COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

NO. SJC-12472

AMANDA S. OBERLIES, SHARON GALE, PATRICIA M. NOGA, and TIMOTHY QUIGLEY

Plaintiffs/Appellants,

v.

MAURA HEALEY, IN HER OFFICIAL CAPACITY AS THE ATTORNEY GENERAL, AND WILLIAM F. GALVIN, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE COMMONWEALTH,

Defendants/Appellees

BRIEF OF AMICUS CURIAE
STEWARD HEALTH CARE SYSTEM LLC

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Judicial Court Rule 1:21, Steward Health Care System LLC discloses that it has no parent corporation and no publicly held corporation owns 10 percent or more of its stock.

STATEMENT OF INTEREST

Steward Health Care System LLC ("Steward") is a physician-led health care services organization committed to providing high-quality health care in the communities where patients live. Steward is the largest private hospital operator in the United States, and it has operated in Massachusetts since 2010, when it purchased the assets of Caritas Christi. At the time of that acquisition, many of the Caritas hospitals were in financial distress. Steward made substantial capital investments in the Caritas hospitals and integrated them into Steward's accountable care-based system for patient care.

Today, Steward operates ten hospital campuses in Massachusetts,[1] making it New England's largest integrated community-based health care system. In addition to its hospital business, Steward conducts significant non-hospital business in Massachusetts,

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[1] Saint Anne's Hospital (Fall River), Holy Family Hospital-Methuen (Methuen), Holy Family Hospital-Haverhill (Haverhill), St. Elizabeth's Medical Center (Brighton), Norwood Hospital (Norwood), Carney Hospital (Dorchester), Good Samaritan Medical Center (Brockton), Nashoba Valley Medical Center (Ayer), Morton Hospital (Taunton), and New England Sinai Hospital (Stoughton).

including operation of physician practice groups, a home health care service, a mobile medical imaging service, and an accountable care organization. Steward employs over 2,700 physicians and specialists in Massachusetts, including nurses, home health, behavioral health, and allied services professionals. In addition to these health care professionals, Steward employs approximately 5,600 non-provider staff members in office and service roles not directly related to patient care. Steward is the fifth largest employer in Massachusetts.

The physicians, nurses, and other professional staff at Steward hospitals serve some of the most vulnerable populations in Massachusetts. In 2016, the Center for Health Information and Analysis (CHIA) designated eight of Steward's hospitals "high public payer" hospitals because they receive 63 percent or more of their gross patient service revenue from Medicare, Medicaid, or other government payers.[2]

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[2] *See* Center for Health Information and Analysis, *Massachusetts Hospital Profiles: Data Through Fiscal Year 2016*, at A12-13; A48-49; A54-56 (Jan. 2018), http://www.chiamass.gov/assets/docs/r/hospital-profiles/2016/Massachusetts-Hospitals-Profiles-Compendium-2016.pdf.

Approximately 70 percent of all Steward's Massachusetts patients have coverage through public payers, a significant number of whom are covered by Medicaid, known in Massachusetts as MassHealth. *Id.*

Steward is committed to providing accessible, affordable, high-quality care to patients in their communities, but there are significant challenges to serving a patient population with a disproportionately high number of patients covered by public payers. MassHealth pays only approximately 85 percent of a hospital's costs to serve a patient.[3] Even after factoring in supplemental "disproportionate share" payments, a hospital is only paid approximately 90 percent of the cost to serve Medicaid beneficiaries.[4] In addition, community hospitals, like many of the facilities run by Steward, provide a higher percentage

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[3] *See* Executive Office of Health and Human Services, *Presentation from Joint Hearing on FY18 MassHealth and Commercial Market Reform Package* at 6 (July 25, 2017), http://www.mass.gov/eohhs/gov/newsroom/press-releases/eohhs/masshealth-and-commercial-market-reform-package.html (accessed Feb. 20, 2018)

[4] *See* American Hospital Association, *Aggregate Hospital Payment-to-Cost Ratios for Private Payers, Medicare, and Medicaid, 1994-2014* (Chart 4.6), https://www.aha.org/2017-12-11-trendwatch-chartbook-chapter-4-trends-hospital-financing (accessed Feb. 18, 2018).

of critical but low-margin services – like emergency care and behavioral health – and fewer high-margin services like surgery and obstetric care.[5] The tight operating margins for these facilities requires that hospital operators have sufficient flexibility to identify ways to continue to provide the high-quality and affordable services on which their communities rely.

