

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL  
COURT

CHRISTOPHER R. ANDERSON AND 54  
OTHER VOTERS,

No. \_\_\_\_\_

Plaintiffs,

COMPLAINT

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.

**INTRODUCTION**

1. The citizens of Massachusetts are asked to vote on amendments to the state constitution only rarely. Deciding whether to approve an amendment is among a citizen's most important duties, for constitutional amendments bind the political branches' hands and an improvident amendment can be repealed only after years have passed and irreparable damage done. It therefore is absolutely essential that voters be provided accurate information when they step into the voting booth—that voters not be misled into supporting a constitutional amendment the substance of which they oppose. This Court is entrusted with policing the summaries of amendments given to voters both for accuracy and fairness. In this lawsuit, Plaintiffs are asking the Court to exercise that authority with respect to a proposed amendment slated to appear on the November 2022 ballot.

2. Specifically, this case concerns the “Proposal for a legislative amendment to the Constitution to provide resources for education and transportation through an additional tax on incomes in excess of one million dollars” (“the Graduated Income Tax Amendment” or “the Amendment”). The Graduated Income Tax Amendment is a carbon copy of the proposed amendment this Court excluded from the November 2018 ballot because it ran afoul of the constitutional prohibition on *initiative petitions* combining unrelated subject matters. *See Anderson v. Att’y Gen.*, 479 Mass. 780, 794-802 (2018) (“*Anderson I*”). By reintroducing the same subject matter through a *legislative amendment* to the Constitution, proponents have avoided that same pitfall for the November 2022 ballot.

3. The summary description of the Graduated Income Tax Amendment for the 2022 ballot, however, still must be fair and not be misleading. To that end, the Attorney General must provide a “fair” summary of the Amendment (the “Summary”) and the Attorney General and the Secretary of the Commonwealth must provide a “fair and neutral” one-sentence statement describing the effect of a vote in favor of the Amendment (the “Yes Statement”). *See* G.L. c. 54, § 53; Mass. Const. Amends. art. 48, *amended by* Mass. Const. Amends. art. 74.

4. Unfortunately, the Attorney General and Secretary (together, “Defendants”) appear intent on providing voters an unfair and misleading Summary and Yes Statement—the same unfair and misleading Summary and Yes Statement they were preparing to use in 2018. Plaintiffs wrote to Defendants more than two months ago to ask them instead to use a fair and accurate description of the Amendment, even suggesting language that would have obviated this lawsuit.

Defendants never responded, and now the informal deadline this Court announced in *Hensley v. Att’y Gen.*, 474 Mass. 651, 671 (2016), for Defendants to release proposed summary language has passed.

5. The problem is this: the Summary and Yes Statement will suggest to voters that new revenues raised by the Graduated Income Tax Amendment only can be used to fund new spending on education and transportation. But that is completely misleading. As the Attorney General told this Court in *Anderson I*:

The Legislature would retain ultimate discretion over spending choices for the . . . reason that money is fungible. 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. . . . As long as the total spending in these combined categories did not fall below the revenue generated by the surtax in any particular year, the Legislature would be in compliance with the proposed amendment.

Br. of the Appellees at 26-27, *Anderson I*, No. SJC-12422 (Mass.), 2018 WL 557688, at \*27 (Jan. 12, 2018) (“AG *Anderson I* Br.”). Thus, as the Attorney General acknowledged in 2018, the Graduated Income Tax Amendment sets up a shell game. Voters will be told the new money must be used for education and transportation, but because state tax revenues are “fungible,” the Legislature will have “ultimate discretion” over which budget categories actually see spending increases.

6. Voters should not be misled in the November election, but Defendants never responded when Plaintiffs wrote to them about this problem. And Plaintiffs’ concerns about the misleading nature of the Summary and Yes Statement are not just attorney argument, as recent polling data conclusively demonstrates that voters feel misled by the summary language Defendants proposed to use in 2018. A remarkable

72% of poll respondents, from across the political spectrum, reported feeling misled by the Defendants' 2018 summary language, after they were provided the Attorney General's explanation how the Amendment really works from *Anderson I*.

7. Defendants' refusal to commit to using a fair Summary and Yes Statement is especially troubling because polling data also shows a high risk that voters may be misled into approving the Graduated Income Tax Amendment despite opposing its substance. A slim majority of poll respondents voiced support for the Amendment when provided the misleading Summary and Yes Statement, but a plurality then said they opposed it when provided the Attorney General's clarifying language from *Anderson I*. This is the nightmare scenario which the requirement for a *fair* summary of a proposed constitutional amendment was designed to avoid.

8. Defendants should not tell this Court one thing in briefing and voters something else entirely in the voting booth. If Defendants refuse to include the clarifying language from the Attorney General's *Anderson I* brief in their Summary and Yes Statement, then this Court must exercise its oversight authority to prevent voters from being misled. In particular, the Court should bar Defendants from placing the Amendment on the ballot unless the Attorney General has agreed to include in the Summary the following clarifying language taken almost verbatim from the Attorney General's *Anderson I* brief: "The Legislature could choose to reduce funding on education and transportation from other sources and replace it with the new surtax revenue because the Graduated Income Tax Amendment does not require otherwise." And if the Amendment does appear on the ballot, then the Court should require Defendants to include in the Yes Statement additional clarifying

language taken almost verbatim from the Attorney General’s *Anderson I* brief: “A YES VOTE would amend the state Constitution to impose an additional 4% tax on that portion of incomes over one million dollars to be used, subject to appropriation by the state Legislature, on education and transportation, though 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.”

