COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT

CHRISTOPHER ANDERSON, CHRISTOPHER CARLOZZI, RICHARD LORD, EILEEN MCANNENY, and DANIEL O'CONNELL,

Plaintiffs,

v.

MAURA HEALEY, in her official capacity as Attorney General of the Commonwealth of Massachusetts, and

WILLIAM F. GALVIN, in his official capacity as Secretary of the Commonwealth of Massachusetts,

Defendants.

No. _____

COMPLAINT

INTRODUCTION

1. This is a civil action for grant of *certiorari* and mandamus under Mass. Gen. Laws ch. 249, § 4 and Mass Gen. Laws ch. 249, § 5, respectively, and for declaratory relief pursuant to Mass. Gen. Laws ch. 231A. On September 2, 2015, the Attorney General of Massachusetts certified, pursuant to Article 48 of the Amendments to the Massachusetts Constitution ("Article 48"), Mass. Const. art. 48, II, §§ 1-3, Initiative Petition No. 15-17, entitled "An Initiative Petition for An Amendment to the Constitution of the Commonwealth to Provide Resources for Education and Transportation through an additional tax on Incomes in excess of One Million Dollars" ("the Challenged Initiative"). Plaintiffs are asking the Court to

declare that the Attorney General's certification of the Challenged Initiative was not in compliance with the requirements and limitations of Article 48, and to enjoin the Secretary from placing the measure on the ballot in the 2018 election.

2. The Challenged Initiative would amend the Massachusetts Constitution to impose a four percent surtax on all incomes over $1 million, and require the Legislature to spend the revenue from that surtax "only" on two distinct causes: education and transportation. The Challenged Initiative states, in full:

> Amendment Article XLIV of the Massachusetts Constitution is hereby amended by adding the following paragraph at the end thereof*:*
>
> To provide the resources for quality public education and affordable public colleges and universities, and for the repair and maintenance of roads, bridges and public transportation, all revenues received in accordance with this paragraph shall be expended, subject to appropriation, only for these purposes. In addition to the taxes on income otherwise authorized under this Article, there shall be an additional tax of 4 percent on that portion of annual taxable income in excess of $1,000,000 (one million dollars) reported on any return related to those taxes. To ensure that this additional tax continues to apply only to the commonwealth's highest income residents, this $1,000,000 (one million dollar) income level shall be adjusted annually to reflect any increases in the cost of living by the same method used for federal income tax brackets. This paragraph shall apply to all tax years beginning on or after January 1, 2019.

A true and correct copy of the Challenged Initiative, as submitted to the Attorney General, is attached as Exhibit 1.

3. There has been significant public debate as to whether the Challenged Initiative is wise as a matter of public policy. Many are concerned that the Challenged Initiative's tax increase will drive taxpayers and businesses to other

States, and that its dedication of spending to just two uses will crowd out public investments in other areas. Others disagree.

4. This lawsuit is not about that public policy debate. Instead, it is about the negative impact that the Challenged Initiative, by constitutionalizing the Commonwealth's fiscal policy, would have on our system of representative democracy. Because the Challenged Initiative advances a constitutional amendment, not a mere statute, the Legislature would be powerless to amend or repeal its provisions once their impacts become clear. The Legislature could not change the four percent tax rate (either up or down), and it could not change the income threshold (either up or down). The Legislature would be equally powerless to spend tax revenue generated by the initiative for any purpose other than education or transportation—it could not use the revenue to address healthcare, housing, energy, or any of the many other challenges that the Commonwealth faces or could face in coming years. Even voters would be unable to change their minds about the taxing and spending decisions embodied in the Challenged Initiative without again going through the cumbersome initiative petition process.

5. This lawsuit, in other words, is not about *what* decisions are made with respect to taxes and spending, but about *how* they are made, and whether certain decisions should be the subject of statutory or constitutional law.

