

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

DONALD W. WOJTOWICZ; BARBARA J. )  
McGANN; JOHN E. SUTHERLAND; and the )  
ILLINOIS POLICY INSTITUTE, an Illinois )  
not-for-profit corporation, )  
Plaintiffs, )

v. )

JESSE WHITE, in his Official Capacity as )  
Illinois Secretary of State; the ILLINOIS STATE )  
BOARD OF ELECTIONS; CHARLES W. )  
SCHOLZ, in his Official Capacity as Chair of )  
the Illinois State Board of Elections; IAN K. )  
LINNABARY, in his Official Capacity as Vice )  
Chair of the Illinois State Board of Elections; )  
and WILLIAM J. CADIGAN, LAURA K. )  
DONAHUE, WILLIAM R. HAINE, WILLIAM )  
M. McGUFFAGE, KATHERINE S. O'BRIEN, )  
and CASANDRA B. WATSON, in their Official )  
Capacities as Members of the Illinois State )  
Board of Elections, )  
Defendants. )

Case No. \_\_\_\_\_

Hon. \_\_\_\_\_

**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Donald W. Wojtowicz, Barbara J. McGann, John E. Sutherland, and the Illinois Policy Institute, by and through their attorney Jack Vrett of Honigman LLP, for their Verified Complaint for Declaratory and Injunctive Relief against Defendants Jesse White, in his Official Capacity as Secretary of State, the Illinois State Board of Elections, and Charles W. Scholz, Ian K. Linnabary, William J. Cadigan, Laura K. Donahue, William R. Haine, William M. McGuffage, Katherine S. O'Brien, and Casandra B. Watson, in their Official Capacities as the Chair, Vice Chair, and Members of the State Board of Elections, state as follows:

## **NATURE OF THE ACTION**

1. This case is an action challenging the language on the propositional ballot for an amendment to Article IX, Section 3 of the Illinois Constitution. Plaintiffs seek a declaration from the Court that the language on the propositional ballot and the language in the election pamphlet provided to voters before the election violate the Free and Equal Elections Clause of Article III, Section 3 of the Illinois Constitution and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. Additionally, Plaintiffs seek temporary, preliminary, and permanent injunctive relief to prevent, correct, and remedy the harms caused by the constitutionally impermissible defects in the propositional ballot and election pamphlet before it is too late.

## **INTRODUCTION**

2. On November 3, 2020, voters in Illinois will consider whether to amend Article IX, Section 3 of the Illinois Constitution to remove the requirement for a non-graduated (or flat) income tax and instead grant the General Assembly authority to impose a progressive income tax (hereafter, the “PIT Amendment”).

3. If approved by voters, the PIT Amendment would eliminate important structural safeguards that deter legislators in the General Assembly from imposing new taxes on retirement income and deter legislators from imposing higher taxes on individuals with middle or low incomes.

4. Although proponents argue that adopting the PIT Amendment would make Illinois’ tax system “fair,” the PIT Amendment would do nothing to address Illinois’ second-highest in the United States property tax burden and would leave the poorest Illinoisans paying the third-highest overall tax burden in the United States.

5. Proponents of the PIT Amendment in the General Assembly have included misleading statements in the purportedly neutral explanation of the PIT Amendment on the propositional ballot's Form of Ballot presented to voters (hereafter, the "Ballot Explanation"). The misleading statements in the Ballot Explanation deny voters their rights to a free and equal election in violation of the Free and Equal Elections Clause of the Illinois Constitution.

6. Furthermore, the proponents of the PIT Amendment in the General Assembly included misleading statements in the "arguments in favor" section of an election pamphlet published at taxpayer expense and mailed to voters in advance of the election by Secretary of State Jesse White (the "Pamphlet"). The misleading statements in the Pamphlet deny voters their rights to a free and equal election in violation of the Free and Equal Elections Clause of the Illinois Constitution.

7. Moreover, the language of the Ballot Explanation and Pamphlet violate similar guarantees afforded to voters by virtue of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.

8. Additionally, the propositional ballot does not include the actual language of the PIT amendment. Instead, voters are only presented with the misleading statements in the Ballot Explanation, in lieu of the actual, plain text of the PIT Amendment, thereby denying voters the right to a free and equal election as guaranteed by the Illinois and United States Constitutions.

9. The Secretary of State published and distributed by mail the Pamphlet and Ballot Explanation to all mailing addresses within the State of Illinois, and the Illinois State Board of Elections certified the Ballot Explanation and Form of the Ballot to the several county clerks and boards of election commissioners across the State of Illinois for use in the November

3, 2020 election. Early voting and vote-by-mail for the November 3, 2020 election has already begun, and time will soon run out before it is too late to correct the constitutionally impermissible defects in the election over whether to adopt the PIT Amendment.

10. The harms caused by constitutionally impermissible defects alleged in this case are not speculative, but real, and they deny voters, including Plaintiffs Donald W. Wojtowicz, Barbara J. McGann, and John E. Sutherland, of their right to a free and equal election as protected by the Illinois and United States Constitutions.

11. In this case, Plaintiffs seek declaratory and injunctive relief to correct the constitutionally impermissible defects and issue a curative instruction to voters concerning confusing and misleading statements in the Ballot Explanation and Pamphlet.

12. The relief Plaintiffs request is not unprecedented. In 2008, the Illinois Appellate Court (First District) affirmed a trial court order requiring the Illinois Secretary of State to issue a corrective notice to voters due to constitutionally impermissible misleading statements on a propositional ballot. *See Chicago Bar Association v. White*, 386 Ill. App. 3d 955, 960 (1st Dist. 2008).

