition and certificates must be submitted to the Attorney General in early August, 15 months prior to the November state election (Table 3.1).

For the initiative petition to continue, the Attorney General must certify that the petition meets constitutional criteria. The MA Constitution, Amendment Article XLVIII, requires the Attorney General to certify an initiative measure if all of the following requirements are met and to decline to certify the measure if the requirements are not met:

- The measure, including its title, must be in proper form for submission to the people;
- The measure must not be, 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 statewide elections; and
- The measure may contain only subjects that are related or mutually dependent and that are not excluded from the initiative process by Article XLVIII.

Under Article XLVIII, a measure is excluded from the initiative petition process if it:
- Relates to religion, religious practices or religious institutions;
- Relates to the appointment, qualification, tenure, removal, recall or compensation of judges, or the reversal of a judicial decision, or the powers, creation or abolition of courts;
- Is restricted in its operation to a particular town, city or other political division or to particular districts or localities of the Commonwealth;
- Makes a specific appropriation of money from the treasury of the Commonwealth;
- Relates to Article XVIII (religious freedom; the "anti-aid" amendment) or that portion of Article XLVIII that specifically excludes matters from the operation of the initiative and referendum process; or
- Is inconsistent with any of the following state constitutional rights:
  - Right to receive compensation for private property appropriated to public use
  - Right of access to and protection in courts of justice
  - 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
  - Right of peaceable assembly
This list is exclusive. The Attorney General may not refuse to certify a proposed law on the ground that it clearly conflicts with some other constitutional guarantee not mentioned in Article XLVIII, such as due process or equal protection. If such a proposed law appeared on the ballot and were approved by the voters, however, it could be challenged in court and could be invalidated.

If the Attorney General determines the initiative relates to an excluded matter, the petition is not certified. If the Attorney General does not certify the petition, the proponents may contest the decision in court. A court order is required to allow the Attorney General to provide a summary and for the Secretary of the Commonwealth to print the petition sheets, and then the proponents may proceed with signature collection.

The Attorney General’s review process is conducted in full cooperation with the sponsors of a proposed law as well as with any opponents of the law who believe it should not be certified. The Attorney General welcomes legal memoranda on whether a proposed law should be certified. Any such memorandum should also be sent to the proponents or to any opponents who have identified themselves. The goal of this open process is to ensure that all issues are spotted and all views thoroughly considered before the Attorney General makes the certification decision.

The Attorney General’s office is responsible for preparing a “fair and concise” summary, which will appear on the petitions, in the “Information for Voters” red booklet and on the ballot itself. As is the case with certification issues, the Attorney General welcomes comments from both sponsors and opponents on how the summary of each proposed law should read.

In September of an odd-numbered year, the petitioners must file their original proposed law, accompanied by the signatures and certificates of 10 registered voters with the Secretary of the Commonwealth who then prepares initiative petition form blanks with the summary printed and space for signatures of registered voters. Electronic versions of the petitions are available if proponents wish to print their own, in accordance with printing guidelines.

In special cases, the Secretary may print petitions for an initiative for a law that the Attorney General has not certified. If the proponents challenge the decision of the Attorney General in court, there is not sufficient time for the court to make a decision so that the proponents can collect signatures in time. In such a case, the court may require the Attorney General to prepare a summary and the Secretary to print the petitions to allow the proponents to proceed with the signature collection and certification, pending the decision of the courts whether the subject matter is within constitutional definitions. If sufficient numbers of signatures are approved and the court decides the question is constitutional, the proponents proceed to the next step in the process. If the court decides the question is not constitutional, the proponents do not proceed.

**3.1.3 Signature Collection**

Proponents must collect signatures equaling at least 3% of voters in the previous gubernatorial election (64,750 valid signatures were required for 2018 ballot questions), with no more than 25% coming from any single county, by early December.
Signature collection rules, certification, and accounting are the same for all citizen-initiated statewide ballot questions (Section 3.4).

For initiative petitions for a law, the petition forms are available within 14 days after the petitioners file the papers with the Secretary of the Commonwealth.

### 3.1.4 The Petition is Laid Before the Legislature

After the necessary certified signatures have been confirmed, the Secretary of the Commonwealth transmits the initiative petition to the House Clerk for legislative action on the first legislative day of the year (early January). The Legislature has until the first Wednesday in May to act on the initiative. The initiative petition may not be amended by the Legislature. Possible outcomes:

- The Legislature approves the initiative, the governor signs it, or it passes over his veto by two-thirds vote in both houses, and it becomes law. The question will not appear on the ballot if this action is taken by the deadline.
- The Legislature rejects the proposed initiative and formulates a legislative proposal of its own, to be grouped on the ballot with the initiative measure as an alternative choice. If both questions pass, the one with more affirmative votes will become law. It is rare for the Legislature to take this approach.
- The Legislature may pass a new law that addresses the subject matter of the initiative petition but is not identical to the initiative. The proponents may then decide whether to continue with the next steps necessary to proceed to the ballot. Ideally these actions are taken before the deadline in order to avoid the question appearing on the ballot.
- The Legislature takes no action and the initiative goes back to the proponents to decide whether to take the next steps necessary to proceed to the ballot.

### 3.1.5 Additional Signature Collection to Get the Petition on the Ballot

If the Legislature fails to enact the proposed law as written, the proponents must gather a second round of signatures by early July to move the initiative to the ballot. These signatures must equal an additional one-half of 1% of voters (10,792 for 2018 ballot), with no more than 25% coming from any single county. These must be additional signers, meaning that voters who signed the initiative petition in the fall are not eligible to sign again. What this means practically for the proponents is that they need to be strategic about where to collect signatures and how many to collect to meet the number to be certified.

If, after the same process as the first round for signature certification and delivery of the initiative petitions, the Secretary of the Commonwealth determines a sufficient number of signatures were certified, the question will appear on the November ballot statewide.

There are a few rare but possible exceptions to this procedure.
• If the Legislature fails to enact the proposed law as written, it is possible for the proposed ballot question to be amended by a majority of the ten original signers. The Attorney General must approve the new language and determine the amendment does not materially change the substance of the message.
• If there is a court challenge to the initiative, usually concerning whether the subject matter was in accordance with those stated in the constitution, the court may decide that the question cannot proceed to the ballot.

3.1.6 Passage
For an initiative petition for a law to be passed by the electorate, the Constitution states two requirements:
1. At least 30% of the voters who cast their ballots in the election must vote in the affirmative on the question and,
2. A majority of the ballots cast on that question must also be affirmative.

The first requirement refers to those who vote in the election, recognizing that some could vote in the election (cast a ballot) but may leave the question blank (not cast on that question).

3.1.7 Enactment
The Constitution states that a law proposed by an initiative petition takes effect thirty days after the state election, or at such time after the election as may be provided in such law. The courts have not definitively decided whether this means thirty days after the election, or thirty days after the certification of the election results by the Governor's Council, which usually occurs in late November or early December.

It is also possible for the initiative to specify the date the law will take effect.

The Legislature may amend or repeal laws passed by ballot question at any time.

3.2 Initiative Petition for a Constitutional Amendment
Citizens may propose constitutional revisions through the initiative petition process. The process starts out similarly to that of an initiative petition for a law, but differs after the signatures are collected, and requires an additional two years to get on the ballot. See Table 3.1 for the complete list of steps and timing of initiative petition for a constitutional amendment.

3.2.1 Prior to Submission
The process is the same as that in Section 3.1.1, but the proponents originate an initiative petition for a constitutional amendment (rather than a law).

3.2.2 Submission to Attorney General and Secretary of the Commonwealth
This process is the same as that described in Section 3.1.2.

