COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

FOR SUFFOLK COUNTY

Case No. SJC-13885

LEWIS FINFER, ET. AL.,

PLAINTIFFS

V.

ANDREA JOY CAMPBELL, ET. AL.,

DEFENDANTS

AMICUS CURIAE BRIEF OF NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER, INC. IN SUPPORT OF DEFENDANTS

Date: 04/13/2026

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INTERESTS OF AMICUS CURIAE

The National Federation of Independent Business Small Business Legal Center, Inc. ("NFIB Legal Center") is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses. It is an affiliate of the National Federation of Independent Business, Inc. ("NFIB"), which is the nation's leading small business association. NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents, in Washington, D.C., and all 50 state capitals, the interests of its members. NFIB supported Initiative Petition 25-18, on behalf of itself and its members, who are small business owners in the Commonwealth of Massachusetts.

Beyond the fate of a single ballot initiative, NFIB Legal Center has an interest in ensuring that there is not an inordinately high bar for members of the public, including small business owners, to have their support for a policy realized in a ballot initiative. NFIB Legal Center seeks to protect the ballot initiative process from descending into needless complexity for drafters and confusion for voters, which include NFIB members.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court is being asked to decide whether a summary for a ballot initiative must include a legal analysis of all possible downstream effects on other statutes to be considered fair and concise.

Plaintiffs are challenging the Attorney General's summary of Initiative Petition 25-18, "Initiative Petition for a Law Relative to Reducing the State Personal Income Tax Rate from 5% to 4%." They claim that, because the initiative would affect other statutes about which it is silent, the Attorney General's summary—likewise silent about the initiative's downstream effects violates Article 48 of the Amendments to the Massachusetts Constitution. Article 48 requires nothing more than a "fair, concise summary," which is what the Attorney General provided: a correct statement of the ballot measure, mirroring its language and the language of the relevant statutory authority. Though the Part C tax rate may be indirectly affected, this is a downstream effect that did not need to appear in the summary.

Requiring a list of downstream effects goes beyond the Constitution's text. It also exceeds this Court's jurisprudence on what constitutes a fair summary and conflicts with this Court's instructions on the conciseness of a summary. The Court should treat with skepticism any claim that would extend the Attorney General's obligations in drafting a summary above and against what the Court has required for almost a century.

Additionally, Plaintiffs' complaint raises policy arguments that must be disregarded to avoid unnecessarily hampering the people's legislative voice in introducing a ballot measure. Instead, the Court should consider the weight of the constitutional text and case law, which show that the Attorney General's summary complies with art. 48, and thus, there is no reason to exclude the initiative from the ballot in the November 2026 election.

ARGUMENT

I. Requiring a Summary to List Downstream Effects Goes Beyond the Constitutional Requirements and Will Lead to Voter Confusion.

Article 48 of the Amendments to the Massachusetts Constitution established a simple requirement when it comes to ballot initiatives: that "a fair, concise summary, as determined by the attorney-general" must be included on the ballot. This was not always the case. The Constitution used to require a "description to be determined by the attorney-general," which was understood as a "complete and comprehensive description." *Bowe v. Sec'y of the Com.,* 320 Mass. 230, 242-43 (1946) (internal quotation omitted). This "was changed to 'a fair, concise summary, as determined by the attorney general.' Evidently . . . the intention was to relax the requirements which had been found implicit in the word description." *Id.* at 243.

To determine whether a summary is fair and concise, as opposed to complete and comprehensive, its language should be compared with that of the initiative. The text of the ballot initiative states, in relevant part[1]:

> (a)(l)(2) Part A taxable income consisting of interest and dividends shall be taxed at the rate of 4.67 per cent for the tax year beginning on January 1, 2027, 4.33 per cent for the tax year beginning on January 1, 2028, and 4.00 per cent for tax years beginning on or after January 1, 2029.
>
> (b) Part B taxable income shall be taxed at the rate of 4.67 per cent for the tax year beginning on January 1, 2027, 4.33 per cent for the tax year beginning on January 1, 2028, and 4.00 per cent for tax years beginning on or after January 1, 2029.

Quite similarly, the Attorney General's summary states:

> This proposed law would, over a period of three years, lower the tax rates on (1) personal taxable income consisting of interest and dividends, and (2) personal taxable income other than interest, dividends or capital gain income, such as wages and salaries. Both tax

[1] The ballot measure begins by stating that it amends Section 4 of Chapter 62, and both the ballot measure and summary conclude with references to a severability clause. Neither clause is germane to the challenge and have been omitted for clarity.