13. Plaintiffs do not seek to delay, suspend, or disrupt the election, nor do Plaintiffs request that the Secretary of State expend limited public resources to undertake a wholesale reprinting of every ballot. Plaintiffs merely seek the same judicial intervention as in the 2008 case of *Chicago Bar Association v. White* in order to correct the constitutionally impermissible misleading statements on the Ballot Explanation and Pamphlet so as to ensure that all Illinois voters have an opportunity to express their choice either for or against the PIT Amendment as protected by the Illinois and United States Constitutions.

14. Moreover, the constitutionally impermissible defects alleged herein have caused, and will continue to cause, substantial harm to Plaintiffs absent judicial relief.

15. The misleading statements in the Ballot Explanation and Pamphlet published to voters by the Secretary of State and Illinois State Board of Elections have harmed Plaintiff Donald W. Wojtowicz by denying Plaintiff the benefits of a free and equal election in violation of Article III, Section 3 of the Illinois Constitution, and depriving him of due process and the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution. Plaintiff Donald W. Wojtowicz brings this action to correct the constitutional deficiencies in the Ballot Explanation and Pamphlet and to redress and prevent the harm he has and will suffer absent judicial relief.

16. The misleading statements in the Ballot Explanation and Pamphlet published to voters by the Secretary of State and Illinois State Board of Elections have harmed Plaintiff Barbara J. McGann by denying her the benefits of a free and equal election in violation of Article III, Section 3 of the Illinois Constitution, and depriving her of due process and the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution. Plaintiff Barbara J. McGann brings this action to correct the constitutional deficiencies in the Ballot Explanation and Pamphlet and to redress and prevent the harm she has and will suffer absent judicial relief.

17. The misleading statements in the Ballot Explanation and Pamphlet published to voters by the Secretary of State and Illinois State Board of Elections have harmed Plaintiff John E. Sutherland by denying Plaintiff the benefits of a free and equal election in violation of Article III, Section 3 of the Illinois Constitution, and depriving him of due process and the equal protection of the laws guaranteed by the Fourteenth Amendment to the United

States Constitution. Plaintiff John E. Sutherland brings this action to correct the constitutional deficiencies in the Ballot Explanation and Pamphlet and to redress and prevent the harm he has and will suffer absent judicial relief.

18. The misleading statements in the Ballot Explanation and Pamphlet published to voters by the Secretary of State and Illinois State Board of Elections have harmed Plaintiff Illinois Policy Institute by frustrating its mission to ensure the people of Illinois have, among other policy priorities, (a) an honest, efficient, and transparent government; (b) the right to earn a living; (c) economic policies that create jobs and opportunity; and (d) limited taxation. Plaintiff Illinois Policy Institute brings this action to correct the constitutional deficiencies in the Ballot Explanation and Pamphlet and redress the harm it and the people of Illinois have suffered or will continue to suffer absent judicial relief.

#### **PARTIES**

19. Plaintiff Donald W. Wojtowicz (“Plaintiff Wojtowicz”) is an individual retired person residing in Cook County, Illinois. Plaintiff Wojtowicz is 84 years old. Plaintiff Wojtowicz retired from the Chicago Police Department in 1990 after serving for approximately 25 years as a police officer. Plaintiff Wojtowicz receives retirement income pursuant to his police pension. Plaintiff Wojtowicz is registered to vote in the State of Illinois and in Cook County.

20. Plaintiff Barbara J. McGann (“Plaintiff McGann”) is an individual retired person residing in Cook County, Illinois. Plaintiff McGann is 83 years old. Plaintiff McGann retired after a career as an administrative assistant in an automotive body repair shop in South Holland, Illinois in southern Cook County. Plaintiff McGann receives retirement income pursuant to a pension through her deceased husband’s employer. Plaintiff McGann is registered to vote in the State of Illinois and in Cook County.

21. Plaintiff John E. Sutherland (“Plaintiff Sutherland”) is an individual retired person residing in Cook County, Illinois. Plaintiff Sutherland is 68 years old. Plaintiff Sutherland retired from the Chicago Fire Department after serving for approximately 20 years as a firefighter. Plaintiff Sutherland receives retirement income pursuant to his fire fighter’s pension. Plaintiff Sutherland is registered to vote in the State of Illinois and in Cook County.

22. Plaintiff Illinois Policy Institute is an Illinois not-for-profit corporation organized under the laws of Illinois, with a principal place of business in Cook County. Plaintiff Illinois Policy Institute is committed to generating public policy solutions aimed at promoting personal freedom and prosperity in Illinois. For its mission, Plaintiff Illinois Policy Institute endeavors to educate and engage citizens and lawmakers to ensure the people of Illinois have: (a) an honest, efficient, and transparent government; (b) a fair and cost-effective criminal justice system that enhances public safety; (c) the right to earn a living; (d) economic policies that create jobs and opportunity; and (e) limited taxation.

23. Defendant Jesse White is the Secretary of State (“Secretary of State”) of the State of Illinois.

24. Defendant Illinois State Board of Elections (“State Board of Elections”) is a governmental entity and instrumentality of the State of Illinois charged under Illinois law with 10 ILCS 5/1A-2 administering the Illinois Election Code. The State Board of Elections is comprised of eight members appointed pursuant to the provisions of the Election Code. Pursuant to the Section 1A-2 of the Illinois Election Code, 10 ILCS 5/1A-2, four of the eight members of the State Board of Elections must be residents of Cook County.

25. Defendants Charles W. Scholz, Ian K. Linnabary, William J. Cadigan, Laura K. Donahue, William R. Haine, William M. McGuffage, Katherine S. O’Brien, and

Casandra B. Watson are respectively the Chair, Vice Chair, and Members of the State Board of Elections.

