

Commonwealth of Massachusetts

Appeals Court No.2025-P-1059

Supreme Judicial Court No._____

James Lyons

Plaintiff - Appellant

v.

Attorney General, et al

Defendants - Appellees

On Appeal from the Suffolk Superior Court

**Appellant Lyons Application for
Direct Appellate Review**

By His Attorney
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September 4, 2025

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Application for Direct Appellate Review (Mass. R.A.P. 11)

1. Request for Direct Appellate Review

Pursuant to Mass. R.A.P. 11, Appellant respectfully requests direct appellate review by the full Supreme Judicial Court. This appeal presents (i) questions of first impression concerning the interaction between Article 48 (the people's initiative), G.L. c. 11, § 12 (as amended by 2024 Question 1), and a single House's internal rule; (ii) constitutional questions under Articles 30 and 21 (legislative privilege and separation of powers); and (iii) issues of such substantial public importance—implicating the validity and effect of a voter-enacted statute and the Auditor's authority over the Legislature—that justice requires final determination by the full Court.

2. Prior Proceedings

Complaint. On December 6, 2024, Appellant filed a complaint for declaratory and injunctive relief in Suffolk Superior Court (No. 2484CV03175), challenging the House's amendment to Rule 85A vis-à-vis Question 1.

Motions. On January 7, 2025, Appellant moved for urgent injunctive relief; the court denied that motion on January 8, 2025. The motion was subsequently renewed on March 5, 2025, now with opposition from the Attorney General. Also on March 5, 2025, the Attorney General filed a motion to dismiss, which was also opposed. By special order of Chief Justice Ricciuti, on March, 19, 2025,

the case was specially assigned to Justice Salinger of the Business Litigation Session. The Superior Court heard oral argument on March 28, 2025 from Mr. Lyons and the Attorney General. On March 31, 2025, the Superior Court gave an order, and entered judgment, dismissing the claims without prejudice based on the Attorney General's standing argument.

Notice of Appeal. Appellant filed a timely notice of appeal, on April 7, 2025. The appeal was docketed in the Appeals Court as No. 2025-P-1059 on August 26, 2025.

Current posture. This application is filed within 21 days of docketing. The Appeals Court docket entries and any written orders or memoranda from the Superior Court are appended.

3. Short Statement of Relevant Facts

This appeal arises from a direct conflict between (a) a voter-enacted statute—Question 1 (2024), which amended G.L. c. 11, § 12 to expressly include “the general court itself” within the State Auditor’s audit jurisdiction—and (b) a subsequent amendment to House Rule 85A under which the House would channel any “audit” through a private firm selected via the Auditor but employed by the House, thereby withholding direct access by the Auditor to legislative financial records. The Superior Court proceedings also placed at issue the scope of legislative privilege, Article 30 separation-of-powers limits, and Appellant’s standing to seek

declaratory relief to vindicate the efficacy of a voter-enacted law.

4. Issues Presented and Preservation

A. Whether a single legislative house, by amending an internal rule, may nullify or materially restrict a duly enacted statute passed by the people under Article 48 (Question 1).

B. Whether legislative privilege under Articles 21 and 30 extends to withhold legislative financial/accounting records from the Auditor where the statute authorizes such audits.

C. How the scope of the Auditor's authority is defined by constitutional amendment, statutory text, and historical understanding.

D. Whether the Legislature's longstanding practice of auditing its own expenditures demonstrates that Question 1 does not violate separation of powers or privilege.

E. Whether declaratory judgment is the proper vehicle for resolving this controversy.

F. Whether Appellant has standing as a voter under Massachusetts precedent, including the continuing vitality of *Sears v. Treasurer & Receiver General*.

G. Whether Question 1 is constitutional under *Paisner v. Attorney General* and Article 30.

Issues A-E and G were preserved by the presentation of a renewed motion for a court order made by Mr. Lyons in the Superior

Court. The Superior Court did not reach those issues, instead deciding the case on standing grounds. The questions raised by Issues A-E and G are implicitly denied by the Superior Court, although there is no alternative holding in its decision. Since the standing grounds are the ratio decedendi, Issue F is also preserved by timely notice of appeal.

5. Brief Argument

A. A single House rule cannot nullify a voter-enacted statute because legislative privilege does not extend so far. Article 48 "created a people's process. It was intended to provide both a check on legislative action and a means of circumventing an unresponsive General Court. It presented to the people the direct opportunity to enact statutes regardless of legislative opposition. It projected a means by which the people could move forward on measures which they deemed necessary and desirable without the danger of their will being thwarted by legislative action." *Buckley v. Secretary of the Commonwealth*, 371 Mass. 195, 198 (1976).

This case embodies that principle. A single house, acting by internal rule, cannot undo a statute passed by the people. "In short, we cannot countenance the emasculation of the initiative petition by the attempt to substitute a measure with objectives at variance with those which the plaintiffs have proposed." *Id.* at 202. To hold otherwise would permit precisely the "emasculation"

Article 48 was designed to forbid. See also *Opinion of the Justices*, 370 Mass. 869, 872 (1976) (article 48 is a cumbersome but extraordinary means of enacting laws by the people directly).

B. Legislative privilege does not extend to block an audit of financial records.

Privilege protects core deliberation—speech, debate, and legislative judgment—but not everything a legislature does. *Gravel v. United States*, 408 U.S. 606, 625 (1972); *United States v. Brewster*, 408 U.S. 501, 512 (1972).

