No. SJC-13257

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

CHRISTOPHER ANDERSON, et al.,

Plaintiffs-Appellants,

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-Appellees,

JOSE ENCARNACION, DEBORAH FRONTIERRO, NAZIA ASHRAFUL, MEG WHEELER, JOHN M. KYRIAKIS, ZIBA CRANMER, KEITH BERNARD and KAYDA ORTIZ,

Intervenors.

On Reservation and Report from the Supreme Judicial Court for Suffolk County

REPLY BRIEF OF PLAINTIFFS-APPELLANTS

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INTRODUCTION

Defendants concede that the Court should invalidate a summary when "it is 'significantly misleading and likely to have a major impact on voters.'" AG Br. 20-21 (quoting *First v. Att'y Gen.*, 437 Mass. 1025, 1026 (2002)). That standard is fatal to the Summary and Yes Statement that Defendants prepared for the Graduated Income Tax Amendment. The Amendment ostensibly links the new tax revenues specifically to education and transportation for the precise purpose of having a "major impact on voters": convincing them to amend Article 44 to impose a graduated income tax when they have refused to allow a graduated income tax five times before. The Summary and Yes Statement reiterate that putative commitment to education and transportation, saying the "additional" revenues "would be used" and are "to be used" for those two specific purposes. But that earmark language is misleading, for—as Defendants acknowledged in *Anderson I*—the fungibility of money means the Legislature has discretion to spend the additional funds on whatever it wants. When voters learn the Legislature can leave education and transportation spending unchanged and use the additional revenues for different purposes, they feel misled and their voting intentions change.

Defendants never *dispute* any of that crucial context; they just want the Court to *ignore* it. Voters, however, should not be asked to amend the Constitution based on language that is intentionally misleading. And Defendants have merely copy-

and-pasted the Amendment's misleading earmark language into the Summary and Yes Statement, while refusing to include any language clarifying for voters how the putative earmark indisputably works in practice.

The reasons Defendants now give to justify their refusal to add clarifying language lack merit. They say the Summary would be too long if it contains five sentences instead of four, but that is unserious given the stakes presented by a proposed *constitutional amendment*—the first in over two decades. Defendants' argument that summaries should not address possible future appropriations ignores that the Summary and Yes Statement *already* highlight possible future spending on education and transportation, saying the additional revenues "would be used" and are "to be used" for those purposes. Defendants' reliance on precedents concerning the use of the phrase "subject to appropriation" with respect to *statutory* earmarks also is misplaced. Voters reasonably might conclude that a *constitutional* earmark constrains the Legislature's discretion in a manner that a mere statutory earmark—always subject to legislative repeal—does not. And while Defendants complain that Plaintiffs' proposed clarifying language is "argumentative," it comes from Defendants' own brief in *Anderson I.* In any event, *Defendants* must promulgate fair and neutral language, and they failed to do so here.

Finally, Defendants argue (at 42-43) that Plaintiffs' challenge to the Yes Statement *still* is premature because Defendants have not formally printed the Yes

Statement yet. But Defendants already provided Plaintiffs the final language, J.A. 349-52, and Defendants cannot reasonably ask the Court to wait longer before addressing a statement that must be published to voters in July.

Defendants have abdicated their duty to provide a "fair" Summary and Yes Statement. The Court should exclude the Amendment from the ballot unless the Summary and Yes Statement are appropriately clarified.

ARGUMENT

I. The Summary and Yes Statement Are Misleading to Voters.

1. When Massachusetts voters are asked to consider ballot measures, the summaries and yes statements Defendants publish play a crucial role in ensuring that voters make an informed decision. The summaries and yes statements therefore must be fair, neutral, and not misleading, so that "the election is not marred by misunderstanding or confusion." *Hensley v. Att'y Gen.*, 474 Mass. 651, 669 (2016). "[M]ention must be made of at least the main features of the measure," *Sears v. Treasurer & Receiver General*, 327 Mass. 310, 324 (1951), in such a manner that voters can understand "the consequence of approval of the petition." *Hensley*, 474 Mass. at 664. Mere technical accuracy is *not* sufficient. Language that is "easily susceptible of being misunderstood," or not as "clear as it could" be, should be clarified for voters. *Opinion of the Justices*, 271 Mass. 582, 589-90 (1930);[1]

[1] As Plaintiffs previously explained (at 28), while *Opinion of the Justices* predates

Hensley, 474 Mass. at 670. And the "impact" of a misleading summary on voting intentions must be considered; a summary that is "significantly misleading and likely to have a major impact on voters" fails the constitutional test. *First*, 437 Mass. at 1026; *Hensley*, 474 Mass. at 666 (explaining that the Court will consider a summary's "likely impact on the voters"). Putting this all together, the Court must pragmatically consider summaries and yes statements through the prism of hypothetical voters—to ask itself how voters both will understand and react to the language put before them.