### **JURISDICTION AND VENUE**

26. This Court has jurisdiction over Defendant Jesse White in his official capacity as Secretary of State pursuant to 735 ILCS 5/2-209 because, among other things, he is a citizen of Illinois and a Constitutional Officer of the State of Illinois with a principal place of business located within Cook County, Illinois.

27. This Court has jurisdiction over Defendant State Board of Elections pursuant to 735 ILCS 5/2-209 because, among other things, it is a governmental entity and an instrumentality of the State of Illinois organized under the provisions of the Illinois Election Code, 10 ILCS 5/1A-1, with a principal place of business located within the Cook County, Illinois.

28. This Court has jurisdiction over Defendants Charles W. Scholz, Ian K. Linnabary, William J. Cadigan, Laura K. Donahue, William R. Haine, William M. McGuffage, Katherine S. O'Brien, and Casandra B. Watson in their official capacities as the Chair, Vice Chair, and Members of the State Board of Elections pursuant to 735 ILCS 5/2-209 because, among other things, they are citizens of Illinois and members of the Illinois State Board of Elections, which is a governmental entity and an instrumentality of the State of Illinois organized under the provisions of the Illinois Election Code, 10 ILCS 5/1A-1, with a principal place of business located within the Cook County, Illinois.

29. This Court is the appropriate venue for this action pursuant to 735 ILCS 5/2-101 and 735 ILCS 5/2-103 because at least one of the Defendants is a resident of Cook County and the transaction, or some part of it out of which this cause of action arose, occurred, or will occur, in Cook County.

## STATEMENT OF FACTS

### A. All Elections in Illinois must be Free and Equal

30. The Illinois Constitution guarantees that all elections shall be “free and equal.” Ill. Const. 1970, Art. III, § 3 (the “Free and Equal Elections Clause”); *see also Chicago Bar Association v. White*, 386 Ill. App. 3d 955, 960 (1st Dist. 2008).

31. The Free and Equal Elections Clause is so critical to the democratic foundations of our state that it has appeared in every Illinois Constitution since the State’s founding in 1818. *See* Const. 1818, Art. VIII, § 5 (“elections shall be free and equal”); Ill. Const. 1848, Art. XIII, §5 (“all elections shall be free and equal”); Ill. Const. 1870, Art. II, § 18 (“All elections shall be free and equal.”).

32. Indeed, the very first Illinois Constitution recognized that guaranteeing “free and equal” elections was one of the “essential principles of liberty and free government.” Const. 1818, Art. VIII.

33. The Free and Equal Elections Clause means that “every qualified voter has a right to vote and that all votes have equal influence.” *Chicago Bar Association*, 386 Ill. App. 3d at 960 *citing Craig v. Peterson*, 39 Ill. 2d 191, 195 (1968).

34. In the context of a referendum on a proposed amendment to the Illinois Constitution, the Free and Equal Elections Clause means that a propositional ballot must adequately present the proposition “in such a manner that the voter has a clear opportunity to express his [or her] choice either for or against it.” *See Hoogasian v. Regional Transportation Authority*, 58 Ill.2d 117, 124 (1974); *see also People ex rel. Royal v. Cain*, 410 Ill. 39, 57 (1951).

35. A propositional ballot measure is “adequately stated if the ballot contains **a fair portrayal** of the proposition’s chief features in words of plain meaning.” *Samour, Inc. v. Bd. of Election Comm'rs of City of Chicago*, 224 Ill. 2d 530, 541 (2007) (emphasis added).

36. The propositional ballot must be “complete enough to convey an intelligible idea of the scope” and of the law and “**not clouded by undue detail.**” *In re Opinion of the Justices*, 271 Mass. 582, 589, 171 N.E. 294, 297 (1930) (emphasis added) (cited in *Smith v. Calhoun Cmty. Unit Sch. Dist. No. 40*, 16 Ill. 2d 328, 335 (1959)).

37. When “additional information is incorporated in the ballot, the test is whether it would tend to **confuse or misinform a voter** so as to affect his free choice.” *Smith v. Calhoun Cmty. Unit Sch. Dist. No. 40*, 16 Ill. 2d 328, 335–36 (1959) (emphasis added).

38. Further, the propositional ballot must be “**free from any misleading tendency**, whether of amplification, of omission, or of fallacy” and “contain **no partisan coloring.**” *In re Opinion of the Justices*, 271 Mass. 582, 589, 171 N.E. 294, 297 (1930) (emphasis added) (cited in *Smith v. Calhoun Cmty. Unit Sch. Dist. No. 40*, 16 Ill. 2d 328, 335 (1959)).

39. Moreover, it is constitutionally improper to induce a voter and taxpayer to “vote a tax upon him [or her]self to be used for other and different purposes than those specified in the call of the election and the ballot there used.” *People ex rel. Hudson v. Cleveland, C., C. & St. L. Ry. Co.*, 360 Ill. 180, 191 (1935).

40. Finally, a ballot that provides voters with more information so as to mislead them constitutes grounds for declaring an election void. *See Knappenberger v. Hughes*, 377 Ill. 126, 133 (1941) (“...the error was on the side of giving the voters more information and, if not stated so as to mislead them, it affords no ground for declaring the election void.”).

41. When a court concludes that a propositional ballot is misleading, but reprinting all ballots is not feasible, the court should order the Secretary of State and Illinois State Board of Elections to issue corrective notices to be distributed to voters at all polling places

and mailed to all voters at their mailing addresses. *See, generally, Chicago Bar Association*, 386 Ill. App. 3d at 959-961.