Massachusetts courts apply the same limits. In *Abuzahra v. City of Cambridge*, 101 Mass. App. Ct. 267, 270 (2022), the Appeals Court held privilege applies to “integral steps in the legislative process,” not to administrative or ministerial functions. See also *Powell v. McCormack*, 395 U.S. 486, 503 (1969) (“Legislative immunity does not, of course, bar all judicial review of legislative acts.”). In fact, in *Powell*, the Supreme Court specifically held that financial matters of salary, so long as the suit was aimed at Clerks and Sergeants at Arms and not legislators, was not prohibited by the Speech and Debate Clause. *Id.* at 504–505. Legislative payrolls, disbursements, and ledgers are not privileged. Question 1 properly places them within the Auditor’s jurisdiction.

C. Defining the Auditor’s Authority.

The State Auditor’s whole job is to audit. That is the essence of

the office. The Treasurer guards funds, the Secretary keeps records, and the Attorney General enforces laws. Only the Auditor exists solely to examine accounts and report the truth. From its creation by St. 1849, c. 56, through its elevation by Article 17 of Amendment in 1855, the Auditor was designed as the people's watchdog—accountable to voters, not to the Legislature it might scrutinize.

The 1853 Convention debates confirm this purpose. Delegates stressed that the Auditor must be elected because "the supreme power ... [is] with the people," and that it was important to recognize the Auditor as a constitutional officer rather than allowing these duties to be completed by a committee of the Legislature or by any other officer." Debates & Proceedings 703-704 (1853). *See Also MBTA v. Auditor*, 430 Mass. 783, 786-787 (2000)

The legislative history supports this understanding. Resolve c. 78 of 1849 directed the Auditor to audit the Sergeant-at-Arms' expenses. St. 1854, c. 78 required Auditor approval of legislators' sickness claims. St. 1856, c. 12 and c. 32 required approval of State House expenditures. St. 1857, c. 19 authorized the Auditor to audit and certify expenses incurred under orders of either branch.

Massachusetts jurisprudence recognizes that constitutional officers retain their defining functions, particularly when not textually defined in the Constitution. Just as the Attorney General

retains common-law powers absent definition (*Commonwealth v. Kozlowsky*, 238 Mass. 379, 385-86 (1921)), the Auditor retains the auditing function that gave the office its very name.

In *MBTA v. Auditor*, 430 Mass. 783, 786-87 (2000), the Court upheld the Auditor's authority to scrutinize the MBTA, rejecting immunity claims. If the Auditor may audit independent authorities created by statute, surely it may audit the Legislature itself—especially when the people have spoken by referendum.

The Auditor is the people's sentinel. It does not legislate or enforce; it observes, records, and reports. Its accountability to voters gives it legitimacy. The 71.6% passage of Question 1 reaffirmed that the watchdog must be able to examine the Legislature. To muzzle that watchdog now would deprive the people of their chosen safeguard.

D. The Legislature's Historical Practice of Auditing Its Own Accounts.

The Legislature itself repeatedly required the Auditor to review its expenditures. The resolves of 1849, 1854, 1856, and 1857 placed Sergeant-at-Arms' expenses, sickness claims, and State House costs under the Auditor's eye. In 1857, the General Court authorized the Auditor to "audit and certify" accounts arising from orders of either branch.

This practice demonstrates two principles. First, legislative expenses are financial, not deliberative. Second, the Legislature

itself once valued external oversight. It also did so while the 1853 Convention was creating the office, providing contemporary evidence of the constitutional meaning of the Auditor's role. The modern claim of absolute privilege is a departure from tradition. Question 1 restores that tradition, ensuring transparency today just as in the nineteenth century.

E. Declaratory judgment is the proper vehicle.

This is not an advisory request. G.L. c. 231A authorizes declaratory relief where an actual controversy has arisen. *Kligler v. Attorney General*, 491 Mass. 38, 44-45 (2022). Courts have long recognized that constitutional challenges to statutes or practices of general application are properly brought as declaratory actions. *Doe, Sex Offender Registry Bd. No. 10800 v. SORB*, 459 Mass. 603, 629-30 (2011). Here, the controversy is direct: whether Question 1's statutory command that the Auditor may audit "the general court itself" can be negated by a single-house rule.

F. Standing and the Continuing Vitality of *Sears v. Treasurer*.

The Attorney General argues Appellant lacks a "concrete and particularized" injury, citing *Ginther v. Commissioner of Insurance*, 427 Mass. 319 (1998). This Court has in appropriate circumstances recognized broader voter and taxpayer standing to prevent unlawful expenditures and to vindicate constitutional processes.

Sears v. Treasurer & Receiver General, 327 Mass. 310, 314-15 (1951), remains controlling. There, this Court held that "the plaintiffs, as taxpayers and voters, have standing to seek to restrain unlawful expenditures of public funds." That principle has never been overruled. It should remain virile in the public interest contexts, like the initiative. *Buckley v. Secretary of the Commonwealth*, 371 Mass. 195, 198-203 (1976) (voters may prevent emasculatation of Article 48). See Also *FEC v. Akins*, 524 U.S. 11, 24 (1998) ("where a harm is concrete, though widely shared, the Court has found 'injury in fact.'").

Mr. Lyons is not a bystander. He campaigned for, supported, and voted for Question 1. His injury is that the measure he and millions of others enacted is being nullified by an internal rule. That is exactly the injury *Sears* recognized: nullification of the public's rights through unlawful governmental action.

This injury is concrete. Question 1 amended G.L. c. 11, § 12 to authorize audits of "the general court itself." The House's amendment to Rule 85A strips that language of meaning. The watchdog chosen by the voters is chained. That is not diffuse taxpayer standing; it is direct injury to the Article 48 franchise. Protecting the Auditor's authority is inseparable from protecting the voters' right to legislate directly.