### **JURISDICTION**

9. The Court has jurisdiction over plaintiffs’ challenge to the Summary pursuant to G.L. c. 249, §§ 4 and 5, and c. 231A, § 1.

10. The Court has jurisdiction over plaintiffs’ challenge to the Statement pursuant to G.L. c. 54, § 53, and c. 231A, § 1.

### **PARTIES**

11. Plaintiff Christopher R. Anderson is a registered voter, taxpayer, and resident 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 other Plaintiffs are all concerned that voters not be misled into supporting the Graduated Income Tax Amendment by a false promise that the new

revenues it raises only can be used to fund new transportation and education spending, and not new spending in other areas of the budget.

12. Plaintiff Nick Boldyga is a registered voter, taxpayer, and resident of Southwick, Massachusetts. He is the Massachusetts State Representative for the 3rd Hampden District, which he has represented since 2010.

13. Plaintiff David DeCoste is a registered voter, taxpayer, and resident of Norwell, Massachusetts. He is the Massachusetts State Representative for the 5th Plymouth District, which he has represented since 2014.

14. Plaintiff Colleen Garry is a registered voter, taxpayer, and resident of Dracut, Massachusetts. She is the Massachusetts State Representative for the 36th Middlesex District, which she has represented since 1995.

15. Plaintiff Marc Lombardo is a registered voter, taxpayer, and resident of Billerica, Massachusetts. He is the Massachusetts State Representative for the 22nd Middlesex District, which he has represented since 2011.

16. Plaintiff Cece Calabrese is a registered voter, taxpayer, and resident of Agawam, Massachusetts. She is the City Council Vice President for Agawam, Massachusetts.