**B. The Constitutional Limits on the Income Tax in Illinois**

42. The Illinois Constitution states in Article IX, Section 3 that:

SECTION 3. LIMITATIONS ON INCOME TAXATION

(a) A tax on or measured by income shall be at a non-graduated rate. At any one time there may be no more than one such tax imposed by the State for State purposes on individuals and one such tax so imposed on corporations. In any such tax imposed upon corporations the rate shall not exceed the rate imposed on individuals by more than a ratio of 8 to 5.

(b) Laws imposing taxes on or measured by income may adopt by reference provisions of the laws and regulations of the United States, as they then exist or thereafter may be changed, for the purpose of arriving at the amount of income upon which the tax is imposed.

(Source: Illinois Constitution.)

(Ill. Const. 1970, Art. IX, Sec. 3).

43. A tax on or measured by income that is at a “non-graduated” rate means that all taxpayers pay the same statutory tax rate regardless of the amount of income, while a “graduated” rate means taxpayers pay different rates based on the amount of the taxpayer’s income.

44. A tax rate is a percentage of an individual’s taxable income.

45. In a non-graduated (or flat) income tax system, all taxpayers pay the same percentage of the taxpayer’s income.

46. Even though all taxpayers in a non-graduated (or flat) income tax system pay the same tax rate, the amount of money owed increases as the individual taxpayer’s taxable income increases.

47. In a non-graduated (or flat) income tax system, taxpayers with higher taxable incomes owe more in taxes than similarly situated taxpayers with middle or lower taxable incomes.

48. In a non-graduated (or flat) income tax system, all similarly situated taxpayers, regardless of taxable income, pay in income taxes an equal share of their taxable income.

**C. The Proposed Constitutional Amendment to Adopt a Progressive Income Tax**

49. The proposal to amend Article IX, Section 3 of the Illinois Constitution to permit the General Assembly to adopt a progressive income tax began in the Illinois Senate.

50. According to Article XIV, Section 2(a) of the Illinois Constitution, “Amendments approved by the vote of three-fifths of the members elected to each house shall be submitted to the electors at the general election next occurring at least six months after such legislative approval, unless withdrawn by a vote of a majority of the members elected to each house.” (Ill. Const. 1970 Art. XIV, Sec. 2).

51. On or about January 28, 2019, Senator Don Harmon (“Senator Harmon”) introduced in the Senate proposed legislation entitled Senate Joint Resolution Constitutional Amendment SC0001 (hereafter, the “Original Resolution”) (Ex. 1, Original Resolution).

52. A true and correct copy of the Original Resolution is attached as **Exhibit 1**.

53. The Original Resolution proposed submitting to the electors of the State for adoption or rejection a proposition to amend Section 3 of Article IX of the Illinois Constitution as follows:

**SECTION 3. LIMITATIONS ON INCOME TAXATION**

~~(a) There may be one tax on the income of individuals and corporations. This may be a fair tax where lower rates apply to lower income levels and higher rates apply to higher income levels. No government other than the State may impose a tax on or measured by income. A tax on or measured by income shall be at a non-graduated rate. At any one time there may be no more than one such tax imposed by the State for State purposes on individuals and one such tax so imposed on corporations. In any such tax imposed upon corporations the rate shall not exceed the rate imposed on individuals by more than a ratio of 8 to 5.~~

(b) Laws imposing taxes on or measured by income may adopt by reference provisions of the laws and regulations of the United States, as they then exist or thereafter may be changed, for the purpose of arriving at the amount of income upon which the tax is imposed.

(Source: Illinois Constitution.)

(Ex. 1, Original Resolution).

54. In proposed legislation in the General Assembly, including amendments to the Illinois Constitution, underlined language means that the language is to be added to the Illinois Constitution, and struck-through language means that the language is to be deleted from the Illinois Constitution.

55. The Original Resolution specifically stated: “There may be one tax on the income of individuals and corporations. This may be a **fair tax where lower rates apply to lower income levels and higher rates apply to higher income levels.** No government other than the State may impose a tax on or measured by income.” (Ex. 1, Original Resolution (emphasis added).

56. On or about April 9, 2019, Senator Harmon filed Senate Committee Amendment No 1 (hereafter, “Revised Resolution”). (Ex. 2, Revised Resolution; Ex. 3, Bill Status.)

57. A true and correct copy of the Revised Resolution is attached as **Exhibit 2.**

58. A true and correct copy of the Bill Status is attached as **Exhibit 3**.

59. The Revised Resolution replaced and removed from the proposal to adopt a progressive income tax any reference to, among other things, “a fair tax where lower rates apply to lower income levels and higher rates apply to higher income levels.” (Ex. 2, Revised Resolution).

60. The Revised Resolution proposed submitting to the electors of the State for adoption or rejection a proposition to amend Section 3 of Article IX of the Illinois Constitution as follows:

#### SECTION 3. LIMITATIONS ON INCOME TAXATION

(a) The General Assembly shall provide by law for the rate or rates of any tax on or measured by income imposed by the State. A tax on or measured by income shall be at a non-graduated rate. At any one time there may be no more than one such tax imposed by the State for State purposes on individuals and one such tax so imposed on corporations. In any such tax imposed upon corporations the highest rate shall not exceed the highest rate imposed on individuals by more than a ratio of 8 to 5.

(b) Laws imposing taxes on or measured by income may adopt by reference provisions of the laws and regulations of the United States, as they then exist or thereafter may be changed, for the purpose of arriving at the amount of income upon which the tax is imposed.

(Source: Illinois Constitution.)

(Ex. 2, Revised Resolution).

