

Voters for None of the Above
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Abstract of Massachusetts, 1999
(H 2870; S 319):

Legislation implementing Voter Consent with a binding “None of the Above” (NOTA) on the ballot, allowing voters to reject all candidates for an office and to call for a new election with new candidates to fill the office. In all elections for office (not primaries), where more votes are cast for NOTA than for any candidate, no one is elected to the office, and a First NOTA Election is held, not less than 60 days and not more than 90 days after the prior election, to fill those offices. Listed candidates who lost to NOTA are not eligible for election to that office in that term. If NOTA wins in a First NOTA Election, the election for those offices goes to a Final NOTA Election, not less than 60 days and not more than 90 days after the prior election, in which the candidate with the most votes is elected.

The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY NINE

An Act FURTHER REGULATING ELECTIONS TO PROVIDE FOR A VOTER CONSENT “NONE OF THE ABOVE” OPTION

Whereas Article VII of the Massachusetts Constitution states: “Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men: Therefore the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.”;

Whereas government should secure the consent of the governed;

Whereas all legitimate consent requires the ability to withhold consent;

Whereas voters can withhold their consent when voting on questions;

Whereas voters are sometimes presented with such choices on the ballot that none of the listed candidates for an office is acceptable, but voters are unable to withhold their consent to such elections to office.

Therefore, to insure the legitimate consent of voters by enabling them to withhold their consent to an election to office;

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

The General Laws are hereby amended by adding the following chapter:

CHAPTER 57A.

ELECTIONS WITH VOTER CONSENT “NONE OF THE ABOVE” OPTIONS

Section 1. None of the Above (NOTA) on the ballot

On all ballots electing a candidate to office, in both general and special elections, there shall appear, after the list of all candidates for each office, a votable line identified with the words “None of the Above; For a New Election.” Voters may choose to vote for “None of the Above; For a New Election” in the same way they might choose to vote for one of the listed candidates. Votes cast for “None of the Above; For a New Election” shall be counted and reported in the same manner as are votes for the listed candidates.

Section 2. When a candidate receives fewer votes than NOTA

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

Section 3. First NOTA election

In any general or special election where no candidate is elected to an office because of votes cast for “None of the Above; For a New Election”, a First None of the Above, hereinafter referred to as NOTA, Election shall be held to fill that office not less than 60 days and not more than 90 days after the prior election.

Section 4. First NOTA election ballot

On all ballots electing a candidate to office in a First NOTA Election, there shall appear, after the list of all candidates for each office, a votable line identified with the words “None of the Above; For a New Election”. Voters may choose to vote for “None of the Above; For a New Election” in the same manner and with the same effect as in the prior election.

Section 5. Final NOTA election

In any First NOTA Election where no candidate is elected to an office because of votes cast for “None of the Above; For a New Election”, a Final NOTA Election shall be held to fill those offices not less than 60 days and not more than 90 days after the First NOTA Election.

Section 6. Final NOTA election ballot

In the Final NOTA Election, there shall appear, after the list of all candidates for each office, a votable line identified with the words “Prefer None of the Above”. Voters may choose to vote both for “Prefer None of the Above” as well as for a candidate. The candidate with the most votes is elected whatever the “Prefer None of the Above” vote count. Votes cast for “Prefer None of the Above” shall be counted and reported in the same manner as are votes for the listed candidates.

Section 7. Voter Consent ballot options

When “None of the Above; For a New Election” appears on the ballot after the list of candidates for each office, a voter may vote for “None of the Above; For a New Election” instead of voting for one of the candidates. If the voter may vote for more

than one candidate for an office, a vote for “None of the Above; For a New Election” counts as one vote.

When “Prefer None of the Above” appears on the ballot after the list of candidates for each office, a voter may vote for a candidate and vote for “Prefer None of the Above.”

Section 8. Statement about NOTA options

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

Your Voter Consent Ballot Options:

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

- Candidate A
- Candidate B
- None of the Above; For a New Election

When “None of the Above; For a New Election” appears on the ballot after the list of candidates for each office, then you may vote for “None of the Above; For a New Election” instead of voting for a candidate. If you may vote for more than one candidate for an office, then a vote for “None of the Above; For a New Election” counts as one vote. If “None of the Above; For a New Election” receives more votes for an office than any candidate, then no one is elected to that office and a new election with new candidates must be held, not less than 60 days and not more than 90 days after this election, to fill the office. YOU MAY VOTE FOR A CANDIDATE **OR** “None of the Above; For a New Election”, but NOT BOTH.

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

- Candidate A
- Candidate B
- Prefer None of the Above

When “Prefer None of the Above” appears on the ballot after the list of candidates for each office, you may vote for a candidate and also vote for “Prefer None of the Above.” The “Prefer None of the Above” votes are counted and reported; however, the candidate for an office with the most votes is elected whatever the “Prefer None of the Above” vote. “YOU MAY VOTE FOR A CANDIDATE **AND** FOR “Prefer None of the Above””.