17. Plaintiff Irina Aguirre is a registered voter, taxpayer, and resident of Chestnut Hill, Massachusetts.

18. Plaintiff Pascal Aguirre is a registered voter, taxpayer, and resident of Chestnut Hill, Massachusetts.

19. Plaintiff Robert Ash, Jr., is a registered voter, taxpayer, and resident of Danvers, Massachusetts.

20. Plaintiff Gordon Bennett is a registered voter, taxpayer, and resident of Brookline, Massachusetts.

21. Plaintiff Judith Anne Bevis is a registered voter, taxpayer, and resident of Swampscott, Massachusetts.

22. Plaintiff Robert H. Bradley is a registered voter, taxpayer, and resident of Wellesley, Massachusetts.

23. Plaintiff Ronald Brooks is a registered voter, taxpayer, and resident of Swampscott, Massachusetts.

24. Plaintiff Tony Burr is a registered voter, taxpayer, and resident of Marion, Massachusetts.

25. Plaintiff Gary Campbell is a registered voter, taxpayer, and resident of Andover, Massachusetts.

26. Plaintiff Christopher Carozzi is a registered voter, taxpayer, and resident of Malden, Massachusetts.

27. Plaintiff John C. Childs is a registered voter, taxpayer, and resident of Needham, Massachusetts.

28. Plaintiff William Clafin IV is a registered voter, taxpayer, and resident of Boston, Massachusetts.

29. Plaintiff Frederic M. Clifford is a registered voter, taxpayer, and resident of Duxbury, Massachusetts.

30. Plaintiff Paul Craney is a registered voter, taxpayer, and resident of Agawam, Massachusetts.

31. Plaintiff Michael M. Davis is a registered voter, taxpayer, and resident of Newton, Massachusetts.

32. Plaintiff Elizabeth Harmer Dionne is a registered voter, taxpayer, and resident of Belmont, Massachusetts.

33. Plaintiff Michael D'Onofrio is a registered voter, taxpayer, and resident of West Roxbury, Massachusetts.

34. Plaintiff Walter Downey is a registered voter, taxpayer, and resident of West Roxbury, Massachusetts.

35. Plaintiff Denise A. Doyle is a registered voter, taxpayer, and resident of Boston, Massachusetts.

36. Plaintiff Zhanna Drogobetsky is a registered voter, taxpayer, and resident of Newton, Massachusetts.

37. Plaintiff Peter Goedecke is a registered voter, taxpayer, and resident of Boston, Massachusetts.

38. Plaintiff Jeffrey Gordon is a registered voter, taxpayer, and resident of Norwell, Massachusetts.

39. Plaintiff Rick Green is a registered voter, taxpayer, and resident of Pepperell, Massachusetts.

40. Plaintiff Timothy Francis Hegarty is a registered voter, taxpayer, and resident of Needham, Massachusetts.

41. Plaintiff Charles C. Hewitt III is a registered voter, taxpayer, and resident of Marshfield, Massachusetts.



42. Plaintiff Lucile Hicks is a registered voter, taxpayer, and resident of Needham, Massachusetts.

43. Plaintiff James S. Hughes is a registered voter, taxpayer, and resident of Boston, Massachusetts.

44. Plaintiff Harvey Hurvitz is a registered voter, taxpayer, and resident of Westwood, Massachusetts.

45. Plaintiff Matthew P. Jordan is a registered voter, taxpayer, and resident of Needham, Massachusetts.

46. Plaintiff Michael Kane is a registered voter, taxpayer, and resident of Framingham, Massachusetts.

47. Plaintiff Robert S. Kaplan is a registered voter, taxpayer, and resident of Belmont, Massachusetts.

48. Plaintiff Joshua Katzen is a registered voter, taxpayer, and resident of Newton, Massachusetts.

49. Plaintiff Gary Kearney is a registered voter, taxpayer, and resident of Boston, Massachusetts.

50. Plaintiff Mark Latina is a registered voter, taxpayer, and resident of North Andover, Massachusetts.

51. Plaintiff Jake Layton is a registered voter, taxpayer, and resident of Westwood, Massachusetts.

52. Plaintiff Pamela Layton is a registered voter, taxpayer, and resident of Westwood, Massachusetts.

53. Plaintiff William J. Lundregan III is a registered voter, taxpayer, and resident of Marblehead, Massachusetts.

54. Plaintiff Eileen McAnneny is a registered voter, taxpayer, and resident of Melrose, Massachusetts.

55. Plaintiff Joel P. Murray is a registered voter, taxpayer, and resident of Westwood, Massachusetts.

56. Plaintiff Tom Palmer is a registered voter, taxpayer, and resident of Natick, Massachusetts.

57. Plaintiff Adam Portnoy is a registered voter, taxpayer, and resident of Boston, Massachusetts.

58. Plaintiff Elizabeth Powell is a registered voter, taxpayer, and resident of Needham, Massachusetts.

59. Plaintiff Robert Reynolds is a registered voter, taxpayer, and resident of Concord, Massachusetts.

60. Plaintiff Grant Schaumburg is a registered voter, taxpayer, and resident of Boston, Massachusetts.

61. Plaintiff Roger Servison is a registered voter, taxpayer, and resident of Brookline, Massachusetts.

62. Plaintiff James Stergios is a registered voter, taxpayer, and resident of Brookline, Massachusetts.

63. Plaintiff Lawrence Stifler is a registered voter, taxpayer, and resident of Brookline, Massachusetts.

64. Plaintiff Frank Wezniak is a registered voter, taxpayer, and resident of Boston, Massachusetts.

65. Plaintiff Pendleton P. White, Jr., is a registered voter, taxpayer, and resident of Boston, Massachusetts.

66. 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.

67. 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**

68. This case concerns the proposed Graduated Income Tax Amendment to the Massachusetts constitution, which states, in full:

Article 44 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 taxpayers, this \$1,000,000 (one million dollars) 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, 2023.

True and correct copies of the Graduated Income Tax Amendment, as adopted by the General Court in 2019 and 2021, are attached as Exhibits 1 and 2.

### **I. The Constitutional Amendment Process**

69. Article 48 allows proposed amendments to the Constitution to be introduced in two ways: by initiative petition, or by a member of the Legislature. This case concerns the latter—a “legislative amendment.” If a member of the Legislature introduces a proposed constitutional amendment, it must receive the affirmative votes of a majority of the elected members sitting in Constitutional Convention in order to proceed. Mass. Const. Amends. art. 48, 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, the Secretary 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.*

70. The Constitution and General Laws include two provisions meant to ensure that voters are given the information necessary to cast an informed vote on a proposed constitutional amendment (or other ballot question).

71. First, Article 48, as amended by Article 74, requires the Attorney General to draft a “fair, concise summary ... of each proposed amendment to the constitution[.]” Mass. Const. Amends. art. 74. That summary must be distributed to voters in advance of the election and also “printed on the ballot” itself. *Id.* This Court has stated, in adjudicating a challenge to a summary under Article 48, that “whether or not the requirements of the Constitution have been observed and a valid

law has been enacted is a justiciable question to be determined” by the judiciary.

*Sears v. Treasurer and Receiver Gen.*, 327 Mass. 310, 321 (1951).

72. Second, General Laws Chapter 54, section 53 provides that the Secretary:

shall cause to be printed and sent to all residential addresses and to each voter residing in group residential quarters, with copies of the measures to which they refer, a summary prepared by the attorney general, a ballot question title prepared jointly by the attorney general and state secretary, fair and neutral 1-sentence statements describing the effect of a yes or no vote prepared jointly by the attorney general and the state secretary, a statement of not more than 100 words prepared by the secretary of administration and finance regarding the fiscal consequences of the measure for state and municipal government finances and, as provided in section 54, arguments for and against measures to be submitted to the voters.

Section 53 also authorizes “[a]ny 50 voters” to “petition the supreme judicial court for Suffolk county to require that a title or statement be amended” if they are “false, misleading or inconsistent with the requirements of this section.”

73. In *Hensley*, this Court stated that any challenge to the Attorney General’s summary of a ballot question pursuant to Article 48 should be brought “not later than February 1 of the election year.” 474 Mass. at 671.