61. The Revised Resolution no longer stated: “There may be one tax on the income of individuals and corporations. This may be a **fair tax where lower rates apply to lower income levels and higher rates apply to higher income levels.** No government other than the State may impose a tax on or measured by income.” (Ex. 2, Revised Resolution).

62. The Revised Resolution was adopted on April 9, 2019. (Ex. 3, Bill Status; Ex. 4, Senate Voting Record April 9, 2019).

63. A true and correct copy of the Senate Voting Record April 9, 2019 is attached as **Exhibit 4**.

64. The Senate voted on the Revised Resolution on May 1, 2019. (Ex. 3, Bill Status).

65. The Revised Resolution passed with 40 Senators voting “yea” and 19 Senators voting “nay.” (Ex. 5, Senate Voting Record May 1, 2019).

66. A true and correct copy of the Senate Voting Record May 1, 2019 is attached as **Exhibit 5**.

67. The Revised Resolution was approved by the Senate with at least a three-fifths majority. (Ex. 5, Senate Voting Record May 1, 2019).

68. The Revised Resolution, as passed by the Senate, arrived in the House of Representatives on May 1, 2019 (Ex. 3 Bill Status).

69. The House of Representatives voted on the Revised Resolution on May 27, 2019 (Ex. 3, Bill Status).

70. The Revised Resolution passed with 73 Representatives voting “yea” and 44 Representatives voting “nay.” (Ex. 6, House Voting Record May 27, 2019).

71. A true and correct copy of the House Voting Record May 27, 2019 is attached as **Exhibit 6**.

72. The Revised Resolution was approved by the House of Representatives by at least a three-fifths majority. (Ex. 6, House Voting Record May 27, 2019).

73. The language amending the Illinois Constitution that was approved by the Senate and the House of Representatives in the Revised Resolution is the same as the language in the PIT Amendment.

74. Because the Revised Resolution was approved in both the Senate and the House of Representatives with at least a three-fifths majority, the PIT Amendment was to be submitted to the electors at the general election next occurring at least six months after legislative approval.

75. The general election next occurring at least six months after the Revised Resolution was approved by both the Senate and the House of Representatives is the general election occurring on November 3, 2020 (the “2020 General Election”).

76. Therefore, Illinois voters would be able to vote for or against the PIT Amendment during the 2020 General Election.

#### **D. The PIT Amendment’s Ballot Explanation and Pamphlet**

77. In addition to preparing the language amending the Constitution, the General Assembly also prepared additional information regarding the PIT Amendment.

78. The General Assembly met in a special legislative session in May of 2020.

79. During the May 2020 special legislative session, the General Assembly adopted language for the Ballot Explanation and Pamphlet.

80. The General Assembly’s obligation to prepare the Ballot Explanation and Pamphlet arose from the Article XIV, Section 2 of the Illinois Constitution and provisions of the Illinois Constitutional Amendment Act.

81. Specifically, Article XIV, Section 2(b) of the Illinois Constitution provides that:

**Amendments proposed by the General Assembly shall be published with explanations, as provided by law, at least one month preceding the vote thereon by the electors.** The vote on the proposed amendment or amendments shall be on a separate ballot. A proposed amendment shall become effective as the

amendment provides if approved by either three-fifths of those voting on the question or a majority of those voting in the election.

(Il. Const. 1970, Art. XIV, Sec. 2(b) (emphasis added).

82. The statutory process for publishing explanations of amendments to the Illinois Constitution proposed by the General Assembly is set forth in Section 2 of the Illinois Constitutional Amendment Act, 5 ILCS 20/2.

83. Section 2 of the Illinois Constitutional Amendment Act provides, in part, that:

The **General Assembly** in submitting an amendment to the Constitution to the electors, or the proponents of an amendment to Article IV of the Constitution submitted by petition, **shall prepare a brief explanation of such amendment, a brief argument in favor of the same, and the form in which such amendment will appear on the separate ballot** as provided by Section 16-6 of the Election Code, as amended. The minority of the General Assembly, or if there is no minority, anyone designated by the General Assembly shall prepare a brief argument against such amendment.

\* \* \*

The proponent's explanation and argument in favor of and the opponent[']s argument against an amendment to Article IV initiated by petition must be submitted to the Attorney General, who may rewrite them for accuracy and fairness. **The explanation, the arguments for and against each constitutional amendment, and the form in which the amendment will appear on the separate ballot shall be filed in the office of the Secretary of State with the proposed amendment.**

\* \* \*

In addition to the notice hereby required to be published, the **Secretary of State shall also cause** the existing form of the constitutional provision proposed to be amended, the proposed amendment, **the explanation of the same, the arguments for and against the same, and the form in which such amendment will appear on the separate ballot, to be published in pamphlet form** in 8 point type or the equivalent thereto; and **the Secretary of State shall mail such pamphlet to every mailing address in**

**the State**, addressed to the attention of the Postal Patron. He shall also maintain a reasonable supply of such pamphlets so as to make them available to any person requesting one.

(Source: P.A. 98-463, eff. 8-16-13.)

(5 ILCS 20/2 (emphasis added)).

84. Section 2 of the Illinois Constitutional Amendment Act requires that the General Assembly shall prepare a brief explanation of the proposed amendment and a brief argument in favor of the amendment. 5 ILCS 20/2.

85. Section 2 of the Illinois Constitutional Amendment Act further provides that the minority of the General Assembly shall prepare a brief argument against such amendment.

86. Section 2 also states that the proposed amendment's explanation and argument in favor and argument against must be submitted to the Attorney General, who may rewrite them for accuracy and fairness.