> rates were 5.00% for tax year 2024. The proposed law would set both tax rates at 4.67% for tax year 2027, 4.33% for tax year 2028, and 4.00% beginning in tax year 2029.

When compared side-by-side, the bulk of the summary's language tracks with that of the ballot measure itself. This should douse any claims of inaccuracy—as this Court held in *Associated Indus. of Massachusetts v. Sec'y of Com.*, a phrase "is not inaccurate" when it "tracks the basic language of the measure." 413 Mass. 1, 12 (1992). In addition, the summary does not omit anything that is present in either the initiative or the current iteration of Chapter 62, Section 4, as neither the initiative nor Section 4 define Part B income.

The only part of the summary where the language does not match the text of the initiative is the Attorney General's explanation of Part B income: "personal taxable income other than interest, dividends or capital gain income, such as wages and salaries." It is readily understandable why this insertion was made—the initiative explains what constitutes Part A income but does not explain Part B income. By adding an explanation of Part B income, the summary of each provision becomes symmetrical.

The explanation of Part B income was not an invention of the Attorney General. Instead, the language was lifted directly from Section 2(b) of Chapter 62. Part B income is defined therein as "Massachusetts gross income not included in

Part A or Part C gross income," with Part A income defined as "total interest, dividend, or capital gain income," and Part C income defined as "capital gain income which equals the gains from the sale or exchange of capital assets held for more than 1 year." Chapter 62, Sec. 2(b)(1)-(3). Put together, the Attorney General's summary defines Part B income exactly as Chapter 62 does: personal taxable income that is not the interest, dividends, or capital gains income described as Parts A or C income.

Far from being "patently false," as plaintiffs have characterized it, *see* Pl. Br. at 6, this addition is deeply rooted in the statutory language. Even if it can be misinterpreted by plaintiffs, this does not make it unfair. The Court dealt with a similar provision in *In re Opinion of the Justs.,* 309 Mass. 571, 589 (1941), where it held that the phrase "other than domestic servants or farm laborers" was "an accurate statement unless it is rendered inaccurate by the implied exclusion, from the application of the proposed law, of 'domestic servants' and 'farm laborers.' Such employees . . . are not absolutely excluded from the application of the proposed law." The potential rendering of the phrase a second way, however, did not pose a significant obstacle in upholding the summary: "the Constitution is not to be so interpreted as to place the rights of petitioners at the risk of a slight deviation from technical exactness in the language of the description[.]" *Id.* Just as the phrase "other than domestic servants or farm laborers," was accurate, the phrase "other than . . . capital gain income" is an accurate description of Part B income, and the entire ballot

initiative should not be placed at risk over what constitutes, at worst, the same "slight deviation from technical exactness." *Id.*

Even though the summary's language tracks the initiative and the statute in a way that comports with the case law, Plaintiffs claim that there is still a problem. Because Part C income, in another section of the General Laws, is calculated based on Part B income, the initiative would have a downstream effect on another provision. They insist that for a summary to be fair and concise, it must include such legal effects that occur downstream of the measure.[2]

On the contrary, a possible interaction between an initiative and existing statutes does not give rise to an obligation for the Attorney General to find and include it: "'[t]he Attorney General is not required to conduct a comprehensive legal analysis of the measure, including possible flaws. All the Constitution demands is a

[2] Plaintiffs' brief seeks to split hairs between a downstream consequence and an effect that occurs outside of the text of the initiative. *See* Pl. Br. at 39-42. As legal support for this theory, Plaintiffs cite *Koussa v. Att'y Gen.,* 489 Mass. 823 (2022), which is not on point, as its discussion of downstream consequences was in reference to the related subjects inquiry about the petition itself, not the summary's fair and concise requirement. But even if the two separate lines of inquiry were analogized, this case is not like *Koussa*. There, an instruction in the initiative expressly invoked "other laws to the contrary," and the Court held that it failed art. 48's related subjects requirement because "[a]n express instruction or directive in an initiative petition is different from a consequential effect." *Id.* at 837. Here, there was no express instruction about other laws—thus, the initiative's effect on Part C is a downstream consequence that was not required to be included in the text of the initiative or in the Attorney General's summary.

summary.'" *Abdow v. Att'y Gen.*, 468 Mass. 478, 505 (2014) (quoting *Mazzone v. Att'y Gen.*, 432 Mass. 515, 532 (2000)).