74. In *Hensley*, the Court also addressed when Defendants should publish their proposed summaries and one-sentence statements. As the Court explained, section 53 allows the Secretary to publish its one-sentence statements as late as “the second Wednesday in May.” *Hensley*, 474 Mass. at 671. But the Court “ask[ed] the Attorney General and the Secretary to consider preparing and publishing the title and one-sentence statements under § 53 no later than twenty days in advance of February

1 of the election year, so that parties who commence an action asserting constitutional challenges under art. 48 might also bring a statutory claim under § 53, in the same case at the same time. If that were done, challenges brought under the statute would proceed in the normal course, at a more orderly pace, and not, as here, at the proverbial eleventh hour.” *Id.* at 671-672. This year, that date was January 12, 2022.

## **II. The History of the Graduated Income Tax Amendment**

### **A. Massachusetts Always Has Required That Any Income Tax Be Imposed At A Flat Rate**

75. Restrictions on the taxing power in Chapter I, Section I, 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 Articles of Amendment 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—salaries versus capital gains, for instance—it cannot impose different tax rates on the same type of income based on the amount of income received.

76. Since 1915, five proposed constitutional amendments have been placed on the ballot to amend Article 44 to allow the Legislature to establish graduated income tax rates. 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.

### **B. Graduated Income Tax Proponents Introduce an Initiative Petition Putatively Linking Increased Taxes to Increased**

**Education and Transportation Spending, Which This Court  
Excludes from the 2018 Ballot**

77. The Graduated Income Tax Amendment is the latest step in the latest attempt to amend the Massachusetts constitution to introduce a graduated income tax.

78. The Graduated Income Tax Amendment's origins date back to 2015, when ten citizens submitted an initiative petition to the Attorney General proposing a constitutional amendment substantively identical to the Graduated Income Tax Amendment ("the Initiative Petition"). A true and correct copy of the Initiative Petition is attached as Exhibit 3.

79. Supporters of the Initiative Petition openly admitted that their goal was logrolling: to leverage popular support for public education and transportation spending in order to overcome voters' historic antipathy to a graduated state income tax. To that end, the Initiative Petition's proponents and supporters consistently asserted that new revenues raised by the tax would be used for new spending on education and transportation, while assuring voters the new revenues would not be used to increase spending in other areas of the budget.

80. For instance, former State Senate President Stan Rosenberg, a supporter of the Initiative Petition, stated that the Initiative Petition "will stand a better chance of being approved" than previous attempts to impose a graduated income tax 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 new tax revenues would be spent. Exhibit 4 at 2.

81. Former Representative Kaufman, Chairperson of the Joint Committee on Revenue, explained, at the June 14, 2017 joint legislative session, that he

supported the Initiative Petition because it addressed “two fundamental challenges. One is the lack of adequate funds for education, and the other is the lack of adequate funds for transportation.” Exhibit 5 at 2.

82. A “FAQ” prepared by the House Committee on Revenue that advocated for the Initiative Petition similarly asserted that the Initiative Petition “provides certainty to the taxpayer on who will be taxed, how much the tax will be, and what the revenue will be spent on (education and transportation)”; that the petition would “fund essential investments in education and transportation”; that the petition was needed due to “underinvestment in our transportation and education system”; and that the petition was “narrowly tailored to meet Massachusetts’ education and transportation needs.” Exhibit 6 at 1, 3-4.

83. One of the questions the FAQ addressed was: “How will the government spend the *additional* revenue?” The answer it provided was: “The language of the Fair Share Amendment explicitly requires that the *additional* revenue raised may only be spent on education and transportation costs. For transportation, this would mean improved maintenance for our roads, bridges, and public transportation infrastructure but could improve services for people with disabilities through services like The Ride. For education, this could mean expanding early education and care, more direct funding for public elementary and secondary schools, as well as lower tuition and fees for public higher education, increased state aid for students, and more robust job training and adult basic education programs.” Exhibit 6 at 5 (emphases added).



84. On September 2, 2015, the Attorney General certified, pursuant to Article 48, Pt. 2, § 3, that the Initiative Petition was consistent with the requirements of Article 48 for initiative petitions. On June 18, 2018, however, this Court held that the Attorney General had improperly certified the Initiative Petition because it addressed unrelated subjects in violation of Article 48's restrictions on initiative petitions. *See Anderson I*, 479 Mass. at 794-802. The Initiative Petition therefore did not appear on the 2018 ballot.

85. Another argument plaintiffs made in *Anderson I* was that the Initiative Petition constituted a specific appropriation of revenues, which Article 48 excludes as a proper subject for initiative petitions to amend the constitution. While this Court did not reach that argument, the position taken by the Attorney General in response to that argument is central to the current litigation.

86. Specifically, the Attorney General argued to this Court in *Anderson I* that the Initiative Petition did not constitute a forbidden specific appropriation because it did not practically restrict how the Legislature could spend the new tax revenues. As the Attorney General's brief explained, state spending on education and transportation has been approximately \$10 billion to \$11 billion each year, while incremental revenue from the Initiative Petition was anticipated to be approximately \$1.9 billion. Based on these facts:

The Legislature would retain ultimate discretion over spending choices for the additional reason that money is fungible. 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. *See New England. Div. of Am. Cancer Soc. v. Comm'r of Admin.*, 437 Mass. 172, 181 (2002) (state

money may be moved among funds to meet obligations). As long as the total spending in these combined categories did not fall below the revenue generated by the surtax in any particular year, the Legislature would be in compliance with the proposed amendment. *See Mitchell v. Secretary of Administration & Finance*, 413 Mass. 330, 333-334 (1992) (Legislature would remain in compliance with Amend. Art. 78 if it appropriated more for enumerated purposes than dedicated revenue sources yielded).

