

THE HIGH TECH AGENDA

MASSACHUSETTS HIGHTECHNOLOGYCOUNCIL

Dedicated to Growth... Committed to Action

Council Among Five Plaintiffs to Challenge Proposed Constitutional Amendment

On Tuesday, October 3, the Massachusetts High Tech Council formally filed a [complaint](#) with the Massachusetts Supreme Judicial Court (SJC) to challenge the proposed ballot initiative that would permanently embed an 80 percent increase to the tax rate on any earned income over \$1 million into the Massachusetts Constitution. The Council was joined by four additional plaintiffs representing Associated Industries of Massachusetts, the Massachusetts Competitive Partnership, the Massachusetts Taxpayer's Foundation and the National Federation of Independent Businesses.

The Council is committed to ensuring that Massachusetts continues to foster conditions that support economic growth and understands the vital importance of continued investment by the Commonwealth in maintaining a world-class public education system and strengthening our transportation infrastructure. The constitutional amendment currently under consideration, however, is the wrong way to codify public policies that raise and spend revenues.

Constitutional Question

The Massachusetts Constitution is the fundamental governing document of the Commonwealth of Massachusetts. It went into effect on October 25, 1780 and is recognized as the oldest continuously functioning constitution in the world. The Constitution requires that the income tax be applied "at a uniform rate throughout the Commonwealth." Since 1915, Massachusetts citizens have considered five ballot initiatives that would empower the Legislature to establish a graduated income tax and the citizens rejected all five. In order to increase the chances of it passing this time, the proponents have violated a constitutional prohibition by combining the tax increase with the promise to spend the money on two popular priorities.

Attorney [Kevin Martin](#), a litigation partner at Goodwin Procter, has developed a trio of compelling constitutional arguments that have been vetted by a team of legal and judicial experts. The plaintiffs assert the proposal is an attempt by the proponents to make an "end run" around the normal legislative process in ways that the authors of our state constitution foresaw 100 years ago and explicitly forbade.

Fundamentally, this lawsuit is not about [what](#) decisions we make as a Commonwealth, but [how](#) we make those decisions. Using the ballot initiative for the first time to spend public funds by popular vote by permanently embedding that fiscal policy in the Constitution is a dangerous door to open. As a Commonwealth, we have to ask ourselves "Do we really want to govern this way now and in the future"? The Council believes the answer is "no".

MISSION STATEMENT

The *High Tech Agenda* keeps the High Tech Council's members and partners up to date on its pro-growth advocacy concerning state and federal public policies and programs in support of its mission.

The goal of the Massachusetts High Technology Council is to help make Massachusetts the world's most attractive place in which to live and work, and in which to create, operate, and grow high technology businesses. Read our Mission Statement at [mhtc.org](#).

UPCOMING EVENTS

Closing the Corporate Gender Gap: Turning a Marathon Into a Sprint

**October 18 –
7:30 AM – 9:30 AM**
Location: Boston, MA

MHTC joins Council member reachIRE, in collaboration with knowledge partner McKinsey & Company in hosting "Closing the Corporate Gender Gap," a breakfast discussion on addressing the workplace gender gap and the latest strategies and programs to address it.

This is an invitation-only event for subscribing Council members. Please contact [Mark Gallagher](#) with questions.

MHTC CEO Roundtable with Honorable Karen Spilka Chairwoman of the Mass. Senate Ways and Means Committee

**October 30 –
9:30 AM – 11:30 AM**
Location: Council Offices – Waltham, MA

Please join us for a **CEO Roundtable with the Honorable Karen Spilka, Chairwoman of the Mass. Senate Committee on Ways and Means** hosted by the Council's Government Relations Committee.

Next Steps

We expect the proponents of the amendment, [Raise Up Massachusetts](#), will ask the SJC for permission to intervene in the suit and join with the Attorney General in defending her 2015 decision to certify the amendment. Following an agreement on the facts, the parties will file legal briefs containing the detailed constitutional arguments—likely in December or January. Several organizations that share and support the Council’s position will seek to join in the case as *amici* or “friends of the court” and we believe the proponents of the amendment will do the same. We anticipate oral arguments will be scheduled over the winter, with a decision likely in early spring. It is not unusual for the SJC to reverse certification decisions by Attorneys General and the SJC has done so several times over the past 30 years. In fact the SJC reversed a certification decision in each of the last two statewide elections in 2014 and 2016.

The Council is confident that the SJC will find this proposal unconstitutional which would cause it to be removed from the November 2018 ballot and likely prohibit the introduction of any substantially similar ballot proposal until at least 2022.

How We Got Here: The Council’s History of Leadership

The filing of the legal challenge marks a critical milestone in more than two years of Council leadership opposing this dangerous proposal. Council staff began researching the proposal’s legality and impact in September 2015, immediately after the Attorney General certified it as eligible to appear on the ballot and presented those initial findings to the Council’s Board of Directors in December of 2015.

In February 2016, the Council’s Board of Directors voted to oppose the proposal and directed Council staff to develop and implement a strategy that would include a coalition of like-minded organizations and individuals. Throughout 2016, the Council convened business leaders from around the state to engage in legislative advocacy, providing information to legislators and urging them to vote against the proposal each time they met in Constitutional Conventions in [2016](#) and [2017](#) to consider it and avoid the same negative impact on the state’s economic climate inflicted by the short-lived “tech tax” of 2013. (The Council and Mass. Taxpayers Foundation partnered then to lead the strategy that resulted in the Legislature’s repeal of this costly tax policy mistake.)

Following the Legislature’s initial approval of the proposal in mid-2016, the Council and our coalition partners engaged legal experts in an analysis of the proposal’s constitutionality.

Having identified numerous constitutional flaws in the proposal, the Council engaged Kevin Martin from Goodwin Procter as our lead legal counsel in April 2017. On June 14, 2017, the proposal received its second and final required approval from the Legislature making it eligible to appear on the November 2018 statewide ballot, unless the SJC rules that it is ineligible to do so.

Media Coverage of the Legal Challenge

[Business Groups Go to SJC to Challenge Tax Proposal](#), Boston Globe, October 3, 2017

[Business Groups Ask State Court to Kill Tax Proposal](#), Boston Business Journal, October 3, 2017

[Biz Groups File Challenge With SJC in Bid to Derail Income Surtax](#), State House News Service, October 3, 2017

[Coalition Sues to Block Tax](#), Boston Herald, October 4, 2017

[Editorial: Time Out on Tax Hike](#), Boston Herald, October 4, 2017

Contact Us

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UPCOMING EVENTS

All Council members are encouraged to attend, but must RSVP in advance to [Mark Gallagher](#) to register.

MHTC Board of Directors Meeting

**December 7 –
10:00 AM – 12:00 PM**
By invitation

Please RSVP via calendar invitation or email to Julie Champion (julie@mhtc.org).

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