For the reasons given in Plaintiffs' opening brief and those of Plaintiffs' supporting amici, the Summary and Yes Statement at issue here fail that pragmatic test, because they reiterate the Amendment's misleading suggestion that the "additional" tax revenues "would be used" and are "to be used" for education and transportation. Defendants assert without support (at 34) that how the new tax revenues will be spent is not "a main feature of the Legislative Amendment," but that blinks reality. It is no secret that the Amendment's drafters included a putative link between the "additional" tax revenues and transportation and education spending in order to have a "major impact on voters"—to overcome voters' historic resistance to a graduated income tax. Pl. Br. 12-14, 16-20. Legislators who

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Article 74, Article 74 did not disturb Article 48's requirement that summaries be "fair." Defendants' complaint (*e.g.*, at 22-23) that Plaintiffs are relying on the pre-Article 74 legal standard is thus misguided.

supported the Amendment openly opined that it "will stand a better chance of being approved" than prior failed efforts to adopt a graduated income tax *precisely because* "it is focused specifically on money for education and transportation." J.A. 128. In fact, this Court *already* has recognized that "the focus of legislators" in advancing the Amendment "was specifically on proposals to appropriate funds for education and transportation, because those proposals would stand a better chance of being approved by voters[.]" *Anderson v. Att'y Gen.*, 479 Mass. 780, 799 n.10 (2018) (*Anderson I*).

Yet while the supposed earmark is being used to sell the Amendment to voters, the Amendment does not *actually* require the Legislature to use the "additional" revenues for education and transportation. Because "money is fungible," the Legislature can decide "to reduce funding" for education and transportation from other sources, "replace it with the new surtax revenue," and spend the money thus freed up however it chooses. AG *Anderson I* Br., at *27. The *practical* flexibility the Amendment leaves the Legislature is such an important feature of the Amendment that Defendants themselves identified and relied on it to defend the measure's constitutionality (as proposed by initiative petition) in *Anderson I*, and legislators preserved that flexibility in the face of proposed modifications to the Amendment. Pl. Br. 17-18.

In their combined 95 pages of briefing, Defendants and Intervenors *never dispute* any of that crucial history or context. They never dispute that the Amendment's proponents want voters to believe the Amendment will lead to increased education and transportation spending to carry the new tax across the finish line. They scarcely could do so, given the extent to which the Amendments' proponents have sought to establish that linkage in voters' minds. Defendants suggest this context is irrelevant because the fairness of a summary does not turn on "'voter interest' in a particular issue." AG Br. 32. That is wrong. This Court has explained that a summary's fairness is not determined in the ether. Instead, "whether a summary is 'fair' … must be assessed in the context of the entire proposal and its likely impact on the voters." *Hensley*, 474 Mass. at 666. Defendants themselves elsewhere concede as much. AG Br. 20-21.

Defendants also never deny that the Amendment would allow the Legislature to use the "additional" revenues to increase spending wherever it wants. Defendants contend (at 38) that Plaintiffs take the Attorney General's statements from *Anderson I* "out-of-context," and throw "Assistant Attorneys General" under the bus for making them, but they never deny the legal point. If there were any doubt, Defendants' primary argument in *this* litigation is that the phrase "subject to appropriation" informs voters that the Legislature can spend the additional tax revenues however it wants, implicitly conceding the point.