87. Section 2 also states that the explanation, the arguments for and against the proposed amendment, and the form in which such amendment will appear on the separate ballot shall be filed in the office of the Secretary of State with the proposed amendment.

88. Section 2 also states that the Secretary of State shall cause the proposed amendment, the explanation, the arguments for and against, and the form in which such amendment will appear on the separate ballot, to be published in pamphlet form and mailed to every mailing address in the State.

89. Additionally, the Illinois Election Code, 10 ILCS 5/1-1, *et seq.*, provides in Section 16-6, in part, that:

Sec. 16-6. Whenever one or more proposals for amendment of the constitution or the calling of a constitutional convention or

any combination thereof is or are to be voted upon by the people, the proposition or propositions for the adoption or rejection of such amendment or amendments or convention shall be submitted upon a ballot separate from the "Official Ballot" containing the names of candidates for State and other offices to be voted at such election. Such separate ballot shall be printed upon paper of a distinctly blue color and shall, as near as may be practicable, be of uniform size and blue color, but any variation in the size of such ballots or in the tincture of blue employed shall not affect or impair the validity thereof. **Preceding each proposal to amend the constitution shall be printed the brief explanation of the amendment, prepared by the General Assembly,** or in the case of a proposed amendment initiated by petition pursuant to Section 3 of Article XIV of the Constitution of the State of Illinois by the principal proponents of the amendment as approved by the Attorney General, and immediately below the explanation, the proposition shall be printed in substantially the following form:

-----  
 YES                      For the proposed amendment  
 -----                      to Article \_\_\_\_\_ (or Section  
 NO                              \_\_\_\_\_ of Article \_\_\_\_\_) of  
    the Constitution.

\* \* \*

(Source: P.A. 97-766, eff. 7-6-12.)

(10 ILCS 5/16-6 (emphasis added).

90. On May 21, 2020 the Senate adopted Senate Joint Resolution No. 1 (the “Ballot and Pamphlet Resolution”) by a vote of 36 in favor and 18 opposed. (Ex. 7, Ballot and Pamphlet Resolution; Ex. 8, Senate Voting Record dated May 21, 2020).

91. A true and correct copy of the Ballot and Pamphlet Resolution is attached as **Exhibit 7**.

92. A true and correct copy of the Senate Voting Record May 21, 2020 is attached as **Exhibit 8**.

93. On May 22, 2020, the House of Representatives adopted the Ballot and Pamphlet Resolution by a vote of 71 in favor and 45 opposed. (Ex. 9, House Voting Record dated May 22, 2020).

94. A true and correct copy of the House Voting Record May 22, 2020 is attached as **Exhibit 9**.

95. The Ballot and Pamphlet Resolution resolved “[t]hat a brief explanation of the [PIT Amendment], a brief argument in favor of the [PIT Amendment], a brief argument against the [PIT Amendment], and the form in which the [PIT Amendment] will appear on the ballot” shall be published and distributed as set forth in the Ballot and Pamphlet Resolution.

96. The Ballot and Pamphlet Resolution stated that the Pamphlet would include the following explanation on the Form of Ballot:

The proposed amendment grants the State authority to impose higher income tax rates on higher income levels, which is how the federal government and a majority of other states do it. The amendment would remove the portion of the Revenue Article of the Illinois Constitution that is sometimes referred to as the "flat tax," that requires all taxes on income to be at the same rate. The amendment does not itself change tax rates. It gives the State the ability to impose higher tax rates on those with higher income levels and lower income tax rates on those with middle or lower income levels. You are asked to decide whether the proposed amendment should become a part of the Illinois Constitution.

(Ex. 7, Ballot and Pamphlet Resolution: Form of Ballot).

97. The Ballot and Pamphlet Resolution also set forth the Arguments in Favor of the proposed amendment.

98. The Arguments in Favor in the Ballot and Pamphlet Resolution began as follows:

Illinois' current tax system unfairly benefits millionaires and billionaires and this amendment will set things right for middle-

class and working people. Currently, it is unfair that billionaires pay the same tax rate as regular people.

Voting "yes" on the amendment means that the State will enact a new tax structure where only those making above \$250,000 a year will see their taxes go up.

This amendment is simply upgrading Illinois' old tax system to a graduated system which is how the federal government and the majority of other states do it.

(Ex. 7, Ballot and Pamphlet Resolution: Pamphlet).

99. The Arguments in Favor also included a section with the heading “This Amendment Would Make Illinois' Tax System Fair[.]” (Ex. 7, Ballot and Pamphlet Resolution: Pamphlet).

100. Specifically, after the heading “This Amendment Would Make Illinois’ Tax System Fair[.]” the Arguments in Favor stated:

Approval of this amendment would enact a fair system that allows the state to tax wealthy people at higher rates and lower income people at lower rates, replacing Illinois' current unfair tax system, in which wealthy people pay the exact same tax rate as lower and middle income people.

Illinois' current tax system unfairly benefits millionaires and billionaires, and approval of this amendment will set things right for the middle class and working people.

This amendment will help small business owners by creating a stable economic environment for their businesses to thrive.

While others try to mislead you, under the current tax system in Illinois, policymakers already have the authority to set any tax rate and to change tax rates at their will. The current system forces policymakers to charge the same tax rate to everyone, regardless of how much money they make. If this amendment passes, the State will have the ability to tax higher income earners at a different rate. In fact, upon passage of this Amendment, a new tax structure will go into effect where 97% of taxpayers will pay the same or less, while only those making more than \$250,000 a year will see a tax increase.

This amendment does not tax retirement income.

(Ex. 7, Ballot and Pamphlet Resolution: Pamphlet).

