

MASSACHUSETTS
HIGH TECHNOLOGY COUNCIL

Dedicated to Growth... Committed to Action



President's Bulletin

July 12, 2018

Introduction

Over the past 40 years, the Massachusetts High Technology Council, Inc. has developed an unmatched record of success by unifying CEO and senior executive decision makers to advance strategies that impact the most critical public policy decisions facing the Commonwealth of Massachusetts, its job creators and its citizens.

Last month, we celebrated another notable—and historic—leadership accomplishment which ranks in importance with several prior Council achievements, including: Enabling the passage of Proposition 2 ½ (1980); drafting and securing the enactment of the state's first R&D tax credit (1992); successfully leading a New England-wide collaboration to support the increasingly technology-oriented mission at Hanscom Air Force Base and the US Army Soldier Systems Center in Natick during the federal Base Realignment and Closure review at the request of Sen. Kennedy and Gov. Romney (2005); and engineering the repeal of the Legislature's expansion of the state sales tax to custom computer services—the so-called "Tech Tax"—in 2013.

On June 18, 2018 the Massachusetts Supreme Judicial Court (SJC) declared the proposed amendment to the State Constitution to establish a permanent \$2 billion per year personal income surtax invalid and unconstitutional. Ours was the first challenge to a proposed citizen's initiative to amend the Constitution since 1937. The victory means that the proposal will not appear on the 2018 statewide ballot in November.

In its ruling, the SJC found that the proposal violated the State Constitution's explicit requirement that ballot initiatives contain only policy matters that are clearly related or mutually dependent. The Court held that the proponents of the amendment improperly combined sending on education and

infrastructure, which are discrete policy subjects. (View the full text of the SJC decision written by Justice Gaziano, [here](#)).

The Council's board of directors and a team of partners has worked together for nearly 3 years to challenge this attempt to severely limit the Legislature's deliberative taxing and spending authority and establish state fiscal policies in direct violation of the Constitution. Special thanks to Attorney Kevin Martin and his associates David Zimmer and Joshua Bone of Goodwin Procter for the well-crafted and delivered arguments.

We had a lot of support. As the lead and coordinating plaintiff, I was joined by four other business leaders from Associated Industries of Massachusetts, the National Federation of Independent Business, the Massachusetts Competitive Partnership, and the Massachusetts Taxpayers Foundation as co-plaintiffs in the legal challenge which was commenced in the Massachusetts Supreme Judicial Court (SJC) in October 2017.

The debate over the proposed amendment laid bare the underlying fiscal drivers behind efforts that have focused purely on raising additional revenues through increased taxes on business and individual taxpayers without regard for the obvious negative fiscal and competitive consequences on our robust economy.

As outlined in detail below, the successful effort to prevent the advance of the proposed amendment is both a case study in the power of collaborative advocacy and a testament to the critical necessity of a more unified and engaged community of job creators.

Avoiding the Unconstitutional Tax Trap: The Power of Collaborative Leadership

The SJC's 5 to 2 decision in favor of our challenge represents the successful culmination of years of Council leadership. Mounting a successful strategy required the Council to leverage the full array of its core competencies including:

- CEO-level Executive Engagement
- Policy Analysis
- Strategy Design & Development
- Coalition Building & Management
- Direct Advocacy
- Message Development
- Communications
- Legal Analysis & Strategy

In addition, the effort required the active coordination of an expanded and unified team of concerned and committed stakeholders, best represented by our fellow plaintiffs in the challenge. Constitutional scholars and business leaders from across the Commonwealth provided critical resources and expert advice to support the effort.

The invalidated graduated income tax amendment is just one of a litany of anti-growth policies advanced by increasingly-aggressive advocates through legislative proposals and-with growing frequency-ballot initiatives.

This bulletin recounts the key steps in the path to successfully challenging the proposed amendment, which provide important lessons for all of us who are interested in preserving Massachusetts' continued economic health.

2015: Risk Analysis and Raising Awareness

From the moment proponents began floating the idea in early 2015, Council staff recognized the dangers the proposed amendment presented to the integrity of the state's budgeting process, fiscal stability and economic competitiveness. By the time the proposed amendment was formally filed in July 2015, Council staff and subject matter experts had already initiated efforts to confirm its potential impacts, assess its legality and share those findings with Council leaders and like-minded stakeholders.

In September 2015, as the Attorney General was certifying the proposal as eligible to appear on the ballot, Council staff developed a written report of initial findings and recommendations which was presented to the Council's Board of Directors in December of 2015.

2016: Legislative Advocacy and Education

In February 2016, the Council's Board of Directors formally voted to oppose the proposed amendment and directed Council staff to develop and implement a comprehensive strategy that would include a coalition of like-minded organizations and individuals.

Throughout 2016, the Council worked to unify and lead a coalition of business leaders from around the state, engaging in coordinated legislative advocacy, providing key information to legislators and urging them to vote against the amendment when they met in Constitutional Convention. In [February 2016](#) and again in May, [the Council urged legislators](#) to consider the unintended consequences of the proposal, including the harm it would do to the state's economic momentum and the permanent damage it would inflict on the integrity of the Commonwealth's budgeting process.