It also is clear that, by singling out education and transportation spending for mention, and using the phrases "would be used" and "to be used," the Summary and Yes Statement misleadingly suggest that the "additional" tax revenues only may be used to increase spending on those purposes and not others. Polling data confirms that common sense point. After reading the almost verbatim 2018 Summary and verbatim 2018 Yes Statement, only a small minority of potential voters correctly understood that the Amendment does not require increased spending on education and transportation. Pl. Br. 41-42. When provided with the clarifying language from the Attorney General's *Anderson I* brief, a large majority of voters feel "misled" by the Summary and Yes Statement. *See id*. Moreover, the evidence shows that the misleading Summary and Yes Statement will impact voting intentions, perhaps decisively so. *See id*. Defendants and Intervenors identify no evidence to the contrary—nor would one expect any, given that the Amendment's earmark language was crafted to mislead voters in this very way. Even if the Attorney General is not required to hold "extensive hearings" before drafting a summary (AG Br. 36-37), Defendants should not blind themselves to existing evidence that their proposed language is misleading to actual voters.

2. Rather than dispute that voters would be misled by statements that the "additional" revenues "would be used" and are "to be used" for education and transportation, Defendants argue that the phrase "subject to appropriation" fixes

everything, because it "informs voters that the Legislature will retain its appropriation authority." AG Br. 33. That scarcely follows. A voter seeing "subject to appropriation" in the context of this proposed constitutional amendment reasonably could think the additional tax revenues must be used for education and transportation, but the Legislature has discretion *when* and *how* to do so. A reasonable voter would *not* read that phrase as freeing the Legislature to use the additional tax revenues to increase spending wherever it wants.

Defendants and Intervenors argue that *Associated Industries of Massachusetts v. Secretary*, 413 Mass. 1 (1992) ("*AIM*"), and *Gilligan v. Attorney General*, 413 Mass. 14 (1992), are dispositive in their favor, but those cases are not to the contrary. In both cases, this Court explained that "subject to appropriation" as used in a *statutory* ballot measure informs voters that the Legislature retains control over how revenues will be spent. But the Legislature retains control over *all* statutory earmarks, because the Legislature "cannot, through enactment of an act or statute, bind itself or its successors to make a particular appropriation." *AIM*, 413 Mass. at 9; *see also Opinion of the Justices*, 302 Mass. 605, 610-611 (1939) (same). The Legislature therefore always can revisit *statutory* allocations of funding, and voters should know that. But while voters should expect that statutory earmarks remain "contingent on … an action of the Legislature," *AIM*, 413 Mass. at 12, they should not expect the same for a *constitutional* earmark. The Constitution, unlike a mere

statute, binds future Legislatures' hands—that is the whole point of having a written Constitution enforced by an independent judiciary. So the phrase "subject to appropriation" in a proposed constitutional amendment, unlike the mere statutes at issue in *AIM* and *Gilligan,* would not suggest to voters that a dedication of funds to certain purposes is toothless.

In addition, precedent requires the Court to pragmatically consider "the context of the entire proposal" and a summary's "*likely impact on the voters*." *Hensley*, 474 Mass. at 666 (emphasis added). Nothing in *AIM* or *Gilligan* suggests that the earmarks in those cases were intended or expected to have the same "likely impact" on voters that the Graduated Income Tax Amendment's putative earmark was crafted to have here. To the contrary, in rejecting the challenge to the summary in *Gilligan,* the Court explained that the "'main features' of the measure *have* been mentioned, although some of the details may have been covered with 'broad generalizations.'" 413 Mass. at 20 (emphasis added). In contrast, how the additional revenues raised by the Graduated Income Tax Amendment can be spent is no mere "detail," and so a different outcome should be reached here.

3. Defendants repeatedly argue (*e.g.*, at 8, 15-16, 48-49) that they need not clarify the operation of the earmark consistent with their own brief in *Anderson I*, because that clarification represents a "disputed interpretation" of the Amendment. Not so. Defendants seemingly expected Intervenors to "contend that

the Legislative Amendment would restrict the spending discretion of the Legislature, requiring all additional revenue to be spent on education and transportation." AG Br. 41. Yet Intervenors' brief does not actually advance that position, which would clearly be unreasonable. This is not a case like *Abdow v. Attorney General*, in which the Attorney General's own understanding of the ballot measure's legal effect was contested, and the Court deferred to her summary because "her understanding of the measure [wa]s reasonable." 468 Mass. 478, 507 (2014). Plaintiffs and Defendants in this case *share* an understanding, and the problem is that the Summary and Yes Statement suggest something *different* to voters.