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[5] *See* Massachusetts Health Policy Commission, *Community Hospitals at a Crossroads: Findings from an Examination of the Massachusetts Health Care System*, at 50-53 (Mar. 2016), http://www.mass.gov/anf/budget-taxes-and-procurement/oversight-agencies/health-policy-commission/publications/community-hospitals-at-a-crossroads.pdf.

SUMMARY OF ARGUMENT

Article 48 limits an initiative petition to those subjects "which are related or which are mutually dependent." Art. 48, II (The Initiative), §3 as amended by Art. 74. Relatedness depends on whether "the similarities of an initiative's provisions dominate what each segment provides separately" and whether the petition expresses "an operational relatedness among its substantive parts that would permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy." *Dunn v. Attorney Gen.*, 474 Mass. 675, 680 (2016); *see also Hensley v. Attorney Gen.*, 474 Mass. 651, 658 (2016) (same). The Petition here fails both of these tests.

First, the Patient Assignment Limits and the Health Care Workforce Restriction do not share a common purpose. *See Gray v. Attorney Gen.*, 474 Mass. 638, 645-46 (2016) (quoting *Massachusetts Teachers Ass'n v. Secretary of the Commonwealth*, 384 Mass. 209, 219-220 (1981)) ("at the core of the related subjects requirement is the condition that the initiative petition's provisions share a 'common purpose'"). Although the Patient Assignment Limits arguably relate

to patient safety – the "common purpose" identified by Petitioners – the Health Care Workforce Restriction has no discernable relationship to patient safety. (p. 13-19).

Second, by grouping together two substantively distinct issues, the Petition puts voters "in the 'untenable position of casting a single vote on two or more dissimilar subjects,' which is the specific misuse of the initiative process that the related subjects requirement was intended to avoid." *Gray*, 474 Mass. at 649 (quoting *Abdow v. Attorney Gen.*, 468 Mass. 478, 499 (2014)) (internal citations omitted). As such, the Attorney General erred in certifying the Petition. (p. 20-26).

ARGUMENT

This appeal is about upholding the ability of Massachusetts voters to make clear, uniform public policy choices through the initiative petition process. Health care is one of the largest sectors in the Massachusetts economy. The delivery of health care services involves a complex web of competing public policy concerns. The goals of providing high quality, affordable, and accessible patient care are largely universal, but balancing these priorities effectively

requires that hospitals be highly flexible, strategic, and creative in their budgeting and management.

Initiative Petition 17-07, entitled "Initiative Petition For A Law Relative to Patient Safety and Hospital Transparency" (hereafter, the "Petition" or "Petition 17-07") asks voters to step into the health care delivery system to make not one, but *two* distinct policy choices. Each of these policy choices has an independent purpose, and, as such, each raises unique concerns about how hospitals will be required to manage the quality, affordability, and accessibility of patient care. *See Gray*, 474 Mass. at 649 ("because the issues combined in the petition are substantively distinct, it is more likely that voters would be in the 'untenable position of casting a single vote on two or more dissimilar subjects'").

First, the Petition seeks to establish maximum patient assignment limits for registered nurses. *See* Initiative Petition 17-07, proposed G.L. c. 111, §§ 231B and 231C (setting forth detailed patient assignment levels) (hereafter, the "Patient Assignment Limits"). Petitioners' stated purpose for this proposal is "patient safety." Statement of Agreed Facts ("SAF"), Ex. E at p. 4. Currently, for most

hospital services, the hospital administrators, physicians, and nurses work together to set appropriate nurse staffing levels that reflect industry-wide standards of care and meet the needs of the community.[6] The Petition would take this decision away from the community-based professionals, and set a single uniform policy by state statute.

