

HOUSE No. 688

The Commonwealth of Massachusetts

PRESENTED BY:

Cleon H. Turner (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 passage of the accompanying bill:

An Act further regulating elections to provide for a voter consent 'None of the Above' option.

PETITION OF:

NAME:

William White

DISTRICT/ADDRESS:

244 Sesuit Neck Rd.
E. Dennis 02641

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 706 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT FURTHER REGULATING ELECTIONS TO PROVIDE FOR A VOTER CONSENT 'NONE OF THE ABOVE' OPTION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws are hereby amended by inserting after chapter 57 the following chapter:

2 CHAPTER 57A.

3 ELECTIONS WITH VOTER CONSENT “NONE OF THE ABOVE” OPTIONS

4 **None of the Above (NOTA) on the ballot**

5 On all ballots electing a candidate to office there shall appear, after the list of candidates
6 for each office, a votable line identified with the words “None of the Above; For a New
7 Election”.

8 A voter may choose to vote for “None of the Above; For a New Election” instead of
9 voting for a candidate. If a voter may vote for multiple candidates for an office, a vote for “None
10 of the Above; For a New Election” counts as one vote. Votes cast for “None of the Above; For a
11 New Election” shall be counted and reported as are votes for listed candidates.

12 **When a candidate receives fewer votes than NOTA**

13 Any candidate for office who receives fewer votes than the votes cast for “None of the
14 Above; For a New Election” for that office shall not be elected.

15 **NOTA election**

16 In any election where no candidate is elected to an office because of votes cast for “None
17 of the Above; For a New Election”, a None of the Above, hereinafter referred to as NOTA,

18 Election shall be held to fill that office not less than sixty (60) days and not more than eighty
19 (80) days after the prior election.

20 **Election of the President of the United States**

21 In elections to the offices of President and Vice President of the United States and their
22 electors, “Prefer None of the Above” shall appear after the list of candidates. Voters may choose
23 to vote both for “Prefer None of the Above” as well as for a candidate. Votes cast for “Prefer
24 None of the Above” shall be counted and reported in the same manner as are votes for listed
25 candidates, but shall not otherwise affect the election outcome.

26 **Statement about NOTA options**

27 The Secretary of State shall prepare a statement titled “Your Voter Consent Ballot
28 Options:”, to be displayed, along with any other materials determined by the Secretary of State,
29 so it is legible to voters at the polling place prior to voting as well as within each voting
30 enclosure, indicating the options available to the voter. For example, such a statement might
31 contain the following:

32 Your Voter Consent Ballot Options:

33 YOU MAY VOTE FOR A CANDIDATE **OR** “None of the Above; For a New Election”.

34 **O** Candidate A

35 **O** Candidate B

36 **O** None of the Above; For a New Election

37 When “None of the Above; For a New Election” appears on the ballot after the list of candidates
38 for an office, then you may vote for “None of the Above; For a New Election” instead of voting
39 for a candidate. If you may vote for more than one candidate for an office, then a vote for “None
40 of the Above; For a New Election” counts as one vote.

41 If “None of the Above; For a New Election” receives more votes for an office than any
42 candidate, then no one is elected to that office and a new election with new candidates must be
43 held, not less than 60 days and not more that 80 days after this election, to fill the office.

44 YOU MAY VOTE FOR A CANDIDATE **AND** FOR “Prefer None of the Above.”

45 Candidate A

46 Candidate B

47 Prefer None of the Above

48 When “Prefer None of the Above” appears on the ballot after the list of candidates for an office,
49 you may vote for a candidate and also vote for “Prefer None of the Above”. Voting for “Prefer
50 None of the Above” indicates you found no listed candidate acceptable.

51 The “Prefer None of the Above” votes are counted and reported; however, the candidate for an
52 office with the most votes is elected whatever the “Prefer None of the Above” vote.

53 **Temporary appointment to offices and assignment of duties**

54 Temporary appointment to offices, pending NOTA elections and an elected candidate
55 taking office, required to execute the duties of an office, may be made by the Governor, or by
56 majority vote of the Board of Selectmen for town offices, provided the person so appointed is
57 either the office’s current incumbent or would be otherwise eligible for election to that office.
58 Temporary appointment to the office of Governor shall be by majority vote of the General Court.
59 No temporary appointment under this provision shall be made to the offices of Town Meeting
60 Representative, State Representative, State Senator, United States Representative, or United
61 States Senator.