Defendants quote *AIM* for the proposition that "[n]othing in art. 48 requires the summary to include legal analysis or an interpretation." AG Br. 18 (quoting *AIM*, 413 Mass. at 12). But *AIM's* statement cannot be taken literally, for to summarize a proposed law necessarily requires *some* legal analysis and interpretation. The Court has recognized that necessity, explaining that "the Attorney General must … craft a fair summary and, in doing so, must *inevitably* form her own understanding of the meaning of the language in the initiative and its operation and effect." *Abdow*, 468 Mass. at 507 (emphasis added). Indeed, Defendants' proposed Summary states a *legal* proposition on its face: that, under the terms of the proposed Amendment, "[r]evenues from this tax would be used, subject to appropriation by the state Legislature," for education and

transportation. That legal proposition is misleading to voters and so must be clarified. In that regard, Plaintiffs are not asking the Attorney General to conduct any *new* "legal analysis," only to give voters the *same* clarification previously provided to this Court. Defendants should not tell this Court one thing and voters something different.

Relatedly, Defendants protest (at 36, 41-42) that the requested clarification would constitute an argument "against" the Amendment, which they say should be left for the partisan statements in the voter guides. That makes no sense—was the Attorney General arguing "against" the Amendment when providing the very same clarification to this Court in *Anderson I*? Of course not. In any event, by effectively copying-and-pasting the misleading earmark language from the Amendment *without* clarification, Defendants are advancing proponents' argument in *favor* of the tax increase. Clarification is needed to avoid a summary that is one-sided and unfair.

Defendants' argument (at 41-42) that summaries should not address possible future appropriations ignores that the Summary and Yes Statement *already* highlight possible future spending on education and transportation, saying the additional revenues "would be used" and are "to be used" for those purposes. If Defendants choose to discuss possible future appropriations, they must do so in a fair and neutral manner.

4. In a different context, this Court has said it will not "check common sense at the door" when considering ballot measure issues. *Carney v. Att'y Gen.*, 447 Mass. 218, 232 (2006). Here, common sense—informed by the legislative history, the text, and polling data—shows that the Summary and Yes Statement will mislead voters into believing the additional tax revenues only may be used to increase education and transportation spending. The Court should exclude the Amendment from the ballot unless the Summary and Yes Statement are modified to eliminate that misleading insinuation.

II. Defendants' Positions Would Deprive The Summary And Yes Statement Of the Vital Role They Play In The Initiative Process.

In addition to their principal argument based on the phrase "subject to appropriation," Defendants make a number of other arguments in support of their misleading Summary and Yes Statement, none of which have merit.

1. According to Defendants (AG Br. 25-28, 30-32, 35), the Summary and Yes Statement are permissible because they largely quote from the Amendment itself. But the purpose of having the Attorney General—not the ballot measure's own proponents—draft the summary is to provide voters with a neutral, objective take on the "the consequence of approval of the petition." *Hensley*, 474 Mass. at 664. In drafting the summary, the Attorney General is required to consider whether the measure itself "is easily susceptible of being misunderstood." *Opinion of the Justices*, 271 Mass. at 589. If a measure's own wording is confusing or misleading,

and the Attorney General copies it, then the summary and yes statement will launder the proponents' word games. Unfortunately, that is what is happening here.

In light of their copy-and-paste job, Defendants' demand for deference (at 20-21) rings hollow. The justification for deferring to the Attorney General is the "exercise of discretion" she deploys as "a constitutional officer with an assigned constitutional duty." *Mass. Teachers Ass'n v. Sec'y*, 384 Mass. 209, 230 (1981). The Attorney General exercises this discretion when she makes a judgment call on "what to include, what to exclude, and what language to use." *Id.* No such judgment call occurred here. Rather, the Summary and Yes Statement merely paraphrase the Amendment's misleading earmark language, swapping in "would be used" and "to be used" for "shall be expended."

Defendants fail to grapple with the ramifications of their position. If the proponents in this case are able to launder a misleading earmark in the Summary and Yes Statement, then no doubt others will try to replicate the same ploy in the future. The result will be a Constitution littered with toothless spending earmarks that were included only to logroll some different policy to victory.