Second, the Petition *also* prohibits hospitals from reducing the levels of their "Health Care Workforce" when implementing the Patient Assignment Limits. *See* Initiative Petition 17-07, proposed §§ 231B and 231D (hereafter, "the Health Care Workforce Restriction"). The Petition defines "Health Care Workforce" broadly: it appears to cover *all* hospital employees and contractors, including "service,

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[6] G.L. c. 111, §231 establishes patient assignment limits for registered nurses in intensive care units. This requirement was the result of a compromise between the Legislature and the Massachusetts Nurses Association ("MNA"), in which the MNA agreed to withdraw two proposed initiative petitions scheduled for the 2014 ballot. *See* Liz Kowalcyzk, *State House Approves Limits on ICU Patients Assigned to Nurses*, THE BOSTON GLOBE (June 25, 2014), https://www.bostonglobe.com/lifestyle/health-wellness/2014/06/25/legislators-negotiating-deal-establish-statewide-limits-icu-patients-assigned-nurses/lNKhAACT9Jj9rYMwN6UxxM/story.html.

maintenance, clerical, and professional and technical workers" whose responsibilities have no discernable impact on patient safety. *See* Initiative Petition 17-07, proposed § 231A. Petitioners' stated purpose for this restriction is "transparency in the way patient assignment limits are being implemented." SAF, Ex. E at p. 4. Petitioners do not appear to deny that the Health Care Workforce Restriction would limit the flexibility of community hospitals to manage their labor forces to meet the needs of patients and their broader communities.

The inclusion of two distinct policy proposals raises serious doubts about whether the Petition complies with Article 48. The requirements in Article 48 for submitting a petition to the people are not mere formalities. *Opinion of the Justices to the House of Representatives*, 422 Mass. 1212, 1219 (1996) (stating that the Court requires "strict adherence to the constitutional requirements for initiative petitions" and that those requirements "are not mere technicalities"). The Initiative and Referendum was one of the most debated issues at the Constitutional Convention of 1917-1918. *See Cohen v. Attorney Gen.*, 357 Mass. 564, 572 (1970). The people of the

Commonwealth, in adopting Article 48, appreciated the solemnity of legislating through the popular initiative, and set clear limits on the use the initiative petition.

In particular, the framers of Article 48 "carefully construct[ed] safeguards against potential voter confusion in the initiative process." *Carney v. Attorney Gen.*, 447 Mass. 218, 230 (2006). When the people "seek to enact laws by direct popular vote they must do so in strict compliance with those provisions and conditions." *Opinion of the Justices*, 442 Mass. at 1219 (citing *Sears v. Treasurer & Receiver Gen.*, 327 Mass. 310, 321 (1951)).

The Petition here fails to meet the Article 48 requirements. The decision of the Attorney General to certify the Petition must be vacated.

I. The Article 48 Relatedness Requirement Safeguards Voters from Being Forced To Cast a Single Vote on Two Dissimilar Policy Proposals.

The plain language of Article 48 limits an initiative petition to those subjects "which are related or which are mutually dependent." Art. 48, II (The Initiative), §3 as amended by Art. 74. *See also Carney*, 447 Mass. at 225 (stating that Article 48

includes "stringent formal limitations adopted by the people to ensure the integrity of the initiative process"). This Court has held that "at the core of the related subjects requirement is the condition that the initiative petition's provisions share a 'common purpose.'" *Gray*, 474 Mass. at 645-46 (quoting *Massachusetts Teachers Ass'n*, 384 Mass. at 219-220).

There is "no single 'bright-line' test for determining whether an initiative meets the related subjects requirement." *Dunn*, 474 Mass. at 680. However, over time, the Court has refined the standard for what constitutes related subjects, to balance appropriately the interests of petitioners to use the popular initiative to "bring important matters of concern directly to the electorate" with the interests of the citizen-voters in avoiding the "untenable position of casting a single vote on two or more dissimilar subjects." *Abdow*, 468 Mass. at 499.

One of the first cases to address this standard in any detail was *Massachusetts Teachers Association*. There, while the Court upheld certification of an initiative petition because it identified a "common purpose to which each subject of an initiative petition can reasonably be said to be germane," the

Court also warned that the purported common purpose may not be so broad as to "render the 'related subjects' limitation meaningless." 384 Mass. at 219-220.