62 If no appointment is made by the day before expiration of an office’s current term, the
63 office’s incumbent is appointed by default.

64 In elections to the office of Secretary of State, or an office for which the incumbent
65 Secretary of State is a candidate, the duties normally performed by the Secretary of State under
66 this act shall be performed by the office of Secretary of State under the direction of the Attorney
67 General.

68 **Campaign finance reporting**

69 Candidates in a NOTA election must conform to the same, or equivalent, campaign
70 financing and reporting requirements as a candidate for that office in a general election.
71 Campaign financing and reporting for activities related to the issue of voters voting for “None of
72 the Above; For a New Election”, or for “Prefer None of the Above”, shall have the same, or

73 equivalent, requirements as a ballot question. All such requirements shall be subject to those
74 changes necessary, as determined by the Secretary of State, to adjust for the varying election
75 dates and campaign durations of NOTA elections, provided such changes adhere to the original
76 intent of those requirements and avoid unreasonable burden to election participants.

77 **Nomination of candidates**

78 Any person who is eligible for nomination as a candidate in the general election for an
79 office shall be eligible for nomination as a candidate in a NOTA election for that office, provided
80 the person did not receive, as a listed candidate in a prior election for the same office and term,
81 fewer votes than those cast for “None of the Above; For a New Election” the office.

82 All candidates for office in NOTA elections shall be nominated to be listed on the ballot
83 either by nominating petition, or by receiving a requisite number of write-in votes in the prior
84 election for that office.

85 **Nomination by petition; eligibility to sign petitions; collecting signatures at polling places**

86 The nomination period for a NOTA election shall commence on the day of the prior
87 election. The nomination period shall continue for fourteen (14) days after the results of the prior
88 election for that office are announced by the Secretary of State.

89 Voters eligible to vote in the NOTA election for an office are eligible to sign, once for
90 each nomination, one or more nominating petitions for one or more candidates for that office
91 during the nomination period.

92 Signatures for nominating petitions may be gathered at polling places, provided they are
93 gathered in one, or two if required, Petition Areas that shall be reserved at each polling place for
94 such purpose, and in such a manner as to provide easy access for voters wishing to sign such
95 petitions or not, and in such a manner that voters shall pass by those collecting nominating
96 signatures before and after voting.

97 Any person collecting nominating signatures at a polling place for one or more petitions,
98 hereinafter referred to as Collector, must be registered to vote at that polling place. A Collector
99 may assist in the gathering of signatures for any Nominating Petition. No signed petition may be
100 removed from a Petition Area, except, after the polls close, by the vote counting authority, who
101 shall deliver all signed petitions to the signature verifying authority.

102 The Collector shall be seated in a chair behind a table, provided at no cost to the Collector,
103 upon which such petitions shall be placed and kept while collecting signatures. The Collector
104 shall not speak to, or otherwise communicate with, any voter unless addressed first by that voter,
105 and shall display no sign except, optionally, one reading “Nominating Petition: <office>”, where
106 <office> shall be the name of the office for which the petition is being gathered, using letters no
107 greater than three inches in height and affixed to the table in such a manner as to be visible to
108 passing voters. The number of Collectors in each Petition Area shall be no more than two (2) per
109 one (1) or more petition sheets with the same Candidate and Party designation. A petition may be
110 brought into and left unattended in the Petition Area by any person.

111 The Petition Area shall be part to the polling place, and any person failing to conform to its
112 requirements shall be considered a disorderly person.

113 **Nomination by write-in**

114 An unlisted write-in candidate in the prior election may be nominated to be listed as a
115 candidate for an office in the following NOTA election by receiving write-in votes equal to at
116 least ten percent (10%) of either: a) the number of nominating signatures required for that office;
117 or, b) the total votes cast for the office in the current election. Such candidates shall submit to the
118 Town Clerk in town wide offices, or otherwise the Secretary of State, by the last day of the
119 nomination period, a completed nominating petition, containing no filled in signature lines, with
120 an attached affirmation by the candidate, stating the candidate received the requisite write-in
121 votes for that office in the prior election. Unlisted write-in candidates who do not receive the
122 number of write-in votes needed for nomination may seek nomination by petition.