6. This lawsuit also is not just about this Challenged Initiative, but is about the precedent that would be set if the Court allows the Challenged Initiative to appear on the ballot. If, by its decision in this case, the Court allows a radical decentralization of fiscal policy away from the Legislature, it will set the stage for

future initiatives from a range of interest groups proposing constitutional amendments segregating funds for their preferred causes, or raising tax rates on some groups and lowering taxes on others. The result will be that the Legislature is left with little control over both taxes and spending, making its constitutional duty to produce a balanced budget increasingly difficult to perform.

7. Fortunately, the appropriate balance between the initiative petition process and the Legislature is not a new issue, but was specifically anticipated and addressed by the delegates who drafted and approved Article 48's initiative petition process at the Constitutional Convention of 1917-1918. Those delegates agreed that the initiative petition process must be restricted to ensure that initiatives do not become an obstacle to sound government. The delegates thus imposed what the Court has described as "significant limits," to which "strict adherence" is demanded, on the subjects that an initiative petition can address and on the structure that an initiative petition can take. *Bates v. Director of Office of Campaign and Political Finance*, 436 Mass. 144, 159 & n. 24 (2002); *Opinion of the Justices*, 422 Mass. 1212, 1219 (1996).

8. The Challenged Initiative violates these limits and, therefore, must be excluded from the ballot for any one of three, independently sufficient reasons.

9. First, the Challenged Initiative violates Article 48 by combining three very different subject matters: whether to impose a graduated income tax, and whether to give preferential treatment in state spending to two unrelated subject matters—education and transportation. Article 48 requires that an initiative petition address only "related" or "mutually dependent" subjects, and the Court repeatedly has

ordered that initiative petitions even more cohesive than the Challenged Initiative be excluded from the ballot on this basis. An important reason for this restriction is to prevent "logrolling," the process by which an unpopular provision is joined in a single initiative petition with a popular provision, making it more likely that both will pass. Yet logrolling is plainly why the Challenged Initiative combines a graduated income tax—an idea that has been rejected *five times* by Massachusetts voters—with increased spending on two currently-popular, but unrelated, causes.

10. Second, the Challenged Initiative violates Article 48 because it ties the Legislature's hands with respect to spending, setting a requirement in the Constitution that revenue raised by the surtax be spent "only" on education and transportation. This earmarking of funds in the Constitution, outside the control of the Legislature, violates Article 48's prohibition on "specific appropriations" by initiative petition. The Court previously excluded from the ballot the only other initiative petition that would have amended the Constitution to introduce a requirement that designated funds be spent "only" on specified purposes. *See Opinion of the Justices*, 297 Mass. 577 (1937). Adhering to that precedent, the Court should reach the same result here.

11. Third, just as Article 48 specifies that the initiative petition process cannot be used to wrest control over public finances away from the Legislature on the spending side, the Court should hold that initiative petitions cannot be used to take control over revenue generation away from the Legislature via a tax set in the Constitution. There was no precedent at the time of the Constitutional Convention for a tax set in a constitution, outside the Legislature's control, and the delegates never even discussed the possibility of an initiative petition being used to do so. As the

Court has recognized, the "specific appropriation" prohibition in Article 48, and the debate around that prohibition, confirm that "[t]he general supervision of ways and means for the needs of the Commonwealth," which includes revenue generation, "was reserved to the General Court," not voters. *Opinion of the Justices (1937)*, 297 Mass. at 580. For this reason too, the Challenged Initiative must be excluded from the ballot.

12. Wherefore, Plaintiffs respectfully request that the Court enter judgment in their favor and exclude the Challenged Initiative from the 2018 ballot.

JURISDICTION

13. The Court has jurisdiction over this matter pursuant to Mass. Gen. Laws Chapter 249, §§ 4 and 5, and Chapter 231A, § 1.