Massachusetts law has always had an eye to both the public interest and the electorate's right to legislate. *Tax Equity*

Alliance v. Commissioner of Revenue, 423 Mass. 708, 714 (1996) (rejecting narrow standing arguments in taxpayer suit); *Vigneault v. Secretary of the Commonwealth*, 354 Mass. 362, 365 (1968) (voter standing in apportionment challenge).

Mr. Lyons also asserted below, and does so here, that he and the public suffer an "informational injury." *FEC v. Akins*, 524 U.S. 11, 24-25 (1998) ("We conclude that, similarly, the informational injury at issue here, directly related to voting, the most basic of political rights, is sufficiently concrete and specific such that the fact that it is widely shared does not deprive Congress of constitutional power to authorize its vindication in the federal courts"). This line of argument, as argued below, pairs very well with the harms to the Auditor's office. The public has a right to the Auditor's work product, a constitutional choice to have an independently elected sentinel. That constitutional choice is undermined when the public's inter-election guardian, who ensures an informed electorate, is deprived of the ingredients necessary to inform the public.

Thus, the logic is complete: the Auditor is the watchdog; the voters installed that watchdog by statute; and when a single house attempts to muzzle it, the voters themselves are injured. Under *Sears*, they have standing to protect the efficacy of their vote and the safeguards they created.

G. Question 1 is constitutional under Paisner.

Paisner v. Attorney General, 390 Mass. 593 (1983), bars initiatives prescribing purely internal legislative procedure. Question 1 does not regulate debate or decorum. It establishes a cross-branch transparency rule. Oversight of financial accounts is external, not internal, and no different than audits of executive agencies. An audit of finances does not interfere with legislative independence; it ensures accountability. Question 1 is therefore constitutional, and a contrary House rule cannot prevail.

6. Reasons Direct Appellate Review Is Appropriate

- **First impression.** The Court has not addressed whether a single house rule may nullify a voter-enacted statute authorizing the Auditor to audit the Legislature.
- **Constitutional questions.** Articles of Amendment 48 (as amended) and 17 as well as Declaration of Rights Articles 30 and 21 are directly implicated.
- **Exceptional public importance.** Question 1 passed with 71.6% support. Its implementation affects transparency, fiscal accountability, and balance of powers. This case also poses questions which go directly to the core of our representative government. Final resolution is urgent.

Conclusion

Wherefore this Honorable Court should grant direct appellate review.

Respectfully Submitted,
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Certificate of Compliance (Rule 20(a), Rule 16(k))

I certify that this application complies with the formatting rules and the 2,000-word limit of Rule 11(b)(5). Prepared in monospaced font specifically Courier New. Word count (excluding exempt portions): 1534.

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September 4, 2025

Certificate of Service

I certify that on September 4, 2024, I served this application on all counsel of record via email.
/s/ Michael C. Walsh

Addendum: Required Appendices

- Appeals Court docket entries for No. 2025-P-1059.....17
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- Superior Court Decision.....23

APPEALS COURT
Full Court Panel Case
Case Docket

JAMES LYONS vs. ATTORNEY GENERAL ANDREA CAMPBELL & others
2025-P-1059

CASE HEADER

Case Status	No briefs yet
Status Date	08/26/2025
Nature	Administrative law
Entry Date	08/26/2025
Appellant	Plaintiff
Case Type	Civil
Brief Status	Awaiting blue brief
Brief Due	10/06/2025
Arg/Submitted	
Decision Date	
Panel	
Citation	
Lower Court	Suffolk Superior Court
TC Number	2484CV03175
Lower Ct Judge	
TC Entry Date	12/06/2024
SJ Number	
FAR Number	
SIC Number	

INVOLVED PARTY

ATTORNEY APPEARANCE

James Lyons Plaintiff/Appellant Awaiting blue brief Due 10/06/2025	Michael Walsh, Esquire
Attorney General Andrea Campbell Defendant/Appellee Awaiting red brief Due 11/05/2025	Anne Sterman, A.A.G. Erin Fowler, A.A.G.
Clerk of the House of Representatives Defendant/Appellee Awaiting red brief Due 11/05/2025	Anne Sterman, A.A.G. Erin Fowler, A.A.G.
Clerk of the Senate Defendant/Appellee Awaiting red brief Due 11/05/2025	Anne Sterman, A.A.G. Erin Fowler, A.A.G.
Secretary of State William Galvin Defendant/Appellee Awaiting red brief Due 11/05/2025	Anne Sterman, A.A.G. Erin Fowler, A.A.G.

DOCKET ENTRIES

Entry Date	Paper	Entry Text
08/26/2025	#1	Lower Court Assembly of the Record Package
08/26/2025		Notice of entry sent.
08/26/2025	#2	Civil Appeal Entry Form filed for James Lyons by Attorney Michael Walsh.
08/26/2025	#3	Copy of Entry Statement filed for James Lyons by Attorney Michael Walsh.

