

WHY THE ACLU OF MASSACHUSETTS OPPOSES PUTTING THE ABROGATION OF CIVIL LIBERTIES TO A POPULAR VOTE

The mission of the ACLU is to protect individual and civil rights, not to pave the way for their abrogation. Because the popular initiative may be used to enact laws which are antithetical to civil liberties, we believe that our proper role with respect to the exercise of this lawmaking power by the voters is the same as its role with respect to more conventional legislative machinery. When an initiative petition seeks to place on the ballot a question which, if approved, would automatically result in a change in the law that would infringe civil liberties, the ACLU will oppose it and work against its “progress” through the Article 48 process. Does an initiative petition defend or enhance fundamental individual rights? If so, we’ll likely to press for its approval.

Consistent with this position, we have urged the legislature, in its role as the gatekeeper for constitutional amendments, to refrain from taking a final vote on the proposed amendment to our constitution to limit marriage rights, a move that takes us one step closer to the permanent denial of equal rights to citizens of the Commonwealth.

Unlike some other states, Massachusetts does not have a direct initiative process where all issues must be placed on the ballot. Article 48, a 1917 amendment to our state constitution, requires that initiative proposals gain approval from two successive legislatures. It does not dictate that the legislature vote on the specific initiative proposal. It states that “final legislative action” or “an unfavorable vote at any stage preceding final action” “shall be taken only by call of the yeas and nays.” Article 48, then, is a provision that requires legislative accountability, not a specific legislative action. Nor, in our view, does Article 48 create any “right to vote” by the public on an initiative proposal.

Below is the ACLU of Massachusetts policy on ballot initiatives and referendum, which may provide further clarification on our position.

ACLU of Massachusetts policy (adopted in 1989):

In Massachusetts, law may be made through binding initiative and referendum petition procedure, by which questions proposing passage of constitutional amendments and adoption of repeal of state laws and local ordinances may be placed on the ballot for approval by the electorate, as well as the enactment of laws by legislative bodies and the promulgation of executive orders and administrative regulations by executive offices and agencies.

In those circumstances where the constitution and laws of Massachusetts permit direct lawmaking through the popular initiative or referendum, ACLUM believes that such collective lawmaking is an exercise of

governmental power which should be treated no differently from the exercise of such power by the legislature.

Because the popular initiative and referendum may be used to enact laws which are antithetical to civil liberties or to repeal laws which protect civil liberties, ACLUM's proper role with respect to the exercise of lawmaking power by the voters is the same as its role with respect to more conventional legislative machinery. When an initiative or referendum petition seeks to place on the ballot a question which, if approved, would automatically result in a law that would infringe civil liberties, ACLUM may oppose its placement on the ballot both on substantive and procedural grounds. Conversely, if a question, if approved, would result in a law strengthening civil liberties, ACLUM may advocate both its placement on the ballot and its approval by the legislature or the voters. ACLUM would object, however, to the exclusion of a question from the ballot where the exclusion was based on the merits of the question presented by the petitioners or on criteria or procedures which in and of themselves present a civil liberties issues.