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Mass. High Tech Council Urges Court to Intervene to Prevent Voters from Being Misled by Proposed Tax Amendment Language

Today the Massachusetts Supreme Judicial Court will hear oral arguments regarding a legal challenge to require the Attorney General and Secretary of State to provide voters with a fair and neutral description of the proposed Graduated Income Tax Amendment approved by the Massachusetts Legislature in 2019 and 2021 and headed for the statewide ballot in November 2022. Goodwin Procter attorney Kevin Martin will present the plaintiffs' argument.

The challenge, which started with [a complaint filed by Mass. High Tech Council president Christopher R. Anderson and 54 other plaintiffs filed in January 2022](#), urges the Court to act to prevent voters from being misled. In 2018, the Supreme Judicial Court invalidated the same proposal from being placed on the ballot because of a similar challenge by Anderson and four other plaintiffs.

Voting on an amendment to the Constitution is both rare and an extremely important responsibility for voters. A misguided amendment can do irreparable damage, taking years until an opportunity for a remedy arises. It is therefore critical for voters to have an accurate and fair description of the proposal.

The Legislature's proposal to amend the Massachusetts Constitution, if passed, would create a new 4% tax on residents' income over \$1 million. Because voters have rejected every prior attempt by the Legislature to establish a graduated income tax, proponents are seeking to gain support by appearing to assure voters that the new revenue would be strictly dedicated to just two purposes: transportation and education. The reality: there is no guarantee that any additional revenue will be dedicated to these areas. Without intervention by the Court, voters will see a description of the Tax Amendment on the ballot that will mislead millions into thinking the Tax Amendment is something it is not.

The Legislature's appropriations are "fungible", meaning the Legislature could readily shift existing funds to another purpose, swapping in the new tax revenues for existing funding and adding no additional funds for education and transportation purposes. The Attorney General herself admitted in 2018 that none of the money need go towards education and transportation if the Legislature does not "lower its historical spending in the designated areas by 80% or more."

Despite that admission, the Attorney General and Secretary intend to include on the ballot language suggesting that the new tax revenues must be used for education and transportation spending — that there must be an increase in spending on those subjects, and not for other subjects of the legislature's choosing.

Proponents use promised education and transportation spending as bait for voter approval of a new tax because voters have rejected previous attempts to amend the Constitution with an income tax increase on five separate occasions. In fact, the highest percentage of "yes" votes recorded in support of any prior tax amendment ballot question is 28% (both in 1972 and 1994). Those advancing the Amendment seek to overcome opposition by falsely promising more education and transportation spending, even though the Amendment does not guarantee a single cent more in appropriations for those areas.

The misleading nature of the ballot language is clear in [results from a November 2021 poll](#), which showed that 72% of voters, across the political spectrum, reported feeling misled by the ballot's reference to education and transportation spending after learning that the Legislature could spend new revenue on whatever it wants. Support for the Amendment fell from 51% to 44% once voters learned how the Amendment really works.

Put simply: the decision to misleadingly mention education and transportation spending on the ballot, when the new tax revenues will not necessarily add any additional funds to these purposes, could result in a new permanent tax policy that doesn't deliver on the expectations of voters.

About the Massachusetts High Technology Council

The [Massachusetts High Technology Council, Inc.](#) is an organization of CEOs and senior executives representing technology companies, professional services firms, and research institutions who are dedicated to creating and sustaining conditions that support investment, job growth, and improved quality of life in Massachusetts. Our members are growth-oriented, knowledge-intensive employers and institutions that develop, deliver, and depend on technology products, services, and innovations to advance their organizational objectives—a definition which covers about all business enterprises in Massachusetts today.

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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