In more recent cases, this Court has posed two key questions in evaluating whether an initiative's provisions pass the relatedness hurdle. First, the Court asks "[d]o the similarities of an initiative's provisions dominate what each segment provides separately so that the petition is sufficiently coherent to be voted on 'yes' or 'no' by the voters?" *Dunn*, 474 Mass. at 680; *see also Hensley*, 474 Mass. at 658 (same). Second, the Court asks whether the petition expresses "an operational relatedness among its substantive parts that would permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy." *Dunn*, 474 Mass. at 680; *see also Hensley*, 474 Mass. at 658 (same); *Gray*, 474 Mass. at 645-46 ("the petition's provisions, considered together, must present a unified statement of public policy that the voters can accept or reject as a whole") (internal quotations omitted).

As explained below, the Petition here fails both of these questions. It does not have a coherent

"common purpose" among its key provisions, nor does it present a "unified statement of public policy." As such, the Petition fails the relatedness requirement of Article 48 and its certification should be vacated.

A. The Patient Assignment Limits Do Not Share a "Common Purpose" with the Health Care Workforce Restriction

It is "not enough that the provisions in an initiative petition all 'relate' to some same broad topic at some conceivable level of abstraction." *Carney*, 447 Mass. at 230. As this Court has clarified, a singular focus on whether petitioners could reasonably believe that various subjects relate to a common purpose "fails to give full effect to art. 48 by ignoring the . . . carefully crafted obligation to protect the voters, who must ultimately 'legislate' the proposal." *Id.* at 225. Instead, "the similarities of an initiative's provisions" must "dominate what each segment provides separately." *Id.* at 226.

Petitioners here affirmatively declare that the "common purpose" shared by all provisions in the Petition is "patient safety." This assertion is made in the title of the Petition itself, and in the certification memorandum Petitioners submitted to the Attorney General ("the common purpose of the

petition[] is patient safety . . . .") SAF, Ex. E at p. 4. And indeed, the Patient Assignment Limits arguably relate to patient safety.

In sharp contrast, however, the Health Care Workforce Restriction has no discernable relationship to patient safety. This is because the Petition defines Health Care Workforce to include nearly *everyone* who works at a hospital, no matter how peripheral their connection to direct patient care, including "service, maintenance, clerical, professional and technical workers." Lawyers, accountants, executive vice presidents – all are covered by the Petition's definition of "Health Care Workforce." Although patient safety and the economics of a hospital's labor force may be interconnected at some conceptual level, "the related subjects requirement is not satisfied by a conceptual or abstract bond." *Gray*, 474 Mass. at 648.

Petitioners contend that the Petition survives the relatedness hurdle of Article 48 because the Health Care Workforce requirement provides transparency regarding the implementation of the Patient Assignment Limits. *See* SAF, Ex. E at p. 4 ("[T]he common purpose of the petition[] is patient

safety, *along with* transparency in the way the patient assignment limits are being *implemented* to ensure patient safety") (emphases added). Yet as the Court is aware, this is the exact same argument made by the Attorney General in *Gray*, which this Court then affirmatively rejected. *See* 474 Mass. at 648-49.

In *Gray*, this Court reversed the Attorney General's certification of a petition that would have withdrawn the current public school curriculum frameworks, established a process for adopting new frameworks, and required the release of test questions from the Commonwealth's standardized student assessment. 474 Mass. at 638. The Attorney General argued that the release of the test questions related to the common purpose of "new procedural requirements on the development and implementation of educational standards," *id.* at 648, because "the public availability of assessment tools would *enhance knowledge about whether the academic standards adopted in accordance with the new procedures are actually implemented.*" *Gray* v. *Attorney Gen.*, No. SJC-12064, Brief of Appellees at 44 (emphasis added).

This Court disagreed. Although acknowledging that withdrawing the current curriculum frameworks and

creating a process for new frameworks "share[d] a common purpose" of redefining curriculum frameworks, the Court held that the testing provision did not relate to that common purpose. *Gray*, 474 Mass. at 647. Instead, the Court observed that the testing provision had a different purpose: increased transparency in standardized testing. *Id.* As such, the petition proposed "two separate public policy issues." *Id.* at 649. Like the testing provisions in *Gray*, the Health Care Workforce Restriction at best would provide "transparency" regarding an issue – the economics and structure of a hospital's labor force – that is substantively distinct from the asserted "public safety" purpose of the Patient Assignment Limits.

