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## **Graduated Income Tax Ballot Question is Misleading to Voters, According to Lawsuit**

**Boston, Massachusetts (January 27, 2022):** A diverse and bipartisan group of Massachusetts registered voters today filed [a complaint with the Supreme Judicial Court \(SJC\)](#), challenging the Attorney General’s and Secretary of the Commonwealth’s failure to propose ballot language fairly and accurately summarizing for voters the proposed Graduated Income Tax Amendment slated to appear on the 2022 Massachusetts ballot.

If approved by voters, the Graduated Income Tax Amendment would amend the state Constitution to add a new four percent tax (representing an 80% tax rate increase) on all incomes over \$1 million, allegedly to fund public education and public transportation spending. Proponents of the measure consistently have held out the promise of new public education and transportation spending as the Amendment’s principal feature. Polls show that many voters support the Amendment only because of that promise of new investments in public education and transportation.

As the lawsuit explains, however, the promise of new public education and transportation spending is an empty one, because the Amendment imposes no real limits on how the state Legislature can spend the new tax revenues. In fact, the Attorney General recognized this fact in a filing made with the SJC in 2018 involving an identical proposed amendment ([Anderson v. Attorney General](#)). The Attorney General explained in that filing, “The Legislature would retain ultimate discretion over spending choices” because “money is fungible.” The Attorney General’s filing also asserted: “Because the proposed amendment does not require otherwise, the Legislature could choose to reduce funding in specified budget categories from other sources and replace it with the new surtax revenue.” Simply put, the Amendment allows a shell game. By moving money around, the Legislature can spend the new tax revenues on whatever it wants. There is no guaranty whatsoever that the unprecedented tax increase will lead to any new investments in public education or transportation.

Massachusetts law requires that summaries of ballot measures that appear before voters be fair and not misleading. Any summary of the Graduated Income Tax Amendment that suggests the new tax revenues only can fund new education and transportation spending would be unfair and misleading, for the

reasons the Attorney General gave in 2018. In fact, [a recent poll](#) shows that 72% of potential voters felt misled by the suggestion that the new tax revenues must be used for education and transportation, once they learned that the Legislature has the option of moving funds around to increase spending elsewhere. The same poll suggested that voters would *reject* the Amendment if they were provided an accurate summary about how it works in practice.

“Voters need to be accurately informed that it is only the Legislature that can allocate how tax money is spent. Even if my current colleagues honor the promises of the ballot question, future legislators may change their minds. I am proud to represent a bi-partisan coalition of 55 legislators, municipal officials, business owners, and civic minded individuals who are bringing this lawsuit forward. I hope the SJC agrees with us on the importance of providing accurate information to the public voting in November’s election,” stated **State Representative Colleen Garry (D-Dracut)**.

In November 2021, Plaintiffs wrote to the Attorney General and Secretary of the Commonwealth to ask that the language on the ballot clarify for voters that the Legislature would retain discretion over how the new tax revenues are spent, using language from the Attorney General’s own 2018 legal filing. Plaintiffs never heard back.

“Voting on proposed constitutional amendments is among a citizen’s most solemn and important duties. Voters should not be misled into voting for an amendment the substance of which they actually oppose,” said **small business owner, Mike Kane, who runs the Ashland-based 126 Self Storage**. “The Graduated Income Tax Amendment presents such a nightmare scenario: many voters support the Amendment because they believe the new revenues must be used only for new education and transportation spending, and when they learn the truth, they oppose it.”

Under these circumstances, Plaintiffs had no choice but to ask the SJC to exercise its authority to require a fair, accurate description of the Graduated Income Tax Amendment to appear on the 2022 ballot. “It is 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 ensuring voters are not misled by a description of the proposal that is neither fair nor accurate,” said **Chris Anderson, president of the MHTC**, speaking on behalf of the plaintiffs. “The proponents of the Graduated Income Tax Amendment should not dangle the promise of new public education and transportation spending in front of voters, knowing that the Legislature actually can use the new funding on whatever it wants.”

The plaintiffs’ complaint was prepared and filed by attorney **Kevin Martin of the law firm Goodwin Procter**. It asks the SJC to exercise the authority granted it both by the state Constitution and state law to require voters be provided a “fair, concise summary ... of each proposed amendment to the constitution” and “fair and neutral 1-sentence statements describing the effect of a yes or no vote.” It specifically requests that the Court order voters be accurately informed by the ballot materials that “the Legislature could choose to reduce funding on education and transportation from other sources and replace it with the new surtax revenue because the proposed amendment does not require otherwise.”

**If the Attorney General does not amend the ballot materials to reflect the Legislature’s discretion, then the Amendment should be excluded from the ballot.**

“Here is the bottom line,” concluded Anderson. “On five previous occasions, Massachusetts citizens have considered ballot initiatives that would empower the Legislature to establish a graduated income tax and the citizens rejected all five. This sixth attempt should not mislead voters through an unfair and inaccurate summary into believing that the Amendment will guarantee additional funding for either transportation or education.”

### **About the Massachusetts High Technology Council**

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Our mission 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.

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