Section 9. Election of the President of the United States

In election to the offices of the President and Vice President of the United States and their electors, “Prefer None of the Above” shall appear after the list of candidates. Voters may choose to vote for “Prefer None of the Above” in the same manner and with the same effect as in a Final NOTA Election.

Section 10. Failure to elect; election by General Court

If, after the Final NOTA Election, an office remains unfilled, the office shall be filled by majority vote of the General Court; or, for town wide offices, within 30 days after the Final NOTA Election, by majority vote of the Board of Selectmen of the Town.

Section 11. Temporary appointment to offices

If temporary appointment to offices, pending NOTA elections, are required to execute duties mandated by law for an office, then temporary appointment, until an elected candidate takes office, may be made by the Governor under this provision, provided the person so appointed would be otherwise eligible for election to that office for that term. The Governor shall make no temporary appointment under this provision to the offices of Town Meeting Representation, State Representative, State Senator, United States Representative, or United States Senator.

Section 12. Campaign finance reporting

Candidates in a NOTA election must conform to the same reporting requirements as a candidate for that office in a general election, except for those changes necessary to adjust for the different election date and election duration, as determined by the Secretary of State. Any efforts urging voters to vote for “None of the Above; For a New Election”, or urging voters to vote for “Prefer None of the Above”, shall have no reporting requirement.

Section 13. Nomination of candidates

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

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

Section 14. Nomination by petition; eligibility to sign petitions; collecting signatures at polling places

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

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

Signatures for nominating petitions may be gathered at polling places, provided they are gathered in one, or two if required, Petition Areas that shall be reserved at each polling place for such purpose, and in such a manner as to provide easy access for voters wishing to sign such petitions or not, and in such a manner that voters shall pass by those collecting nominating signatures before and after voting. Any person collecting nominating signatures at a polling place for one or more petitions, hereinafter referred to as collector, must be registered to vote at that polling place and shall be seated in a chair behind a table, provided at no cost to the collector, upon which such petitions shall be placed and kept while collecting signatures. The collector shall not speak to, or otherwise communicate with, any voter unless addressed first by that voter, and shall display no sign except, optionally, one reading “Nominating Petition: <office>”, where <office> shall be the name of the office for which the petition is being gathered, using letters no greater than three inches in height and affixed to the table in such a manner as to be visible to passing voters. The number of collectors in each Petition Area shall be no more than one per one or more petition sheets with the same Candidate and Party designation.

Section 15. Nomination by write-in

An unlisted write-in candidate in the prior election may be nominated to be listed as a candidate for an office in the following NOTA election by receiving at least as many write-in votes as the number of nominating signatures required for that office. Such candidates shall submit to the Town Clerk in town wide offices, or otherwise the Secretary of State, by the last day of the nomination period, a completed nominating petition, containing no filled in signature lines, with an attached affirmation by the candidate, stating the candidate received the requisite write-in votes for that office in the prior election. Unlisted write-in candidates who do not receive the number of write-in votes needed for nomination may seek nomination by petition.

Section 16. Signature verification; number of signatures required; submitting petitions

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

The number of valid signatures under the same party designation required for nomination by petition shall be the same for all candidates for the same office and shall be: either equal to the number of the most signatures required for a general election nomination for the office divided by number of days in the general election nomination period, and then multiplied by number of days in the current nomination period, and then divided by 3; or, equal to 20, whichever is greater.

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

Section 17. Multiple nominations of a candidate

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

Section 18. Nomination notification and acceptance

The Secretary of State, or Town Clerk for town wide elections, shall have delivered to each nominee, within 3 days of the nominee qualifying for the nomination, a Nomination Notification, notifying the nominee of the nomination, along with other materials determined by the Secretary of State. The nominee shall respond to the Nomination Notification within 5 days by returning the Nomination Acceptance, as determined by the Secretary of State, to the offices of the notifying authority. Failure to respond shall be deemed a rejection of the nomination.

Section 19. Candidate Statement; requirements and limits; qualifying for distribution

To assist the voters in assessing candidates for office in NOTA elections, the Secretary of State shall distribute Candidate Statements to the electorate.

When a candidate submits a Nomination Acceptance, the candidate may also submit one Candidate Statement for distribution by the Secretary of State, which shall be subject to the following requirements and limits: a Candidate Statement is required to be a black and white statement, consisting only of spaces, letters, punctuation marks, and numeric or other textual notation, and, optionally, one photograph of the candidate from the neck up no greater than 3 x 3 inches, contained within both sides of a single 8.5 x 11 inch white paper sheet, for the purpose of allowing the candidate to communicate with the voters, and shall be limited to identifying the candidate, and, optionally, describing the candidate’s qualifications for office, party affiliation, proposed policies, and contact information, and shall contain no solicitation for funds or information of a commercial nature, and shall be limited to one per candidate. The requirements and limits of the Candidate Statement must be met, in the opinion of the

Secretary of State, in order to qualify for distribution as a Candidate Statement. The Secretary of State, or Town Clerk for town wide elections, shall assemble the candidate statements into a ballot pamphlet for that office, at no cost to the candidates, and shall distribute the pamphlet by mail to the electorate for that office at least 7 days before the election. Reference copies of the pamphlets shall be made available at polling places for voter use and return.