101. The Arguments in Favor also included a section with the heading “The Federal Government and Most States Use the Graduated Tax System Proposed in this Amendment, Not the Unfair System Currently Used in Illinois[.]” (Ex. 7, Ballot and Pamphlet Resolution: Pamphlet).

102. Specifically, after the heading “The Federal Government and Most States Use the Graduated Tax System Proposed in this Amendment, Not the Unfair System Currently Used in Illinois[.]” the Arguments in Favor stated:

Illinois is among a minority of states that do not utilize graduated tax rates because the Illinois Constitution requires a "flat tax" that penalizes middle-class and working people and benefits higher income individuals.

A majority of states and the federal government already use the kind of graduated income tax system proposed in this amendment to ensure that wealthy people pay their fair share of taxes.

Nearby states including Iowa, Minnesota, Missouri, Ohio, and Wisconsin are among the majority of states that have graduated tax systems.

(Ex. 7, Ballot and Pamphlet Resolution: Pamphlet).

103. The Arguments in Favor also included a section with the heading “Illinois' Current Income Tax System Relies on Taxes from Middle and Lower Income Earners, While a Graduated System Would Lower that Burden and Fund Critical Programs such as Education and Human Services[.]” (Ex. 7, Ballot and Pamphlet Resolution: Pamphlet).

104. Specifically, after the heading “Illinois' Current Income Tax System Relies on Taxes from Middle and Lower Income Earners, While a Graduated System Would

Lower than Burden and Fund Critical Programs such as Education and Human Services[,]” the Arguments in Favor stated:

While some states have fair tax rates in which the highest income earners pay the highest tax rate, Illinois' "flat tax" rate continues to rely unfairly on taxes from middle and lower income earners.

Under Illinois' "flat tax" structure, a nurse making \$50,000 per year pays the same tax rate as an executive making \$4 million per year. A graduated tax rate would have the executive pay more.

Because of the way our current tax system is set up, the bottom fifth of Illinois taxpayers (those making below \$21,800) contribute 14.4% of their income to state and local taxes, compared to 7.4% for the top 1 percent of Illinois taxpayers.

If this Amendment passes, the State has already enacted a new graduated tax structure where 97% of taxpayers will pay the same or less.

Under the new tax structure, only the top 3% of Illinois income earners would pay more in income taxes. Everyone who makes \$250,000 or less a year would pay the same or less.

Over 95% of small businesses earn \$250,000 or less a year in profits, and their owners will not see a tax increase under the new tax structure.

This change will generate additional revenue each year that can help address Illinois' budget deficit and fund critical programs, including the State's education system, public safety, and social services like mental health and substance abuse treatment and domestic violence shelters.

(Ex. 7, Ballot and Pamphlet Resolution: Pamphlet).

105. The Arguments in Favor also included a section with the heading “After the COVID-19 Pandemic, We Need to Do All We Can to Help the Economy and Middle-Class and Working People[,]” (Ex. 7, Ballot and Pamphlet Resolution: Pamphlet).

106. After the heading “After the COVID-19 Pandemic, We Need to Do All We Can to Help the Economy and Middle-Class and Working People[,]” the Arguments in Favor stated:

Working people and essential workers like nurses, first responders, and grocery store clerks should not pay the same tax rate as the wealthy. Nurses making \$50,000 a year should not pay the same tax rate as an executive making \$4,000,000 a year.

Having wealthy people pay more would reduce the burden on working families. This is money that middle and lower income people need for housing, groceries, medicine, and essentials.

When the wealthiest people pay more, middle and lower income earners can pay less while the State funds critical services that our essential workers rely on.

(Ex. 7, Ballot and Pamphlet Resolution: Pamphlet).

107. In both the House of Representatives and the Senate the votes for and against the Ballot and Pamphlet Resolution generally reflected the partisan political divisions between the two major political parties in Illinois. In fact, in the Senate, all votes in favor of the Ballot and Pamphlet Resolution were votes from members of the Democratic Party, and all votes against the Ballot and Pamphlet Resolution were members of the Republican Party.

108. After the House of Representatives and the Senate adopted the Ballot and Pamphlet Resolution, the Secretary of State distributed the Pamphlet to voters.

109. The Illinois Attorney General did not rewrite either the Ballot Explanation or Arguments in Favor for accuracy or fairness.

110. The Secretary of State mailed the Pamphlet to every mailing address in the State of Illinois.

**E. The State Board of Election’s Certification of the Ballot**

111. Section 2a of the Illinois Constitutional Amendment Act states that:

The State Board of Elections as constituted in the Election Code shall, not later than the time prescribed by law for certifying the candidates for State offices to be voted upon at the same election, certify to the several county clerks any proposal to amend the constitution. The several county clerks shall certify such proposal to any board of election commissioners within their respective counties not later than the time prescribed by law for the certification of candidates.

(5 ILCS 20/2a).

112. The State Board of Elections, including its Chair, Vice, Chair, and Members of the Board, certified to the several county clerks the proposal to amend the Illinois Constitution by adopting the PIT Amendment.

113. The State Board of Elections, including its Chair, Vice, Chair, and Members of the Board, used the Ballot Explanation from the Ballot and Pamphlet Resolution when certifying the ballot.

114. The county clerks and any boards of election commissioners in their respective counties have used the Ballot Explanation and Form of Ballot from the Ballot and Pamphlet Resolution for the purpose of the ballot.

115. When voters in Illinois vote on whether to approve the PIT Amendment, voters will view the Ballot Explanation from the Ballot and Pamphlet Resolution.