3.2.3 Signature Collection
The number of signature and process are the same as that described in Section 3.1.3. There is no second round of signature collection for constitutional amendments.
3.2.4 The Petition is Laid Before the Legislature
As with initiative petition for laws, after the necessary signatures have been confirmed, the Secretary of the Commonwealth transmits the initiative petition to the House Clerk for legislative action on the first legislative day of the year (early January). From this point on, the process is different from that of an initiative petition for a law.

An initiative petition for a constitutional amendment is acted upon by joint sessions of the House and Senate sitting together. The initiative must be “laid before” the joint session by the second Wednesday in May. The petition may be amended by a three-fourths affirmative majority vote by the Legislature (in joint session). By a majority vote, the Legislature may formulate a proposal of its own, to be grouped on the ballot with the initiative amendment.

3.2.5 Getting the Petition on the Ballot
The initiative for a constitutional amendment must be placed on the ballot if, in joint sessions held by two successively elected Legislatures, the petition wins the support of at least 25% of the legislators. This step is accomplished through what is called the Constitutional Convention. If at least 25% of senators and representatives (50 of the 200 legislators: 40 senators and 160 representatives), in two successive conventions, vote to allow the amendment to appear on the ballot, it is placed on the next general election ballot.

Possible outcomes:
- The 25% threshold is reached in both sessions and the measure proceeds to the ballot.
- The 25% threshold is reached in the first session but not the next. The measure does not go forward.
- The Legislature takes procedural actions to prevent the matter from coming up, such as a majority voting for adjournment prior to a vote on the amendment.
- If there is a court challenge to the initiative, usually concerning whether the subject matter was in accordance with those stated in the constitution, the court may decide that the question cannot proceed to the ballot.

What happened? Millionaires Tax Constitutional Amendment
In September 2015 sufficient signatures were collected for an initiative petition for the so-called “Fair Share” or “Millionaires Tax” constitutional amendment. Two successive joint sessions of the Legislature approved the measure (25% threshold), and the ballot question was on track for the November 2018 election. On February 6, 2018, the Massachusetts Supreme Judicial Court heard the case of Anderson v. Healey, with representatives from five groups alleging that the proposed amendment violates Article XLVIII of the state’s constitution. The court agreed that the question was unlawful because it combined multiple subjects — spending on transportation and on education — that were not related. The state constitution requires such ballot measures to have subjects that are related or “mutually dependent.” As a result, the question did not go before the voters in November 2018.

3.2.6 Passage and Enactment
As with an initiative petition for law, to be passed by the electorate, an initiative petition for a constitutional amendment must meet the same two requirements:
1. At least 30% of the voters who cast their ballots in the election must vote in the affirmative on the question and,
2. A majority of the ballots cast on that question must also be affirmative

The Constitution states that a constitutional amendment proposed by initiative petition takes effect upon certification of the election results by the Governor’s Council, which usually occurs in late November or early December, or date provided if later.
### Table 3.1: Citizen-Initiated Petitions for Law and Constitutional Amendment Steps

<table>
<thead>
<tr>
<th>Event</th>
<th>Law Petition</th>
<th>Constitutional Amend Petition</th>
<th>2017/2018 Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submission of petition to Attorney General (AG) by 10 original signers</td>
<td>by the 1st Wed of Aug</td>
<td>by the 1st Wed of Aug</td>
<td>Aug 2, 2017</td>
</tr>
<tr>
<td>Filing of petition with the Secretary of the Commonwealth (SOC) by original petitioners</td>
<td>Not before the 1st Wed of Sep</td>
<td>Not before the 1st Wed of Sep</td>
<td>Sep 6, 2017</td>
</tr>
<tr>
<td>SOC has petition forms prepared for collection of required number of signatures</td>
<td>No later than 14 days after filing with SOC</td>
<td>No later than 14 days after filing with SOC</td>
<td>Sep 20, 2017</td>
</tr>
<tr>
<td>Filing of petitions with local registrars for certification</td>
<td>By 14 days before the 1st Wed of Dec</td>
<td>By 14 days before the 1st Wed of Dec</td>
<td>Nov 22, 2017</td>
</tr>
<tr>
<td>Filing certified petitions with the SOC</td>
<td>By the 1st Wed of Dec</td>
<td>By the 1st Wed of Dec</td>
<td>Dec 6, 2017</td>
</tr>
<tr>
<td>Transmittal of petitions to House Clerk by the SOC</td>
<td>First legislative day of the year</td>
<td>First legislative day of the year</td>
<td>Jan 3, 2018</td>
</tr>
<tr>
<td>Legislative action</td>
<td>BEFORE the 1st Wed of May</td>
<td></td>
<td>May 1, 2018</td>
</tr>
<tr>
<td>Legislative action - Joint Session</td>
<td></td>
<td>Must be 'laid before' joint session not later than the 2nd Wed of May. If approved by at least 25% (50 votes) of Legislature, it is held for the next elected Legislature. If not, it is dead.</td>
<td>May 9, 2018</td>
</tr>
<tr>
<td>Legislative action - next elected Legislature in joint session</td>
<td>Legislative action - next elected Legislature in joint session</td>
<td>2019 or 2020</td>
<td></td>
</tr>
<tr>
<td>Filing with SOC of request for additional petition forms</td>
<td>Not before the 1st Wed of May</td>
<td></td>
<td>May 2, 2018</td>
</tr>
<tr>
<td>Filing with SOC of amended petition, with certification from the AG that the amendment does not materially change the substance of the measure</td>
<td>BEFORE the 1st Wed of Jun</td>
<td></td>
<td>Jun 5, 2018</td>
</tr>
<tr>
<td>Collection and filing of additional signatures with local registrars for certification</td>
<td>After the 1st Wed of May &amp; by 14 days before the 1st Wed of Jul</td>
<td></td>
<td>Jun 19, 2018</td>
</tr>
<tr>
<td>Filing with SOC of additional signatures to put petition on ballot if General Court fails to enact Measure</td>
<td>NOT BEFORE the 1st Wed of Jun &amp; by the 1st Wed of Jul</td>
<td></td>
<td>Jun 7, 2018</td>
</tr>
<tr>
<td><strong>STATE ELECTION DAY</strong></td>
<td>1st Tues after the 1st Mon in Nov</td>
<td>1st Tues after the 1st Mon in Nov</td>
<td>Nov 6, 2018</td>
</tr>
<tr>
<td><strong>Effective Date</strong></td>
<td>Thirty days after election or upon such time as may be provided in such law</td>
<td>Date of certification of election results or upon date provided if later</td>
<td>Dec 6, 2018 Nov/Dec 2020</td>
</tr>
</tbody>
</table>

* Date falls on a Tuesday due to Independence Day

Table Reference: [https://www.sec.state.ma.us/ele/elepdf/State-Ballot-Question-Petitions-Jan-2017.pdf](https://www.sec.state.ma.us/ele/elepdf/State-Ballot-Question-Petitions-Jan-2017.pdf)
3.3 Referendum Petition

A referendum petition is presented to the voters for approval or repeal of a law that has already been signed by the Governor (or passed over his veto). A referendum petition can only be used to repeal an entire law; it cannot be used to repeal a section of a law. If legislators or the Governor make the law an “emergency” measure, it cannot be suspended, but could be the subject of a referendum petition to have the vote repealed at the next election.

Referendum petitions have two signature thresholds, a higher certified signature threshold to suspend the implementation of the law until the next state election, and a lesser threshold that just brings the question to the voters in the next election.

Unlike the other citizen-initiated types of petition, the referendum petition signature collection timing is dependent on the passage of the law (Table 3.2). The process of getting the question “on the ballot” can be accomplished in less than 4 months, but the election only happens in November of even-numbered years.

It should be noted that a law or a portion of a law can be repealed through the process of an initiative petition for a law.

