Going to the dogs: it's time for reform of the initiative process

By Christine A. Dorchak

Despite the signatures of more than 150,000 Massachusetts citizens, there was one question on which we were not permitted to vote on Nov. 7.

It was a petition to protect dogs from being used in dog fighting, from suffering harm while serving the blind and law enforcement, and from injury while racing.

The Dog Protection Act was sponsored by the MSPCA, the Animal Rescue League of Boston and GREY2K USA. It was endorsed by more than two dozen Massachusetts lawmakers, the Bay State Council for the Blind, NEADS (Dogs for Deaf and Disabled Americans), and the Humane Society of the United States.

Opinion

But in response to a lawsuit brought by one Massachusetts dog-track owner, the Supreme Judicial Court blocked the question, holding that its provisions failed to serve a "common purpose."

The July ruling was issued more than 11 months after the Dog Protection Act had been legally certified by the attorney general, and 10 months after the secretary of state distributed official petition papers for signature collection. Volunteers had already gathered 115,000 signatures by the time suit was brought and had no choice but to continue collecting.

There are two problems with the SJC's action. First, the court's reasoning is problematic. Even to non-lawyers, anti-cruelty concern for dogs was the obvious common purpose. (When is a dog not a dog?)

Moreover, Chief Justice Margaret H. Marshall lamented in her decision that the voters would be unable to "express a uniform public policy." She wrote: "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."

But for those whose paramount concern is animal abuse, that *is* the reason for eliminating dog racing. For others, they would do what citizens always do with voter questions: balance potentially competing interests and reach a decision. This is a task that Massachusetts voters are eminently capable of performing.

Second is the problem of timing, or, more fundamentally, of process. Nationwide, Massachusetts offers the least forgiving initiative process. We have the shortest signature collection period of any state — just 64 days — and our Constitution also requires geographic diversity for signatures gathered.

Further, unlike many other states using statistical sampling, the Bay State mandates a two-step process in which town clerks must verify *each* signature submitted, then the secretary of state must examine all signature pages for "extraneous marks" (i.e., coffee stains, scribbles). Any such mark causes the rejection of an entire petition page containing more than a dozen signatures. The so-called "coffee stain" disqualification is unique to Massachusetts.

To make matters worse, recent legislative efforts have aimed at making the process even more difficult. Just this year Attorney General Thomas F. Reilly and Secretary of State William F. Galvin joined with Common Cause to defeat a Senate-sponsored bill that would have *doubled* signature-gathering requirements.

Amplifying signature requirements would have opened a Pandora's Box of new problems for would-be petitioners by inviting the use of paid signature gatherers, increasing the risk of fraud, and creating additional burdens for town clerks statewide.

Most significantly, true citizens groups would have yet higher hurdles to jump in order to obtain a place before their fellow voters. It seems that some on Beacon Hill believe lawmaking should be their exclusive domain, with no intrusion from mere citizens.

But just the opposite is the case; citizen participation must be encouraged. To this end, the initiative process should be streamlined as follows: When a petition is evaluated by the attorney general, interested parties should be invited to participate in the process. After certification, objectors can still have their day in court, but there should be a limited time for judicial review. That is, the time for court involvement should be before, not after, signature collection.

Once the secretary issues official petitions, the question belongs in the hands of the people, not in the hands of the court.

The initiative process was created in 1918 to give Massachusetts citizens a voice in self-determination. Citizen petitioners who weather through our difficult process should have a place on the ballot and their day before the electorate — and voters should have the right to determine the results. MLW

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