As of 08/28/2025 4:15pm

2484CV03175 Lyons, James vs. Attorney General Andrea Campbell et al

- Case Type:
- Actions Involving the State/Municipality
- Case Status:
- Open
- File Date
- 12/06/2024
- DCM Track:
- A - Average
- Initiating Action:
- Equity Action involving the Commonwealth, Municipality, MBTA, etc.
- Status Date:
- 12/06/2024
- Case Judge:
- Salinger, Hon. Kenneth W
- Next Event:
-

[All Information](#) [Party](#) [Event](#) [Tickler](#) [Docket](#) [Disposition](#)

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Events

Date	Session	Location	Type	Event Judge	Result
03/28/2025 10:00 AM	Business Litigation 2	BOS-10th FL, CR 1017 (SC)	Rule 12 Hearing	Salinger, Hon. Kenneth W	Held as Scheduled
03/28/2025 02:00 PM	Business Litigation 2	BOS-10th FL, CR 1017 (SC)	Rule 12 Hearing	Salinger, Hon. Kenneth W	Rescheduled

LYONS DAR PG 000019

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
Ticklers					
<u>Tickler</u>		<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Service		12/06/2024	03/06/2025	90	
Answer		12/06/2024	04/07/2025	122	
Rule 12/19/20 Served By		12/06/2024	04/05/2025	120	03/31/2025
Rule 12/19/20 Filed By		12/06/2024	05/05/2025	150	03/31/2025
Rule 12/19/20 Heard By		12/06/2024	06/04/2025	180	03/31/2025
Rule 15 Served By		12/06/2024	01/30/2026	420	03/31/2025
Rule 15 Filed By		12/06/2024	03/02/2026	451	03/31/2025
Rule 15 Heard By		12/06/2024	03/02/2026	451	03/31/2025
Discovery		12/06/2024	11/27/2026	721	03/31/2025
Rule 56 Served By		12/06/2024	12/28/2026	752	03/31/2025
Rule 56 Filed By		12/06/2024	01/25/2027	780	03/31/2025
Final Pre-Trial Conference		12/06/2024	05/25/2027	900	03/31/2025
Judgment		12/06/2024	12/06/2027	1095	03/31/2025

Docket Information				
<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>	
12/06/2024	Complaint electronically filed.	1		
12/06/2024	Civil action cover sheet filed.	2		
12/06/2024	Case assigned to: DCM Track A - Average was added on 12/06/2024			
01/07/2025	Plaintiff(s) James Lyons's Motion for a Court Order (Urgent Motion)	3		
01/08/2025	Endorsement on Motion for a Court Order (Urgent Motion) (#3.0): DENIED After review, Denied without prejudice, for lack of "urgency" and because this motion does not specify what the requested "court order" would say. This case concerns serious subject matters, and I see no need for judicial actions at this point, especially without input from Defendants. (dated 1/7/2025) Notice sent 01/09/2025.			
02/13/2025	Defendant Attorney General Andrea Campbell, Clerk of the House of Representatives, Clerk of the Senate, Secretary of State William Galvin's Notice of motion to dismiss Plaintiff's complaint for injunctive and declaratory relief			
03/05/2025	List of Documents included in 9A Package	4		
03/05/2025	Defendant Attorney General Andrea Campbell's Motion to dismiss Plaintiff's Complaint for Injunctive and Declaratory Relief	5		
03/05/2025	Attorney General Andrea Campbell's Memorandum in support of her Motion to Dismiss Plaintiff's Complaint for Injunctive and Declaratory Relief	6		
03/05/2025	Opposition to Attorney General's Motion to Dismiss filed by James Lyons	7		
03/05/2025	Reply/Sur-reply Defendant Attorney General's Reply in Support of her Motion to Dismiss Plaintiff's Complaint for Injunctive and Declaratory Relief	8		
03/05/2025	Certificate of Notice of Filing of 9A Package	9		
03/05/2025	Plaintiff James Lyons's Motion for A Court Order (Renewed)	10		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/05/2025	Opposition to Motion for A Court Order (Renewed) filed by Attorney General Andrea Campbell	11	
03/05/2025	Rule 9A Package List of Documents	12	
03/19/2025	ORDER: FOR SPECIAL ASSIGNMENT: JAMES LYONS VS. ATTORNEY GENERAL ANDREA A CAMPBELL, ET AL It is hereby ORDERED that the above-captioned case is specially assigned to the Honorable Kenneth W. Salinger, Associate Justice of the Superior Court, for all purposes. In future filings, the parties shall note prominently in the caption that he case is specially assigned to Judge Salinger. The Civil Clerk's office will notify all counsel of record. Michael D. Ricciuti, Chief Justice. DATED: March 18, 2025 Notice sent 3/25/25	13	  
03/24/2025	Event Result:: Rule 12 Hearing scheduled on: 03/28/2025 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Kenneth W Salinger, Presiding Staff: Erin Coronado, Assistant Clerk Magistrate		
03/28/2025	Event Result:: Rule 12 Hearing scheduled on: 03/28/2025 10:00 AM Has been: Held as Scheduled Hon. Kenneth W Salinger, Presiding Staff: Erin Coronado, Assistant Clerk Magistrate		
03/31/2025	Judgment. It is ORDERED and ADJUDGED:: The Attorney General's Motion to Dismiss having been ALLOWED, Final Judgment enters DISMISSING this action without prejudice as to all Defendants Entered on docket pursuant to Mass R Civ P 58(a) and notice sent to parties pursuant to Mass R Civ P 77(d)		 
04/01/2025	ORDER: Decision and Order Allowing Motion to Dismiss Order: The Attorney General's motion to dismiss is allowed. Final judgment shall enter dismissing this action without prejudice as to all Defendants. See p#14 for complete Decision and Order. (dated 3/31/25) Notice sent by email	14	 
04/01/2025	Endorsement on Motion to dismiss Plaintiff's Complaint for Injunctive and Declaratory Relief (#5.0): ALLOWED Allowed after hearing. See Decision and Order. (dated 3/31/25) Notice sent by email		 
04/07/2025	Plaintiff James Lyons's Notice of Appeal	15	 
04/07/2025	Notice of appeal filed. (See p#15) Notice sent 4/9/25 Applies To: Lyons, James (Plaintiff)		
07/30/2025	Plaintiff James Lyons's Notice of Transcripts not needed for this Appeal and Request an Assembly of the Record.	16	 
08/20/2025	Appeal: Statement of the Case on Appeal (Cover Sheet).		 
08/20/2025	Notice of assembly of record sent to Counsel		 
08/20/2025	Notice to Clerk of the Appeals Court of Assembly of Record		 
08/27/2025	Notice of Entry of appeal received from the Appeals Court In accordance with Massachusetts Rule of Appellate Procedure 10(a)(3), please note that the above-referenced case (2025-P-1059) was entered in this Court on August 26, 2025.	17	 
Case Disposition			
<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>	
Disposed by Court Finding	03/31/2025	Salinger, Hon. Kenneth W	

SUFFOLK, ss.