3.3.1 Originating a Referendum Petition

To originate a referendum petition, at least ten qualified voters of the Commonwealth may draw up and sign an original petition on which they correctly identify the law they wish to have repealed. As with the other petitions in this section, ten original signers must submit voter registration certificates and the original petition to the Secretary of the Commonwealth no later than 30 days after the act is signed into law by the Governor or passed over his veto.

3.3.2 Submission to Attorney General and Secretary of the Commonwealth

The original referendum petition is filed with the Secretary of the Commonwealth, who asks the Attorney General whether it can be the subject of a referendum and, if yes, to prepare the summary. The Attorney General prepares a summary of the act to be repealed. The Constitution excludes from the Referendum process subjects that relate to religion, judges, the courts, particular localities of the Commonwealth, state appropriations, and certain provisions of the state constitution’s Declaration of Rights.

Within 14 days after receiving the summary from the Attorney General, the Secretary of the Commonwealth prepares referendum petition form blanks with the summary for gathering signatures of registered voters.

3.3.3 Signature Collection

See the next section for the number of signatures required.

Signature collection rules, certification, and accounting are the same for all citizen-initiated statewide ballot questions (Section 3.4).

Referendum petition forms will be printed within 14 days after the summary is prepared by the Attorney General.

3.3.4 Getting the Petition on the Ballot

The number of certified signatures required depends on three factors:

- Whether the law in question has an emergency declaration (and therefore is constitutionally barred from being suspended)
- Whether the petitioners request the law be suspended upon filing the petition
• The number of votes cast for Governor at the last biennial state election, excluding blanks
If the repeal is sought on an emergency law or on a law whose suspension is not requested by the petitioners, the number of certified signatures required is 1.5% of the total vote cast for Governor (excluding blanks) at the last state election (32,375 for 2018) with no more than one-fourth of these certified signatures coming from any one of the 14 counties.

If the original petition filed by ten registered voters requests suspension in writing, the law will be suspended from taking effect when the referendum petition is filed. (Again, this does not apply to emergency laws.) The number of signatures required to suspend the law upon filing of the petition is 2% of the total vote cast for Governor (excluding blanks) at the last state election (43,167 for 2018) with no more than one-fourth of these certified signatures coming from any one county.

3.3.5 Passage and Enactment
The ballot question that results from a referendum petition must read as follows:

“Do you approve of a law summarized below, which was approved by the House of Representatives by a vote of _____ on _____ (date) and approved by the Senate by a vote of _____ on _____ (date)?”

For referendum to repeal an existing law to be successful, the Constitution states two requirements:

1. At least 30% of the voters who cast their ballots in the election must vote against the question and,
2. A majority of the ballots cast on that question must be against it.

The Legislature may pass a new or similar bill to the one repealed at any time.

Table 3.2: Citizen-Initiated Referendum Petitions Steps

<table>
<thead>
<tr>
<th>Event</th>
<th>Referendum Petition</th>
<th>Legal Deadline*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submission of petition to SOC by ten original signers</td>
<td>Not later than 30 days after act is signed by Governor (or passed over his veto)</td>
<td>-----</td>
</tr>
<tr>
<td>SOC has petition forms prepared for collection of required number of signatures</td>
<td>Within 14 days after summary is prepared by AG</td>
<td>-----</td>
</tr>
<tr>
<td>Filing of petitions with local registrars for certification</td>
<td>By 14 days before filing deadline with SOC</td>
<td>-----</td>
</tr>
<tr>
<td>Filing certified petitions with the SOC</td>
<td>Within 90 days after the act is signed by the Governor (or passed over his veto)</td>
<td>-----</td>
</tr>
<tr>
<td>Petitions submitted to the voters; Suspended law immediately null and void if law disapproved</td>
<td>First state election 60 or more days after filing certified petitions with the SOC</td>
<td>-----</td>
</tr>
<tr>
<td>STATE ELECTION DAY</td>
<td></td>
<td>Nov 6, 2018</td>
</tr>
<tr>
<td>Effective Date</td>
<td>30 days after election</td>
<td>Dec 6, 2018</td>
</tr>
</tbody>
</table>

* If a deadline falls on a Saturday, Sunday, or legal holiday, the deadline may be on the previous or next weekday. Check with the Elections Division for exact dates.
Table Reference: [https://www.sec.state.ma.us/ele/elepdf/State-Ballot-Question-Petitions-Jan-2017.pdf](https://www.sec.state.ma.us/ele/elepdf/State-Ballot-Question-Petitions-Jan-2017.pdf)
### 3.4 Signature Collection

All three types of statewide citizen initiated ballot questions have the same rules for collecting and processing signatures. In Massachusetts there are no requirements to be a signature gatherer and no expectations or identification. Proponents may pay signature gatherers or, more commonly, hire a company that specializes in signature collection.

Signed petitions are reviewed in two locations. The local election boards, through the city and town clerks, verify whether each signer is a registered voter. The Secretary of the Commonwealth checks the petition sheets to ensure they meet the legal requirements. The Secretary informs the proponents of the official total number of signatures and sends the petition to the Clerk of the Legislature.

#### 3.4.1 Certifying Signers Are Registered Voters

Regardless of which type of petition is circulated, all signatures gathered must be those of Massachusetts registered voters. All signatures must be certified by at least three of the members of the Board of Registrars or the Elections Commission of the town or city which the signatories list as the municipality in which registered to vote.

Since this signature certification happens in each municipality, each petition sheet may only contain signatures from registered voters from one city or town. Proponents must deliver the signed petition sheets to the election boards in each municipality (351 municipalities in Massachusetts). The city or town clerk, acting as agents of the Registrar of Voters, certifies whether each signer is a registered voter in his/her municipality. At least three members of the local election board must sign each sheet to attest to certification.

In order for a signature to be certified, the signature must be legible and signed in person, substantially as registered. Next to the signature must be written the complete address where the voter is registered. A signature will be certified if it can reasonably be identified as that of a registered voter.

Next, the proponents collect the certified petitions from the municipalities and deliver them to the Secretary of the Commonwealth.

#### 3.4.2 Processing Petition Sheets

The Secretary of the Commonwealth reviews each sheet to ensure they meet the requirements, calculates the official number of certified signatures, informs the proponents of the total number, and submits the petition to the Clerk of the Legislature. The requirements for each sheet include: sheets contain no extraneous markings, are exact copies of the original, and are signed by at least three registrars or commissioners (see above).

As a result of two court decisions, there are rules about keeping the petitions free of stray marks (Massachusetts Supreme Judicial Court Walsh v. Secretary of the Commonwealth, 430 Mass. 103 (1999) and Hurst v. State Ballot Law Commission, 427 Mass. 825 (1998)).

Specifically, both courts held that any extraneous markings on a petition sheet will invalidate all of the signatures on that sheet. In addition, any petition that deviates from the blank form provided by the Secretary will invalidate all the signatures on that sheet. Regulations 950 C.M.R. § 48.00 govern the format of ballot question petitions.

Examples of extraneous markings include, but are not limited to: highlighting, underlining, scribbles, doodles, instructional language (i.e., “over” or “see other side”), the name or initials of the circulator, the telephone number of the circulator.

Examples of petition forms which are not exact copies include, but are not limited to: paper size or color that is different than that prepared by the Secretary, original text is missing or altered, sent by facsimile
machine, contains printing on only one side, contains a different number of signature lines than on the original petition form.

In some cases, fear of having petitions rejected has resulted in signature collectors gathering only a small number of signatures per page in order to have less of an impact on the total number of signatures in the event an entire page is rejected. There are reports of an entire collection of signatures for a question having only one signature per sheet.

The Secretary of the Commonwealth advises that “if a voter signs incorrectly or makes an error, do not erase or make changes. Leave the incorrect line intact and ask the voter to sign his or her name and address again on the next line. An altered or illegible signature may be disallowed or challenged.”