This Court's decision in *Dunn v. Attorney General* also highlights that the common purpose required between the individual provisions is conspicuously missing from the Petition here. 474 Mass. 675 (2016). In *Dunn*, the Court upheld the Attorney General's certification of a petition that 1) prohibited the confinement of certain farm animals in a cruel manner, and 2) prohibited the sales of products from animals so confined. *Id.* The Court upheld the petition because both provisions shared "a common purpose of

preventing farm animals from being caged in overly cramped conditions" *and* the provisions "complement[ed] each other in the means of accomplishing this common purpose" *Id.* at 681; *see also id.* at 682 ("Because the petition's provisions share a common purpose *and* are related in the accomplishment of that purpose, we conclude that a reasonable voter may affirm or reject the entire petition as a unified statement of public policy") (emphasis added).

Here, however, the Patient Assignment Limits and the Health Care Workforce Requirement do *not* complement each other in the accomplishment of the same common purpose. While the Patient Assignment Limits arguably further Petitioners' stated purpose of improving "patient safety," the Health Care Workforce Restriction limits a hospital's management flexibility with respect to employees and contractors who have no direct impact on patient care. Tellingly, the Petition already requires a facility to certify to the Health Policy Commission that the facility complies with the Patient Assignment Limits, *independent* of the Health Care Workforce Restriction. *See* SAF, Ex. A, proposed G.L. c. 111, §231E. Any "transparency" resulting from the Health Care Workforce Restriction

is necessarily in addition to, and thus distinct from, implementation of the Patient Assignment Limits.

Further, it is not dispositive that the Health Care Workforce Restriction is phrased as a condition of compliance with the Patient Assignment Limits. To comply with Article 48, the provisions must relate to a common purpose, even if one provision would have no independent effect without the condition-precedent of the other. *See Gray*, 474 Mass. at 649 ("at the core of the related subjects requirement is the condition that the initiative petition's provisions share a 'common purpose'").

For example, a Petition that required a hospital to certify that it will not change its cafeteria menu as a result of implementing the Patient Assignment Limits would surely be invalid under Article 48, even though the requirement to certify menu consistency was only triggered by the obligation to comply with the Patient Assignment Limits. The effect of the Petition at issue here is no different. The number of in-house counsel, accountants, gift shop staff, or landscapers a hospital employs or contracts with has no discernable impact on patient safety.

Further, the Patient Assignment Limits and Health Care Workforce Restriction are not "mutually dependent," as required by Article 48. Although the Health Care Workforce Restriction is a condition of compliance with the Patient Assignment Limits, the dependence between the two provisions here is not mutual. A hospital's obligations regarding nurse staffing under the Petition would be the same *regardless* of whether the Petition included the Healthcare Workforce Restriction or not. Put differently, the Healthcare Workforce Restriction depends on the Patient Assignment Limits – *but not vice versa*. It is hard to conceive of a clearer example of two provisions not being "mutually dependent."

Any alleged similarities between the Patient Assignment Limits and the Health Care Workforce Requirement do not dominate what the provisions provide separately. *See Gray*, 474 Mass. at 648. As such, and as discussed further below, the Petition places the voter in the untenable position of being forced to cast a single vote on two dissimilar subjects. *Id.*

B. The Petition Does Not Present a Unified Statement of Public Policy

The Petition also fails to satisfy this Court's second inquiry for relatedness: demonstration of an "operational relatedness among its substantive parts that would permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy." *Dunn*, 474 Mass. at 680 (quoting *Abdow*, 468 Mass. at 501).

"The relatedness limitation requires the Attorney General to scrutinize the aggregation of laws proposed in the initiative petition for its impact at the polls." *Carney*, 447 Mass. at 226. This limitation is critical because, as the Court has noted, the initiative petition process:

> does not, and cannot, turn every voter into a legislator. Unlike a legislator, the voter has no opportunity to modify, amend, or negotiate the sections of a law proposed by popular initiative. He or she cannot sever the unobjectionable from the objectionable.