2. Defendants argue that even if their Summary and Yes Statement are unclear about how the earmark works, the Amendment's opponents can clear things up in the voter guide. AG Br. 19-20, 42. Even assuming *Plaintiffs* (and not some other third parties) will have that opportunity, Defendants' response misses the

mark. As the National Conference of State Legislatures has observed, official summaries serve as many voters' only resource for the meaning of a measure. Pl. Br. 26-27. And in that regard, voters rightly expect the Attorney General to provide them a "fair" summary they can trust—Article 48 and Section 53 require no less. On the other hand, voters have no reason to believe that the arguments by the "pro" and "con" camps are trustworthy, and for that reason many voters likely just ignore them. Moreover, even if opponents of a ballot measure have a brief (150-word) chance to explain *why* the ballot measure should be rejected, they should not need to use that scarce space to contest misleading statements by the Attorney General about *what* the measure even provides.

3. Like Massachusetts, other states around the country have safeguards to ensure that voters are given accurate summaries of ballot measures. In addressing challenges brought to enforce those safeguards, other states' highest courts have stressed that neutral, non-misleading materials are vital. *See* Pl. Br. 37-39. In line with these principles, Plaintiffs explained in their opening brief (at 37-39) that other courts have struck down ballot summaries that, while technically accurate, elided important information about a measure's practical consequences. Other courts likewise have held that, where the language of a measure itself "creates an inaccurate or incomplete impression of the law, the failure of the ballot to correct the

misconception will render it unclear, misleading, and deceptive." *City and Cnty. of Honolulu v. State*, 431 P.3d 1228, 1239 (Haw. 2018).

In response to this discussion of other states' precedents, Defendants essentially argue that Article 48 provides fewer safeguards to Massachusetts voters than voters in other states receive. AG Br. 23-25. Defendants' argument that this Court should ignore how the highest courts of other states address ballot integrity questions fails twice over.

First, while Defendants highlight differences in wording between Article 48/Section 53 and other state's relevant laws, it would be surprising if the various states' laws were word-for-word identical. The important point is that all of these laws advance the *same* principle—that the ballot should "give the voter fair notice of the decision he must make." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982). Thus, while this Court has explained that a summary should provide "a fair and intelligent conception of the main outlines of the measure," *First*, 437 Mass. at 1026, and Section 53 requires "fair and neutral 1-sentence statements describing the effect of a yes or no vote," G.L. c. 54, § 53, other states' laws and courts describe the very same requirements using only slightly different wording. *See, e.g., Fla. Dep't of State v. Slough*, 992 So. 2d 142, 146 (Fla. 2008) (a ballot summary must include "an explanatory statement … of the chief purpose of the measure" (quoting Fla. Stat. § 101.161(1))); *Fairness & Accountability in Ins. Reform v. Greene*, 886 P.2d 1338,

1346-47 (Ariz. 1994) (summary must include a description of a measure's "effect if adopted"). And just as other states have referenced Massachusetts precedents in support of the proposition, *e.g.*, that "the basic purpose of the ballot summary is to enable voters to reach informed and intelligent decisions on how to cast their ballots," *Alaskans for Efficient Gov't, Inc. v. State*, 52 P.3d 732, 735-36 & n.16 (Alaska 2002) (citing *Mass. Teachers Ass'n* and *Sears*), it would be reasonable for this Court to consult out-of-state precedents too.

Second, and perhaps more fundamentally, Defendants provide no reason why Massachusetts voters should be afforded less protection against unfair, misleading summaries than voters in other states—why, in light of Article 48's requirement for a "fair" summary, Massachusetts should be a laggard and not a leader in ensuring the integrity of "the people's process." Consider this statement in Defendants' brief (at 24-25):

> Article 48 does not require the Attorney General to "explain" the "chief purpose of the measure"; conduct an "analysis" of a measure's provisions; describe "the meaning of the measure" or "its effect if adopted"; or make "the meaning" of a measure "clear."

Put aside that this statement mischaracterizes this Court's Article 48 and Section 53 jurisprudence, as more accurately recounted *supra* at 7-8, as well as in Plaintiffs' opening brief and elsewhere in Defendants' brief too. Do Defendants really mean to suggest that Massachusetts, in contrast to other states, is content to have voters

determine whether to amend the state constitution based on summaries that are not "clear" about the "chief" purposes of a measure, such that voters are left uncertain about what an amendment's "effect if adopted" would be? That *should not* be Massachusetts law and, as described elsewhere, that *is not* Massachusetts law.

III. Defendants' Objections To Plaintiffs' Proposed Clarifying Language Miss The Mark.

In addition to trying to justify their own misleading Summary and Yes Statement, Defendants attack Plaintiffs' proposed revisions. Their counteroffensive lacks merit.