PARTIES

14. Plaintiff Christopher Anderson is a registered voter, taxpayer, and resident of the Town of Westford, Massachusetts. He is the President of the Massachusetts High Technology Council, Inc. ("Council") and former Chairman of the Massachusetts State Board of Education. For over 40 years, the Council has represented senior executive leadership from Massachusetts' diverse technology, professional services, and higher education sectors and has advocated for policies ensuring that Massachusetts fosters the conditions that support jobs and economic growth. Mr. Anderson and the Council are concerned that the Challenged Initiative would harm Massachusetts' brand as a hub for innovation, entrepreneurship, and investment, and would do lasting damage to the fiscal, economic and civic health of the Commonwealth by allowing special interests to circumvent the legislative process

by public expenditures and tax rates are determined. Mr. Anderson and the Council are further concerned that the Challenged Initiative would inject significant instability into the Commonwealth's finances by adding billions of dollars in new, permanent special interest spending to the budget in reliance on a volatile, non-recurring revenue stream. States that have enacted similar measures have found themselves in dire budgetary crises when estimated revenue has failed to materialize.

15. Plaintiff Christopher Carlozzi is a registered voter, taxpayer, and resident of the City of Malden, Massachusetts. He is the Massachusetts State Director of the National Federation of Independent Business ("NFIB"). A non-profit, non-partisan organization, NFIB represents thousands of small and independent business owners involved in all types of industry, including manufacturing, retail, wholesale, service, and agriculture. The average NFIB member has five employees and annual gross revenues of about $450,000. Mr. Carlozzi and NFIB are concerned that the Challenged Initiative would subject many small business owners to a one-time tax surcharge when they sell their businesses—into which they have devoted a lifetime of financial and human capital—even though the sale of a small business often acts as a retirement fund for these owners. Mr. Carlozzi and NFIB also are concerned that the Challenged Initiative would severely impact the roughly 75 percent of small businesses that file as "pass-through" entities. Taxing these entities, whose owners are not high-income earners, would inhibit business growth, especially in capital-intensive industries like manufacturing and agriculture, while harming the Massachusetts small business economy.

16. Plaintiff Richard C. Lord is a registered voter, taxpayer, and resident

of the City of Peabody, Massachusetts. He is President and Chief Executive Officer of Associated Industries of Massachusetts ("AIM"). Founded in 1915, AIM represents the public-policy interests of thousands of member employers from all economic sectors. Mr. Lord and AIM are concerned that embedding fiscal policy in the state Constitution would represent a dangerous precedent that would erode the ability of the Massachusetts Legislature to fulfill its constitutional responsibility to manage fiscal policy. Employers who depend upon a predictable and rational budgetary process to make decisions about growth fear the initiative will open the door for future efforts by interest groups to propose constitutional amendments segregating funds for their preferred causes, or raising tax rates on some groups and lowering taxes on others. Such a scenario would destabilize the fiscal health of Massachusetts and prompt employers to move their operations and jobs elsewhere.

17. Plaintiff Eileen McAnneny is a registered voter, taxpayer, and resident of the City of Melrose, Massachusetts. She is President of the Massachusetts Taxpayers Foundation ("Foundation"). Founded in 1932, the Foundation provides research and policy recommendations designed to strengthen the Commonwealth's finances and economy. Ms. McAnneny and the Foundation are concerned that the Challenged Initiative would undermine the Commonwealth's appropriation process. Giving voters the power to amend the Constitution to raise or lower taxes and segregate money to certain causes would make the annual budgeting process more complicated as voters earmark tax dollars for discrete purposes, leaving inadequate revenue available for other spending priorities. Ms. McAnneny and the Foundation are also concerned that the Challenged Initiative would exacerbate the

Commonwealth's overreliance on volatile capital gains revenue, making economic downturns more severe and undermining the state's fiscal well-being.

18. Plaintiff Daniel O'Connell is a registered voter, taxpayer, and resident of the City of Boston, Massachusetts. He is the President and Chief Executive Officer of the Massachusetts Competitive Partnership ("MACP"). MACP, comprised of chief executives from some of the Commonwealth's largest employers, is a nonprofit, nonpartisan public-policy group. MACP works in collaboration with public officials and business and civic leaders to increase the Commonwealth's competitiveness and to promote job growth and opportunity. Mr. O'Connell and MACP are concerned that the Challenged Initiative would cause irreparable damage to the Commonwealth's business climate and economy by discouraging employers from growing their businesses locally and limiting their ability to retain premier talent. The Commonwealth's prominent high-growth sectors, which employ many residents, would be particularly adversely affected. These unintended consequences would disrupt the state's business environment, driving employment from the state.

