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SJC-13885

LEWIS FINFER & others¹ vs. ATTORNEY GENERAL & others.²

Suffolk. May 4, 2026. - June 18, 2026.

Present: Budd, C.J., Gaziano, Kafker, Wendlandt, Georges, Dewar, & Wolohojian, JJ.

Initiative. Constitutional Law, Initiative petition. Attorney General. Taxation, Income tax, Capital gain.

Civil action commenced in the Supreme Judicial Court for the county of Suffolk on January 29, 2026.

The case was reported by Gaziano, J.

Lisa C. Goodheart (Srish Khakurel also present) for the plaintiffs.

Grace Gohlke, Assistant Attorney General, for the defendants.

Kevin P. Martin (Brianna Jordan also present) for the interveners.

¹ Barry C. Sanders, Kathryn Anderson, Erik Berg, Joan Lynne Cederholm, Phyllis Keenan, Jazmine Woodberry, and Cynthia Yetman.

² Secretary of the Commonwealth; and James Stergios, Elizabeth Mahoney, Christopher Anderson, Christopher Carlozzi, Paul Craney, Richard Laws, Kenneth Paxton, Ellen Paxton, Stephen Fantone, and Pauline Zywaski, interveners.

The following submitted briefs for amici curiae:
Timothy G. Kenneally for National Federation of Independent Business Small Business Legal Center, Inc.
Paul R. Johnson, Frank J. Bailey, & Gabriela Forero for Pioneer New England Legal Foundation.
Andrew R. Dennington for Adam J. Berinsky.
Mark A. Martinez, Jr., & Jamie Ann Sabino for Massachusetts Budget and Policy Center.

GEORGES, J. The plaintiffs, eight Massachusetts voters, challenge the Attorney General's summary of Initiative Petition 25-18, titled "[An] Initiative Petition for a Law Relative to Reducing the State Personal Income Tax Rate from 5% to 4%." They claim that the summary does not satisfy art. 48's requirement that the Attorney General provide a "fair, concise summary" of the proposed law. Art. 48, The Initiative, II, § 3, of the Amendments to the Massachusetts Constitution, as amended by art. 74 of the Amendments. The challenged language states the petition would "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" (emphases added). According to plaintiffs, the emphasized exclusion tells voters the long-term capital gain tax rate will remain unchanged. Under current law, the petition would in fact lower it.

We agree; the summary misstates the petition's impact. As written, the proposed law would reduce the tax rate for Part B taxable income, including income derived from wages and

salaries. Because current law ties the tax rate for most Part C taxable income, i.e., long-term capital gain income, to the Part B rate, the proposed law also would reduce the long-term capital gain tax rate. The summary's contrary statement is not a minor imprecision. It is significantly misleading and likely to influence voters. Cf. Massachusetts Teachers Ass'n v. Secretary of the Commonwealth, 384 Mass. 209, 236 (1981). The Attorney General therefore did not provide a "fair" summary as required by art. 48, and the initiative petition may not appear on the 2026 Statewide election ballot.³

Background. We begin by summarizing the relevant tax law and procedural history.

1. Current tax code for personal income. For purposes of assessing income taxes for Massachusetts residents, and for nonresidents in certain circumstances, our General Laws divide gross income into "three Parts." G. L. c. 62, § 2 (b). "Part A" gross income consists of "the total interest, dividends and capital gain income included in Massachusetts gross income," subject to certain exceptions. G. L. c. 62, § 2 (b) (1). One

³ We acknowledge the amicus briefs of Adam J. Berinsky, Ph.D.; and the Massachusetts Budget and Policy Center in support of removing Initiative Petition 25-18 from the ballot. We also acknowledge the amicus briefs of the National Federation of Independent Business Small Business Legal Center, Inc.; and the Pioneer New England Legal Foundation in support of Initiative Petition 25-18 remaining on the ballot.

exception is income from long-term capital gains, meaning "income from the sale or exchange of capital assets held for more than one year." G. L. c. 62, § 2 (b) (1) (C). "Part B" gross income is Massachusetts gross income not included in Part A or Part C, such as wages and salaries. See G. L. c. 62, § 2 (b) (2); Opinion of the Justices, 471 Mass. 1201, 1204 n.7 (2015) (listing examples of Part B income). "Part C" gross income is long-term capital gain income. See G. L. c. 62, § 2 (b) (3).

