

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

NO. SJC-09684

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JOHANNA SCHULMAN,  
Plaintiff-Appellant,

v.

THOMAS REILLY, in his official capacity as ATTORNEY GENERAL  
and WILLIAM F. GALVIN, in his official capacity as  
SECRETARY OF THE COMMONWEALTH,  
Defendants-Appellees,

And

HON. RAYMOND FLYNN, HON. PHILIP TRAVIS, RICHARD GUERRIERO,  
JOSSIE OWENS, ROBERTO MIRANDA, RICHARD RICHARDSON,  
BRONWYN LORING, C. JOSEPH DOYLE, KRIS MINEAU, LURA MINEAU,  
THOMAS SHIELDS and MADELYN SHIELDS,  
Defendants-Intervenors.

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On A Reservation And Report From A Single Justice  
Of The Supreme Judicial Court For Suffolk County

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REPLY BRIEF OF THE PLAINTIFF-APPELLANT

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I. THE DEFENDANTS' CASE IN SUPPORT OF THE CERTIFICATION OF PETITION 05-02 IS BUILT ON RHETORICAL STRAWMEN THAT COLLAPSE UNDER SCRUTINY.

The Defendants' main effort to shore up support for the certification of Petition 05-02 in the face of the Plaintiff's plain meaning argument relies on two purported controlling distinctions - one between "legislative" acts and "judicial" acts and the other between "recall" and constitutional amendment. Those distinctions are superficially alluring but ultimately lack any substance or legal relevance.<sup>1</sup>

A. The Defendants' Use Of A Distinction Between A "Legislative" Act And A "Judicial" Act To Support Certification Is Quite Simply Unsupportable.

The Defendants concoct an artificial distinction between acts that are "legislative" in character and acts that are "judicial" in character and then seek to limit the "reversal of a judicial decision" exclusion to "judicial" acts while denominating constitutional amendments as "legislative" acts. Under this view,

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<sup>1</sup> The briefs of the Defendants-Interveners and amici mimic the arguments of the Defendants albeit in lesser detail and complexity. Therefore, for the sake of simplicity, this Reply Brief refers solely to the "Defendants" while intending to encompass the Defendants-Interveners and amici as well.

Petition 05-02 is immune from the exclusion because it is a constitutional amendment and thus a "legislative" act. (See Defendants' Brief ("DB") at 7-25).

Even assuming for the sake of argument alone that amending the constitution can so easily be characterized as "legislative,"<sup>2</sup> as opposed to something completely unique unto itself, the legislative/judicial distinction readily collapses.

The Defendants try mightily to show that "reversal" simply is not used to describe the "prospective legislative alteration of a rule adopted in a court decision," (DB at 22; id., pp. 22-25). However, they candidly admit that the sole case among their various citations that actually involves a constitutional amendment, Hans v. Louisiana, 134 U.S. 1, 11 (1890), as well as a speech from the 1917 Debates, actually support the opposite conclusion.

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<sup>2</sup> See, e.g., Hollingsworth v. Virginia, 3 U.S. 378, 379, 381 (1798) (asserting 11<sup>th</sup> Amendment to be void because "never submitted to the President for his approbation"; "the negative of the President applies only to the ordinary case of legislation: He has nothing to do with the proposition, or adoption, of amendments to the Constitution"); cf. Hawke v. Smith, 253 U.S. 221, 229 (1920) ("... ratification by a state of a constitutional amendment is not an act of legislation within the proper sense of the word").

(DB at 22-25 and nn. 10, 13 and 14).<sup>3</sup>

Similarly, it is simply wrong to maintain that there is some fundamental divide between declaring a court decision wrong and prospectively changing the law in the future as if the prospective change has no effect on the court decision itself. As just one example, the decision in Goodridge v. Dep't of Pub. Health, 440 Mass. 309 (2003), entailed a rule of law and declaratory relief operating prospectively and indefinitely. To suggest that Petition 05-02 does not "set aside, vacate or render void" the Goodridge decision's rule of law and prospective relief seems patently absurd.

Second, the Defendants admit that Petition 05-02 can be viewed as "overruling" or "legislatively overruling" the Goodridge decision. (DB at 13-14). The words "reverse" and "overrule" turn out to be synonyms both in law and in the vernacular.<sup>4</sup> See Hans,

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<sup>3</sup> Hans states: "This amendment [the Eleventh], expressing the will of the ultimate sovereignty of the whole country, superior to all legislatures and all courts, actually reversed the decision of the supreme court" (emphasis added). Hans, supra at 11.

