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GRADUATED INCOME TAX UNCONSTITUTIONAL ACCORDING TO LAWSUIT FILED WITH SJC

October 3, 2017 – Boston, MA – A group of Massachusetts business and fiscal policy leaders representing a range of traditional and well-established employers, innovative start-ups and small and owner-operated businesses throughout the Commonwealth today filed a complaint with the Supreme Judicial Court, challenging an initiative petition recently certified for the 2018 Massachusetts ballot. The initiative petition at issue in the complaint seeks to amend the state Constitution to impose a new graduated income tax, adding a new four percent tax (representing an 80% tax rate increase) on all incomes over \$1 million and dictating how the revenue must be spent. The plaintiffs assert that the proposal contains numerous constitutional violations. It cynically and improperly combines a graduated income tax that in the past has been rejected each and every time by Massachusetts voters, with attractive spending in a prohibited manipulation of the vote called “logrolling.” And it does something that has never been done before: never in the history of Massachusetts has a tax or tax rate been set in the Constitution, making the new tax essentially permanent and unchangeable.

The five plaintiffs lead organizations that represent the full breadth of the Massachusetts economy and are united in their commitment to ensuring that the Commonwealth continues to foster conditions that support job development and economic growth. They are: Christopher Anderson, President of the Massachusetts High Technology Council, Inc. (MHTC); Christopher Carlozzi, Massachusetts State Director of the National Federation of Independent Business (NFIB); Richard Lord, President and Chief Executive Officer of Associated Industries of Massachusetts (AIM); Eileen McAnneny, President of the Massachusetts Taxpayers Foundation (MTF); and, Daniel O’Connell, President and Chief Executive Officer of the Massachusetts Competitive Partnership (MACP). The named defendants in the lawsuit are Attorney General Maura Healey and Secretary of State William Galvin.

“It is really important to understand that this lawsuit is not about whether creating a new graduated income tax is good public policy or bad public policy, it is about the way that it is being done, which we find to be so clearly flawed and unconstitutional that it is alarming,” said Chris Anderson of the MHTC, speaking on behalf of the plaintiffs. “We would be equally opposed if they were proposing the opposite and trying to roll back the income tax and cut funding for education or transportation. Amending the Constitution to achieve taxing and spending by popular vote is just a terrible idea, and could undo much of the good work that Massachusetts has done in terms of creating a successful economic climate.”

The plaintiffs also note that it is critical to understand the difference between typical initiative petitions (also referred to as ballot questions) that amend state statutes, which voters are accustomed to seeing, and this ballot question that would change the Massachusetts Constitution and strip the Legislature of its ability to easily amend

the policy in the future. Only three initiative petitions to amend the Constitution have ever appeared on the ballot.

The plaintiffs' complaint, prepared and filed by attorney Kevin Martin of Goodwin Procter, outlines three critical ways in which the proposal violates the requirements and restrictions of Article 48 of the Massachusetts Constitution – which specifies the limits of the initiative petition process – and is therefore unconstitutional.

- It combines three unrelated subjects: it establishes a graduated income tax, and mandates spending the money raised only on education and transportation. These three parts are not mutually dependent or related and for this reason violate Article 48's ban on "logrolling," a strategy by which an unpopular provision is joined with a popular provision making it more likely they both will pass. Here, the filers of the proposed initiative petition are seeking to pass the unpopular graduated income tax – rejected by Massachusetts voters five times in its history – by combining it with the popular causes of funding for education and transportation.
- The second legal flaw is that it improperly allocates funding. Article 48 specifically bars initiative petitions that "make a specific appropriation of money from the treasury" and this one would require that all revenue raised by the new tax be spent "only" on education and transportation. This usurps the Legislature's sole Constitutional authority to set state spending policy.
- The third constitutional problem is that Article 48 does not authorize the use of an initiative petition to set taxes in the Constitution, outside of the Legislature's control. Never in the history of the Commonwealth has a tax or a tax rate been set in the Constitution.

"Here is the bottom line," concluded Anderson. "On five occasions since 1915, Massachusetts citizens have considered ballot initiatives that would empower the Legislature to establish a graduated income tax and the citizens rejected all five. In this latest attempt, the proponents have decided not to propose *authorizing* the Legislature to adopt a graduated income tax. They have decided to *impose it* through the initiative petition, amending the Constitution. As a key element of the strategy, they have logrolled it by including two attractive subjects that would receive the funding. And they have limited the set of people who would be impacted. This would set a bad precedent for Massachusetts, which will likely lead to future amendments to the Constitution by other special interest groups. *This time* it is about those making over a million dollars, what's next?"

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