Part B's tax rate has stood at five percent since 2020. See G. L. c. 62, § 4 (b), third par.; Press Release, Office of Governor Charlie Baker and Lt. Governor Karyn Polito, Baker-Polito Administration Announces Massachusetts Income Tax Rate Dropping to 5% on January 1, 2020 (Dec. 13, 2019) (reduction of Part B income tax rate to five percent "represents the conclusion of the statutory process . . . to lower the income tax rate to 5% based on certain [S]tate revenue milestones"). See also Massachusetts Department of Revenue, Massachusetts Tax Rates, <https://www.mass.gov/info-details/massachusetts-tax-rates> [<https://perma.cc/T5BF-GDTQ>]. With some exceptions, that rate governs Parts A and C as well. See G. L. c. 62, § 4 (a) (2) (Part A taxable income derived from interest and dividends); G. L. c. 62, § 4 (c) (certain long-term capital gains). As a result, since 2020, Part A income and Part C income have been

taxed at five percent, the same rate as Part B income. See State Tax Handbook 28 (Timothy Bjur & Brian Nudelman eds., 2026).

2. The initiative petition. In August 2025, ten registered voters (proponents) filed the petition, titled "Initiative Petition for a Law Relative to Reducing the State Personal Income Tax Rate from 5% to 4%," with the Attorney General, seeking certification under art. 48. The petition states, as relevant here:

"SECTION 1. Section 4 of chapter 62 of the General Laws as appearing in the 2024 Official Edition is hereby amended by striking out subparagraph (a) (1) (2)^[4] and subparagraph (b) and inserting in place thereof the following two subparagraphs --

"(a) (1) (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."

On September 3, 2025, the Attorney General certified to the Secretary of the Commonwealth (Secretary) that the petition,

⁴ The text of the petition refers to a nonexistent "subparagraph (a) (1) (2)." All parties acknowledge this as a scrivener's error and agree that the reference should be read as "subparagraph (a) (2)."

which she designated Initiative Petition 25-18, complied with art. 48. With her certification, the Attorney General submitted the summary as required by art. 48, The Initiative, II, § 3, as amended by art. 74. That summary was placed on the forms used to gather signatures in support of the petition. It states in relevant part:

"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 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."

After receiving the Attorney General's summary and certification, the Secretary prepared blank signature collection forms and provided them to the proponents. The forms contained the Attorney General's summary but not the text of the petition. By December 3, 2025, the proponents had collected more than 85,000 signatures and submitted them to the Secretary. The Secretary confirmed that the proponents had collected the signatures required for the petition to proceed under art. 48. The Secretary then transmitted the petition to the House of Representatives. See art. 48, The Initiative, II, § 4.

In January 2026, the plaintiffs commenced this action in the county court. They sought a declaration that the Attorney General's summary of Initiative Petition 25-18 violates art. 48

because it is not fair, and an injunction barring the Secretary from including the petition and summary in the 2026 Information for Voters guide (information guide) or on the 2026 Statewide election ballot. In February, the proponents moved to intervene. A single justice of this court allowed the motion and then reserved and reported the case to the full court on the complaint, a stipulation in lieu of answer, and a statement of agreed facts.

Discussion. 1. Fairness requirement. The plaintiffs challenge the fairness of the Attorney General's summary. Article 48 requires the Attorney General to write a "fair, concise summary" of each initiative petition. Art. 48, The Initiative, II, § 3, as amended by art. 74. The summary accompanies three critical documents in the initiative process: at the top of each blank form used to collect voter signatures; in the information guide disseminated to voters; and on the ballot itself. See id.; art. 48, General Provisions, IV, as amended by art. 108 of the Amendments; art. 48, General Provisions, III, as amended by art. 74, § 4. As one of the "precisely defined safeguards" that permits lawmaking by direct popular vote, art. 48 originally required the Attorney General to prepare a "description" of the petition. Sears v. Treasurer & Receiver Gen., 327 Mass. 310, 320, 324 (1951). That requirement was meant to ensure that both the petition signers

and voters understood the proposed law. See Evans v. Secretary of the Commonwealth, 306 Mass. 296, 298-299 (1940). Article 74 later replaced the "description" requirement, which had produced "very long and cumbersome statements of details of proposed laws," Sears, supra at 324, with the present requirement of a "fair, concise summary," art. 48, The Initiative, II, § 3, as amended by art. 74.

