

Massachusetts: Proposal to tax millionaires returns



David M. Kall | Monday, July 29, 2019

We have been [following](#) a contentious proposal in Massachusetts that would levy an additional four percent income tax on individual income exceeding \$1 million. The proposal, known as the “[Fair Share Amendment](#),” would generate approximately \$2 billion in revenue for the state to improve public transportation infrastructure and public education, if it is ultimately enacted. It began as a citizens’ initiative to amend the Massachusetts Constitution. However, the Fair Share Amendment never reached the ballot due to a [decision](#) of Supreme Judicial Court of Massachusetts that found the amendment unlawfully addressed more than one subject.

But now the Fair Share Amendment is back. Rather than rely on a citizens’ initiative, a majority of both houses of the Massachusetts Legislature (or “General Court”) voted to place it on the ballot. [Procedures](#) set forth under the Massachusetts Constitution provide that if a majority of both houses of the Legislature convened during 2021-2022 once again vote to place the Fair Share Amendment on the ballot, the Amendment would then appear on the November 2022 ballot for Massachusetts voters to reject or deny.

Citizen-Led Initiative Fails

In 2015, [Raise Up Massachusetts](#) (a coalition established in 2013 of community organizations, labor unions, and religious groups) launched a campaign for the Fair Share Amendment. The campaign gathered over 150,000 signatures from Massachusetts voters in support of the Fair Share Amendment ballot question. The Massachusetts Constitution provides that an initiated constitutional amendment must obtain

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favorable votes from at least one-quarter of the legislature in consecutive biennial legislative terms in order to be placed before voters.

Despite obtaining the necessary votes from legislators in 2017, the Supreme Judicial Court (the highest court in Massachusetts) struck down the citizen-proposed Fair Share Amendment as violating the single subject rule of the Massachusetts Constitution. [Article 48](#) of the Massachusetts Constitution, as amended by Article 74 thereof, provides that statewide initiative petitions may only contain subjects that are “related” or “mutually dependent.” After reviewing the Amendment, the Court held that it “does not only contain subjects which are related or mutually dependent” and invalidated it for that reason. In the Court’s view, the Amendment is not a “unified statement of public policy” because the income tax, transportation funding, and education funding provisions are not “related or mutually dependent.”

Constitutional Amendment Procedure

By contrast to citizen-led initiative proposals, the single subject rule under the Massachusetts Constitution does not stand in the way of the Legislature placing proposed constitutional amendments before voters. If Massachusetts legislators, rather than citizens, propose an amendment, the single subject rule does not apply and the majority vote threshold is required in consecutive biennial sessions of the Legislature rather than the one-quarter vote threshold. It is this alternative to the citizen-led initiative that is now playing out with the Fair Share Amendment in Massachusetts.

Legislators Introduce the Amendment

In January 2019, Massachusetts State Senator Jason Lewis (D) State Representative James O’Day (Democrat) introduced the Fair Share Amendment to the Massachusetts Legislature. Legislators gave overwhelming initial approval with a vote of 147-48. Looking forward, the Amendment must be approved by a majority of both houses of the Legislature during 2021 or 2022 session to appear on the ballot. If that occurs, then it would indeed appear before voters on the November 2022 ballot despite the adverse ruling from the Supreme Judicial Court with respect to the citizen-led initiative. And if the voters support the Amendment, the millionaire’s tax would take effect in 2023.

Controversy Continues

Proponents of the proposed Amendment argue that it would create approximately \$2 billion in new revenue that could be used for vital improvements to public transportation and education. In addition, the tax levy would [only affect 0.5%](#) of all taxpayers and, in their view, only those taxpayers who can afford it most.

Opponents argue that the tax would harm the state economy. They argue that small businesses can easily relocate to one of the nine states that do not impose the additional tax. However, [proponents refute](#) that argument by their position that the Amendment helps small businesses. Most small businesses are not considerably close to the \$1 million threshold. Thus, these small businesses would not fall within the aforementioned 0.5% of taxpayers. Small businesses aspire to growth. Proponents argue that with a well-funded educational system, and advancements in transportation, which the amendment tries to accomplish, small businesses will ultimately grow and be successful by allowing employees an alternative mean to travel to work. In addition, proponents argue that this Amendment is necessary because legislators have cited evidence that the State has a high demand for more transportation infrastructure. Proponents further point out the state’s educational achievement gap and high demand for preschool programs in urban neighborhoods, to provide evidence for a critical funding need.

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The Fair Share Amendment is sure to generate more debate as we await developments from future Massachusetts Legislatures and potentially voters themselves.



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[Team member bio](#)