<sup>4</sup> "Overrule" is defined as: "c. To declare null and void; invalidate; reverse." American Heritage Dictionary of the English Language 937 (1981). Similarly, in Black's Law Dictionary (rev. 4<sup>th</sup> ed.

supra at 11 (describing 11<sup>th</sup> Amendment with both “actually reversed the decision of the supreme court” and “its decision was thus overruled”). Therefore, particularly when the interpretive goal is the plain meaning of amendment words as understood by the ratifying voters in 1918, it is unduly formalistic, to say the least, to hang a constitutional interpretation on a word choice between synonyms. However, it is perhaps unsurprising where the Defendants never even acknowledge the governing standard for constitutional interpretation.<sup>5</sup>

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1968), “overrule” is defined as “supersede; annul; make void; reject by subsequent action or decision” (emphasis added) and “reverse” is defined as “overthrow; vacate; set aside; make void; annul; repeal, or revoke” (emphasis added). Id. at 1257, 1482.

<sup>5</sup> Other than a purely conclusory assertion as to what “[t]he voters in 1918 would not have understood” (DB at 14), the Defendants’ entire discussion of plain meaning (DB at 12-25) never even nods to the governing standard, i.e., expressing general ideas, words were chosen to be understood by the ratifying voters and meant “to be interpreted in the sense most obvious to the common intelligence ... according to the familiar and approved usage of the language.” Yont v. Sec’y of the Commonwealth, 275 Mass. 365, 366-367 (1931). Instead, the Defendants’ entire plain meaning discussion (DB at 12-25) focuses on arcane (and suspect) legal distinctions, comments (pointing in both directions) from the convention delegates, article 30 jurisprudence and a handful of admittedly conflicting court decisions (from, for example, Idaho, Montana, North Carolina, Nebraska, Kentucky and

Third, the Defendants agree that the "reversal of a judicial decision" exclusion does not simply equate to a Roosevelt "recall" mechanism. (DB at 57). Rather, they admit that the exclusion also applies to an "initiative to reverse a particular decision" (emphasis in text). (DB at 57).

This admission shows how the Defendants' scheme of distinctions breaks down. They assert that "reversal" = "judicial" = excluded under Article 48 while "constitutional amendment" = "legislative" = not excluded under Article 48. However, their own example

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Virginia). And the Defendants never offer any legal support for the proposition that such technical matters are properly used to interpret a constitutional amendment and, indeed, could not do so. See, e.g., Opinion of the Justices, 308 Mass. 619, 626 (1941) (no narrow or constricted meaning as words "are chosen to express generic ideas and not nice shades of distinction," quoting Attorney Gen. v. Methuen, 236 Mass. 564, 573 (1921)); Town of Mt. Washington v. Cook, 288 Mass. 67, 70 (1934) (words "used in their normal and ordinary as distinguished from technical meaning," quoting United States v. Sprague, 282 U.S. 716, 731 (1931)).

As a last resort, the Defendants assert that they have at least demonstrated an ambiguity in the exclusionary language. (DB at 25). However, an ambiguity is not created simply because a controversy exists between the parties as to the "proper construction of ... language." Home Ins. Co. v. Liberty Mut. Fire Ins. Co., 444 Mass. 599, 602 (2005) (insurance policy); Southern Constr. Co. v. United States, 364 F.2d 439, 453 (Ct.Cl. 1966) (disagreement not enough; "There must be a reasonable uncertainty of meaning").

is of a "reversal" (of a particular decision) that is "legislative" (a proposed law) and that is "excluded." So it seems that, for the Defendants, a "reversal" is either "legislative" or "judicial," depending on what serves their rhetorical purpose. Therefore, a purported distinction that the Defendants maintain will resolve this case simply disappears upon examination.