3.5 Sources

- Tassinari, Michelle, Chief Legal Counsel/Director of Elections - Secretary of Commonwealth’s Office. Personal communication, December 19, 2017.
- Kiley, Thomas. Personal communication March 27, 2018.

3.6 Legal References

- Articles XLVIII, LXVII, LXXIV, and LXXXI of the Amendments of the Massachusetts Constitution.
- Massachusetts General Laws Chapter 53, section 22A (2014 ed.).
- 950 C.M.R. § 48.00.
4 Voter Information

4.1 Massachusetts Information for Voters [election year] Ballot Questions

The "Information for Voters" red booklet is prepared every two years prior to state elections. The 2016 edition may be downloaded at https://www.sec.state.ma.us/ele/elepdf/IFV_2016.pdf. The 2018 "Information for Voters" is posted and can be accessed, but not downloaded, at https://www.sec.state.ma.us/ele/elepdf/IFV_2018.pdf.

Article LXXIV (Amendment Articles LXXIV and CVIII), Section IV of the Massachusetts Constitution states: “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.” These constitutional requirements are contained in the “Information for Voters” red booklet prepared prior to each election (Table 4.1).

Other components are required by law (M.G.L. c.54). The Secretary of the Commonwealth also includes other information not directly related to ballot questions in the red booklet. These are not considered in this summary report.

Links to ballot question voter guides from seven other states are available in Appendix 4.

<table>
<thead>
<tr>
<th>Table 4.1: Required components of the “Information for Voters” related to ballot questions</th>
</tr>
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<tbody>
<tr>
<td><strong>Component</strong></td>
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<tr>
<td>Ballot Question Number</td>
</tr>
<tr>
<td>Ballot Question Title</td>
</tr>
<tr>
<td>The Question</td>
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<tr>
<td>Summary</td>
</tr>
<tr>
<td>What Your Vote Will Do</td>
</tr>
<tr>
<td>Statement of Fiscal Consequences</td>
</tr>
<tr>
<td>Arguments in favor and against</td>
</tr>
<tr>
<td>Full text of question</td>
</tr>
</tbody>
</table>

* Spring preparation of odd-numbered year is around the time the initiative petition is submitted to the Attorney General, prior to signature gathering. Fall of even-numbered year is around the time the measure becomes a ballot question.

Abbreviations: SOC, Secretary of the Commonwealth; AG, Attorney General; M.G.L., Massachusetts General Law.

4.1.1 The Ballot Question Number

The Secretary of the Commonwealth gives each question a unique number starting with "1."
4.1.2 The Ballot Question Title
M.G.L. c. 54, § 53, requires the Attorney General and the Secretary of State to jointly prepare a “ballot question title,” a short title. Interested parties’ comments are welcomed on drafts of the title.

4.1.3 The Question
The Secretary of the Commonwealth shall cause each question 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)?”
- 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)?”
- In the case of a referendum (i.e., not to repeal an existing law): “Do you approve of a law summarized below, which was approved by the House of Representatives by a vote of ______ on ______ (date) and approved by the Senate by a vote of ______ on ______ (date)?”

4.1.4 Summary
The Massachusetts Constitution requires the Attorney General to prepare a “fair and concise summary.” The Attorney General welcomes comments from both proponents and opponents on the summary. The same summary appears on the petition for signatures and the ballot.

4.1.5 What Your Vote Will Do
M.G.L. c. 54, § 53, requires the Attorney General and the Secretary of the Commonwealth to jointly prepare “fair and neutral one sentence statements describing the effect of a yes or no vote.” Interested parties’ comments are welcomed on drafts of these materials.

4.1.6 Statement of Fiscal Consequences
M.G.L. c. 54, § 53, amended in 2014, requires a “statement of not more than 100 words prepared by the Secretary of Administration and Finance regarding the fiscal consequences of the measure for state and municipal government finances” for each ballot question to be printed in the “Information for Voters” red booklet. These statements were included in 2016 and 2018. The statements for the ballot questions for these two elections are in Appendix 3, along with samples from other states.

4.1.7 Arguments in Favor and Against
The Secretary of the Commonwealth must include arguments for and against every ballot question, limited to 150 words. The secretary shall seek such arguments from the principal proponents and opponents and determine those best able to present the argument for and against the measure at the time the measure is finally received by the secretary for submission to the voters. The principal proponents of an initiative or referendum petition shall be the first ten signers of such petition, or a majority of them.

In determining the principal proponents and opponents of a measure, the state secretary shall contact each nonelected political committee which is properly organized to influence the outcome of such a measure. If no argument is received within the time allowed, the secretary shall prepare such argument. All arguments filed with or prepared by the Secretary under this section shall be open to public inspection.

4.1.8 Full Text of the Question
The exact and complete language of the law, constitutional amendment, or referendum, no matter the length, is printed.
4.2 Research and Guidance on Designing and Writing Information for Voters

4.2.1 Center for Civic Design

4.2.2 The Center for Plain Language
Article LXXIV (amendment to XLVIII) calls for a “a fair, concise summary.” The Center for Plain Language’s goal is to help government agencies and businesses write so clearly that their intended audience understands what they are saying the first time they read or hear it.

A communication is in plain language if its wording, structure, and design are so clear that the intended readers can easily find what they need, understand what they find, and use that information. The Center offers details on the five steps to plain language, and is an example of a resource that could assist in the preparation of the summary and other sections of the “Information for Voters.”

4.3 Alternative Voter Information Sources: Citizens Initiative Review
A Citizens’ Initiative Review (CIR) is a panel of citizens that meets to deliberate on a ballot initiative or referendum that voters in the same jurisdiction will be deciding in an upcoming election. At the end, using a combination of voting and consensus techniques, they produce a statement that contains key facts, the best reasons to vote for the measure, and the best reasons to vote against the measure. Their statement is distributed as widely as possible so that all of the state’s voters can read and consider the statement when they cast their ballot.

The panelists are chosen to be representative of the relevant population. To ensure that the panel is a manageable size for face-to-face deliberation, a CIR caps the number of participants at around two dozen. They are often paid for their time and travel so that the broadest possible range of citizens can participate. To date, only the state of Oregon has passed a law to enact a permanent version of the CIR. The states of Colorado, Arizona, and Massachusetts have conducted pilot tests of the CIR.

4.3.1 The Massachusetts Citizens’ Initiative Review Pilot Project
The 2016 Massachusetts CIR Pilot Project was carried out through a partnership between the office of State Representative Jonathan Hecht, Tufts University’s Tisch College of Civic Life, and Healthy Democracy, the organization that pioneered CIR in Oregon.

A panel of 20 was formed from a pool of 10,000 randomly selected Massachusetts voters using a scientific method to ensure it is representative of the overall electorate (based on place of residence, party affiliation, age, gender, educational attainment, and race and ethnicity). Over four days in late August 2016, the panel heard from the campaigns supporting and opposing Question 4 (legalization of recreational marijuana) and relevant policy experts, deliberated among themselves with the help of professional facilitators, and produced the Citizens’ Statement.

In 2018, another pilot was carried out and prepared the Citizens’ Statement on Question 1 (patient-to-nurse limits). The statement is posted on the website below.

4.3.2 Citizens’ Statements
The Citizen’s Statement that emerged after the panel in 2016 is copied onto the next page from http://www.cirmass.org/. The 2018 statement may be found at https://www.cirmass.org/the-2018-citizens-statement.
Citizens’ Statement

Key Findings
The following findings are ranked in order of importance as determined by the citizen panel, from most to least important.