Id. at 230.

By combining the Patient Assignment Limits with the Health Care Workforce Restriction, Petitioners attempt to patch together unrelated policy provisions in order to assemble political support for their proposal. This is exactly what the Article 48

relatedness restriction was (and is) intended to prevent. "A recurring topic of concern [at the constitutional convention] was the possibility that well-financed 'special interests' would exploit the initiative process to their own ends by packaging proposed laws in a way that would confuse the voter." *Carney*, 447 Mass. at 228 (citing 2 Debates in the Massachusetts Constitutional Convention 1917-1918 at 131). "One means of exploiting the initiative that the delegates denounced was the practice of 'hitching' alluring provisions at the beginning of an initiative petition and burying more controversial proposals farther down." *Carney*, 447 Mass. at 229 (citing 2 Debates in the Massachusetts Constitutional Convention 1917-1918).

Instead of merely asking voters to establish a one-size-fits-all standard for nurse staffing levels, the Petition asks voters a *second* policy question: how should hospitals be forced to pay for it? But this second question raises a separate set of policy choices about how hospitals serve their communities that are entirely distinct from and unrelated to nurse staffing levels.

For Steward hospitals in the Northeast, labor costs make up approximately 60 percent of hospital budgets.[7] Supplies and drug expenses account for about 20 percent of budgets, while professional fees and purchased services account for about 10 percent. The final approximately 10 percent of hospital expenses are maintenance, repairs, insurance, and other operating costs. Many of these costs are fixed and subject to inflation. Already tight margins for community hospitals leaves little room or flexibility for hospitals to absorb additional costs that may be incurred for staffing additional nurses.

By rendering off-limits the ability of hospitals to consider changes to broader workforce staffing when implementing the Patient Assignment Limits, the Health Care Workforce Requirement thus directly implicates how hospital expenses – *other* than labor – affect the quality, affordability, and accessibility of care. Community hospitals need to be able to adjust their staffing and the services they provide to reflect

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[7] *See also* Massachusetts Health Policy Commission, *2013 Cost Trends Report*, at 34 (Jan. 2014) (reporting industry-wide numbers).

ever-changing community needs. For example, eliminating a hospital's flexibility to shift resources and manage its non-nursing staff will have a significant impact on a hospital's ability to adjust resources to react to changes in community demographics, or to the fluctuating prevalence of certain diseases. The Health Care Workforce Restriction asks voters to affirmatively limit a hospital's options by removing one major tool from the hospital's management toolbox.

Further, there is no inherent connection between the number of patients assigned to a nurse (on one hand) and how a hospital manages its legal, billing, or administrative staff (on the other). Nurse staffing is an issue directly related to patient care. How the hospital manages its billing, accounting, or legal offices is not.

The holding in *Carney* illustrates how the Court determines whether a petition proposes a unified statement of public policy. In *Carney*, the Attorney General certified an initiative petition that would have both (i) strengthened penalties for animal cruelty; and (ii) abolished pari-mutuel dog racing in the Commonwealth. *Id.* at 220-21. In so doing, the

Attorney General found that those two provisions satisfied the relatedness requirement of Article 48 because they were related "generally to promoting the more humane treatment of dogs." *Id.* at 224 (internal quotations removed).

The Court disagreed, concluding:

> The voter who favors increasing criminal penalties for animal abuse should be permitted to register that clear preference without also being required to favor eliminating parimutuel dog racing. Conversely, the voter who thinks that the criminal penalties for animal abuse statutes are strong enough should not be required to vote in favor of extending the reach of our criminal laws because he favors abolishing parimutuel dog racing.

Id. at 231; *cf. Gray*, 474 Mass. at 649 (finding a petition that combined "substantively distinct" provisions did not satisfy Article 48).

The same principle applies here. A voter should be able to register his or her preference for increased nurse staffing levels as a means of improving patient safety *without* also being required to favor restricting the means in which hospitals manage their *non-nursing* workforce in implementing the Patient Assignment Limits.