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT
2484CV03175-BLS2

JAMES LYONS

v.

SECRETARY OF STATE WILLIAM GALVIN, CLERK OF THE HOUSE
TIMOTHY CARROL,¹ CLERK OF THE SENATE MICHAEL HURLEY, AND
ATTORNEY GENERAL ANDREA CAMPBELL, IN THEIR OFFICIAL CAPACITIES

DECISION AND ORDER ALLOWING MOTION TO DISMISS

Massachusetts voters recently approved a ballot initiative that authorizes and directs the State Auditor to audit the Legislature. By passing Question 1 in November 2024, voters revised the statute that addresses the auditing of accounts to add the Legislature, the official name of which is The General Court of Massachusetts,² to the description of entities to be audited. The statute, as amended, provides that the State Auditor "shall audit the accounts, programs, activities and functions directly related to the aforementioned accounts of all departments, offices, commissions, institutions and activities of the commonwealth, **including those of ... the general court[.]**"³ It also provides that the Auditor's staff "shall have access" to the accounts they are charged with auditing and may require production of relevant records.

Nine days after this election, the House of Representatives amended House Rule 85A to provide that each year (starting in fiscal year 2026) the House Business Manager shall retain a private auditing firm recommended by the State Auditor, engage the firm to conduct an "outside, independent financial audit of House financial accounts," provide copies of the completed audit report to the House Clerk and State Auditor, and post a copy on the Legislature's website.⁴ In February 2025, the House further revised Rule 85A to

¹ Timothy Carroll succeeded Steven James as Clerk of the Massachusetts House of Representatives in January 2025. Since Mr. James was sued only in his official capacity, Mr. Carroll "is automatically substituted as a party" without need for any order of substitution. See Mass. R. Civ. P. 25(d)(1).

² See Part 2, c. 1, § 1, art. 1 of the Constitution of the Commonwealth.

³ G.L. c. 11, § 12 (emphasis added), as amended by St. 2024, c. 250, § 1.

⁴ See Order H. 5105, available at <https://malegislature.gov/Bills/193/H5105>. The Court may consider the text of the November 14, 2024, amendment to House

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provide that the House Committee on Operations, Facilities and Security (and not the House Business Manager) will arrange for or do these things.⁵

James Lyons contends that the amended House rule "does not allow the Auditor to audit the Legislature" and that it "directly undermines the intent of the voters" by interfering with the Auditor's new statutory authority "to directly audit the Legislature." Mr. Lyons filed this action seeking declarations that the amended House rule is invalid because it is inconsistent with the statutory amendment approved by the voters, and that the amended statute does not violate the separation of powers requirements of the Massachusetts Declaration of Rights or any other constitutional requirement.⁶ He also seeks unspecified injunctive relief. Mr. Lyons has named as defendants the Secretary of the Commonwealth, the Clerks of the Massachusetts House of Representatives and Senate, and the Massachusetts Attorney General, all in their official capacities.

The Court will **allow** the Attorney General's motion to dismiss this action because Mr. Lyons does not have legal standing to bring these claims. Although

Rule 85A because Mr. Lyons refers to it the amended rule in, and relied upon it in framing, his complaint. See *Lanier v. President and Fellows of Harvard College*, 490 Mass. 37, 44 (2022) (documents referenced in complaint); *Marram v. Kobrick Offshore Fund, Ltd.*, 442 Mass. 43, 45 n.4 (2004) (document relied upon in framing complaint).

⁵ See <https://malegislature.gov/Laws/Rules/House>. The Court may take judicial notice of these additional events, even though they occurred after Mr. Lyons filed his complaint, because this information is a matter of public record and comes from a source the accuracy of which cannot reasonably be questioned. See *Schaer v. Brandeis Univ.*, 432 Mass. 474, 477 (2000) (court may consider "matters of public record" in deciding motion to dismiss); *Commonwealth v. Greco*, 76 Mass. App. Ct. 296, 301 n.9, *rev. denied*, 457 Mass. 1106 and 458 Mass. 1105 (2010) (court may take judicial notice of facts "capable of accurate and ready determination by resort to resources whose accuracy cannot reasonably be questioned") (quoting Mass. Guide Evid. § 201(b)(2)).

⁶ Though Mr. Lyons' complaint also sought a declaration that the State Auditor now "has the statutory authority to audit the Legislature," at oral argument Mr. Lyons and the Attorney General agreed that the statutory amendment approved by the voters has taken effect. If this were the only relief sought by Mr. Lyons, the Court would have to dismiss the complaint even if Mr. Lyons had standing, because there is no actual controversy about this issue. See generally *Alliance, AFSME/SEUI, AFL-CIO, v. Commonwealth*, 425 Mass. 534, 537-539 (1997) (in absence of actual controversy between the parties, claim for declaratory relief under G.L. c. 231A must be dismissed)

the Attorney General filed a motion to dismiss only on her own behalf, the Court must dismiss this action in its entirety because Mr. Lyons does not have standing to seek relief against any of the Defendants.⁷ The Court will order that judgment enter dismissing this action without prejudice.⁸

1. Burden of Establishing Standing. Mr. Lyons may not pursue this action unless he can show that he has legal standing to do so. That is his burden, not something that the Defendants must disprove. See *Pugsley v. Police Dept. of Boston*, 472 Mass. 367, 373 (2015). The Court “must resolve this threshold issue” before it can address the merits of Mr. Lyons’ claims because “standing is a prerequisite for a court to adjudicate a dispute.” *Cubberley v. Commerce Ins. Co.*, 495 Mass. 289, 293 (2025).