On May 16, 2016, an overwhelming majority of the Massachusetts legislature gave the proposal the first of two required votes of approval, despite the vigorous opposition of the Council and other coalition partners. With very few legislators willing to stand up against the proposal, it became increasingly apparent that the second required legislative approval in 2017 was a near certainty. In addition, numerous public opinion polls revealed strong support for the proposal. Without the development and skillful execution of a legal strategy to prevent the amendment from reaching the ballot, the path to eventual passage by the voters seemed clear.

In the fall of 2016, the Council [began marshalling resources to support a legal challenge](#) and engaged noted Massachusetts election law experts to conduct a preliminary analysis of the proposal's

constitutional flaws and the prospects for a legal challenge. After reviewing these findings at their December 2016 quarterly meeting, the Council's Board of Directors instructed Council staff to prioritize and pursue a litigation strategy to ensure the constitutionally prohibited measure would not appear on the 2018 ballot.

2017-18: Developing and Executing a Litigation Strategy

Throughout 2017, the Council worked with the leaders of other business groups to identify additional plaintiffs and to secure the resources required to support a vigorous legal challenge. In April of 2017, [the Council engaged Kevin Martin](#), a highly respected [Goodwin Procter](#) appellate attorney to lead the litigation effort and prepare a legal challenge to be filed later in the year.

The Council continued to engage in legislative advocacy to ensure there could be no doubt that supportive legislators were well-aware of the proposal's negative impacts. On June 13, 2017, the Council joined with coalition partner Associated Industries of Massachusetts to provide every legislator with an in-depth explanation of the proposal's [Myths and Facts](#).

On June 14, 2017, the legislature gave the proposal its second required approval making it eligible to appear on the November 2018 statewide ballot. The [Council characterized the proposal](#) as "an unprecedented move to shelter elected politicians from accountability for taxation and spending policies" and expressed confidence that the special interest-backed measure would fail to pass constitutional muster.

On October 3, 2017, the Council joined with our four fellow plaintiffs in filing a [formal legal challenge](#) to the question and in December and January filed briefs outlining in detail three critical ways in which the proposal violated the requirements and restrictions on the initiative petition process set forth in Article 48 of the Massachusetts Constitution. In a media statement, the Council made clear that the proposed amendment was historically unprecedented and the litigation's primary objective was to preserve the integrity of the state budgeting process: "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."

On February 7, 2018, the SJC heard oral arguments from legal counsel for the plaintiffs, the Attorney General's office in defense of her certification and the proposal's lead proponents as intervening defendants. As noted in several press accounts of the SJC proceeding, the Council's [arguments were well-received](#), while the Justices [expressed skepticism](#) about fundamental aspects of the defendants' claims.

On June 18 the SJC ruled 5-2 in favor of the Council and our fellow plaintiffs, eliminating any opportunity for the proposal to appear before voters in 2018.

2018-2022: The Path to Fiscal Stability-A Unified Response to Address Root Causes

Throughout the multi-year process of opposing the constitutional amendment proposal, Massachusetts business leaders continually asked: "What is driving this insatiable demand for new

revenues?” Council leaders have observed consistently low unemployment, enormous levels of capital investment, and significant annual increases in state revenues for nearly a decade. Yet the state seems stuck in a continuing cycle of fiscal crises around its now \$41B annual budget, marked by recurring demands for higher taxes on employers and growing concerns that many of the Commonwealth’s economic and quality of life priorities (including education and transportation) are being underfunded.

As Massachusetts’ economic engines have hummed along in high gear in recent years, too few policymakers and political leaders have focused on the Commonwealth’s fundamental fiscal challenges. But in case after case around the nation, the taxation and spending policies of individual states’ -both the decisions they make and how they make them- are an increasingly important differentiator in the global competition for job creation and capital investment.

Council Chairman Aron Ain’s remarks at our 2018 Annual Meeting (see video highlights, [here](#)) the day after the SJC’s affirmation of our challenge, and the [Council’s July 4, 2018 Boston Globe opinion editorial](#) summarize why we believe it is necessary to now take the lead on helping strengthen the state’s public finances and improve its fiscal stability.

The Commonwealth must prioritize these state fiscal stability challenges that threaten the conditions for investment, employment growth and quality of life in Massachusetts, including a world-class public education system and 21st Century transportation infrastructure. Chief among the challenges to be addressed is the explosive growth in the cost of MassHealth, the state’s Medicaid program, which now accounts for more than 40% of the total state budget.

A unified community of job creators deeply engaged with state policymakers will be critical to advancing the solutions necessary to put the Commonwealth on more secure financial footing. The Council is dedicated to growth and committed to action and we look forward to helping unify our Commonwealth’s leaders around an agenda that will keep Massachusetts moving forward.



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