Although art. 74 relaxed the earlier requirement, each word in the phrase "fair, concise summary" must be satisfied. See Mazzone v. Attorney Gen., 432 Mass. 515, 531 (2000). To be "fair," a summary may not be "partisan, colored, argumentative, or in any way one sided," and it must be complete enough to give a voter asked to sign a petition, or a voter standing in the polling booth, "a fair and intelligent conception of the main outlines of the measure." Sears, 327 Mass. at 324. Put another way, the summary may not be, in the context of the entire proposal, "significantly misleading" and likely to "influence[] voters." Massachusetts Teachers Ass'n, 384 Mass. at 235-236. See id. at 234 (error must be analyzed in context of entire proposal).

We give some deference to the Attorney General's judgment because, in preparing a summary, she "must inevitably form her own understanding of the meaning of the language in the initiative and its operation and effect." Abdow v. Attorney

Gen., 468 Mass. 478, 507 (2014). Deference, however, is not abdication. Cf. Hensley v. Attorney Gen., 474 Mass. 651, 668 (2016) (deference owed to Attorney General and Secretary's one-sentence statements and title for initiative petition does not mean abdication by courts). If the summary "is not substantially adequate and accurate," such that a reasonable voter would materially misunderstand the proposed law, "a great safeguard of direct legislation is lost." Evans, 306 Mass. at 299. See Hensley, supra at 664 (summary "ought to be written in plain English that a reasonable voter can readily comprehend"); First v. Attorney Gen., 437 Mass. 1025, 1026 (2002) (summary must not be "significantly misleading"). See also Barnes v. Secretary of the Commonwealth, 348 Mass. 671, 674 (1965) (art. 74 preserved art. 48's intention that voters understand law). We make this determination case by case, "according to the nature of the proposed measure and the character of the 'summary' in question." Sears, 327 Mass. at 324.

2. Application. The plaintiffs argue that the Attorney General's summary violates art. 48 because it incorrectly tells voters that Initiative Petition 25-18 would not lower the tax rate on capital gain income.

The Attorney General rejects both the plaintiffs' reading of the measure and their claim of unfairness. She emphasizes that the petition does not seek to amend the text of G. L.

c. 62, § 4 (c), which governs the tax rate for long-term capital gains, and argues that the summary does not say otherwise. In her view, the plaintiffs identify, at most, an omitted reference to an "ancillary follow-on effect" of the petition's changes to Part B income, not an affirmative misstatement about the petition's impact. See Anderson v. Attorney Gen., 490 Mass. 26, 34 (2022) ("The summary need only describe the amendment itself . . .").

The interveners press a related argument. They contend that the summary, read as a whole, would be understood as describing two technical categories of income subject to lower tax rates: Part A taxable income derived from interest and dividends; and Part B taxable income, such as income derived from wages and salaries. They point to the summary's reference to "(1) personal taxable income consisting of interest and dividends, and (2) personal taxable income other than interest, dividends or capital gain income" (emphases added). In their view, if the phrase "other than . . . capital gain income" is read to exclude capital gains from the measure, the same language would also exclude interest and dividends, even though subpart (1) says the opposite. From that premise, they argue that voters will understand subpart (2) only as a description of Part B income, not as a statement about whether the measure lowers taxes on capital gains.

Neither the Attorney General's nor the interveners' arguments persuade us. The summary tells voters that the proposed law would "lower the tax rates on . . . personal taxable income other than . . . capital gain income." In ordinary English, "other than" means "except for" or "besides." Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/other%20than> [<https://perma.cc/D5P8-HRNS>]. Accordingly, as the plaintiffs argue, a reasonable voter would read that language to mean that the proposed law lowers some personal income tax rates, but not the rate on capital gain income. Cf. Schulman v. Attorney Gen., 447 Mass. 189, 191 (2006) ("In interpreting any statutory or constitutional provision, . . . the starting point of our analysis is its plain language . . ."). That is wrong for long-term capital gains. Under current law, most Part C taxable income is taxed at the Part B rate. See G. L. c. 62, § 4 (c). Because Initiative Petition 25-18 would lower the Part B rate, it also would lower the rate for most long-term capital gain income. At oral argument, the Attorney General acknowledged that, as current law stands, there is a "third rate" that would change as a "collateral effect" of the measure's two express changes. The problem is not that the summary mirrors the structure of technical tax categories. The problem is that the summary

translates those categories into ordinary language in a way that materially misstates the proposal's effect.