AG *Anderson I* Br., 2018 WL 557688, at \*27 (footnote omitted). At oral argument, Chief Justice Gants asked counsel for the Attorney General to confirm that this was the Attorney General's understanding, and counsel confirmed that it was.

**C. The Legislature Approves the Same Proposed Graduated Income Tax Measure As a Legislative Amendment to the Constitution, Again Using Education and Transportation Spending as a Lure**

87. Following *Anderson I*, Representative O'Day reintroduced the Initiative Petition as a legislative amendment, *i.e.*, the Graduated Income Tax Amendment.

88. On June 12, 2019, the General Court met to consider the Graduated Income Tax Amendment. At that session, a group of Representatives proposed an amendment ("Amendment 1") to the Graduated Income Tax Amendment that would close the loophole identified by the Attorney General in her *Anderson I* brief. The amendment would have added language specifying that "any funds appropriated [for education and transportation] shall be in addition to and not in lieu of funds appropriated for [education and transportation] in the fiscal year most recently completed prior to the enactment of this amendment." Exhibit 7 at 3.

89. State Senator Tarr explained the rationale behind Amendment 1 as follows:

The gentleman's very simple amendment says exactly what's been said all along in this discussion, that the revenues generated by the proposal would be used to add to, not to be supplanted for, the amount of revenue we are already spending on those things. How many times have we heard we are going to have a net gain? A net gain. How many times have we heard we'll have an increase in net amount of spending for transportation and education? Well, we've been educated. The result of the education is the formulation of this amendment. All left to do now is approve this amendment and say, we mean what we've been saying.

A true and correct copy of the proceedings of the General Court, as prepared by the State House News Service, is attached as Exhibit 8. *See* Exhibit 8 at 7.

90. Representative Jones explained that the new language was needed to avoid a "bait-and-switch" scenario in which, after voters approve the Graduated Income Tax Amendment because they want more education and transportation spending, "the \$2 billion raised gets spent in those areas, and then we back out money we currently spend in those areas and spend it elsewhere." Exhibit 8 at 6.

91. The General Court rejected the amendment to the Graduated Income Tax Amendment by a vote of 6-33 in the Senate and 34-123 in the House, and then voted in favor of the Graduated Income Tax Amendment as written. Exhibit 8 at 8, 19.

92. On June 9, 2021, the General Court again convened to consider the Graduated Income Tax Amendment. A majority of the General Court again voted in favor of the Amendment. Exhibit 9 at 9.

**D. The Public Debate Over the Amendment Remains Misleading**

93. Despite the Attorney General's acknowledgement in *Anderson I* that the Legislature will retain the "ultimate discretion" over where the incremental new

revenues raised by the Graduated Income Tax Amendment are spent, supporters of the Graduated Income Tax Amendment have persisted in asserting that any new revenues must be used only for new education and transportation spending.

94. At the 2021 convention, members of the Legislature continued to characterize the Graduated Income Tax Amendment as both increasing taxes and “invest[ing] the proceeds in public education and transportation.” Exhibit 9 at 2. Supporters of the Amendment never acknowledged that the Legislature would retain discretion over how to spend the incremental new revenues, as described in the Attorney General’s *Anderson I* brief. To the contrary, shortly after that convention, Senator Jason Lewis, the lead Senate sponsor of the Graduated Income Tax Amendment, released a press release stating: “The revenue generated [from the Amendment] would fund repair and maintenance projects for roads, bridges and public transportation; preK-12 public schools; and public colleges and universities in Massachusetts.” Exhibit 10. Senator Lewis also stated that “[t]he ‘millionaires tax’ proposal is clear that all the new revenue raised must be used for investments in public education and transportation, both areas that lawmakers and the public overwhelmingly agree need additional resources.” Exhibit 11 at 3.

95. Raise Up Massachusetts, the group that has led the campaign to enact the Graduated Income Tax Amendment, also has characterized the Amendment as assuring increased spending on education and transportation. For instance, in a May 5, 2021, press release, the group stated that “the proposed state tax on incomes above \$1 million . . . would raise approximately \$2 billion a year for spending on transportation and public education.” Exhibit 12 at 2. And in a November 10, 2021,

job posting for a “Campaign Manager” for the “Fair Share Amendment,” Raise Up Massachusetts described the Graduated Income Tax Amendment as “creating a millionaires’ tax of 4% that would raise significant resources for public education and transportation.” Exhibit 13 at 1.