19. Defendant Maura Healey is Attorney General of the Commonwealth of Massachusetts, and is sued in her official capacity. The office of the Attorney General is located at One Ashburton Place, Boston, MA 02108.

20. Defendant William F. Galvin is Secretary of the Commonwealth of Massachusetts, and is sued in his official capacity. The office of the Secretary of the Commonwealth is located at One Ashburton Place, Boston, MA 02108.

STATEMENT OF FACTS

The Article 48 Initiative Petition Process

21. The initiative petition process was born of the Massachusetts Constitutional Convention of 1917-1918. At the time, numerous States either recently had adopted, or were in the process of adopting, procedures under which voters could participate more directly in the legislative and constitutional amendment process. The delegates to the Convention were able to draw on the experience of these other States, adopting the aspects of the ballot initiative process that had been proven to work while rejecting those that had not.

22. Article 48 allows both initiative petitions that enact statutes and initiative petitions that amend the Constitution. The initiative at issue in this case is an initiative petition to amend the Constitution. It would not merely enact a statute that the Legislature could amend or repeal as it sees fit, but would impose constitutional obligations that the Legislature would be required to obey.

23. An initiative petition to amend the Constitution begins with ten signatures, a certification by the attorney general that the initiative contains only non-excluded and related subjects, the collection of additional signatures, and submission to the Legislature. *Id*. Pt. II, § 3. Once submitted to the Legislature, an initiative petition to amend the Constitution need only receive the affirmative votes of one-quarter of the elected members in order to proceed. *Id*. Pt. IV, § 4. If the initiative receives those votes, it is referred to the next legislative session. *Id*. If in that session the initiative again receives affirmative votes from one quarter of all representatives, the secretary of the commonwealth submits the proposed amendment to the people.

Id. Pt. IV, § 5. In order to be adopted, the initiative must be approved by both thirty per cent of the total number of ballots cast and a majority of voters voting on the initiative petition. *Id*.

24. The Legislature also has the power to initiate a constitutional amendment. If a member of the Legislature introduces a proposed constitutional amendment, it must receive the affirmative votes of a majority—not merely one-quarter—of the elected members in order to proceed. *Id*. Pt. IV, § 4. If the legislative amendment receives those votes, it is referred to the next legislative session. *Id*. If it again receives a majority vote in the next legislative session, the secretary of the commonwealth submits the proposed amendment to the people. *Id*. Pt. IV, § 5. To be adopted, a legislative amendment must be approved by a majority of voters voting on the proposed amendment. *Id*.

25. In practice, constitutional amendments originating in the Legislature have been the primary means of amending the Constitution. While dozens of amendments originating in the Legislature have been adopted, only three initiative petitions to amend the Constitution even have appeared on the ballot. Two of those—to move to biennial budgeting and biennial sessions of the Legislature (in 1938), and to allow transportation taxes to be spent on mass transit (in 1974)—passed. The initiative petition that failed was a proposal for a graduated income tax (in 1994).

Constitutional Limitations On Initiative Petitions

26. Article 48 both limits the subjects that an initiative petition may address and limits the range of subjects that may be bundled together in a single initiative. Art. 48, Pt. II, §§ 2, 3. One of the technical advisors to the Constitutional

Convention described these limitations as Article 48's "distinguishing feature . . . as compared with similar measures in other states." Lawrence B. Evans, The Constitutional Convention of Massachusetts, 15 Am. Pol. Sci. Rev. 214, 218 (1921).