Finally, Article 48 allows only "measures," i.e., either laws or constitutional amendments. Therefore, it operates only to "exclude" measures. As a result, whatever the people propose that could be excluded as a "reversal of a judicial decision" must, by definition, be "legislative" under the Defendants' rubric because it is either a proposed law or proposed constitutional amendment. Put another way, under the Defendants' rubric, Article 48 simply does not allow for any "judicial" act, making a legislative/judicial distinction between included/excluded measures utterly meaningless.<sup>6</sup>

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<sup>6</sup> The Defendants do envision the exclusion of a "legislative" act that produces a "judicial" result in their "reversal of a judicial decision" hypothetical. (DB at 57 and n.38). Of course, that is precisely how Petition 05-02 could be characterized as well.

B. The Defendants' Distinction Between  
A Constitutional Amendment And  
Roosevelt's "Recall" Mechanism Has  
No Legal Significance To Certification.

The Defendants continue to exert considerable effort on an undisputed point, i.e., that there is a difference between a constitutional amendment and Theodore Roosevelt's "recall of judicial decisions" mechanism. (Compare A. 143-150 and DB at 42-53 with Plaintiff's Brief at 45). Everyone agrees that there is a distinction.

At the same time, the Defendants acknowledge, see Section I.A., above, that the "reversal of a judicial decision" exclusion is broader than the Roosevelt mechanism. (DB at 57-58 and nn. 38-39). It includes, in the Defendants' own self-defeating words, an "initiative to reverse a particular decision" (emphasis in text). (Id. at 57).

Assuming this is so, as the Plaintiff agrees, what excludable petitions lie in this terrain beyond the Roosevelt mechanism and within the purview of an initiative to reverse a particular decision? Fatally, the Defendants posit that it could be an initiated law (DB at 57 n. 38). However, that cannot possibly be so. No initiated law could have the effect of

reversing a constitutional decision of this Court.  
Only a constitutional amendment could do that.

The Defendants' motivation in characterizing their "reversal of a particular decision" exclusion as encompassing only an initiative law is transparent.

(DB at 57 n. 38) If the initiative could be - or must be - a constitutional amendment, then the Defendants must concede that the "reversal of a judicial decision" exclusion in Article 48 actually applies to initiative constitutional amendments; and the artificial barrier - between "recall" on the one hand and constitutional amendments on the other - breaks down, a distinction without which an amendment falls squarely within the prohibited "reversal of a judicial decision" exclusion in Article 48.

The Plaintiff submits that the "reversal of a particular decision" exclusion that the Defendants embrace certainly cannot be limited to precluding only an initiated law and not an initiated amendment.

First, the exclusion applies to "measures," which includes laws and constitutional amendments. Mazzone v. Attorney Gen., 432 Mass. 515, 526 (2000). Second, without the necessary constitutional amendment to create a "recall" mechanism, a point on which the

parties agree, the "recall" of an individual constitutional ruling must be done by a constitutional amendment.<sup>7</sup>

In sum, once the Defendants have conceded, as they do, that Article 48 excludes a type of "recall" of a judicial decision that can take the form of a constitutional amendment, any distinction between a "recall" and a constitutional amendment cannot answer the question before the Court. Put another way, the Defendants' "recall v. amendment" analysis only creates irresolvable inconsistencies.<sup>8</sup>

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<sup>7</sup> The Defendants may well be correct that the initiated law they have hypothesized could properly be certified. (DB at 57 n. 38). However, it would undoubtedly be futile as it would certainly be unconstitutional - although not necessarily on art. 30 grounds if it did not interfere with the underlying judgment.

<sup>8</sup> The Defendants also variously seek to distinguish a recall/reversal from a constitutional amendment by labeling the recall/reversal "quick and easy," "faster and less deliberative," "faster and more subject to popular control" and "less subject to legislative control." (DB at 43, 47, 48, 49). Presumably, that would make constitutional amendments slower, more difficult, more deliberative and more subject to legislative control. However, such distinctions are simply fanciful. First, the Defendants offer absolutely no support for these distinctions. Second, what little evidence we have suggests the contrary. As Mr. Ransom notes, "the period of popular deliberation advocated by Colonel Roosevelt is much greater than that required for the adoption of broad constitutional amendments in many States of the West."