- Question 4 provides significant control to city and town authorities by allowing safeguards on the operations of marijuana establishments. It protects business and landlord rights and it prohibits marijuana consumption in public areas.
- Question 4’s taxed and regulated system is modeled after the State's system for alcohol regulation. It replicates a system that is already working well in the State. The proposed system would be controlled, transparent and accountable.
- Question 4 allows people to grow a limited number of marijuana plants in his or her home under lock and key for personal use. Sale of homegrown marijuana is still illegal.
- Replacing the current marijuana policy in Massachusetts with a regulated and taxed system allows limited legal possession to persons 21 and over.
- Legalization would prohibit marketing and branding toward children, as with alcohol and tobacco.

Statement in Support of Question 4
The citizen panel considers these to be the strongest reasons for supporting Question 4:

- Legalized and regulated marijuana is safer than black market marijuana because the legalized product will be tested and clearly labeled according to state regulations.
- Question 4 will create a large number of regulatory, law enforcement, legal, and licensure jobs that are supported by taxes on the sale of marijuana.
- Question 4 would give patients and health providers ready access to marijuana without committing a crime. Legalization could help people avoid opiates, addiction and worse problems.

Question 4 legalizes recreational marijuana in the Commonwealth, creating new jobs and adding to the Massachusetts economy. This initiative includes measures for economic sustainability, regulatory responsibility and ensures access to safe products.

Safety, responsibility, justice, fairness and freedom are the basic values at stake in this matter.

Statement in Opposition to Question 4
The citizen panel considers these to be the strongest reasons for opposing Question 4:

- According to the executive director of marijuana policy for Denver, after legalization, the black market continues to thrive and change.
- Although in development, at this time there is no definitive method of testing for impaired drivers.
- There is conflicting evidence of an increase in teen use or motor vehicle accidents in states that have legalized recreational use.
- Question 4 will create a large number of regulatory, law enforcement, legal, and licensure jobs that are supported by taxes on the sale of marijuana.

This referendum proposes a questionable means of legalizing recreational marijuana. There is a lack of transparency as many regulatory policies and procedures will not be defined until after the passage of the referendum. The long-term effects of recreational marijuana use on society, not fully understood, present a threat to our communities and roadways. There is a lack of credible evidence regarding the financial stability and economic gains. The many unknowns in this referendum make it difficult to support Question 4 at this time.

Safety, responsibility, and public health and welfare are the core values at stake in this matter.
4.3.3 The CIR Bill in the Massachusetts Legislature

A bill to implement CIR was filed in the Massachusetts Legislature in 2015 and 2017. On April 9, 2018, HB 368/SB390 [https://malegislature.gov/Bills/190/H368](https://malegislature.gov/Bills/190/H368), sponsored by Representative Jonathan Hecht, was reported favorably by the Joint Committee on Election Laws and sent on to the House Ways and Means Committee. As drafted, the bill would have established a seven member Citizens’ Initiative Review Commission to: conduct a review of at least one ballot measure for each statewide biennial election; articulate qualifications of Commission members; set forth procedures for the Commission to follow, including contracting with a nonpartisan organization with expertise in the delivery of nonpartisan public deliberation to conduct said review; direct the Commission to report on the review. The House Ways and Means Committee did not bring the bill forward in the 2017-2018 session, and so it did not come before the Legislature for a vote.

4.4 Sources

- Massachusetts Constitution Article XLVIII, Section IV and Amendment Articles LXXIV and CVIII
- Massachusetts General Law: M.G.L. c. 54, § 42A, c. 54 § 53, c. 54 § 54
5 Initiative and/or Referendum around the United States

5.1 The Initiative and Referendum Movement in the United States
Between 1902 and 1988 26 states passed constitutional amendments along with related statutes and regulations that gave or expanded a citizen’s right to initiate statewide proposals for new constitutional amendments and/or state statutes and/or to repeal laws, that may be voted on through a statewide ballot question. Massachusetts did so in 1918 by approving the constitutional amendment (Article XLVIII) establishing the mechanism that allows for citizen-initiated petitions.

Factors contributing to the initiative and referendum movement included reform movements by populists (those who distrusted government) and progressives (those whose goal was to improve the government), those frustrated with inaction by their state government, and those who believed that their governments were not serving the will of the people.

5.2 Methodology for State Comparisons
Although the initiative and referendum process is different in every state, there are five basic steps of the process that are common to all, according to the Initiative and Referendum Institute.

1. Preliminary filing of a proposed initiative with a designated state official
2. Review of the initiative for compliance with statutory requirements prior to circulation
3. Circulation of the petition to obtain the required number of signatures
4. Submission of the petition signatures to the state elections official for verification of the signatures
5. The placement of the initiative on the ballot and subsequent vote

For this study, the Study Committee could not reasonably describe the different procedures that all 26 individual states have in place for initiatives and referendums. The Committee decided on the methodology described below.

Early on in its research the Study Committee identified seven states to study in detail: the five states with the greatest number of initiatives over time (Oregon, California, Colorado, North Dakota and Arizona), one mid-western state (Ohio), and the only other New England state besides Massachusetts that has an initiative and referendum process (Maine). To ensure consistency in our review we first established a common understanding of terminology and created an “Inventory of Key I&R Procedural Components” that are most common among the states.

After establishing the consensus questions, the Study Committee focused on information relevant to the questions, with the goal of putting Massachusetts procedures into perspective. For each consensus question, a summary among relevant states is provided in the Study Guide. In addition, the procedures related to the consensus questions for the seven states listed above are included in Appendix 4.
5.3 Overview of States

Twenty-six states have a process for at least one of three types of ballot questions that result from the initiative and referendum process. The three types are initiative for constitutional amendment, initiative for law, and veto referendum (to repeal a law). Within the 26, a given state may have a process for one type, any two types, or all three. There are 16 states that allow all three types, including Massachusetts. Table 5.1 shows the various provisions for the 26 states.

Table 5.1 The 26 States with Initiative and/or Referendum Provisions

<table>
<thead>
<tr>
<th>State</th>
<th>Initiative for Law</th>
<th>Initiative for Constitutional Amendment</th>
<th>Veto Referendum</th>
<th>Initiative &amp; Referendum</th>
<th>All Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>AK</td>
<td>Yes</td>
<td></td>
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Sources: from Ballotpedia and National Conference of State Legislatures
The map shown in Figure 5.1 illustrates the influence of geography on the likelihood of having an initiative and referendum process, with 18 of the 24 states west of the Mississippi having at least one type, but only 8 of the 26 states east of the Mississippi. Massachusetts is the only East Coast state to have all three.

![Figure 5.1. Map of Initiative and Referendum Provisions](https://ballotpedia.org/Ballot_measure)

The remaining 24 states (in gray) have ballot questions, but no process for citizen-initiated statewide ballot questions to propose laws, constitutional amendments, or to repeal existing laws. Overall, 36 states have provisions allowing for recall of certain elected officials at the local and/or state level. All states except Delaware require voters to ratify constitutional amendments (whether citizen- or legislature-initiated). Every state except Indiana and Wyoming features the initiative and referendum power within at least some local municipalities or counties.

### 5.3.1 Direct vs. Indirect Initiatives

Initiatives are categorized as either “direct” or “indirect,” defined by whether or not the state legislature has a role in the process. In an indirect process the legislature has a role, and in the direct process the legislature has no role.
Massachusetts has an indirect process for both laws and constitutional amendments, as described in Section 3. Of the 21 states that have initiatives for laws, 14 have a direct process and nine have an indirect process (two of them have both direct and indirect). Of the 18 states with initiatives for constitutional amendments, 16 have a direct process and 2 (Massachusetts and Mississippi) have an indirect process.

5.4 Massachusetts Compared with Other States

There are no national statutes that govern ballot questions or the initiative and referendum process. Each state has its own constitutional law, general law, and regulations to govern the process. Listed below are a few areas where Massachusetts stands out as being different from other states. The intent of this list is to point out differences—there is no inference intended about whether the Massachusetts process is “better” or “worse” than other states.

