

# Mass. Court Told To Nix 'Frankenstein-Like' Booze Ballot Issue

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A group of Massachusetts taxpayers asked the state's top court Monday to block a prospective ballot question backed by convenience store chain Cumberland Farms that would overhaul the state's restrictions on alcohol licenses.

Arguing it would force voters to decide multiple unrelated issues in a single "Frankenstein-like" question, the taxpayers argued the liquor license question fails on a pair of legal grounds: The question would ask voters to cast a "yes or no" vote on unrelated issues, and asks them to vote on a specific appropriation. The taxpayers say both problems mean the question runs afoul of the state's constitution. The prospective ballot question was certified by Attorney General Maura Healey in September.

"You can't have these logically distinct things all crammed into one ballot initiative; you're supposed to give the voters a single question of public policy so they can A: understand it and B: decide whether they support it or not," Ben Goldberger of McDermott Will & Emery LLP, one of the attorneys representing the taxpayers, told Law360 in an interview.

"I was surprised that the AG certified it, because the provisions really are all over the place," Goldberger said, noting Healey rejected two other would-be questions for the 2020 ballot because they violated the relatedness requirement.

The complaint mirrors some of the arguments weighed by the state's Supreme Judicial Court when it struck down a ballot question over a millionaires' tax in a split decision in 2018. In that case, the court held a ballot question included two distinct earmarks for the tax windfall that were not related enough for the issue to go to the voters.

The alcohol license complaint derides the prospective ballot question as a "Frankenstein-like ballot initiative certain to create voter confusion and presenting four separate questions of public policy, each unrelated to the other, except that they all reference alcoholic beverages."

The question would ask whether sales of wine and beer, but not liquor, should be permitted in an unlimited number of locations in a certain city or town, as long as the location also sells food.

It would also ask voters to decide whether one entity should be able to hold an unlimited number of licenses to sell alcohol, whether retail buyers of alcohol should have to present identification regardless of apparent age and whether funds from the alcohol

excise tax should be diverted to a separate fund used by the Alcoholic Beverages Control Commission.

In addition to the relatedness argument, the complaint says rerouting money from the general fund into a specific fund is unconstitutional.

The complaint does not name Cumberland Farms as a defendant, but does note that the retail store has been the driving force behind the question, which would appear on the 2020 ballot. Secretary of the Commonwealth William Galvin, who oversees elections, and Healey are both named in the complaint.

A Cumberland Farms representative did not immediately respond to a comment request. Representatives for both Healey and Galvin declined comment.

Some hurdles may remain for the question, even absent the legal challenge. Petitions had to be turned into city and town clerks last week, and local officials are in the process of certifying those petitions.

Local clerks have until next Monday to complete certification, but whether the questions have enough signatures to move forward will not be known for a few weeks. Goldberger said that if the Cumberland Farms question has enough signatures, the hope would be for the full court to take the case and hear oral argument in the spring.

Monday's initiative petition was filed with the Supreme Judicial Court for Suffolk County, which could then take the issue to the full panel.

In the case of the millionaires' tax, the Supreme Judicial Court in June 2018 issued a rare split decision striking from the November ballot a question that included the issue of whether to impose a 4% tax increase on personal incomes over \$1 million but also included two other parts related to earmarks for the tax windfall. In that case, the court did not reach the question over whether diverting money from one fund to another is within the bounds of the state constitution.

"If they end up deciding on the specific appropriation issue, that would be different," Goldberger said. "We don't know what this court as a group thinks about that."

The taxpayers are represented by Ben Goldberger, Robert Cordy and Jeffrey York of McDermott Will & Emery LLP.

Counsel information for the Commonwealth was not available.

The case is Benjamin Locke Weiner et al. v. Healey et al., case number SJ-2019-0498, in the Supreme Judicial Court of Massachusetts.