Indeed, it is not difficult to imagine a reasonable voter who both supports statutorily-

mandated nurse staffing requirements *and* believes hospitals should have the flexibility to budget for those requirements by hiring less-expensive lawyers or accountants, rather than by being forced to delay facility upgrades or purchases of new medical equipment and technology. The Petition here does not give a reasonable voter such a choice. Where the Petition does not "permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy," *Carney*, 447 Mass. at 231, Article 48 prohibits its certification as a matter of law.[8]

If Petitioners wish voters to legislate a solution to the perceived problem of inadequate nurse staffing levels, Article 48 requires that voters be entitled to make such a decision without *also* being

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[8] Nor is *Hensley v. Attorney General*, 474 Mass. 651 (2016), to the contrary. In fact, the *Hensley* petition only highlights the "unified statement of public policy" that is absent here. In *Hensley*, the Court found that 1) marijuana legalization and 2) retail sale by registered medical marijuana dispensaries were independently related to the *same* common purpose: creating a system for legalizing and licensing marijuana for adult use. *Id.* at 658. The critical difference is that unlike in *Hensley*, the provisions here share no similar common purpose. *See Gray*, 474 Mass. at 649 (quoting *Abdow*, 468 Mass. at 499).

forced to render simultaneous judgment on the wisdom of restricting the means and methods – unrelated to patient care – that a hospital uses to implement these requirements. Under the Petition, a reasonable voter will be placed in the "untenable position of casting a single vote on two or more dissimilar subjects" given that mandated nurse staffing for patient safety purposes is unrelated to mandated hospital staffing of non-caretaker positions. *Gray*, 474 Mass. at 649.

In short, the Petition includes *two* discrete policy preferences, thus preventing a reasonable voter from being able to "affirm or reject the entire petition as a unified statement of public policy." *Abdow*, 468 Mass. 478, 501 (2014) (quoting *Carney*, 447 Mass. at 230-231). A reasonable voter may prefer to adopt mandatory nurse staffing requirement but oppose restricting hospitals from changing staffing levels for other employees. He or she cannot constitutionally be made to accept the poison pill of voting for both, or neither, when the issues do not share anything more than abstract relatedness.

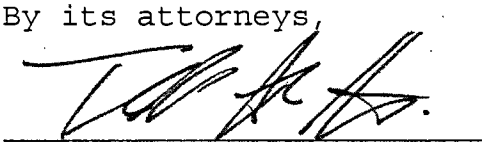
CONCLUSION

Community hospitals balance competing financial pressures and regulatory requirements to provide high-

quality, affordable, and accessible care in communities across Massachusetts. Article 48 protects Massachusetts voters from being forced to cast an up or down vote on two dissimilar policy provisions.

For the foregoing reasons, this Court should enter an order declaring that the Petition does not meet the requirements under Article 48 to be placed on the ballot, and vacating the decision of the Attorney General.

Respectfully submitted,
STEWARD HEALTH CARE SYSTYEM LLC
By its attorneys,



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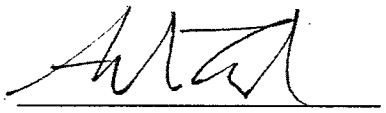
Date: February 20, 2018

RULE 16(K) CERTIFICATION

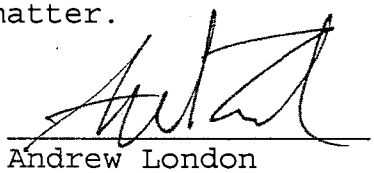
I, Andrew London, counsel for Steward Health Care System LLC, hereby certify pursuant to Mass. R. App. P. 16(k) on February 20, 2018, that the foregoing brief, complies with the requirements for appellate briefs set forth in the Massachusetts Rules of Appellate Procedure, including but not limited to the requirements imposed by Rule 16 and 20 of the Massachusetts Rules of Appellate Procedure.



Andrew London

CERTIFICATE OF SERVICE

I, Andrew London, counsel for Steward Health Care System LLC, hereby certify that on February 20, 2018, I caused a true and correct copy of the within document to be served by first class mail on counsel of record for all parties to this matter.



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