

HOUSE No. 3530

The Commonwealth of Massachusetts

PRESENTED BY:

Jay D. Livingstone, (BY REQUEST)

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying order requiring the opinion of the Attorney General on questions of law, regarding the marijuana (cannabis) laws.

PETITION OF:

NAME:

Mark Thomas

DISTRICT/ADDRESS:

DATE ADDED:

1/16/2019

HOUSE No. 3530

The Commonwealth of Massachusetts



House of Representatives,

**In the One Hundred and Ninety-First General Court
(2019-2020)**

1 *Ordered,* 1. WHEREAS, the citizens of the Commonwealth by Ballot Referendum
2 Law on November 8, 2016 purported to legalize the production, regulation, sale and
3 consumption of Marijuana in the Commonwealth of Massachusetts;

4 2. WHEREAS, on July 20, 2017 the Massachusetts General Court by legislative law also
5 purported to legalize the production, regulation, sale and consumption of Marijuana in the
6 Commonwealth of Massachusetts (H.3818);

7 3. WHEREAS, on July 28, 2017 the Governor of Massachusetts signed into law the
8 legislative bill, purporting to legalize the production, regulation, sale and consumption of
9 Marijuana in the Commonwealth of Massachusetts (M.G.L. c. 10 & c. 94G);

10 4. WHEREAS, the production, regulation, sale and consumption of Marijuana in the
11 Commonwealth of Massachusetts violates Federal Laws as a prohibited controlled substance

12 activity (21 U. S. C. §801, et seq.), upheld by *Gonzales v. Raich*, 545 U.S. 1 (2005), rebutting
13 any legislative presumption of constitutionality of the Massachusetts Marijuana Laws;

14 5. WHEREAS, the production, regulation, sale and consumption of Marijuana in the
15 Commonwealth of Massachusetts appears to violate both the Massachusetts Constitution and the
16 United States Constitution in various and sundry ways;

17 6. WHEREAS, it appearing that the purported Citizen Referendum Question on November
18 8, 2016 could, in no way, have been correctly and legally certified by the Massachusetts
19 Attorney General to the Massachusetts Secretary of State, as being without constitutional, legal
20 impediment and acceptable for citizen voting;

21 7. WHEREAS, the Massachusetts Supreme Judicial Court decision, *Sears v. Treasurer &*
22 *Receiver General*, 98 N.E.2d 621, 629 (Mass. 1951) has asserted, “The people themselves and all
23 branches of government, Legislative, Executive, Judiciary alike, are bound by the Constitution
24 and owe to it implicit obedience.”

25 8. WHEREAS, the decisive landmark U.S. Supreme Court decision, *Gibbons v. Ogden*, 22
26 U.S. 1, 210-11 (1824) declared, “When a federal and state law are in conflict, the federal law is
27 supreme.” See *James v. City of Boise*, 136 S.Ct. 685 (2016).

28 9. WHEREAS, there appears no justifiable or legal reason why state laws contradicting the
29 Massachusetts and United States Constitutions may exist as supposed laws;

30 10. WHEREAS, M.G.L. c. 12 § 9 grants authority to either the House of Representatives or
31 the Senate to require that the Attorney General, “shall give [her] opinion upon questions of law
32 submitted to [her]...by either branch of the general court,” this legal conflict being important,

33 exigent questions of law, as the General Court having neglected to secure such judicial opinions
34 prior to authorizing the Marijuana Laws;

35 11. WHEREAS, Article VI, Clause 3 of the United States Constitution mandates “all
36 executive Officers in every State shall support this Constitution,” thereby obligating her and the
37 General Court, by Oath, to confront these “important questions of law.”

38 12. WHEREAS, this Order requiring the Attorney General to give her opinion shall only be
39 approved, if the House refuses to require of the Supreme Judicial Court its respective opinions of
40 law, OR, if the Supreme Judicial Court should refuse its respective opinion.

41 NOW THEREFORE, it appearing that the Citizen Referendum and Legislative laws legalizing
42 Marijuana in the Commonwealth of Massachusetts are: (1) repugnant, both to the Massachusetts
43 and United States Constitutions; (2) such laws appearing null and void by violating the dual
44 constitutions; (3) it appearing that numerous Massachusetts’ officials stand in default of their
45 Oaths of Office regarding the aforementioned dual constitutions:

46 BE IT ORDERED, by the Massachusetts Senate in the General Court assembled, by authority of
47 M.G.L. c. 12 § 9, this body does respectfully require the opinion of the Massachusetts Attorney
48 General, in an expeditious manner, on the following important, exigent question(s) of law,
49 namely:

50 I. Does the Citizen Ballot law and Massachusetts General Court laws (“the Laws”)
51 purporting to legalize the production, regulation, sale and consumption of Marijuana in the
52 Commonwealth (“the Acts”), plainly violate the Massachusetts Constitution, Declaration of
53 Rights, Article IV, as defying the United States Congress’ laws already in force regulating and
54 prohibiting Marijuana?

- 55 II. Do “the Laws and Acts” violate the Massachusetts Constitution, Chapter I; § I; Article
56 IV, “so as the same be not repugnant or contrary to this Constitution,” as also described by
57 Amendment Article 48, II, § 2, Cl. 5?
- 58 III. Do “the Laws and Acts” impermissibly violate and defy the Supremacy Clause, Art. VI,
59 et seq. of the United States Constitution and 21 U. S. C. §801, et seq.?
- 60 IV. Do the “Laws and Acts” unlawfully deprive all citizens the Privileges, Immunities and
61 equal protection of being governed by “the supreme Law of the Land?”
- 62 V. May the Massachusetts Cannabis Commission purport to promote and regulate Marijuana
63 use in the Commonwealth when the U.S. Congress has prohibited same?
- 64 VI. May that Commission, and others, execute illegal contracts with various entities against
65 the Contracts Clause, Art. I, § 10, Cl. 1 of the United States Constitution?
- 66 VII. Do “the Laws and Acts” run afoul of Art. IV § 1, the Full Faith and Credit Clause?
- 67 VIII. Do “the Laws and Acts” violate the several Oaths of Office and performance required of
68 Massachusetts government officials?
- 69 IX. Did the Massachusetts Attorney General properly certify to the Secretary of State that,
70 such Question presented no constitutional, legal impediments regarding the Marijuana
71 Referendum Ballot Question submitted to voters in November 8, 2016?
- 72 X. Can the foregoing important questions of law be summed up by answering the following
73 question: “Are ‘the Laws and Acts’ null and void?”