- Massachusetts is considered the “most indirect” state for initiative constitutional amendments because proponents have no right to submit their proposal to the people for a vote without the consent of the Legislature in two sessions.
- For initiatives for laws, Massachusetts is one of three states that requires a second round of signatures.
- The number of signatures required for initiatives for law (3.5% percent of those voting for governor in the last election) is on the lower end compared to other states (range from 2% to 15%).
- Massachusetts has the shortest time period for collecting signatures.
- Massachusetts is the only state that sets a maximum number of signatures from a geographic district rather than a minimum for initiative for laws.

5.5 Sources

6 Ballot Question Finance

6.1 Oversight and Reporting

6.1.1 Office of Campaign and Political Finance (OCPF)
The OCPF is described in Section 970 of the Code of Massachusetts Regulations (970 CMR). The code states that OCPF regulates all campaign finance activity for state, county, city and town elections and regional school and other district elections in the Commonwealth. 970 CMR 1.00 provides for the regulation of activity, which is often engaged in by political committees, including ballot question committees. It establishes specific guidelines for the acceptance and reporting of campaign contributions and loans.

Study Committee members met with three representatives of OCPF on December 12, 2017. Director Michael Sullivan stated that their main roles were:

• To educate the various players on what they can and cannot do.
• To ensure the public can see what is going on regarding campaign finance.

To support these roles, the OCPF website contains a wealth of information. It includes many documents, videos, newsletters and other educational materials, and OCPF encourages those involved in the process to meet with them and call with questions.

6.1.2 Statewide Ballot Question Committees: Formation and Reporting
In order to raise money or accept contributions for a ballot question, a ballot question committee must be formed, and an application completed and filed with the OCPF.

The steps a ballot campaign committee must carry out are described in detail on the OCPF website and briefly summarized below.

Once the initial “Statement of Organization” is received and reviewed, OCPF registers the committee and assigns it an ID number and password for electronic filing. Registered committees (filers) may be viewed on the OCPF website (http://www.ocpf.us/Filers, select ballot question committee).

Committees must maintain detailed accounts of all contributions received and all expenditures made. These records must be kept separate and distinct from any other accounts or records and must be preserved until December 31, 6 years from the relevant election.

6.1.3 Statewide Ballot Question Committees Report Schedule
Ballot question committees are required to file periodic reports of monetary receipts and expenditures, as well as in-kind contributions. The Statement of Organization must be filed when the committee is organized (for state ballot question committees only). Subsequent reporting becomes more frequent in the months close to the ballot question elections. Committees for ballot questions in the 2018 election reported 2017 contributions and expenditures in a report due in January 2018 (assuming they had organized). In 2018, the first report (after any initial, organizing report) covered the period up to 60 days before the election—through September 2. After that, reports were due about every 15 days until mid-November. In addition, a year-end report and a final report when the committee dissolves must be filed. Except for the initial report, all reports must be filed electronically.

Filed reports are immediately and automatically updated, and are available for viewing on the OCPF website (http://www.ocpf.us/Reports/BallotQuestionReports). The website gives a summary totaling all reported receipts, expenditures and in-kind contributions according to the question, year, and ballot question committee. Individual filed reports may be viewed and the data can be downloaded into Excel or pdf files.
6.1.4 Ballot Question Campaign Contributions
There are no limits on donations to ballot question campaign committees. This differs from contributions to candidates, which are restricted and can be viewed at http://www.ocpf.us/Legal/ContributionLimits.

6.2 Ballot Question Contributions and Expenditures

6.2.1 Primary Source Data for This Report
For the November 2016 election the study committee used two primary sources of information to analyze ballot question receipts and expenditures, both from the Massachusetts Office of Campaign and Political Finance (OCPF). One is the abovementioned website of filed reports. The other is a press release summarizing spending prepared by OCPF after all reports had been received. For the November 2016 election, the source is the September 28, 2017 OCPF press release titled “Ballot question committees break spending records in 2016.”

6.2.2 Secondary Source Data for This Report
Secondary sources used for the finance section of this report include ballotpedia.com and media reports (Boston Globe) related to the November 2016 election. It should be noted that for Question 2 (expand charter schools), the Ballotpedia totals do not match either of our primary sources. This speaks to the difficulty interpreting the finances for that question because of multiple campaign committees supporting that question.

We have used some information from Ballotpedia in order to compare Massachusetts to other states. We feel that their totals are close enough for this purpose.

6.2.3 Spending Trends over Time
Table 6.1 and Figure 6.1 summarize ballot question funding trends over time in Massachusetts, starting in 1988. Expenditures over time increased substantially in 2014, and continued to increase in 2016. Certain ballot questions contributed to the increase in 2014 (e.g., spending for the casino gambling question ($15.5 million) and the updated bottle bill ($10.7 million), and in 2016 (e.g., charter schools ($41.2 million) and, to a lesser extent, recreational marijuana ($9.5 million)).
Table 6.1: Massachusetts ballot question expenditures 1988-2016

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Questions</th>
<th>Number of Committees</th>
<th>Total Spent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988</td>
<td>4</td>
<td>18</td>
<td>$13,317,952</td>
</tr>
<tr>
<td>1990</td>
<td>6</td>
<td>20</td>
<td>$5,661,062</td>
</tr>
<tr>
<td>1992</td>
<td>4</td>
<td>8</td>
<td>$16,139,661</td>
</tr>
<tr>
<td>1994</td>
<td>9</td>
<td>23</td>
<td>$11,155,835</td>
</tr>
<tr>
<td>1996</td>
<td>1</td>
<td>3</td>
<td>$1,210,777</td>
</tr>
<tr>
<td>1998</td>
<td>3</td>
<td>9</td>
<td>$9,999,283</td>
</tr>
<tr>
<td>2000</td>
<td>8</td>
<td>16</td>
<td>$15,340,199</td>
</tr>
<tr>
<td>2002</td>
<td>3</td>
<td>6</td>
<td>$2,332,880</td>
</tr>
<tr>
<td>2004</td>
<td>0</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>2006</td>
<td>3</td>
<td>6</td>
<td>$15,320,327</td>
</tr>
<tr>
<td>2008</td>
<td>3</td>
<td>7</td>
<td>$11,516,215</td>
</tr>
<tr>
<td>2010</td>
<td>3</td>
<td>9</td>
<td>$9,098,307</td>
</tr>
<tr>
<td>2012</td>
<td>3</td>
<td>13</td>
<td>$9,554,909</td>
</tr>
<tr>
<td>2014</td>
<td>4</td>
<td>13</td>
<td>$30,193,266</td>
</tr>
<tr>
<td>2016</td>
<td>4</td>
<td>15</td>
<td>$57,477,775</td>
</tr>
</tbody>
</table>


Figure 6.1A and B: Expenditures over time and average spent per question over time
6.2.4 Donations and Expenses for November 2016 Election

The study committee examined the November 2016 election spending in more detail. Table 6.2 gives the receipts, receipts with in-kind contributions and liabilities included, and expenditures, as calculated by OCPF. As shown, in two cases the higher-spending position won and in two cases, the lower-spending position won.

The study committee used these data to calculate expenditures per vote for the eight campaigns (yes/no for four questions) based on the amount of expenditures and the number of votes cast. Among the eight questions/positions, the cost per vote ranged from $0.04 to $20.90.