II. THE DEFENDANTS' EXAMPLE OF AN EXCLUDABLE PETITION PROVES PLAINTIFF'S CASE.

The Defendants posit that the following initiative would be prohibited by the "reversal of a judicial decision" exclusion: "Notwithstanding the decision of the court in X. v. Y. declaring unconstitutional chapter ### of the acts of 19##, such statute shall remain in full force and effect." (Id., pp. 57-58 n.38). Seemingly, the Defendants would thus find the following initiative prohibited:

"Notwithstanding the decision of the court in Goodridge v. Dep't of Pub. Health declaring

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William L. Ransom, Majority Rule and the Judiciary 158 (1912) (A. 305). Interestingly, the proposal spelled out by Ransom required: (1) signatures of 12% of qualified voters; (2) a period of "not less than one year" from date of challenged decision to vote; and (3) a vote of "a majority of the total number of voters duly qualified to take part in the general election for that year." Id. at 116 (A. 284). By contrast, the Massachusetts constitutional initiative as initially adopted required only 25,000 signatures, subsequently changed to 3% of the preceding gubernatorial election vote. See Articles 48 and 81. Further, the original proposal for the constitutional initiative required 50,000 signatures but had no legislative control at all. See 2 Debates at 3. The Massachusetts 1914 recall proposals' signature requirement was the lesser of 50,000 or 10% of the gubernatorial election vote. (See DB, Addendum B). Colorado's recall required petitions "signed by not less than five per cent. of the qualified electors." People v. Western Union Telegraph Co., 198 P. 146, 148 (Colo. 1921).

unconstitutional the sex and sexual orientation eligibility requirements of G.L. c. 207, such statutory requirements shall remain in full force and effect.”

As a result, the Defendants agree that Article 48 cannot be used to submit the Goodridge decision to a vote of acceptance or rejection by the people in the above-stated form. Nonetheless, the Defendants claim that Petition 05-02 passes muster. The Plaintiff submits that both the Defendants’ hypothetical and Petition 05-02, which seeks to accomplish the equivalent, are excluded under Article 48 and that the Defendants’ efforts to articulate a valid legal distinction between the two are unavailing. See Section I, above.

Once it is acknowledged that the “evil” to be addressed by the “reversal of a judicial decision” exclusion is the people being “given the opportunity to reinstate the same law, notwithstanding the court’s declaration of its unconstitutionality,” Mazzone, supra at 527-528, the scope of the exclusion cannot be governed by the mere phrasing of the initiative. Although the Defendants’ phrasing - using the “notwithstanding” language and referencing the name of

the decision in issue - mirrors the form the author Mr. Ransom suggested the recall "might, perhaps, take," Ransom, supra at 117 (A. 284), the idea that such an initiative - but not its legal equivalent - is prohibited has no basis in law.<sup>9</sup>

In short, the central question cannot be the wording of the measure but whether the petition in issue is giving the people the opportunity to directly reinstate the law declared unconstitutional. Because the Defendants agree that is the purpose and effect of Petition 05-02, which would directly reinstate the portions of G.L. c. 207's licensing standards declared unconstitutional in Goodridge, Article 48 excludes this proposed initiative.

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<sup>9</sup> Moreover, the Defendants' preferred language was not mandated in the one state, Colorado, that adopted a version of Roosevelt's recall mechanism, see People v. Western Union Telegraph Co., supra at 148; and it was not envisioned in the proposed 1914 recall amendments in Massachusetts. Those Massachusetts proposals provided that the ballot would include a clear and simple description of the law and the following words: "Shall the proposed act [here insert description] have the force and effect of law." (DB, Addendum B, House No. 186, lines 69-77; House No. 1106, lines 70-78).

III. THERE IS A WORKABLE PRINCIPLE, CONSISTENT WITH PLAIN MEANING, THE CONVENTION DEBATES AND THE MAZZONE DECISION, THAT PRECLUDES THE CERTIFICATION OF PETITION 05-02 AND DOES NOT THREATEN THE INITIATIVE PROCESS AS THE DEFENDANTS CONTEND.

As demonstrated in the Plaintiff's opening brief, applying the plain meaning of the "reversal of a judicial decision" exclusion language as it would have been understood by the voters who ratified Article 48 in 1918 requires the exclusion of Petition 05-02 as an attempt to directly and explicitly overturn a decision of this Court. (Plaintiff's Brief at 11-23). The Defendants' attempt at an "alternative" plain meaning interpretation simply fails. As demonstrated in Section I.A., above, the Defendants' distinction between "legislative" and "judicial" cannot bear the weight the Defendants place on it; and the distinction between declaring a court decision wrong and any prospective legal change fails as well.