123 **Signature verification; number of signatures required; submitting petitions**

124 The authority responsible for signature verification for nominations for a office in the
125 general election shall be responsible for verifying the signatures on the nominating petitions for a
126 NOTA election are valid and of the requisite number within fourteen (14) days after the end of
127 the nomination period.

128 The number of valid signatures under the same party designation required for nomination
129 by petition shall be the same for all candidates for the same office and shall be: either equal to
130 the number of the most signatures required for a general election nomination for the office,
131 divided by number of days in the general election nomination period, and then multiplied by

132 number of days in the current nomination period, and then divided by three (3); or, equal to
133 twenty (20), whichever is greater.

134 Each original nominating petition sheet shall be submitted to the offices of the same
135 verifying authority as for general elections, within three (3) days after the end of the nomination
136 period.

137 **Multiple nominations of a candidate**

138 In NOTA elections, if a candidate has been separately nominated with different political
139 party designations, the candidate shall appear on the ballot separately for each such nomination.
140 The same political party designation may not appear with more candidates for an office than the
141 number of positions to be elected to that office. The party designation of either “No Party” or
142 “Write-In” shall be allowed once each for a candidate so nominated.

143 **Nomination notification and acceptance**

144 The Secretary of State, or Town Clerk for town wide elections, shall have delivered to
145 each nominee, within three (3) days of the nominee qualifying for the nomination, a Nomination
146 Notification, notifying the nominee of the nomination, along with other materials determined by
147 the Secretary of State. The nominee shall respond to the Nomination Notification within five (5)
148 days by returning the Nomination Acceptance, as determined by the Secretary of State, to the
149 offices of the notifying authority. Failure to respond shall be deemed an acceptance of the
150 nomination.

151 **Candidate Statement; requirements and limitations; qualifying for distribution**

152 To assist the voters in assessing candidates for office in NOTA elections, the Secretary of
153 State, or Town Clerk for town wide elections, shall distribute Candidate Statements by mail to
154 the electorate at least seven (7) days before the election at no cost to the candidates.

155 When a candidate submits a Nomination Acceptance for an office, the candidate may also
156 submit a Candidate Statement for distribution, which shall be subject to the following
157 requirements and limitations: required to be a black and white statement, consisting only of
158 spaces, letters, punctuation marks, and numeric or other textual notation, contained within both
159 sides of a single 8.5 x 11 inch white paper sheet, and, optionally, one photograph of the
160 candidate from the neck up no greater than 3 x 3 inches, for the purpose of allowing the

161 candidate to communicate with the voters; and, shall be limited to identifying the candidate, and,
162 optionally, describing the candidate’s qualifications for office, party affiliations, proposed
163 policies, and contact information; limited to one per candidate, even if the candidate receives
164 multiple nominations for an office; and, shall contain no solicitation for funds nor refer to other
165 candidates. The requirements and limitations of the Candidate Statement must be met, in the
166 opinion of the Secretary of State, in order to qualify for distribution as a Candidate Statement

167 Across the top inch of the first page of every Candidate Statement shall be the Statement
168 Header. The Statement Header shall be blank except for the state seal and the words, in large
169 font, “Candidate Statement of <candidate name> for <office>”, where <candidate name> shall
170 be the name of the candidate as it shall appear on the ballot and <office> shall be the name of the
171 office as it shall appear on the ballot; and then, in a smaller font, “Prepared by the candidate and
172 distributed to voters without cost to the candidate by the Office of the Secretary of State.”; and
173 then, a line at the lower boundary of the Statement Header; and, anywhere within the Statement
174 Header, any other content determined by the Secretary of State. At Nomination Notification, the
175 candidate shall receive sample Candidate Statements and an assigned Statement Header from the
176 Secretary of State that the candidate is required to use as the Statement Header for any Candidate
177 Statement the candidate submits.