“The standing requirement exists because ‘[c]ourts are not established to enable parties to litigate matters in which they have no interest affecting their liberty, rights or property,’ but rather only those matters in which they have a ‘definite interest’ such that their ‘rights will be significantly affected by a resolution of the contested point.’” *Cambridge St. Realty, LLC v. Stewart*, 481 Mass. 121, 128–129 (2018), quoting *HSBC Bank USA, N.A. v. Matt*, 464 Mass. 193, 199 & 200 (2013).

If Mr. Lyons cannot establish a sufficiently direct and personal interest to give him standing, or show that his claims fall within a rare exception to this requirement, then the Court may not decide his claims. *HSBC Bank*, 464 Mass. at 199. “Standing is not a mere legal technicality.” *Matter of Chapman*, 482 Mass. 1012, 1015 (2019). To the contrary, whether a plaintiff has standing is a “question ... of critical significance” that “goes to the power of the court to hear and decide the matter.” *Ginther v. Comm’r of Ins.*, 427 Mass. 319, 322 & n.6 (1998), quoting in part *Tax Equity Alliance of Massachusetts v. Comm’r of Revenue*, 423 Mass. 708, 715 (1996) (“question ... of critical significance”). In other words, under Massachusetts law standing is a question of subject matter jurisdiction.

⁷ The Attorney General indicated during oral argument that she did not file a motion to dismiss on behalf of all Defendants because Mr. Lyons has not served the other Defendants with process or asked anyone to accept service of process on their behalf. Nonetheless, most of the Attorney General’s arguments for dismissal apply equally to all Defendants.

⁸ “Dismissals for lack of subject matter jurisdiction are ordinarily without prejudice because dismissal for lack of jurisdiction is typically not an adjudication on the merits.” *Abate v. Fremont Inv. & Loan*, 470 Mass. 821, 836 (2015); accord *Bevilacqua v. Roberts*, 460 Mass. 762, 779–780 (2011).

Indeck Maine Energy, LLC v. Comm'r of Energy Resources, 454 Mass. 511, 516 (2009).

The Court must determine whether Mr. Lyons has standing with respect to his claims against all of the Defendants in this action, even though the Attorney General is the only party that filed a motion to dismiss. See *HSBC Bank*, 464 Mass. at 199 (plaintiff must establish standing "whether it is challenged by an opposing party" or not). Like any issue of subject matter jurisdiction, when a question of standing "becomes apparent to a court, the court has 'both the power and the obligation' to resolve it, 'regardless [of] whether the issue is raised by the parties.'" *Rental Prop. Mgmt. Servs. v. Hatcher*, 479 Mass. 542, 547 (2018), quoting *HSBC Bank, supra*. The fact that three of the Defendants have not yet been served and have not joined in the motion to dismiss does not affect whether Mr. Lyons has standing to bring suit against them. "Subject matter jurisdiction cannot be conferred by consent, conduct or waiver." *Rental Prop. Mgmt., supra*, quoting *Litton Business Sys., Inc. v. Comm'r of Revenue*, 383 Mass. 619, 622 (1981).

The Court finds that Mr. Lyons has had a full and fair opportunity to address whether he has standing to bring this action with respect to all of the Defendants, both in writing and during the recent oral argument.

2. **Analysis.** Mr. Lyons alleges no facts suggesting that he suffered or likely will suffer any personal harm as a result of a violation of any legal duty owed to him, and he has not identified any applicable exception to these general requirements of standing. He therefore does not have standing to challenge House Rule 85A, to seek a declaration as to whether the voters' amendment to the Auditor's statutory authority is constitutional, or to obtain any other relief.

Mr. Lyons cannot cure his lack of standing, or avoid his burden of proving that he has standing, by seeking a declaratory judgment under G.L. c. 231A. See *Pratt v. City of Boston*, 396 Mass. 37, 42-43 (1985). "Even if there is an actual controversy" that would otherwise support a claim for declaratory relief, Mr. Lyons "must demonstrate the requisite legal standing to secure its resolution." *Id.*, quoting *Massachusetts Ass'n of Indep. Ins. Agents & Brokers, Inc. v. Comm'r of Ins.*, 373 Mass. 290, 292 (1977). "It is settled that G.L. c. 231A does not provide an independent statutory basis for standing." *School Comm. of Hudson v. Board of Educ.*, 448 Mass. 565, 579 (2007). The declaratory judgment statute did not create a "roving entitlement for allegedly aggrieved plaintiffs to seek judicial review" of any government action or public matter, without regard to whether they have standing. *Enos v. Secretary of Envtl. Affairs*, 432 Mass. 132, 141 (2000).

2.1. No Personal Harm From a Breach of Legal Duty. As a general rule, "only persons who have themselves suffered, or who are in danger of suffering, legal harm can compel the courts to assume the difficult and delicate duty of passing upon the validity of the acts of [another] branch of the government." *Tax Equity Alliance of Mass.*, 423 Mass. at 715 (taxpayers lacked standing to challenge constitutionality of capital gains tax legislation), quoting *Kaplan v. Bowker*, 333 Mass. 455, 459 (1956) (members of general public had no standing to seek order restricting legislative commission in publishing names of suspected Communist Party members). This principle applies with full force here.