27. As a structural matter, Article 48 specifies that a single initiative petition can address multiple subjects only if those subjects are "related or … mutually dependent." Article 48 Pt. II, § 3. This requirement was intended to prevent "logrolling"—muscling through an unpopular provision by combining it with popular provisions in a single initiative. Requiring that a single initiative petition address a single issue, or at least related issues, ensures that voters are not put to the quandary of voting on an initiative that combines subject matters of which they may alternately approve and disapprove.

28. Substantively, Article 48 bars initiative petitions that (among other subjects) "make[] a specific appropriation of money from the treasury of the commonwealth." Article 48, Pt. II, § 2. The purpose of this limitation is to centralize control over spending decisions in the Legislature, which can most effectively balance the Commonwealth's competing interests in light of available resources. As one of the delegates to the Constitutional Convention put it, "an appropriation by the people of specific sums of money would knock spots, if I may use a slang expression, out of any State budget, and prevent any real regulation and careful administration of the finances of the State." 2 Debates in the Massachusetts Constitutional Convention of 1917-1918, 828-829 (1918). The Court has similarly explained that "[t]he essential aspect of a specific appropriation is that it removes public monies, and the decision how to spend them, from the control of the Legislature." *Associated Indus. of*

Massachusetts v. Sec'y of Com., 413 Mass. 1, 6 (1992).

29. The delegates who framed Article 48 intended that the Legislature not only would maintain control over spending, but also would be ultimately responsible for raising revenue. "The general supervision of ways and means for the needs of the Commonwealth was reserved to the General Court," not voters. *Opinion of the Justices (1937)*, 297 Mass. at 580. For example, Article 48 states that "if a law approved by the people is not repealed, *the general court* shall raise by taxation or otherwise and shall appropriate such money as may be necessary to carry such law into effect." Article 48, Pt. II, § 2 (emphasis added). While, in the century since Article 48 was adopted, initiative petitions to adopt mere statutes with some revenue component have appeared on the ballot, there never has been an initiative petition proposing to amend the Constitution to usurp the Legislature's control over tax policy, by specifying that a particular tax must be imposed and what the rate must be.

The Challenged Initiative

30. Restrictions on the taxing power in Article IV of the Massachusetts Constitution originally prevented the Legislature from imposing an income tax. This was changed in 1915, when Article 44 of the Amendments to the Massachusetts Constitution was adopted. Article 44 authorizes the Legislature to adopt an income tax, but it limits the Legislature to taxes that are "levied at a uniform rate" upon "incomes derived from the same class of property." Thus, while the Legislature can apply different rates to different types of income—employment versus capital gains, for instance—it cannot impose different tax rates on the same type of income based on the amount of income received.

31. Since 1915, five proposed constitutional amendments have been placed on the ballot to amend Article 44 to empower the Legislature to establish graduated income tax rates. Four of those originated in the Legislature and one was an initiative petition. All five proposals were defeated. The highest percentage of "yes" votes such a proposed amendment ever received was 28 percent of the vote, in 1972 and 1994.

32. The Challenged Initiative is the latest attempt to impose a graduated income tax. Instead of simply authorizing the Legislature to adopt such a tax, however, the Challenged Initiative itself imposes, as a constitutional mandate, a four percent surtax on incomes over $1 million. The Challenged Initiative imposes a further constitutional mandate that the Legislature "shall" spend revenue generated by the surtax "only" on two unrelated subjects: education and transportation.

33. In 2015, ten citizens submitted the Challenged Initiative to the Attorney General.

34. On September 2, 2015, the Attorney General certified, pursuant to Article 48, Pt. 2, § 3, that the Challenged Initiative was consistent with the requirements of Article 48. A true and accurate copy of the Attorney General's certification is attached as Exhibit 2.

35. After the Attorney General's certification, the proponents filed the Challenged Initiative with the Secretary. The Secretary prepared and distributed blank signature forms for circulation by the proponents.