96. Other organizations supporting the Graduated Income Tax Amendment similarly have urged voters to endorse the Graduated Income Tax Amendment on the basis that it will lead to increased spending in education and transportation. For instance, the American Federation of Teachers-Massachusetts, has stated that the Amendment will “raise a substantial amount of NEW revenue annually to be re-invested into our public education system and transportation infrastructure.” Exhibit 14 at 1. Massachusetts Teachers Association has stated that the Amendment will “make sure that public education gets the permanent funding it deserves” and “would change the state’s Constitution to help address the chronic underfunding of our public schools, colleges and universities. The amendment would add 4 percentage points to the tax on income above \$1 million, generating up to \$2 billion annually for public education and transportation.” Exhibit 15 at 1. And the Massachusetts Education Justice Alliance has said the Amendment “will lead to investments in quality public schools, affordable higher education, and a reliable transportation system by creating an additional tax of four percentage points on annual income above \$1 million.” Exhibit 16 at 1.

97. Press coverage of the Graduated Income Tax Amendment has included statements from supporters of the Amendment characterizing it as raising money that will support incremental “new” and “added” spending “dedicated” to education and

transportation. For instance, WGBH reported that “[s]upporters of the amendment say it would give the state nearly \$2 billion in new revenues annually, creating a crucial new funding stream for public education and transportation.” Exhibit 17 at 2. The Boston Business Journal reported that “[t]he proposal remains unaltered — a surtax on annual income over \$1 million, to fund schools and transportation.” Exhibit 18 at 1. And WBUR reported that “Democrats on Beacon Hill have been pursuing the tax policy change for years and supporters say the surtax could generate \$2 billion per year, earmarked for education and transportation.” Exhibit 19 at 4.

98. Such public support for the Graduated Income Tax Amendment as exists has been driven, in large part, by the proponents’ efforts to link the new tax to new transportation and education spending. For example, research conducted by Echo Cove Research & Consulting on behalf of Raise Up Massachusetts showed that “continued support for [the Graduated Income Tax Amendment] accords with a renewed interest in public investments in education and transportation.” Exhibit 20 at 1.

**D. Defendants Are Poised to Use Summary Language for the Graduated Income Tax Amendment That Is Not Fair and Is Misleading**

99. Although this Court in *Hensley* asked Defendants to release their summary language by no later than 20 days before February 1 in an election year, Defendants have yet to do so for the Graduated Income Tax Amendment. Therefore, all Plaintiffs have to go by is the language Defendants previously stated they would use for the identical Initiative Petition in 2018.

100. In 2018, the Attorney General released a Summary for the Initiative Petition (the “2018 Summary”) which stated, in full:

This proposed constitutional amendment would establish an additional 4% state income tax on that portion of annual taxable income in excess of \$1 million. This income level would be adjusted annually to reflect increases in the cost of living by the same method used for federal income-tax brackets. Revenues from this tax would be used, subject to appropriation by the state Legislature, only for public education, public colleges and universities, the repair and maintenance of roads, bridges, and public transportation. The proposed amendment would apply to tax years beginning on or after January 1, 2019.

A true and correct copy of the 2018 Summary is attached as Exhibit 21.

101. In 2018, the Defendants also proposed a Yes Statement for the Initiative Petition (the “2018 Yes Statement”). It stated:

A YES VOTE would amend the state Constitution to impose an additional 4% tax on that portion of incomes over one million dollars to be used, subject to appropriation by the state Legislature, on education and transportation.

A true and correct copy of the 2018 Yes Statement, as published in the Massachusetts Register, is attached as Exhibit 22 at 1-2.

102. That language is not a fair summary of the Graduated Income Tax Amendment. To the contrary, it is misleading because it ignores the fungibility issue identified in the Attorney General’s *Anderson I* brief. The average voter would believe, based on the 2018 Summary and 2018 Yes Statement, that the Graduated Income Tax Amendment requires that the incremental new revenues be used for education and transportation spending and nothing else. In reality, and as the Attorney General previously acknowledged, the Amendment would permit the Legislature to leave spending in those areas flat—or even decrease it—while using all of the incremental new revenues to increase spending on other subjects.

103. To confirm that the 2018 Summary and 2018 Yes Statement are misleading to voters, Plaintiffs commissioned a poll, which was conducted in November 2021. In that polling, respondents first were presented with the 2018 Summary and 2018 Yes Statement. Based on those summaries, respondents were asked how they likely would vote on the Graduated Income Tax Amendment. Respondents then were asked whether they believed the Amendment will cause spending on education and transportation to increase. And they were asked to describe, in their own words, how they feel about the Amendment based on the 2018 Summary and 2018 Yes Statement. Exhibit 23 ¶¶ 3, 4.

104. Poll respondents then were presented with the language from the Attorney General's *Anderson I* brief quoted in paragraph 86, above, explaining that the Graduated Income Tax Amendment leaves the Legislature with "ultimate discretion" over how to spend the incremental tax revenues, because "the Legislature could choose to reduce funding in specified budget categories from other sources and replace it with the new surtax revenue." After being presented with the Attorney General's clarification concerning the Amendment, respondents again were asked how they likely would vote on the Amendment. Respondents also were asked whether they felt misled by the 2018 Summary and 2018 Yes Statement. Exhibit 23 ¶ 5.

105. The poll results were conclusive. They show that the 2018 Summary and 2018 Yes Statement are substantially misleading to a material number of voters, to such an extent that they may affect the outcome of the election.