Moreover, properly understood, Plaintiff's plain meaning analysis actually satisfies the Defendants' own test; comports with the dominant purpose of the exclusion; is consistent with the Defendants' preferred narrative of the Debates; and does not broadly curtail the use of the initiative process.

First, the Defendants admit that Article 48 may not be used to criticize this Court's decisions or to imply they are wrong on the law or erroneous but may be used to change the rules of constitutional law. (DB at 4,6,7,8,12,14). Or, putting it another way, the Defendants state that it does not violate Article 48 to "[a]mend[] the law so that, if a similar case arose in the future, the result would be different ..." (Id. at 8).

Simply put, under Article 48, the people cannot directly have a referendum on the Court's result; but they can change the legal basis upon which the decision is made. Applying that distinction in the present case is quite clear. Petition 05-02 seeks one end, i.e., to expressly and directly reverse the Goodridge decision. It is a direct attack. It is as much a referendum on a court decision as any recall envisioned under the Roosevelt proposal. See Ransom, supra at 115, 117 (A. 283, 284) (describing "recall" as a referendum). Just as clearly, Petition 05-02 does not seek to change the legal basis upon which Goodridge was decided. As the Defendants acknowledge (DB at 41), Goodridge was decided under Articles 1 and

10 of the Declaration of Rights;<sup>10</sup> and Petition 05-02 makes no attempt whatsoever to alter the language of those constitutional provisions.

Second, as the Plaintiff demonstrated in her opening brief, unchallenged by the Defendants, there was a clear intent of the "judiciary" exclusions to protect this Court's decisions from direct attack by popular plebiscite. (Plaintiff's Brief, pp. 24-29, 36-37); see also Mazzone, supra at 528 (petition relates to the reversal of a judicial decision if it attempts "to reenact a provision of the General Laws that has been invalidated on constitutional grounds").

Third, the Defendants have a preferred narrative of the "principal purpose" of the constitutional initiative as designed to "enable the people to respond to decisions of this court on social welfare legislation." (DB at 33-41). Assuming for the sake of argument alone that this is accurate and relevant to the interpretation of Article 48,<sup>11</sup> the Defendants'

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<sup>10</sup> The Court in Goodridge addressed plaintiff claims grounded in Articles 1, 6, 7 and 10 of the Declaration of Rights. See Goodridge, supra at 316. Petition 05-02 also does not seek to alter the language of Articles 6 or 7.

<sup>11</sup> Given that ordinary meaning should control even over drafters' intent (Plaintiff's Brief at 37 n.19),

narrative is consistent with the exclusion of Petition 05-02.

As the Defendants explain, one stated goal of the leading proponents of the constitutional initiative was to allow the people, in response to a decision of this Court holding a desired law unconstitutional, to amend the constitution so that either the legislature or the people could then constitutionally enact the law that they desired. Ultimately, in this view, the fight came down to those provisions in the Declaration of Rights then directly bearing on the constitutionality of social welfare legislation. As

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it is interesting to note that the Defendants' "principal purpose" seems never to have emerged in reported public debate in the weeks immediately prior to the adoption of Article 48 in the November 1918 election. The Massachusetts Historical Society is the repository of all newspaper accounts of the convention published in Massachusetts, collected in "scrapbooks" compiled by Frank Washburn Grinnell on behalf of the Massachusetts Bar Association. A review of those clippings in Scrapbooks 20 and 21, during the period from October 1, 1918 until Election Day (when the public would presumably have started to focus on the question), shows that papers such as the Boston American (10/17, 10/21 and 10/23), the Boston Post (10/27, 11/3), the Taunton Gazette (10/28), the Worcester Labor News (11/1) and the Boston Advertiser (11/3) were running pieces, including analytical editorials on the virtues of adopting the Initiative and Referendum, without a single mention of the courts or Defendants' "principal purpose." Frank Washburn Grinnell Scrapbooks, 1913-1944 (volumes 1-23 deposited by the MBA) (Mass. Historical Society).

Mr. Walker stated the point, "it may be necessary in order to make such laws constitutional to amend the Declaration of Rights as interpreted by the court." 2 Debates at 738. Put another way, Mr. Walker believed that if the pertinent sections of the Declaration of Rights were excluded from the initiative process, it would be impossible to obtain the desired legislation after a ruling of unconstitutionality. Id. at 738-739.

