August 14, 2026

The Honorable Andrea Campbell
Attorney General of the Commonwealth
1 Ashburton Place
Boston, MA 02108

Re: Comments of the Fiscal Alliance Foundation on Initiative Petition 26-03

Dear Attorney General Campbell:

The Fiscal Alliance Foundation is pleased to provide comments in response to the solicitation of the Attorney General regarding whether the proposed Initiative Petition 26-03 ("An Act to Limit Artificial-Person Powers") (the "Petition"), meets the criteria for certification under Article 48 of the Amendments to the Massachusetts Constitution. For the reasons below, it does not. The Fiscal Alliance Foundation is a 501(c)(3) non-partisan, non-profit organization whose mission is to increase public awareness about the public benefits to be derived from greater fiscal responsibility, transparency, and accountability in government.

OVERVIEW

> [S]tate law grants corporations special advantages—such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets. This does not suffice, however, to allow laws prohibiting speech. **It is rudimentary that the State cannot exact as the price of those special advantages the forfeiture of First Amendment rights**.
>
> *Citizens United v. FEC*, 558 U.S. 310, 351 (2010) (cleaned up) (emphasis supplied).

The Petition cannot be certified as a matter of law because it violates the prohibited matters clause of Article 48 of the Amendments to the Massachusetts Constitution. That clause provides that "no proposition inconsistent with any one of the following rights of the individual . . . shall be subject of an initiative or referendum petition: . . . freedom of speech . . . ." Under Article 16 of the Constitution (as amended by Article 77 of the Amendments), "The right of free speech shall not be abridged." As the Attorney General is aware, the certification question is not whether the Petition reflects a desirable policy, but whether it is reasonably clear that the proposed law would burden a protected right. Here, the Petition unquestionably does.

In *Associated Industries of Massachusetts v. Attorney General*, the Supreme Judicial Court held that where "it is reasonably clear that a proposal contains an excluded matter," a petition cannot be certified for the ballot. 418 Mass. 279, 285-86 (1994) ("*AIM*"). In that case, the Court agreed that the initiative petition in question—ironically, one that would have "materially restrict[ed] the use of corporate funds to support or to oppose a ballot question"—

was a "restriction [that] operates at the very heart of the right of free speech, limiting the means of communicating ideas on a political question presented to the people for their expression of opinion." *Id.* at 287-88. The Petition here does precisely that.

I. BACKGROUND

The Petition would remove election activity and ballot-question activity from the lawful powers of corporations, limited liability companies, and most Chapter 180 nonprofit corporations. It would define "election activity" as paying, contributing, or expending money or anything of value to support or oppose a candidate, political committee, political designation, or political party, and define "ballot-question activity" as paying, contributing, or expending money or anything of value to favor or oppose a question submitted to voters, including a charter change, initiative or referendum question, or constitutional amendment. The Petition contains a narrow exception for Chapter 180 political committees organized solely for those purposes and claiming no charter privilege other than limited liability, but otherwise would apply broadly.

The Petition would enforce these restrictions through more than ordinary regulation. For corporations, it would make any organizational provision purporting to confer such a power void and any covered act "ultra vires and void." For limited liability companies, a violation would render the LLC subject to dissolution and related statutory sanctions. The Petition would also authorize dissolution proceedings against Chapter 180 corporations and would subject foreign corporations and foreign limited liability companies that directly or indirectly undertake, finance, or direct such activity in Massachusetts to a conclusive determination that they are transacting business here, with applicable penalties or sanctions. In short, the Petition would not merely regulate the manner of political advocacy: it would withdraw the legal capacity to engage in it and attach severe legal and financial consequences to any attempt to do so.

II. The Petition Violates Article 48

The Petition is unambiguously unconstitutional. Article 48 expressly prohibits any initiative petition inconsistent with the freedom of speech. The Petition would prohibit political speech that the Supreme Court has repeatedly and unambiguously held to be protected.

First, binding Supreme Court precedent squarely protects what the Petition proposes to prohibit. In *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), the Supreme Court invalidated a Massachusetts statute that prohibited corporate expenditures intended to influence the outcome of a ballot question. The Court began by reiterating that "there is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs," and that "the inherent worth of [such] speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual." *Id.* at 776-77. Crucially, the Court then held unambiguously that in this realm of protected speech,

> the legislature is constitutionally disqualified from dictating the subjects about which persons may speak and the speakers who may address a public issue. If a legislature may direct business corporations to "stick to business," it also may limit other corporations—

> religious, charitable, or civic—to their respective "business" when addressing the public. **Such power in government to channel the expression of views is unacceptable under the First Amendment.**

Id. at 784-86 (emphasis supplied). *See also AIM*, 418 Mass. at 286-88. Under Article 48, the people act in a legislative capacity when voting on initiative petitions. ("The limitations on the legislative power of the general court in the constitution shall extend to the legislative power of the people as exercised hereunder.") Here, the Petition's ban on paying, contributing, or expending money or anything of value to favor or oppose a charter change, initiative, referendum, or constitutional amendment seeks to have the people—acting in their legislative capacity—prohibit corporations from exercising exactly the same core public political speech rights that *Bellotti* expressly protected.