36. After sufficient signatures were submitted to the Secretary pursuant to Article 48 Pt. II, § 3 and Pt. IV, § 2, the Secretary transmitted the Challenged

Initiative to the Clerk of the House of Representatives on January 6, 2016, where it was assigned bill number House No. 3933 of 2016. A true and correct copy of that bill is attached as Exhibit 3.

37. On May 18, 2016, pursuant to Article 48, Pt. IV, § 4, the members of both houses of the Legislature voted on H.3933. Because more than one-quarter of the members of the Legislature voted in favor of the measure, the Challenged Initiative was referred to the next legislative session.

38. On June 14, 2017, pursuant to Article 48, Pt. IV, § 5, the members of both houses of the Legislature again voted on the Challenged Initiative, which had been renumbered as bill number Senate No. 10 of 2017. A true and correct copy of that bill is attached as Exhibit 4. Because more than one-quarter of the members of the Legislature again voted in favor of the measure, the Secretary of the Commonwealth will place the Challenged Initiative on the November 2018 ballot, absent action by the Court.

39. Supporters of the Challenged Initiative have not concealed the fact that it combines a graduated income tax with a mandate that revenue be spent on transportation and education—two subjects currently popular with voters—in order to overcome historic antipathy by voters to graduated income taxes. For instance, State Senate President Stan Rosenberg, a supporter of the Challenged Initiative, has stated that the Challenged Initiative "will stand a better chance of being approved" than previous attempts to amend Article 44 because "it is focused specifically on money for education and transportation," and hence is "very differently constructed" than previous proposals that did not specify where the tax revenue would be spent.

Exhibit 5.

40. Other supporters of the Challenged Initiative have recognized that it addresses multiple, distinct subjects. For example, Representative Kaufman, Chairperson of the Joint Committee on Revenue, explained, at the June 14, 2017 joint legislative session, that he supported the Challenged Initiative because it addressed not one, but "two fundamental challenges. One is the lack of adequate funds for education, and the other is the lack of adequate funds for transportation." Exhibit 6.

41. The Legislature has recognized that, if the Challenged Initiative were adopted, it would force the Legislature, as a matter of constitutional law, to spend the new revenue on education and transportation, and that the revenue could not be spent for any other purpose. Thus, a "FAQ" prepared by the House Committee on Revenue with respect to the Challenged Initiative explained that "[t]he government will only be able to spend the revenue received from the [Challenged Initiative] on education and transportation. If the legislative or executive branch ever did attempt to use the revenue for other purposes, it would be violating the Constitution and would likely be promptly sued. . . . No act of the legislature can supersede the state Constitution, and future sessions of the General Court will be bound by the requirement to spend the money on education and transportation." Exhibit 7 at 5.

42. Senator Spilka, Chairperson of the Joint Committee on Ways and Means and the Senate Committee on Ways and Means, similarly explained, at the June 14, 2017 joint legislative session, that "[t]he Legislature cannot just go in and change our constitution. . . . It will be directed to education and transportation only . . . . The clear language and the clear message of the voters will be fully

understood. Spending from these new resources will be solely for education and transportation." Exhibit 6.

COUNT ONE

THE INITIATIVE CONTAINS SUBJECTS THAT ARE NOT RELATED OR MUTUALLY DEPENDENT

43. Paragraphs 1-42 are incorporated by reference.

44. Article 48 bars the Attorney General from certifying any initiative petition unless it "contains only subjects … which are related or which are mutually dependent." Art. 48, Pt. II, § 3. Under this prohibition, an initiative petition cannot combine two unrelated subjects of spending—education and transportation—with a graduated income tax, in the hopes that voters' approval of one of the initiative petition's features will overcome voters' opposition to the others.

45. The Challenged Initiative's three components—an income-based surtax and a dedication of revenue to the disparate purposes of education and transportation—are not mutually dependent. The components of an initiative are "mutually dependent" where they could not exist independently of each other. That is not the case here.