The interveners respond that a reduction in the long-term capital gain tax rate is not guaranteed, because the Legislature could amend G. L. c. 62, § 4 (c), before the election and untether the Part C rate from the Part B rate. That possibility does not make the summary fair. We review the summary against the law as it exists, not based on speculation about a hypothetical future statute. See Ash v. Attorney Gen., 418 Mass. 344, 349 (1994) (failure to address possibility of future legislation overturning portions of initiative "does not render the summary misleading or otherwise unfair"). Cf. Anderson, 490 Mass. at 32-34 (rejecting challenge premised on hypothetical legislative appropriations). Otherwise, a summary that inaccurately describes a petition's present legal impact could be insulated from challenge by speculation that the Legislature may later change the surrounding law. Article 48 does not permit the fairness inquiry to turn on that kind of conjecture.

The Attorney General need not conduct the sort of exhaustive legal analysis our cases reject. See El Koussa v. Attorney Gen., 494 Mass. 269, 279 (2024) (summaries are not required to explain "full sweep" of "potential legal ramifications"); Mazzone, 432 Mass. at 532 (summary does not require "comprehensive legal analysis of the measure"). She is

not required to address every possible consequence, collateral effect, or future legal dispute a measure may generate. See Mazzone, supra (analysis of "possible flaws" not required). However, she is required, when she does address such topics, to do so accurately. See Evans, 306 Mass. at 299 (summary must be "substantially adequate and accurate").

That conclusion does not end the inquiry. The error must be "significantly misleading" and likely to influence voters. Massachusetts Teachers Ass'n, 384 Mass. at 236. We have recognized that, in some circumstances, an imperfect summary may be properly understood in light of public debate, the Attorney General and Secretary's "yes" and "no" statements, the "for" and "against" statements in the information guide, and the full text of the proposed law. See Hensley, 474 Mass. at 665 (publications and public debate mitigate risk of misleading voters); Mazzone, 432 Mass. at 533 (public debate); Massachusetts Teachers Ass'n, supra at 233, 236 ("clear error" in summary was minor where "error was one of limited, not Statewide, influence" and "summary was not the only source of voter information"). These additional sources do not salvage this summary.

First, Hensley and Mazzone involved omissions or incomplete descriptions in summaries that could be filled by other materials and public debate. See Hensley, 474 Mass. at 665;

Mazzone, 432 Mass. at 532-533. Here, the summary does not merely leave something unsaid. It affirmatively tells voters, in ordinary language, that capital gain income is outside the proposed tax reduction when, under current law, most long-term capital gain income would be affected. Campaign materials are unlikely to cure this kind of error in the Attorney General's neutral summary. Nor do the already published "yes" and "no" statements cure the problem. See G. L. c. 54, § 53 (Secretary must publish in Massachusetts Register "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").⁵ Those statements say only that the measure would lower tax rates on interest and dividends and "other personal taxable income such as wages and salaries." They do not mention long-term capital gains.⁶

Second, the full text of the petition would not correct a reasonable voter's misunderstanding. The petition itself does

⁵ Although the parties did not include the one-sentence statements in the record, we take judicial notice of them. See G. L. c. 30A, § 6, tenth par. ("contents of the Massachusetts Register shall be judicially noticed").

⁶ Specifically, they state: "A YES VOTE would gradually lower to 4% the tax rates on interest and dividends and other personal taxable income such as wages and salaries." 1573 Mass. Reg. 4 (May 8, 2026). "A NO VOTE would make no change in the law relative to the tax rate on interest and dividend and other personal taxable income such as wages and salaries." Id.

not mention capital gain income. A voter reading the petition and the summary together would see a summary that expressly excludes capital gain income and a petition that says nothing to contradict that statement. But see Massachusetts Teachers Ass'n, 384 Mass. at 233, 236 (summary's misstated impact of initiative petition was "not significantly misleading," where, among other things, petition expressly stated impact on certain property tax rates). This case therefore differs from Massachusetts Teachers Ass'n, where the underlying measure itself addressed the point misstated in the summary. See id. at 222 n.11, 233. It also differs in scope. The error in Massachusetts Teachers Ass'n had limited local effect, see id. at 234-236; the error here concerns a Statewide tax reduction.