"Legal harm" means a breach of a legal duty owed to the plaintiff that resulted in actual harm. See *Perella v. Massachusetts Tpk. Auth.*, 55 Mass. App. Ct. 537, 539 (2002) (local resident lacked standing to challenge discretionary decision to construct a roadway through a "park and ride" facility). Both of these elements are generally required to establish standing.

First, there must be a plausible claim that the defendants violated a legal duty that they owed to the plaintiff. "[I]t is not enough that the plaintiff be injured by some act or omission of the defendant; the defendant must additionally have violated some duty owed to the plaintiff." *School Comm. of Hudson*, 448 Mass. at 579 (cleaned up) (school committees lacked standing to challenge charter school approval), quoting *Penal Institutions Comm'r for Suffolk County v. Comm'r of Correction*, 382 Mass. 527, 532 (1981) (county penal commissioner lacked standing to seek order compelling transfer of prisoners to different facility).

Courts must "pay special attention to the requirement that standing usually is not present unless the government official or agency can be found to owe a duty directly to the plaintiffs," and not just to the general public. *City of Revere v. Massachusetts Gaming Comm'n*, 476 Mass. 591, 607 (2017) (host city and labor union lacked standing to challenge denial of casino gaming license application for site in Revere and allowance of application for site in Everett), quoting *Enos*, 432 Mass. at 136 (neighbors lacked standing to challenge environmental approval for construction of municipal sewage treatment plant); accord *Hertz v. Secretary of the Exec. Office of Energy & Env'tl. Affairs*, 73 Mass. App. Ct. 770, 771-774 (2009) (residents lacked standing to challenge approval of municipal harbor plan that allowed construction of towers on neighboring wharf, where regulation did not afford them special status different from public at large).

Second, the plaintiff must have suffered "a concrete and particularized harm" as a result of the alleged breach of duty. *Alliance, AFSCME/SEIU, AFL-CIO v. Commonwealth*, 427 Mass. 546, 549 (1998) (labor unions lacked standing to

challenge Governor's line-item veto of earmarked funding for public health program). In other words, some "personal interest" of the plaintiff must have been "directly affected." *Id.*, quoting *Town of Brookline v. The Governor*, 407 Mass. 377, 388 (1990) (Liacos, C.J., concurring); accord, e.g., *Horton v. Attorney General*, 269 Mass. 503, 514 (1930) ("Only those directly affected as to some personal interest by the operation of a statute can question its validity.").

Mr. Lyons has not shown that the amendment to the State Auditor's statutory authority created any legal duty owed to him personally, or that he will suffer any personal harm if revised House Rule 85A were to be applied in a manner that restricts the Auditor's exercise of her statutory authority. He therefore does not have standing to bring this lawsuit unless he can identify an applicable exception to these general requirements for standing.

2.2. No Exception to Requirement of Personal Harm. Mr. Lyons asserts he has standing because he is a resident, taxpayer, and voter in Massachusetts, and he is among the many Massachusetts citizens who supported and voted for Question 1 during the most recent election. The Court is not persuaded.

The Court recognizes that the recent amendment to the State Auditor's statutory authority was supported by a clear majority of the citizens who cast ballots during the November 2024 State election.⁹ That does not change the legal requirement that neither Mr. Lyons nor anyone else who voted for or otherwise supports Question 1 must show that they have legal standing before they may seek a court ruling about whether this amendment is constitutional, or whether the revised House rule impermissibly conflicts with the statute.

Though Mr. Lyons expresses keen interest in making sure that the statutory amendment giving the State Auditor express authority to audit the Legislature is implemented in a manner that he thinks is proper, that does not mean Mr. Lyons has standing to defend the statutory amendment or to challenge the recent House rules change. Being a concerned citizen who believes that "the Legislature is the enemy [of] and the opposition" to the intended goals of

⁹ Secretary of the Commonwealth William Galvin determined that 2,326,911 voters, representing 71.6 percent of all votes cast, voted "Yes" on Question 1 during the 2024 general election. These election results are reported online at https://electionstats.state.ma.us/ballot_questions/search/year_from:1972/year_to:2024. The Court may take judicial notice of this information because it is a matter of public record and comes from a source the accuracy of which cannot reasonably be questioned. See *Schaer*, 432 Mass. at 477; *Greco*, 76 Mass. App. Ct. at 301 n.9; Mass. Guide Evid. § 201(b)(2).

Question 1, as Mr. Lyons writes in his memorandum, does not give one standing to challenge a legislative rule or seek a declaration as to the constitutionality of a statute.

"[S]tanding is not measured by the intensity of the litigant's interest or the fervor of his advocacy." *New Bedford Educators Assn. v. Chairman of the Massachusetts Bd. of Elem. and Secondary Educ.*, 92 Mass. App. Ct. 99, 108 (2017) (teachers unions lacked standing to challenge adequacy of "turnaround plans" for underperforming schools), quoting *Pratt*, 396 Mass. at 42 (taxpayers and residents lacked standing to challenge City's decision to let nonprofit corporation use 2.5 acres of Boston Common for "Concerts on the Common" events), and *Valley Forge Christian College v. Americans United for Separation of Church & State*, 454 U.S. 464, 486 (1982) (organization dedicated to separation of church and state lacked standing to challenge transfer of government property to religious organization without payment).

Mr. Lyons has not met his burden of showing that he has standing under any of the legal doctrines or precedent that he invokes in opposing the motion to dismiss, as discussed below.

2.2.1. Voter and Proponent Standing. Mr. Lyons does not have standing merely because he voted for and remains a proponent of the ballot initiative authorizing audits of the Legislature.