In short, the proponents on whom the Defendants rely envisioned a two-step process vis-à-vis social welfare legislation declared unconstitutional: amend the Declaration of Rights so as to then allow subsequent enactment of desired legislation. See also 2 Debates at 29 (Mr. Walker: refers to changing the Constitution "as to permit such a law to be passed"); id. at 49 (Mr. Whipple: describing initiative as "an easier way to make that legislation permissible"); id. at 413-414 (Mr. Walker: people "may change their own Constitution so as to permit the passage of that law"); id. at 791 (Mr. Cummings: "we have the power to expand the Constitution and reenact the law and make it constitutional"); and id. at 935-936 (Mr. Garland: people cannot obtain social welfare legislation if

Declaration of Rights is excluded from the Initiative and Referendum).

Such a process would not be a direct attack on this Court's decisions, reversing its results, but would allow for a change of Declaration of Rights language in order to permit a desired law to pass. In the present case, it prohibits Petition 05-02 but would allow an amendment to the Declaration of Rights which would then permit the people or the legislature to reenact the marriage eligibility law they would desire.<sup>12</sup>

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<sup>12</sup> This is of course nicely illustrated by the New York workers' compensation law scenario that so animated certain proponents of the initiative in Massachusetts. Following a declaration of unconstitutionality, the New York legislature submitted a proposed amendment to the state constitution's Bill of Rights that was adopted in 1913 and became §19 of Article 1. The New York legislature then passed a workers' compensation law in 1914 that was sustained by the Court of Appeals. See generally Jensen v. Southern Pac. Co., 109 N.E. 600 (N.Y. 1915). That New York constitutional provision, currently codified as McKinney's Const. Art. 1, §18, begins, "Nothing contained in this constitution shall be construed to limit the power of the legislature to enact laws for the protection of the lives, health, or safety of employees ..." This is exactly what Mr. Walker and followers envisioned for Massachusetts with the exception that the people would be able to make the constitutional change if the legislature failed to act. 2 Debates at 413-414; see also id. at 935-936 (Mr. Garland). See also Mazzone, supra at 527 (recounting this same scenario).

Fourth, under this scenario where the people retain the ability to change the actual constitutional provision that the Court has interpreted or to adopt new statutory language, there is simply no danger of the "slippery slope" the Defendants envision that would somehow pull a multitude of questions outside the reach of the initiative process. (DB at 25-32).<sup>13</sup>

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<sup>13</sup> For the reasons set forth in the text and because the Plaintiff continues to maintain that this Court need not answer any question beyond the precise question presented here (Plaintiff's Brief at 48), the Plaintiff will not be drawn into a systematic challenge to each of the Defendants' assertions of matters that they hypothesize might be barred under their overblown reading of Plaintiff's position. Suffice it to say that only one example involves a constitutional amendment in response to a ruling of this Court declaring a law unconstitutional, and it conforms to Plaintiff's understanding of a non-excluded measure. In Mass. Taxpayers Found., Inc. v. Sec'y of Admin., 398 Mass. 40 (1986), this Court found a statutory enactment of personal income tax exemptions to violate Amendment Article 44. A subsequent initiative constitutional amendment sought to rewrite a portion of Article 44, and an initiated law was also proposed to amend the tax laws should the amendment be ratified. See Information for Voters: The 1994 Ballot Questions (1994) at 13, 16 and 39.

At the same time, it is worth noting that the Defendants would have the Court adopt an interpretation of the exclusion that renders it essentially meaningless, i.e., it bars a Roosevelt mechanism admittedly long dead by 1917-1918 and a very specific type of initiated law that would be futile because always unconstitutional, see n. 3, above. That "slippery slope" of meaninglessness must be avoided as well.

Conclusion

For all of these reasons and for the reasons set forth in her opening brief, the Plaintiff submits that the Attorney General erred in certifying Petition 05-02 and reasserts the request for relief in her opening brief.

Respectfully submitted

JOHANNA SCHULMAN  
By her attorneys,

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DATED: April 24, 2006

Certification Pursuant to Mass. R. App. P. 16(k)

The foregoing brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to, Mass. R. App. P. Rules 16 and 20.

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Gary D. Buseck