106. To start, based on reading the 2018 Summary and 2018 Yes Statement, 35% of poll respondents inaccurately believed that the Graduated Income Tax Amendment *requires* increased spending on education and transportation. Only 24% of voters accurately understand that the Graduated Income Tax Amendment would not require increased spending on education and transportation. Another 41% of voters answered “Not Necessarily” or “Unsure.” Exhibit 23.1 at 2-3.

107. That is not all. After being provided the clarifying language from the Attorney General’s *Anderson I* brief, an overwhelming majority of poll respondents—72%, with remarkable consistency across the political spectrum—reported feeling misled by the 2018 Summary and 2018 Yes Statement. That an overwhelming majority of voters believe the Attorney General’s summary language is misleading, after being provided with the clarifying language from the Attorney General’s brief to this Court, should be dispositive on the question whether the 2018 Summary and 2018 Yes Statement are unfair and misleading. Exhibit 23.1 at 4.

108. Most disturbingly, the polling shows that the misleading 2018 Summary and 2018 Yes Statement could fool a majority of voters into supporting the Graduated Income Tax Amendment—even though a majority of voters oppose it, once they understand that the Legislature “would retain ultimate discretion over spending choice.” When provided only the 2018 Summary and 2018 Yes Statement, a slight majority of poll respondents said they would support the Amendment. But when provided the Attorney General’s clarifying language from *Anderson I*, a plurality of respondents said they would oppose the Amendment. Simply put, this is the nightmare scenario against which Article 74’s requirement of a “fair” Summary,

and Chapter 54's requirement of a "fair" one-sentence Yes Statement, were intended to guard. Exhibit 23.1 at 2, 4.

109. Individual respondents' narrative answers reinforce these quantitative results. For example, one respondent stated that, based on the 2018 Summary and 2018 Yes Statement, she "definitely" would vote for the Graduated Income Tax Amendment and that she "definitely" believes it requires increased spending on education and transportation. She added that she "would expect every single dollar of this additional 4% tax to go to public education and improving/maintaining our roads and bridges." After being provided with the Attorney General's language from *Anderson I*, however, she responded that the 2018 Summary and 2018 Yes Statement "definitely" were misleading and that she was "unsure" whether she would vote for the Amendment. Exhibit 23.2 at 13.

110. Another respondent stated that, based on the 2018 Summary and 2018 Yes Statement, he "definitely" would vote *for* the Amendment and that it "probably" requires increased spending on education and transportation. He wrote that the "extra revenue would come in handy. I think it would be helpful for public education, roads, and bridges." After being provided with the Attorney General's language from *Anderson I*, however, he responded that the 2018 Summary and 2018 Yes Statement "definitely" were misleading and that he "probably" would vote *against* the Amendment. Exhibit 23.2 at 38.

111. On November 16, 2021, following receipt of these poll results, Plaintiffs asked Defendants whether they intended to use the 2018 Summary and 2018 Yes Statement and, if not, when they would release their proposed summary and

statement for the 2022 ballot. Plaintiffs explained that, if Defendants used the 2018 Summary and 2018 Yes Statement, then Plaintiffs would consider filing a lawsuit within the timeframe established by *Hensley*. Plaintiffs proposed to Defendants that Defendants instead use the same clarifying language Plaintiffs seek in this lawsuit. And Plaintiffs explained that, if Defendants did not release a new summary and statement by January 12, 2022—*i.e.*, “twenty days in advance of February 1,” *Hensley*, 474 Mass. at 671—Plaintiffs would need to assume that Defendants were planning to use the 2018 Summary and 2018 Yes Statement. A true and correct copy of Plaintiffs’ letter is attached as Exhibit 24.

112. The January 12 deadline has come and gone. As of the date of this complaint, Defendants have not yet responded to Plaintiffs’ letter and have not yet released their proposed Summary and Yes Statement. February 1 is fast approaching. Plaintiffs therefore have no reasonable choice but to assume, for purposes of this lawsuit, that Defendants intend to use the 2018 Summary and 2018 Yes Statement for purposes of the 2022 ballot.

### **COUNT ONE**

#### **THE ATTORNEY GENERAL’S SUMMARY OF THE GRADUATED INCOME TAX AMENDMENT IS NOT “FAIR,” IN VIOLATION OF ARTICLE 48 AND ARTICLE 74 OF THE ARTICLES OF AMENDMENT**

113. Paragraphs 1-112 are incorporated by reference.

114. Article 48, as amended by Article 74, requires the Attorney General to prepare a “fair, concise summary . . . of each proposed amendment to the constitution” that will be both “printed on the ballot” and provided in advance of the election to voters. Mass. Const. Amends. art. 48, Gen. Prov., Pts. III, IV; *see also* art. 74.

115. The Attorney General’s proposed Summary is misleading, not “fair.” The Summary states, in relevant part: “Revenues from this tax would be used, subject to appropriation by the state Legislature, *only* for public education, public colleges and universities, the repair and maintenance of roads, bridges, and public transportation.” Exhibit 21 at 3 (emphasis added).