<table>
<thead>
<tr>
<th>Question</th>
<th>Receipts</th>
<th>Expenditures and Outcome</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Receipts</td>
<td>Receipts+In Kind+Liabilities</td>
<td>Expenditures</td>
</tr>
<tr>
<td>Q1 YES total (1 committee)</td>
<td>$3,667,799</td>
<td>$3,775,671</td>
<td>$3,663,760</td>
</tr>
<tr>
<td>Q1 NO total (2 committees)</td>
<td>$73,200</td>
<td>$73,250</td>
<td>$73,250</td>
</tr>
<tr>
<td>Q1 Totals</td>
<td>$3,740,999</td>
<td>$3,848,921</td>
<td>$3,737,010</td>
</tr>
<tr>
<td>Q2 YES total (6 committees*)</td>
<td>$26,117,042</td>
<td>$27,048,142</td>
<td>$26,012,127</td>
</tr>
<tr>
<td>Q2 NO total (1 committee)</td>
<td>$15,407,239</td>
<td>$17,228,189</td>
<td>$15,188,667</td>
</tr>
<tr>
<td>Q2 Totals</td>
<td>$41,524,281</td>
<td>$44,276,331</td>
<td>$41,200,794</td>
</tr>
<tr>
<td>Q3 YES total (1 committee)</td>
<td>$2,755,513</td>
<td>$3,453,019</td>
<td>$2,742,874</td>
</tr>
<tr>
<td>Q3 NO total (1 committee)</td>
<td>$302,600</td>
<td>$330,737</td>
<td>$287,867</td>
</tr>
<tr>
<td>Q3 Totals</td>
<td>$3,058,113</td>
<td>$3,783,756</td>
<td>$3,030,741</td>
</tr>
<tr>
<td>Q4 YES total (1 committee)</td>
<td>$6,431,549</td>
<td>$6,797,470</td>
<td>$6,447,495</td>
</tr>
<tr>
<td>Q4 NO total (3 committees)</td>
<td>$3,076,798</td>
<td>$3,052,502</td>
<td>$3,061,732</td>
</tr>
<tr>
<td>Q4 Totals</td>
<td>$9,508,347</td>
<td>$9,849,972</td>
<td>$9,509,227</td>
</tr>
</tbody>
</table>

**Question 1:** An Act Relative to Expanded Gambling; **Question 2:** An Act to Allow Fair Access to Public Charter Schools; **Question 3:** An Act to Prevent Cruelty to Farm Animals; **Question 4:** The Regulation and Taxation of Marijuana Act

* One committee donated all its assets to another committee and is therefore not included in the totals.
Figure 6.2: 2016 Ballot Questions Total Expenditures and Outcome

Receipts
Table 6.3 shows the percentage of out-of-state money contributed to the eight campaigns in 2016 and the types of donors. On the out-of-state donors, it is possible for a Massachusetts individual to contribute to an out-of-state committee or other organization.

Table 6.3: Out-of-State Donations and Types of Donors November 2016 Ballot Questions

<table>
<thead>
<tr>
<th>Question</th>
<th>Origin of Donations*</th>
<th>Types of Donors**</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>MA</td>
<td>Out-of-State</td>
</tr>
<tr>
<td>Q1 Yes (Expand slots)</td>
<td>0.1%</td>
<td>90%</td>
</tr>
<tr>
<td>Q1 No</td>
<td>7%</td>
<td>93%</td>
</tr>
<tr>
<td>Q2 Yes (Expand Charter Schools)</td>
<td>20%</td>
<td>80%</td>
</tr>
<tr>
<td>Q2 No</td>
<td>62%</td>
<td>38%</td>
</tr>
<tr>
<td>Q3 Yes (Farm Animal Conditions)</td>
<td>5%</td>
<td>95%</td>
</tr>
<tr>
<td>Q3 No</td>
<td>2%</td>
<td>98%</td>
</tr>
<tr>
<td>Q4 Yes (Legalize Marijuana)</td>
<td>6%</td>
<td>94%</td>
</tr>
<tr>
<td>Q4 No</td>
<td>54%</td>
<td>46%</td>
</tr>
</tbody>
</table>

*Source Q1,3,4: [http://www.ocpf.us/Reports/BallotQuestionReports](http://www.ocpf.us/Reports/BallotQuestionReports) (download committee reports);
Q2:http://www.ocpf.us/Data/PeriodicCharts

**Defined by OCPF. Source: [http://www.ocpf.us/Data/PeriodicCharts](http://www.ocpf.us/Data/PeriodicCharts)
**Expenditures**

As shown in Table 6.2 above, the 2016 ballot committee spending closely resembled the amount of their receipts from contributions. Ballot committees reported spending on an array of expenses, including media advertising, signature gathering, campaign mailings, legal counsel, and operational expenses such as staff salaries and space rental. Although ballot campaign committees must report on the purpose of their expenditures, consistent wording on the purpose of the expense is not required, which makes categorizing the thousands of individual expenditures reported difficult.

By searching the expenditure data, we determined that three of the four 2016 committees that prepared petitions for ballot questions paid outside firms to help with gathering signatures and reported at least the following expenses related to that signature gathering:

- Question 1 (Expanding casinos): $393,370
- Question 2 (Expanding charter schools): $414,000
- Question 4 (Legalizing recreational marijuana): $351,400

Supporters of Question 3 on farm animal conditions did not hire an outside signature collection firm. Two signature collection companies were used in Massachusetts in 2016, J.E.F. Associates and Spoonworks.

A large portion—at least 72%—of the 2016 ballot question committees’ expenditures was for media advertising. Expenditures on media advertising that we were able to identify by analyzing the committees’ spending by vendor are shown in Table 6.4 below.

**Table 6.4: November 2016 Ballot Question Expenditures on Media Advertising**

<table>
<thead>
<tr>
<th>Question</th>
<th>Expenditures by Supporting Committee(s)</th>
<th>Percent of Total Expenditures</th>
<th>Expenditures by Opposing Committee(s)</th>
<th>Percent of Total Expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1 - Expand Slots</td>
<td>$2,350,395</td>
<td>64%</td>
<td>$4,000</td>
<td>5%</td>
</tr>
<tr>
<td>Q2 - Expand Charter Schools</td>
<td>$18,728,929</td>
<td>72%</td>
<td>$11,408,073</td>
<td>75%</td>
</tr>
<tr>
<td>Q3 - Farm Animal Conditions</td>
<td>$2,147,546</td>
<td>78%</td>
<td>$199,669</td>
<td>69%</td>
</tr>
<tr>
<td>Q4 - Legalize Marijuana</td>
<td>$4,020,410</td>
<td>62%</td>
<td>$2,785,126</td>
<td>91%</td>
</tr>
</tbody>
</table>


**6.2.5 Summary of Expenditures Nationwide**

To put Massachusetts in perspective, below is a summary of the ballot measures in the United States in 2016 from the Ballotpedia website.

- In 2016, 71 citizen initiatives and five veto referendums were certified for the ballot across 17 different states.
- Out of those 76 measures, seven petition drives were completed entirely through volunteers (including one in Massachusetts); the rest were completed through hiring a petition management company to run the petition drive effort or a combination of paid circulators and volunteer circulators.
- In 2016, the average amount spent on the 76 citizen-initiated measures was $12.3 million (Massachusetts average was $14.4 million).
- Of the top ten most expensive campaigns in 2016, six were in California. Massachusetts Question 2 (expand charter schools) was the sixth most expensive. Other non-California states with a campaign in the top ten were Oregon, Florida, and Nevada.
6.3 Issues and Challenges

6.3.1 Reporting and Interpretation of Campaign Committee Finance Data

**Locating and Interpreting Online Information**

The total donations and expenditures presented in our two sources for Question 2 (charter schools) appear, to the casual user, to differ by about $20 million. The Study Committee sought guidance on source documents with OCPF, and they advised us to use the summary information in the September 28, 2017 press release as our primary source for summary data. This press release reflected adjustments made to the data to prevent double-counting certain donations and expenditures, which occurred when one committee’s funds had been donated to another committee. OCPF solved this problem by eliminating one ballot question committee’s receipts and expenses.