46. The three components also are not "related." To qualify as related, the components of an initiative must share a common purpose, and must be operationally related to each other, such that a reasonable voter would likely favor or disfavor the initiative as a whole. The Challenged Initiative's three components do not share a sufficiently concrete common purpose to satisfy the relatedness requirement. A graduated income tax has no purposive similarity with spending on two distinct policy areas—education and transportation—to the exclusion of others. A voter who

supports the graduated tax might not want to spend the revenue on education and transportation, but might prefer instead to reduce other taxes, or to spend the increased revenue on public health care, affordable housing, or clean energy subsidies. Similarly, a voter may oppose a graduated income tax, but support increased education and transportation funding. Finally, a voter might reasonably support increased spending on either education *or* transportation, but not on the other. For any of these voters, it would be impossible to cast a coherent up-or-down vote on the Challenged Initiative as a whole.

47. The Court has invalidated initiative petitions with subjects that are much more closely related than a graduated income tax and a dedication of revenue to education and transportation, to the exclusion of other purposes. For instance, in *Gray v. Attorney General*, 474 Mass. 638, 647 (2016), the Court rejected on relatedness grounds an initiative that included two proposals concerning education policy: ending Common Core standards in public education, and requiring annual publication of state comprehensive assessment exams. Even though both aspects of the initiative petition dealt in some way with education, the Court deemed the two components "separate public policy issues," and held that the proposed initiative would place voters "in the untenable position of casting a single vote on two or more dissimilar subjects." *Id*. at 649 (internal quotation marks and citation omitted).

48. Similarly, in *Carney* v. *Attorney General*, 447 Mass. 218 (2006), the Court held that tightening criminal penalties for animal abuse lacked a sufficient operational relation to the abolition of the pari-mutuel dog racing industry. Although both of these components might have served a common purpose of protecting animal

welfare, the initiative improperly combined "criminal law and administrative overhaul," and voters might reasonably have supported one means, but not the other. *Id*. at 231.

49. Imposing a graduated income tax for the first time in the Commonwealth's history, and dedicating revenue to purposes as disparate as bridge repairs and teacher salaries, are even less related than the subjects deemed too unrelated in *Gray* and *Carney*. The Attorney General thus erred in certifying the Challenged Initiative, for it does not "contain[] only subjects … which are related or which are mutually dependent."

50. The Court therefore should declare that the Challenged Initiative is inconsistent with Article 48, and order it excluded from the ballot.

COUNT TWO

THE INITIATIVE MAKES A SPECIFIC APPROPRIATION

51. Paragraphs 1-50 are incorporated by reference.

52. Article 48 bars any initiative petition that "makes a specific appropriation of money from the treasury of the commonwealth." Art. 48, Pt. II, § 2.

53. The purpose of this bar on specific appropriations is to ensure that initiative petitions cannot place specific funds outside of the Legislature's control.

54. The Court has held that a proposed initiative petition that would have amended the Constitution to require that certain revenue be spent "only" on "highway purposes" was a forbidden appropriation because it left the Legislature "powerless to appropriate any revenue from that source to any other public use." *Opinion of the Justices (1937)*, 297 Mass. at 580. "Permanently to lay hold of and appropriate to a

single public use all the revenue derived from one source of taxation … is a 'specific appropriation' with [the] prohibition [of Article 48]." *Id*. at 581.

55. The Challenged Initiative constitutes an impermissible specific appropriation for the same reason. Like the initiative excluded from the ballot in *Opinion of the Justices (1937)*, the Challenged Initiative forces the Legislature, as a matter of constitutional law, to spend designated state funds "only" on education and transportation. The Legislature would be powerless to spend the revenue from this tax on any other cause—whether MassHealth, the opioid epidemic, affordable housing, clean energy, or any of the other pressing issues that currently face the Commonwealth, or that could arise in the future.

56. The phrase "subject to appropriation" in the Challenged Initiative does not save it from being a specific appropriation, as supporters of the Challenged Initiative have suggested. *See, e.g.*, Exhibit 7 at 5-6. Whether or not the revenue raised by the surtax ever actually is appropriated for transportation and education, it still cannot be used for any other subject under the Challenged Initiative's "only" clause. That restriction on the Legislature's discretion over how to spend state revenue is precisely the same flaw that doomed the initiative in *Opinion of the Justices (1937)*.