116. The average voter would understand this statement to mean the Graduated Income Tax Amendment allows the incremental tax revenues raised by the new tax to fund “only” new spending on public education and transportation, not increased spending in other areas. Indeed, that is what polling data shows voters to understand after reading the 2018 Summary and 2018 Yes Statement. The insinuation to voters that the new tax revenues will lead “only” to increased spending on education and transportation spending—and not increased spending on less popular purposes—is a key and intended feature of the Graduated Income Tax Amendment, designed to overcome voters’ repeated refusals to approve a graduated income tax when not linked to popular spending purposes.

117. In reality, however, the Graduated Income Tax Amendment does not require the Legislature to use the incremental new tax revenues raised for new education and transportation spending. The Legislature could keep spending on education and transportation completely flat (or even decrease it), while increasing spending on other purposes by the full incremental amount of the new tax revenues. So long as education and transportation spending *from all sources* does not fall below the amount of the tax—an unrealistic *decrease* of more than 80% from recent levels—there will be no violation of the Amendment.

118. The Attorney General previously emphasized this feature of the Graduated Income Tax Amendment, in arguing to this Court in 2018, with reference to multiple precedents of this Court, that “[t]he Legislature would retain ultimate discretion over spending choices for the additional reason that money is fungible. Because the [Graduated Income Tax 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.” *Supra* ¶ 85.

119. While that subtlety of the state budget might be clear to constitutional lawyers steeped in this Court’s precedents and budget experts, it is not clear to the average voter from the proposed Summary. Yet the Attorney General has refused to add the clarifying language from the *Anderson I* brief to the Summary.

120. Article 48 does not require summaries to be merely technically accurate, it requires them to be “fair.” The Summary here is not “fair,” because it misleadingly suggests that the new tax revenues only can lead to new spending on education and transportation, and not new spending in other areas through the redeployment of funds historically spent on education and transportation.

121. The Court should declare that the Summary is not “fair,” and hence violates Article 48. It should prohibit Defendants from placing the Amendment on the ballot unless the Attorney General has amended the Summary to include the clarifying language from the *Anderson I* brief: “Revenues from this tax would be used, subject to appropriation by the state Legislature, only for public education, public colleges and universities, the repair and maintenance of roads, bridges, and public transportation. The Legislature could, however, 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.”

## **COUNT TWO**

### **THE ONE-SENTENCE STATEMENT PREPARED BY DEFENDANTS IS “MISLEADING,” NOT “FAIR AND NEUTRAL,” IN VIOLATION OF GENERAL LAWS CHAPTER 54, § 53**

122. Paragraphs 1-121 are incorporated by reference.

123. Mass. General Laws Chapter 54, § 53 requires that Defendants jointly prepare “fair and neutral 1-sentence statements describing the effect of a yes or no vote.” It further provides that this Court “may issue an order requiring amendment” of a proposed statement if it is “false, misleading or inconsistent with the requirements of this section.”

124. Defendants’ proposed Yes Statement for the Graduated Income Tax Amendment is misleading, not fair and neutral. It states: “A YES VOTE would amend the state Constitution to impose an additional 4% tax on that portion of incomes over one million dollars to be used, subject to appropriation by the state Legislature, on education and transportation.” Exhibit 22 at 2-3.

125. As alleged in greater detail above, the average voter would understand this Yes Statement to mean that the Graduated Income Tax Amendment allows the new tax revenues to fund increased spending on public education and transportation, and not increased spending in other areas. That is not a fair summary, and it is misleading to voters.

126. In the Court does not exclude the Graduated Income Tax Amendment from the ballot, then it should order Defendants to amend the Yes Statement to read: “A YES VOTE would amend the state Constitution to impose an additional 4% tax

on that portion of incomes over one million dollars to be used, subject to appropriation by the state Legislature, on education and transportation, though 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.”

**PRAYER FOR RELIEF**

Wherefore, Plaintiffs request that the Court:

1. Declare that the Summary fails to meet the requirements of Article 48 of the Articles of Amendment to the Massachusetts Constitution, as amended by Article 74 of the Articles of Amendment to the Massachusetts Constitution;
2. Declare that the Yes Statement fails to meet the requirements of Mass. General Laws Chapter 54, § 53.
3. Order Defendants not to place the Graduated Income Tax Amendment on the 2022 ballot unless the Attorney General has amended the Summary to clarify that the Graduated Income Tax Amendment does not preclude the Legislature from reducing spending on education and transportation from other revenue sources and replacing it with the new surtax revenue.
4. If the Court does not exclude the Graduated Income Tax Amendment from the ballot, then order Defendants to amend the Yes Statement to clarify that the Amendment does not preclude the Legislature from reducing spending on education and transportation from other revenue sources and replacing it with the new surtax revenue.
5. Afford Plaintiffs such other relief as is just and proper.

Respectfully submitted,

Plaintiffs Christopher R. Anderson and  
54 other voters,

By their attorneys,

/s/ Kevin P. Martin

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Dated: January 27, 2022



**CERTIFICATE OF SERVICE**

I, Kevin P. Martin, counsel for Plaintiffs, hereby certify that I have served a copy of this Complaint by causing it to be delivered by hand this 27th day of January, 2022, 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

/s/ Kevin P. Martin  
Kevin P. Martin