In order to look at types of donor, out-of-state donations, and types of expenditures, the study committee needed the detail only available in the on-line reports. In order to be consistent with OCPF’s summary document, for Question 2 the study committee employed the same solution as OCPF in their report/press release: eliminate one ballot question committee’s receipts and expenses. Therefore, for Question 2, all donations and expenses for the Families for Excellent Schools – Advocacy have been ignored.

We note that this report/press release is the best primary source for ballot question spending summary information, but is very difficult to find even if you know to look for a specific press release. We also noted that there is no general search function on the OCPF website so it is not findable by searching within the website.

6.3.2 OCPF Oversight and Fines in 2016

In 2016 there were three “dark money” cases resulting in fines to ballot question campaign committees. The investigations were completed after the election, and therefore had no impact on the results of the election.

**January 2017: Ballot question committee fined to resolve campaign finance issues**

The Horse Racing Jobs and Education Ballot Question Committee has agreed to a $125,000 civil forfeiture, paid to the state’s general fund, to resolve campaign finance issues related to the 2016 state election, according to a disposition agreement between the committee and OCPF.

OCPF concluded that the committee, which supported Question 1 concerning expanded gaming, violated several sections of the campaign finance law:

- Receiving contributions made in a manner intended to disguise the true source of the funds.
- Broadcasting television advertisements that did not contain required disclosures.
- Failing to disclose campaign finance activity in a timely or accurate manner.

**September 2017: Schools organization charter school ballot question funding source issue**

A New York-based social welfare organization that supported a 2016 state ballot question to increase the cap on charter schools – Question 2 – paid more than $425,000 to the Massachusetts general fund as part of a legal settlement with the Office of Campaign and Political Finance. The payment by Families for Excellent Schools – Advocacy (FESA) is the largest civil forfeiture negotiated by OCPF in the agency’s 44-year history.

According to the disposition agreement, OCPF concluded that FESA violated the campaign finance law by receiving contributions from individuals and then contributing those funds to the Great Schools Massachusetts Ballot Question Committee in a manner intended to disguise the true source of the money.
January 2018: Strong Economy for Growth (SEFG) discloses contributors on charter school and marijuana ballot questions

According to OCPF’s review, SEFG solicited, raised and spent money from Aug. 1, 2016 to early November 2016 to influence two questions on the 2016 state ballot without organizing a ballot question committee or disclosing its activity.

As a result, Massachusetts-based SEFG, a 501(c)(4) non-profit social welfare organization, organized a ballot question committee with OCPF, disclosed its donors during the relevant period, and listed the contributions SEFG made to two other ballot question committees in 2016. In addition, the organization has made a payment of $31,000 to the Commonwealth. This amount represents the funds currently available in its bank account.

6.4 Campaign Finance in Other States

The study committee compared financing requirements for Massachusetts’ ballot initiatives with seven other states’ requirements and found that requirements are fairly consistent but with a few differences. (Table 6.5). Oversight of ballot campaign financing is overseen in Massachusetts and one other state (Maine) by independent state agencies, but in the other six states, the Secretary of State oversees ballot campaign financing.

None of the states limited individual contributions to ballot initiatives or disallowed contributions from out of the state. However, one state (North Dakota) requires that if a contribution of over $100 is from out of state, the contributing organization must provide a name, address, and amount for any person contributing over $100 toward that organization’s contribution.

Massachusetts and the other seven states all require electronic reporting of contributions and expenditures. Most require more frequent reports closer to the election. Two states require very quick reporting on contributions or expenditures over a certain amount--North Dakota within 48 hours if contributions are $500 or more and are within 39 days of the election and Maine within 24 hours if contributions are $5,000 or more or expenditures are $1,000 or more. All eight states had contributions and expenditures data publicly available.

Contribution information included names, addresses, occupations (when individuals), and amounts. Expenditure information included the payee, amount, and, for all but North Dakota, a description; Maine required a specific category for type of expense, which would facilitate analysis of spending.
### Table 6.5. Comparisons of Key States’ Ballot Question Financing Requirements and Available Information

<table>
<thead>
<tr>
<th></th>
<th>California</th>
<th>Oregon</th>
<th>Arizona</th>
<th>Colorado</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Who Oversees</strong></td>
<td>Political Reform Division, Office of the Secretary of State</td>
<td>Elections Division, Secretary of State</td>
<td>Secretary of State</td>
<td>Secretary of State</td>
</tr>
<tr>
<td><strong>Information</strong></td>
<td>Contribution and expenditure details</td>
<td>Contribution and expenditure details</td>
<td>Contribution and expenditure details</td>
<td>Contribution and expenditure details</td>
</tr>
<tr>
<td><strong>Publicly Available</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Limits on Giving</strong></td>
<td>Contributions to ballot measure committees are not limited.</td>
<td>No limits</td>
<td>No limits</td>
<td>No limits for “issue committees”</td>
</tr>
<tr>
<td><strong>Out-of-State Giving</strong></td>
<td>No limits</td>
<td>No limits</td>
<td>No limits</td>
<td>No limits</td>
</tr>
<tr>
<td><strong>Reporting Requirements</strong></td>
<td>Periodic reporting; more often closer to elections</td>
<td>Within 30 days of a transaction until 7 weeks before election; then within 7 days of a transaction.</td>
<td>Quarterly and pre-election campaign finance reports</td>
<td>More often during election year and closer to the election</td>
</tr>
</tbody>
</table>

### Comparisons of Key States’ Ballot Question Financing Requirements and Available Information (Continued)

<table>
<thead>
<tr>
<th></th>
<th>North Dakota</th>
<th>Maine</th>
<th>Ohio</th>
<th>Massachusetts</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Who Oversees</strong></td>
<td>Secretary of State</td>
<td>Commission on Governmental Ethics and Election Practices</td>
<td>Secretary of State, Campaign Finance Div.</td>
<td>Office of Campaign and Political Finance (independent state agency)</td>
</tr>
<tr>
<td><strong>Information</strong></td>
<td>Contribution &amp; expenditure data, but expenditure data does not include type of expenditure</td>
<td>Contribution &amp; expenditure details, including a consistent category of expenditure</td>
<td>Contribution &amp; expenditure details</td>
<td>Contribution &amp; expenditure details</td>
</tr>
<tr>
<td><strong>Publicly Available</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Limits on Giving</strong></td>
<td>No limits</td>
<td>No limits</td>
<td>No limits</td>
<td>No limits</td>
</tr>
<tr>
<td><strong>Out-of-State Giving</strong></td>
<td>No limits, but if out-of-state, must show the name, address, and amount given towards that organization’s contribution for all individuals who gave over $100.</td>
<td>No limits</td>
<td>No limits</td>
<td>No limits</td>
</tr>
<tr>
<td><strong>Reporting Requirements</strong></td>
<td>3 times a year, but if an individual contribution during the 39 days before an election is over $500, it must be reported within 48 hours.</td>
<td>Quarterly, plus 24-hour reporting of contributions of $5,000 or more and expenditures of $1,000 or more</td>
<td>Semi-annual plus pre-election through 20 days before election and post-election through 31 days after election.</td>
<td>Report 60 days before election, then every 15 days until the election plus end-of-year/close-out reports</td>
</tr>
</tbody>
</table>
6.5 Sources

- Sullivan, Michael, Director of the Office of Campaign and Political Finance; Tait, Jason Director of Communication and Public Information; Joyce, Michael, Investigator (assigned to PACs and ballot question committees). Personal communication. December 12, 2017.
  - http://www.ocpf.us/Legal/Regulations#970cmr1
  - http://www.ocpf.us/Filers/FilingSchedules#tabBQC
  https://ballotpedia.org/Ballot_measures_cost_per_required_signatures_analysis

6.6 Legal References

- M.G.L. c 55
- 970 CMR 1.00-4.00