178 The area of the Candidate Statement apart from the Statement Header is the Candidate
179 Content determined by the candidate. The Secretary of State, or Town Clerk for town elections,
180 shall take care to distribute Candidate Content as submitted, except as follows: The Secretary of
181 State, and the Town Clerk for town elections, shall review Candidate Statements submitted to
182 them to insure they qualify for distribution as a Candidate Statement. The Town Clerk shall have
183 delivered to the Secretary of State all Candidate Statements, along with their Candidate
184 Instructions, if any, for final review, within three (3) days of receipt, along with a Town Clerk
185 Opinion, defined by the Secretary of State, indicating whether the Candidate Statement meets the
186 requirements and limits of a Candidate Statement.

187 If, in the opinion of the Town Clerk, a Candidate Statement does not meet the
188 requirements and limits of a Candidate Statement, the Town Clerk Opinion shall include an
189 explanation of the nonconformance, along with a proposed Deletion Notification to make the
190 Candidate Statement conformant, and any other relevant document. Before submitting the Town
191 Clerk Opinion to the Secretary of State, the Town Clerk may contact the candidate directly to
192 verbally suggest changes to the Candidate Statement to make it conformant. If the candidate then

193 submits one or more revised drafts, the Town Clerk shall submit the last such draft as the
194 Candidate Statement, retaining prior drafts as part of the Candidate Statement’s record.

195 Should the Secretary of State determine a Candidate Statement does not qualify for
196 distribution because it does not meet the requirements and limits of a Candidate Statement, then
197 the Secretary of State shall have delivered to the candidate, within ten (10) days of the
198 submission of the Candidate Statement by the candidate, a Deletion Notification, defined by the
199 Secretary of State, which shall include a copy of the Candidate Statement to show the deletions
200 needed to bring the statement into compliance and a letter stating the reasons for those deletions.
201 The Secretary of State, or representative, shall meet with the candidate at the offices of the
202 Secretary of State, upon the candidate’s request, within two (2) days of receipt of a request for
203 such a meeting, to review the Candidate Statement with the candidate’s representatives. The
204 candidate shall have delivered to the Secretary of State within five (5) days of the receipt of the
205 Deletion Notification or within two (2) days after such meeting, whichever is later: the
206 candidate’s response to the Deletion Notification; and/or a corrected Candidate Statement; and/or
207 a Candidate Instruction, to be defined by the Secretary of State, in the event of a non qualifying
208 Candidate Statement, instructing Secretary of State either to withdraw the Candidate Statement
209 completely or to distribute the original Candidate Statement with the deletions indicated by the
210 Deletion Notification.

211 Changes to the Candidate Content by Secretary of State shall be by deletion only, using
212 methods to be established in advance of the election by Secretary of State so as to be obvious to
213 voters which parts of the Candidate Content were deleted. Should the candidate fail to provide an
214 acceptable, corrected Candidate Statement and fail to provide Candidate Instructions for such an
215 event, the Secretary of State shall distribute the original Candidate Statement with the deletions
216 specified in the Deletion Notification. The Secretary of State shall make available at its offices to
217 any person, within one day of a written request, copies of any original Candidate Statement as
218 well as associated Town Clerk Opinion, corrected Candidate Statement, Deletion Notification,
219 and Candidate Instruction, and other related documents during the election campaign and for ten
220 (10) years after the election.

221 Whenever possible, all Candidate Statements for the same office shall be assembled into a
222 single ballot pamphlet for distribution. Reference copies of the Candidate Statements shall be
223 made available at polling places for voter use.

224 **Confirming nominations**

225 The Secretary of State, or Town Clerk for town wide elections, shall confirm by Party
226 Confirmation, as defined by the Secretary of State, with the governing body of the designated
227 political party, that the party accepts the party designation on the ballot for a candidate. If the
228 party designation of the nomination is not accepted by the governing body of the party within ten
229 (10) days of notification, or if the authority of the governing body is determined by the Secretary
230 of State to be in dispute, then the candidate shall be listed with a “No Party” party designation.
231 Write-in nominations shall be designated as “Write-In”, or with any other political party
232 designation acceptable to both the candidate and the governing body of the political party.

233 **Ballot determination; election date determination**

234 The Secretary of State shall determine the date, offices, and candidate lists for NOTA
235 elections, and shall announce such determinations, whenever possible, at least thirty days in
236 advance of the date set for the NOTA election.