To begin, Defendants' quibbles with the precise wording of Plaintiffs' proposals—*i.e.*, their complaint about the word "however"—are a distraction. The question before the Court is whether Defendants complied with their duties under Article 48 and Section 53, not whether every single word in Plaintiffs' preferred alternatives is flawless. In that regard, the procedural history is worth reviewing. Plaintiffs reached out to Defendants in November 2021 to explain the problem with the 2018 Summary and Yes Statement and to propose that Defendants clarify matters. J.A. 332-337. Defendants never substantively responded, waiting to release any proposed language until the Single Justice asked them to do so in March 2022. J.A. 79-80, 339-53. Even then—after being asked to "work together" to "reach an agreement," J.A. 80—Defendants just rejected all of Plaintiffs' suggestions and offered *no* proposed wording changes in reply. J.A. 339-53.

Moreover, in an effort to find common ground, Plaintiffs' proposed language had been taken almost verbatim from the Attorney General's *own* brief in *Anderson I*. J.A. 339-40, 350-52. Perhaps for that reason, Defendants never argue that Plaintiffs' language is wrong. They instead object to the length of Plaintiffs' proposed insertions, arguing (at 34) that a Summary that contains five sentences rather than four is unreasonable. But a desire to be "concise" is no reason to exclude a single additional sentence intended to ensure that voters do not amend the constitution based on a misunderstanding. Even with an extra sentence the Summary would be shorter than those Defendants typically use for mere statutes.

Defendants argue (at 35) that voters will be confused by "undefined terms and concepts" in Plaintiffs' proposed language, highlighting "choose to reduce funding," "other sources," and "new surtax revenue." These terms are scarcely confusing in context. Indeed, Defendants' simultaneous arguments that voters will be flabbergasted by "choose to reduce funding," but will have a budget analyst's appreciation for the full implications of "subject to appropriation," reveals the lack of any serious effort by Defendants to craft a Summary and Yes Statement that might be useful to real-life voters.

Defendants object (at 36) that Plaintiffs' proposed additional language for the Summary and Yes Statement is argumentative because "its purpose is to refute a particular understanding of the Legislative Amendment." But that *always* will be

the case when plaintiffs are concerned that Defendants' proposed summary and yes statement are misleading such that the "particular understanding" being conveyed to voters is wrong. Defendants' argument is especially perplexing because Plaintiffs and Defendants *share* an understanding of how the Amendment's earmark actually works. As for Defendants' assertion (at 36) that "Plaintiffs contend that voters must be warned that "the Legislature has the discretion to increase spending on whatever it wants,'" which they deem an improper partisan argument, that clarification would be unnecessary, and this lawsuit would not have been filed, if the Summary and Yes Statement did not misleadingly suggest *the opposite* to voters.

Finally, Defendants have no response to Plaintiffs' alternative proposal for the Yes Statement: if the additional revenues can be spent however the Legislature wants, then exclude the misleading statement that they "would be used" or are "to be used" for education and transportation. This alternative, describing only the tax increase, would address Defendants' claimed interest in a Yes Statement that is concise and free from speculation.

CONCLUSION

The Court should: (1) declare that the Summary does not comply with Article 48 and order the Secretary not to place the Amendment on the ballot unless Defendants have resolved the misleading description; and/or (2) revise the Yes Statement pursuant to G.L. c. 54, § 53, consistent with Plaintiffs' suggestions.

Dated: April 26, 2022

Respectfully submitted,

Plaintiffs-Appellants

By their attorneys,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(k) of the Massachusetts Rules of Appellate Procedure, the undersigned counsel states that this brief complies with the rules of court that pertain to the filing of briefs, including but not limited to Mass. R. App. P. 16(b), 16(e), 16(f), 16(h), 18, and 20.

This brief was prepared using Microsoft Word 2016 in 14-point Times New Roman, a proportionally spaced typeface, and contains 4,494 words.

Dated: April 26, 2022

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CERTIFICATE OF SERVICE

I, Kevin P. Martin, counsel for Plaintiffs-Appellants, hereby certify that I have served two copies of this Reply Brief by causing it to be sent via first class mail and email to counsel for Defendants-Appellees and Intervenor-Defendants-Appellees this 26th day of April, 2022:

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