Consider how this Court handled the same issue in *Associated Indus. of Mass.* When plaintiffs alleged that a summary was unfair because it did not inform voters that monies could be spent for other purposes at the Legislature's discretion, this Court referred to the text of the measure to determine the fairness of the omission:

> The measure does not expressly state that the monies may be used for [other] purposes . . . [t]o require the Attorney General to state that the monies could be spent for other purposes would, in essence, require him to state a legal interpretation of the measure. Nothing in art. 48 requires the summary to include legal analysis or an interpretation.

Associated Indus. of Massachusetts, 413 Mass. at 12.

This gives us a metric by which to evaluate the lengths to which a summary must go: the language of the initiative itself. If the initiative does not expressly say that it would have a certain legal effect, requiring the Attorney General to find and include that effect exceeds her responsibilities. Instead, all that was required was a summary of the initiative, which, as noted above, was accomplished by tracking its exact language.

There is a twofold danger to the Court adopting Plaintiffs' position and requiring more of the Attorney General than either the Constitution or the case law

demands. First, requiring a legal analysis of downstream consequences would cut against the constitutional requirement that a summary be "concise." *See Bowe v. Sec'y of the Com.*, 320 Mass. 230, 243 (1946) ("[C]onciseness and completeness are often incompatible.") A summary that is not concise risks "a return to the overelaborate description which tended to confuse rather than clarify," that, "cluttered with detailed explanation and discussion, could no longer rightly be called a summary." *Massachusetts Tchrs. Ass'n v. Sec'y of Com.*, 384 Mass. 209, 228 (1981) (citing *Opinion of the Justices*, 357 Mass. 787, 799-800 (1970)). This elaboration risks ending in voter confusion: "it might fail of careful reading as a whole, and voters might not consider it of paramount importance." *Id.*

Second, adding a "downstream consequences" test would turn the Attorney General's summary into an exercise in poking holes in a ballot initiative. This is precisely the result that this Court has sought to avoid—summaries, after all, "must not be partisan, colored, argumentative, or in any way one-sided." *Sears v. Treasurer & Receiver Gen.*, 327 Mass. 310, 324 (1951). Yet, if the summary must include a legal analysis of potentially impacted statutes, then the Attorney General is cast in the role of devil's advocate, being on the lookout for countless ways in which the initiative, if enacted, could affect other statutes.

This upheaval would in turn have a profound effect upon members of the public who draft ballot measures—if they want to ensure that the summaries are

legally sufficient, they will be forced to add redundant or useless information into the text of the ballot measure, making it more argument than statute. This will result in poor legal drafting and reduce the chances that simple proposals are able to be included on the ballot. The initiative process would be worsened on both ends, as the text of initiatives would descend into indecipherable "legalese," the resulting summaries would become more complex, and ironically, the exact danger cited by Plaintiffs—confused voters—would be a virtual certainty.

II. The Court Should Not Be Swayed by Policy Arguments Against the Underlying Initiative.

Though Plaintiffs insist that "[t]his case . . . is *not* about the public policy debate over the merits of the Tax Rate Reduction initiative," Complaint at 2, (emphasis in original) they nevertheless lead with numerous policy assertions against the initiative, including effects on tax revenue. *Id.* Plaintiffs' complaint goes to great lengths to iterate criticisms of the initiative's content, because they seek, in part, to make this case about the tax dollars that labor unions and other groups will not be able to spend, rather than whether the Attorney General's summary is fair, which is the only actual legal issue.

Just as the provisions of art. 48 exist to safeguard the integrity of the ballot initiative process, so too must the prerogative of the people, in introducing a ballot initiative, be protected and not be subject to interference based on policy arguments

against it. A ballot initiative is ultimately the people's legislative action, which cannot be preemptively hampered by courts because of its content:

> [S]ince the judges are bound by the Constitution and must see that its provisions and conditions are at all times faithfully observed, they must determine that question [of art. 48 compliance] with sole reference to the facts of the case and the language of the Constitution and without the slightest regard to their own personal views as to the desirability or otherwise of the law involved.

Sears v. Treasurer & Receiver Gen., 327 Mass. 310, 321 (1951). *See also Bowe v. Secretary of the Commonwealth,* 320 Mass. 230, 247 (1946) ("[N]o court can interfere with the process of legislation, either by the General Court or by the people, before it is completed[.]"). Neither should courts let the fear of lost tax revenue sway them into removing a ballot initiative that complies with art. 48 and has received enough popular support—tens of thousands of signatures—to be certified by the Attorney General for inclusion on the ballot.

CONCLUSION

For these reasons, the Court should declare that the initiative can be presented to the voters in the November 2026 election.

Dated: April 13, 2026

Respectfully submitted,

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