

*Whereas*, Initiative Petition 25-14 has been filed and certified, in accordance with Article XLVIII of the Amendments to the Constitution of the Commonwealth, seeking passage of legislation, House No. 5004 entitled “An Act to improve access to public records,” hereinafter referred to as “the petition,” which is pending before the General Court; and

*Whereas*, The petition purports to amend certain provisions of the General Laws to extend application of Chapter 66 of the General Laws, hereinafter referred to as “the public records law,” to the General Court and the office of the Governor; and

*Whereas*, The petition seeks to supersede the authority granted by the Constitution of the Commonwealth to each house of the General Court to make its own rules and manage its own proceedings, including the authority to manage and maintain its records; and

*Whereas*, By extending application of the public records law to the General Court, the petition purports to grant the Secretary of the Commonwealth and the Attorney General the authority to oversee and direct the General Court’s compliance with the public records law; and

*Whereas*, By extending application of the public records law to the General Court, the petition purports to grant the judicial branch new and unprecedented authority to review and invalidate determinations made by the General Court concerning the management and maintenance of its own records and order relief, including, but not limited to, injunctions, attorneys’ fees and costs and punitive damages, against the General Court in such matters; and

*Whereas*, By extending application of the public records law to the General Court, the petition imposes duties on the General Court that may violate or intrude upon rights granted to members and staff of the General Court pursuant to Part I, Article XXI of the Constitution of the Commonwealth, namely freedom of deliberation, speech and debate; and

*Whereas*, Grave doubt exists as to whether the petition proposes a law within the meaning of Article XLVIII, The Initiative, Part II, Section 3 of the Amendments to the Constitution of the Commonwealth; and

*Whereas*, Grave doubt further exists as to whether the petition relates “to the powers . . . of courts,” which is an excluded subject matter under Article XLVIII, The Initiative, Part II, Section 2 of the Amendments to the Constitution of the Commonwealth; and

*Whereas*, Grave doubt further exists as to whether the petition, if enacted, would comply with certain provisions of the Constitution of the Commonwealth, including, but not limited to, the Senate’s constitutional authority to make its own rules and manage its own

proceedings, separation of powers and legislative immunity and privilege; now therefore be it

*Ordered*, That the opinions of the Honorable Justices of the Supreme Judicial Court be required by the Senate on the following important questions of law:-

1. Does the petition, which proposes statutory changes relating to the retention of and access to records of the General Court, propose a rule relating to internal legislative procedures, not a law, and is, therefore, not properly introduced and pending before the General Court under Article XLVIII, The Initiative, Part II, Section 3 of the Amendments to the Constitution of the Commonwealth?
2. Does the petition relate “to the powers . . . of courts,” insofar as it grants the judicial branch new and unprecedented authority to review, decide and order relief in challenges to records determinations made by the General Court, and is thus excluded from the initiative process under Article XLVIII, The Initiative, Part II, Section 2 of the Amendments to the Constitution of the Commonwealth?
3. If the petition is properly introduced and pending, does the petition, by amending the public records law to include the General Court within its ambit, violate or intrude upon the Senate’s authority to “determine its own rules of proceedings” for its records under Part II, Chapter 1, Section 2, Article VII of the Constitution of the Commonwealth?
4. If the petition is properly introduced and pending, does the petition’s grant of authority over the records of the General Court—and to supersede legislative rules and proceedings related to those records—to the judicial branch and to executive branch officers, including the Secretary of the Commonwealth and Attorney General, violate Part I, Article XXX of the Constitution of the Commonwealth?
5. If the petition is properly introduced and pending, does the petition violate or intrude upon rights granted to members and staff of the General Court pursuant to Part I, Article XXI of the Constitution of the Commonwealth, namely freedom of deliberation, speech and debate?