The interveners attempt to minimize the point by characterizing the long-term capital gain impact as indirect or minor. That characterization understates the impact both as a matter of law and common sense. As discussed, long-term capital gains are one of three statutory categories of gross income. See G. L. c. 62, § 2 (b). The proposed tax rate reduction for Part B taxable income would, under current law, reduce the rate for most Part C taxable income by operation of G. L. c. 62, § 4 (c). The fiscal distributional consequences of that reduction may matter to voters who favor the petition, voters who oppose it, and voters still deciding. At oral argument, the

interveners fairly acknowledged that some voters may care more about one category of taxable income than another. The interveners also concede that Part C is relevant to "not just 'the very wealthy,'" but also "many people selling a home." See G. L. c. 62, § 1 (m) (incorporating 26 U.S.C. § 1221's definition of "capital asset"); 26 U.S.C. § 1221 ("the term 'capital asset' means property held by the taxpayer").

Article 48 does not require definitive proof that the error will change the election outcome. It requires a fair summary before the question reaches the ballot. See First, 437 Mass. at 1026. Because this summary materially misstates the true scope of the proposal, it is unfair.

3. Remedy. The Attorney General concedes that, if the summary is unfair, precedent prevents Initiative Petition 25-18 from being placed on the ballot. See Hensley, 474 Mass. at 667 n.26 (court has no authority to order revision of summary). The interveners argue for a different result. Relying on Hensley's statement that this court lacks authority to "order an amendment of a summary" (emphasis added), id., they contend that the Attorney General should be allowed to revise the summary voluntarily because art. 48 does not expressly forbid that remedy. They further argue that removing the petition from the ballot would disserve the democratic principles underlying art. 48.

We disagree. Article 48 vests voters with the power to enact laws directly and bounds that power with constitutional safeguards. It does not create unconditional access to the ballot. The initiative process was designed "in a carefully prescribed manner and with certain precisely defined safeguards" to, among other things, "prevent hasty action" and "acquaint the voters with the proposed laws." Sears, 327 Mass. at 320. When the people "seek to enact laws by direct popular vote they must do so in strict compliance with those provisions and conditions." Id. at 321. A "fair, concise summary" is one of those conditions. Art. 48, The Initiative, II, § 3, as amended by art. 74. If that requirement is not met, the petition cannot proceed to the ballot. See Sears, supra.

The structure and text of art. 48 confirm that conclusion. Article 48 expressly provides a process for amending an initiative petition if the Legislature does not pass the proposed law. See art. 48, The Initiative, V, § 2, as amended by art. 81, § 3, of the Amendments. It provides no comparable process for revising a deficient summary after signatures have been collected. That silence is crucial because the summary is not peripheral. See Opinion of the Justices, 309 Mass. 571, 589 (1941) ("[t]he provisions of said art. 48 touching the [summary] are mandatory and . . . highly important"). The summary appears at the top of the signature forms and "will appear on the

ballot." Art. 48, The Initiative, II, § 3, as amended by art. 74. Allowing a new summary at this stage would create a different constitutional sequence from the one art. 48 prescribes. It would also call into question the validity of the more than 85,000 signatures already gathered on forms bearing the unfair summary. See Hensley, 474 Mass. at 667 n.26; Opinion of the Justices, 357 Mass. 787, 800 (1970) (summary's purpose is to ensure signers of initiative petition and voters understand proposed law). We therefore decline to read into art. 48 a post-signature amendment process for summaries that fail the constitutional requirement of fairness.

Conclusion. We remand the case to the county court for entry of a judgment declaring that the Attorney General's summary of Initiative Petition 25-18 does not comply with art. 48 and enjoining the Secretary from taking steps to place the measure on the ballot for the 2026 Statewide election.

So ordered.