Second, binding Supreme Court precedent confirms that the government may not suppress political speech based on the speaker's corporate identity. In *Citizens United v. FEC*, 558 U.S. 310 (2010), the Court reiterated that "[t]he Court has recognized that First Amendment protection extends to corporations" (citing twenty-three prior decisions) and that "[t]his protection has been extended by explicit holdings to the context of political speech." *Id.* at 342. The Court also reiterated that "the Court has thus rejected the argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not 'natural persons.'" *Id.* at 343. In short, the Court held that the government

> commit[s] a constitutional wrong when by law it identifies certain preferred speakers. . . . The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The First Amendment protects speech and speaker, and the ideas that flow from each.

Id. at 341. This express constitutional protection is precisely what the Petition proposes to outlaw.[1]

Finally, there is no question that the activities the Petition would bar—"paying, contributing, or expending money or anything of value for the purpose of supporting or opposing a candidate, political committee, political designation, or political party"—are core political speech activities protected by the First Amendment, even when made by corporate entities. "All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech. The First Amendment protects the resulting speech." *Id.* at 351.

The Petition's proposed categorical ban on the political speech of some speakers but not others strikes at the heart of what the Supreme Court has held to be constitutionally protected by the First Amendment. This protection applies with equal force in Massachusetts: as the Supreme Judicial Court has recognized, "[h]istorically, we have interpreted the protections of free speech and association under our Declaration of Rights to be comparable to those guaranteed by the

[1] *See* Petition, Section 5 ("Under no circumstances shall any power or activity related to election activity or ballot-question activity be deemed necessary or convenient for a limited liability company's lawful business or affairs."); *see also* Section 9 (same as to Chapter 156D corporations), Section 14 (same as to Chapter 180 corporations).

First Amendment." *1A Auto, Inc. v. Director of the Office of Campaign & Political Fin.*, 480 Mass. 423, 440 (2018). While the SJC has "the inherent authority to declare that our State Constitution affords *broader* protection" to free speech rights than does the United States Constitution, *id.* (emphasis supplied), the Petition here would intentionally *restrict* protected free speech rights, not expand them. There is no legal basis to assert that the Petition, unambiguously unconstitutional under the First Amendment, *Bellotti*, and *Citizens United*, is somehow "consistent" with the protections of free speech rights under Article 16.

Nor does the Petition's attempt to claim a distinction based on "conditional grants" of corporate status change the controlling analysis or render an unconstitutional proposal permissible. The Petition appears to contend that the creation and continued existence of corporations and limited liability companies are conditional grants of legal status by the Commonwealth, and proposes to characterize election and ballot-question activity as outside such entities' lawful powers. But merely labeling a restriction as a limit on corporate capacity does not render the restriction non-*speech*-related. As the Supreme Court held in *Citizens United*, the fact that the state may establish the contours of corporate existence "does not suffice, however, to allow laws prohibiting speech. **It is rudimentary that the State cannot exact as the price of those special advantages the forfeiture of First Amendment rights**." *Id.* at 351 (emphasis supplied).

Indeed, the operative provisions of the Petition expressly target the payment, contribution, or expenditure of money or anything of value for political advocacy. Declaring such conduct void or ultra vires, or conditioning continued legal status on refraining from it, is a facial—and intentional—prohibition on protected political expression under both the First Amendment and Article 16. *Bellotti* and *Citizens United* conclusively foreclose the premise that the government may suppress political speech simply by invoking the speaker's corporate form.

The Attorney General's certification responsibilities under Article 48 are to "ferret out obviously improper initiative petitions." *Yankee Atomic Elec. Co. v. Secretary of Commonwealth*, 402 Mass. 750, 757 (1988). As the Petition unambiguously violates the prohibited-matters clause of Article 48, it is "obviously improper." Its restrictions on ballot-question advocacy are inconsistent with *Bellotti* and Article 16; its restrictions on candidate-related political speech specifically—and corporate political speech generally—are inconsistent with *Citizens United* and Article 16. We respectfully request that the Attorney General decline to certify the Petition.

The Fiscal Alliance Foundation appreciates the opportunity to submit these comments. Please do not hesitate to contact us if we can provide further clarity regarding the positions set forth above.

Sincerely,



Danielle Webb
Chair, Fiscal Alliance Foundation

Cc (by email): Matthew M. Burke, Esq., Assistant Attorney General