Standing to protect voters' rights arises in limited circumstances not relevant here. For example, the first ten signers of an initiative or referendum petition have standing to bring suit to ensure that the petition is properly presented to the voters. *Buckley v. Secretary*, 371 Mass. 195, 197-198 (1976); see also *Paisner v. Attorney General*, 390 Mass. 593, 595 (1983) (implicitly assuming, without deciding, that proponents had standing to challenge Attorney General's decision not to certify initiative petition). This line of cases is not relevant because Question 1 has already been passed by the voters.

Voters also have standing to sue to have their votes be counted and given equal weight; for example, a voter in a district that has a disproportionately large population has standing to challenge the apportionment. See *Vigneault v. Secretary of the Commonwealth*, 354 Mass. 362, 363-364 (1968); *Baker v. Carr*, 369 U.S. 186, 206-208 (1962). These cases are not relevant because this suit is not about whether Mr. Lyons' vote counted or was diluted.

Mr. Lyons has identified no authority holding or even suggesting that someone who votes for a ballot initiative thereby has standing to bring suit regarding

implementation of a resulting law, even if the statute does not affect them personally. Permitting any supporter of a successful ballot initiative to bring suit at any time to enforce the resulting law would be inconsistent with the requirements of standing discussed above.

2.2.2. Taxpayer Standing. Nor does Mr. Lyons have standing merely because he is a taxpayer who cares about how the Legislature spends public funds.

There is no general equity jurisdiction in Massachusetts “to entertain a suit by individual taxpayers” to challenge allegedly unlawful expenditures by governmental entities. *Pratt*, 396 Mass. at 42, quoting *Fuller v. Trustees of Deerfield Academy*, 252 Mass. 258, 259 (1925).

Nor do taxpayers have standing to ask courts to decide other “generalized grievances” about the conduct of government. *Goldman v. Sec’y of Exec. Off. of Health & Hum. Servs.*, 101 Mass. App. Ct. 427, 438 (2022) (taxpayers lacked standing to challenge use of Medicaid funds to pay for neonatal male circumcisions that are not medically necessary); accord *Valley Forge Christian College*, 454 U.S. at 479 (reaching similar conclusion, as to transfer of government property to religious organization, under “case or controversy” requirement of United States Constitution art. III).¹⁰

It follows that individual taxpayers do not have standing to bring suit to support the Auditor’s monitoring of governmental spending or operations.

2.2.3. “Disclosure Standing.” Mr. Lyon’s interest in compelling the Legislature to disclose more information about its operations does not give him standing either. He is not seeking to enforce a statute that gives him a personal right to obtain certain categories of information from political donors or from a government entity. Contrast *Federal Election Commission v. Akins*, 524 U.S. 11, 21 (1998) (standing to enforce public disclosure obligation of political action committees); *Public Citizen v. Department of Justice*, 491 U.S. 440, 449 (1989) (standing to enforce notice requirements of Federal Advisory Committee Act). The ballot initiative approved by the voters authorizes and directs the State Auditor to audit the Legislature, and therefore to obtain relevant information from the Legislature, but it does not compel public disclosure of anything.

¹⁰ The Court recognizes that “the constraints of Article III do not apply to state courts, and accordingly the state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability ...” *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617 (1989). The holding in *Valley Forge Christian College* is nonetheless instructive, as it is consistent with the recent decision in *Goldman*.

2.2.4. Public Right Doctrine. Finally, Mr. Lyons does not have standing under the so-called public right doctrine.

This doctrine permits citizens who otherwise would lack standing because they themselves have not suffered any legal injury to “seek relief in the nature of mandamus to compel the performance of a duty required by law.” *Perella*, 55 Mass. App. Ct. at 539, quoting *Tax Equity Alliance of Mass.*, 423 Mass. at 714. “A complaint in the nature of mandamus is ‘a call to a government official to perform a clear cut duty,’ and the remedy is limited to requiring action on the part of the government official.” *Boston Med. Ctr. Corp. v. Sec’y of Exec. Off. of Health & Human Servs.*, 463 Mass. 447, 469–470 (2012), quoting *Simmons v. Clerk-Magistrate of the Boston Div. of the Housing Court Dept.*, 448 Mass. 57, 59–60 (2006), quoting in turn *Doe v. District Attorney for the Plymouth Dist.*, 29 Mass. App. Ct. 671, 675 (1991).

[T]he public right doctrine has always been limited to the enforcement of clear and unequivocal duties.” *Perella*, *supra*, at 540. The duty at issue must be something other than a general obligation to obey the law. “[A]lthough officials ‘are obligated to obey the law, ... that obligation, without more, is not a sufficient ground for action by persons who are not injured.’ ” *Id.*, quoting *Kaplan*, 333 Mass. at 460–461.

The public right doctrine must be “construed narrowly.” *Perella*, *supra*. It “cannot be invoked for broad purposes, such as to challenge [or defend] the substantive constitutionality of a statute” or legislative rule. *Id.*; accord, e.g., *Anzalone v. Administrative Office of the Trial Court*, 457 Mass. 647, 649, 654–655 (2010); *Tax Equity Alliance of Mass.*, 423 Mass. at 714–715.

The doctrine is therefore not implicated here, as it does not permit Mr. Lyons to challenge the validity of House Rule 85A or defend the constitutionality of the statutory amendment approved by the voters without showing that he has legal standing.

ORDER

The Attorney General’s motion to dismiss is **allowed**. Final judgment shall enter dismissing this action without prejudice as to all Defendants.

31 March 2025

/s/
Kenneth W. Salinger
Justice of the Superior Court