237 The Secretary of State shall insure, whenever possible, various NOTA Elections take place
238 throughout the state on the same day.

239 **Counting votes; recounts**

240 In cases of multiple listings of a candidate for an office, the number of votes cast for each
241 such listing of a candidate shall be counted and reported separately; however, the sum of all
242 votes for a candidate for an office shall be used in determining the candidate’s vote for election
243 to the office.

244 A qualified write-in candidate who receives more votes than any listed candidate, and
245 more votes than any other write-in candidate, and more votes than “None of the Above; For a
246 New Election” for that office shall be elected.

247 The Secretary of State shall conduct a recount of any election where the number votes cast
248 for “None of the Above; For a New Election” would require, or would allow a candidate to
249 request, a recount if that number of votes had been cast for a candidate, and otherwise act on
250 behalf of voters who cast votes for “None of the Above; For a New Election.” Delegation of this
251 duty to the Secretary of State shall in no way limit voters, who affirm they voted for “None of

252 the Above; For a New Election” in an election, from also acting on behalf of themselves and
253 other such voters.

254 **Failure to nominate**

255 Should no candidate qualify for nomination for an office in a NOTA Election, the office
256 shall appear on the ballot with no listed candidate with only the “None of the Above; For a New
257 Election” line.

258 **Nominating Petition Description**

259 The nominating petitions shall consist of 8.5 x 11 inch white paper with the first printed
260 title line reading “NOTA Election Nominating Petition”;

261 The next printed line shall state: “To be signed only by voters eligible to vote for the
262 office.”;

263 The next printed line of the petition shall state: “For the office of: ”, followed immediately
264 by the title the office, as it appears on the ballot, for which the candidate is to be nominated; and,
265 followed immediately by the text “ for ”; and, followed by the jurisdiction of the office;

266 The next printed line of the petition shall state: “Nominating: ”, followed immediately by
267 the candidate’s legal name and, optionally, in quotes, an informal name, as it is intended to
268 appear on the ballot;

269 The next printed line of the petition shall state: “Whose legal address is: ”, followed
270 immediately by the candidate’s legal address, as it is intended to appear on the ballot;

271 The next printed line of the petition shall state: “Political Party: ”, followed immediately
272 by the name of the political party, as it is intended to appear on the ballot. “No Party” is
273 permitted. “Write-In” is permitted for candidates nominated by write-in votes; and, “For the
274 Town or City:”, followed immediately by the name of the town or city where the signers below
275 must be registered to vote.

276 The next printed line shall identify the appropriate columns for voters to fill out with the
277 words “Voter’s Name (print)”; “Street Address”; “Signature”; “Date”;

278 There shall follow sixteen (16) thin, straight lines, indicating the space for the voter to
279 make a nomination.

280 **Petition Sample**

281 **NOTA Election Nominating Petition**

282 *To be signed only by voters eligible to vote for the office.*

283 For the office of: United States Representative for 5th Congressional District

284 Nominating: William P. Doe “Billy Doe”

285 Whose legal address is: 600 Elm Street, Harvard, MA 01451

286 Political Party: No Party For the Town or City: Harvard

287	Voter’s Name (print)	Street Address	Signature	Date m/d/y
288	_____	_____	_____	_____
289	_____	_____	_____	_____
290	_____	_____	_____	_____
291	_____	_____	_____	_____
292	_____	_____	_____	_____
293	_____	_____	_____	_____
294	_____	_____	_____	_____
295	_____	_____	_____	_____
296	_____	_____	_____	_____
297	_____	_____	_____	_____
298	_____	_____	_____	_____
299	_____	_____	_____	_____
300	_____	_____	_____	_____
301	_____	_____	_____	_____

302 _____

303 _____

304 **Conflicting provisions**

305 The provisions of this act shall prevail over any conflicting provisions of any other law.

306 **Severability**

307 The provisions of this act are severable, and if any of its provisions shall be held unconstitutional
308 by any court of competent jurisdiction, the decision of such court shall not affect or impair any of
309 the remaining provisions.

310 **Effective date**

311 The provisions of this act shall take effect two (2) years after enactment.