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

The Secretary of State, or Town Clerk for town wide elections, shall take care to distribute Candidate Content as submitted, except as follows. The Secretary of State, and the Town Clerk for town wide elections, shall review Candidate Statements submitted to them to insure they qualify for distribution as a Candidate Statement. The Town Clerk shall have delivered to the Secretary of State all Candidate Statements for final review, within 3 days of receipt, along with a Town Clerk Opinion, defined by the Secretary of State, indicating whether the Candidate Statement meets the requirements and limits of a Candidate Statement, and, if not, why.

Should the Secretary of State determine a Candidate Statement does not qualify for distribution because it does not meet the requirements and limits of a Candidate Statement, then the Secretary of State shall have delivered to the candidate, within 10 days of the submission of the Candidate Statement by the candidate, a Deletion Notification, defined by the Secretary of State, which shall include a copy of the Candidate Statement to show the deletions needed to bring the statement into compliance and a letter stating the reasons for those deletions. The Secretary of State, or representative, shall meet with the candidate at the offices of the Secretary of State, upon the candidate’s request, within 2 days of receipt of a request for such a meeting, to review the Candidate Statement with the candidate’s representatives. The candidate shall have delivered to the Secretary of State within 5 days of the receipt of the Deletion Notification: the candidate’s response to the Deletion Notification; and/or a corrected Candidate Statement; and/or a Candidate Instruction, to be defined by the Secretary of State, in the event of a non qualifying Candidate Statement, either to withdraw the

Candidate Statement completely or to allow the Secretary of State to distribute the original Candidate Statement with the deletions indicated by the Deletion Notification.

Changes to the Candidate Content by Secretary of State shall be by deletion only, using methods to be established in advance of the election by Secretary of State so as to be obvious to voters which parts of the Candidate Content were deleted. Should the candidate fail to provide an acceptable, corrected Candidate Statement and fail to provide Candidate Instructions for such an event, the Secretary of State shall distribute the original Candidate Statement with the deletions specified in the Deletion Notification. The Secretary of State shall make available at its offices to any person, within 1 day of a written request, copies of any original Candidate Statement as well as associated Town Clerk Opinion, corrected Candidate Statement, Deletion Notification, and Candidate Instruction, during the election campaign and for 10 years after the election.

Section 20. Confirming nominations

The Secretary of State, or Town Clerk for town wide elections, shall confirm by letter, with the governing body of the designated political party, that the party accepts the party designation on the ballot for a candidate. If the party designation of the nomination is not accepted by the governing body of the party within 10 days of notification, or if the identity of the governing body is determined by the Secretary of State to be in dispute, then the candidate shall be listed with a “No Party” party designation. Write-in nominations shall be designated as “Write-In”, or with any other political party designation acceptable to both the candidate and the governing body of the political party.

Section 21. Ballot determination; election date determination

The Secretary of State shall determine the date, offices and candidate lists for NOTA elections, and shall announce such determinations, whenever possible, at least 30 days in advance of the date set for the NOTA election.

The Secretary of State shall insure, whenever possible, that all First NOTA Elections take place throughout the state on the same day and all Final NOTA Elections take place throughout the state on the same day.

Section 22. Counting votes; recounts

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

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

The Secretary of State shall have a recount conducted for any election for an office in which votes cast for “None of the Above; For a New Election” equaled 99.5 percent or more of the votes cast for a winning candidate.

Section 23. Failure to nominate

Should no candidate qualify for nomination for an office in the First NOTA Election, that office shall not appear on the ballot of the First NOTA Election, and a Final NOTA Election shall be held to fill those offices. In such a case, the valid nominating signatures gathered during the First NOTA Election nomination period shall be counted as valid for the Final NOTA Election nomination period.

Should no First NOTA Election take place because no person qualified for nomination for any office, the Secretary of State shall announce that no First NOTA Election is to take place; and, a Final NOTA Election shall be held to fill those offices not less than 60 days and not more than 90 days after such announcement.

Should no candidate qualify for nomination for an office in the Final NOTA Election, the office shall appear on the ballot with no listed candidate and no “Prefer None of the Above” line.

Section 24. Nomination period for Final NOTA Election

The final nomination period shall commence on the day of the First NOTA Election or the day after the Secretary of State’s announcement that no First NOTA Election is to take place.

Section 25. Nominating Petition Description

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

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

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

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

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

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

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

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

Section 26. Petition Sample

Section 27. Conflicting provisions

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

Section 28. Severability

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

Section 29. Effective date

The provisions of this act shall take effect three years after enactment.