57. Contrary to arguments made by supporters of the Challenged Initiative, it also is not like Article 104, which was adopted by initiative petition and which requires that funds from certain transportation-related sources be spent "only" on transportation-related purposes. *See, e.g.*, Exhibit 7 at 6. Article 104 merely reproduced the existing spending restriction found in Article 78, which was not

introduced by initiative petition and therefore was not subject to the "specific appropriation" bar. Article 104 did not add a new restriction on legislative discretion over the spending of state funds, but instead *expanded* legislative discretion by amending Article 78 to add "mass transportation" to Article 78's preexisting list of approved purposes. Because the adoption of Article 104 did not reduce existing legislative discretion, it was not a specific appropriation within the meaning of Article 48.

58. The Attorney General erred in certifying the Challenged Initiative because the Challenged Initiative makes an impermissible "specific appropriation of money from the treasury of the commonwealth," in violation of Article 48.

59. The Court therefore should declare that the Challenged Initiative is inconsistent with Article 48, and order it excluded it from the ballot.

COUNT THREE

THE INITIATIVE IMPERMISSIBLY ESTABLISHES A TAX RATE IN THE CONSTITUTION

60. Paragraphs 1-59 are incorporated by reference.

61. The framers of Article 48 intended that "[t]he general supervision of ways and means for the needs of the Commonwealth was reserved to the General Court," not voters. *Opinion of the Justices (1937)*, 297 Mass. at 580. This is reflected in Article 48's specific appropriation ban, and in Article 48's presumption that the Legislature would raise any tax revenue necessary to fund spending required by a statutory petition initiative.

62. Never in the history of the Commonwealth has a tax or tax rate been set in the Constitution, whether by initiative petition or otherwise. The delegates to

the Constitutional Convention of 1917-1918 never even discussed the possibility of that occurring. It beggars belief that the delegates would have been so careful to exclude voters from exercising ultimate control over spending via initiative petition, while leaving the door open for voters to exercise ultimate control over the opposite side of the ledger—the revenue needed for spending—by setting tax policy via initiative petitions to amend the Constitution. Article 48 should be construed as precluding constitutional amendments via initiative petition that would usurp legislative control over either revenue or spending.

63. The Attorney General erred in certifying the Challenged Initiative because Article 48 does not allow an initiative petition to amend the Constitution to establish a specific tax and tax rate.

64. The Court therefore should declare that the Challenged Initiative is inconsistent with Article 48, and order it excluded it from the ballot.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that the Court:

1. Declare that the Challenged Initiative fails to meet the requirements of Article 48 of the Amendments to the Massachusetts Constitution;
2. Declare that the Attorney General erred as a matter of law in certifying the Challenged Initiative under Article 48 of the Amendments to the Massachusetts Constitution;
3. Quash the Attorney General's certification of the Challenged Initiative;
4. Enjoin the Secretary of the Commonwealth from placing the

Challenged Initiative on the general election ballot; and

5. Afford Plaintiffs such other relief as is just and proper.

Respectfully submitted,

Plaintiffs Christopher Anderson, Christopher Carlozzi, Richard Lord, Eileen McAnneny, and Daniel O'Connell,

By their attorneys,

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Dated: October 3, 2017

CERTIFICATE OF SERVICE

I, Kevin P. Martin, counsel for Plaintiffs Christopher Anderson, Christopher Carlozzi, Richard Lord, Eileen McAnneny, and Daniel O'Connell, hereby certify that I have served a copy of this Complaint by causing it to be delivered by hand this 3rd day of October, 2017, to:

The Honorable Maura Healey
Attorney General of Massachusetts
One Ashburton Place
Boston, MA 02108

The Honorable William F. Galvin
Secretary of the Commonwealth
One Ashburton Place
Boston, MA 02108

_____
Kevin P. Martin