116. On or about September 24, 2020, voters in Illinois began voting in the 2020 General Election.

117. Mail-in and absentee voting has already begun.

118. Early voting for voters residing Chicago, Illinois began on October 1, 2020.

119. Early voting for voters residing in Cook County, Illinois, but outside the City of Chicago, is scheduled to begin in some places on October 7, 2020, and in most places, on or around October 19, 2020.

120. The next regularly scheduled meeting of the State Board of Elections is set for October 20, 2020.

121. The 2020 General Election will conclude on November 3, 2020.

**F. The Ballot Explanation on the Form of Ballot is Misleading**

122. The Form of Ballot approved by the General Assembly contains the Ballot Explanation.

123. The Ballot Explanation is misleading.

124. The Ballot Explanation on the Form of Ballot states the following:

The proposed amendment grants the State authority to impose higher income tax rates on higher income levels, which is how the federal government and a majority of other states do it. The amendment would remove the portion of the Revenue Article of the Illinois Constitution that is sometimes referred to as the "flat tax," that requires all taxes on income to be at the same rate. The amendment does not itself change tax rates. It gives the State the ability to impose higher tax rates on those with higher income levels and lower income tax rates on those with middle or lower income levels. You are asked to decide whether the proposed amendment should become a part of the Illinois Constitution.

(Ex. 7, Ballot and Pamphlet Resolution: Form of Ballot).

125. The Ballot Explanation includes misleading statements concerning the PIT Amendment, including, among other things that the PIT Amendment “gives the State the ability to impose **higher tax rates** on those with **higher income** levels and **lower income tax rates** on those with **middle or lower income** levels.” (Ex. 7, Ballot and Pamphlet Resolution: Form of Ballot (emphasis added)).

126. In reality, the PIT Amendment does not give the State authority to only impose “higher tax rates” on those with “higher income levels” and “lower income tax rates on those with middle or lower income levels.” Rather, the PIT Amendment merely gives the State authority to impose different tax rates on those with different income levels.

127. The significance of the difference between the actual impact of the PIT Amendment and the Ballot Explanation cannot be overstated – the Ballot Explanation implies that, if the PIT Amendment passes, individuals with middle or lower income levels will only experience lower income tax rates, while only those individuals with higher income levels will be subjected to higher tax rates. However, nothing in the PIT Amendment provides for or justifies such assurances in the Ballot Explanation.

128. The misleading statements in the Ballot Explanation are further elaborated by the PIT Amendment’s legislative history.

129. When the Senate first considered the resolution to amend the Constitution and adopt a progressive income tax, the resolution included language that would have actually meant what the Ballot Explanation says, but this language was removed.

130. Specifically, the Original Resolution proposed by Senator Harmon on January 29, 2019 stated that there would be a “fair tax where lower rates apply to lower income levels and higher rates apply to higher income levels.”

131. However, the General Assembly did not adopt the language in the Original Resolution; instead, the General Assembly adopted the language of the Revised Resolution.

132. The Revised Resolution merely stated that “The General Assembly shall provide by law for the rate or rates of any tax on or measured by income imposed by the State.”

133. Therefore, while the language in the Original Resolution actually required a “fair tax” that imposed “lower rates” on “lower income levels” and “higher rates” on “higher income levels,” the language in the Revised Resolution simply grants the General Assembly authority to impose different tax rates on different levels of income.

134. The General Assembly adopted the Revised Resolution, and if the PIT Amendment is approved by the voters, the Illinois Constitution will be amended to comply with the language of the Revised Resolution.

135. The Ballot Explanation of the PIT Amendment bears no resemblance to the actual language of the PIT Amendment; therefore, the Ballot Explanation of the PIT Amendment is misleading.

136. Furthermore, the Ballot Explanation is also misleading when it states in the first sentence that the PIT Amendment “grants the State authority to impose higher income tax rates on higher income levels, **which is how the federal government and a majority of other states do it.**” (Ex. 7, Ballot and Pamphlet Resolution: Form of Ballot) (emphasis added).

137. The language of the Ballot Explanation suggests that a vote in favor of the PIT Amendment means that taxes will only be increased for those taxpayers with higher income levels.

138. In a majority of other states with a progressive income tax (18 out of 32), individuals with middle income levels are taxed at the same rate as those with higher income levels.

139. Therefore, the Ballot Explanation contains additional information that is misleading and likely to confuse or misinform voters to as to affect voters’ free choice.

140. As alleged in the paragraphs above, the Ballot Explanation is not a fair portrayal of the PIT Amendment, is misleading, demonstrates partisan coloring, and provides additional information tending to confuse or misinform voters so as to affect voter free choice.

**G. The Pamphlet is Misleading**

141. The Pamphlet that the Secretary of State mailed to every mailing address is misleading.

142. The Pamphlet contains the Arguments in Favor approved by the General Assembly.

143. Like the Ballot Explanation, the Arguments in Favor include several misleading statements, including, among others, a misleading statement that, upon information and belief, will induce retirees into voting to impose on themselves a tax on retirement income.

144. The Arguments in Favor conflate the provisions of the PIT Amendment with a new statutory tax structure the General Assembly enacted that only goes into effect if the PIT Amendment passes.

145. Conflating the provisions of the PIT Amendment with the new statutory tax structure passed by the General Assembly misleads voters.

146. Whereas voters need to approve the PIT Amendment for the new statutory tax structure to go into effect, the General Assembly need not seek voter approval to make any future changes to the tax structure.

147. Accordingly, all references to the features of the new tax structure which are not expressly required by the PIT Amendment constitute additional information.

148. The additional information contained in the Arguments in Favor is likely to misinform or confuse voters in the exercise of their right to make a free choice.

149. Specifically, the Pamphlet states: “Voting ‘yes’ on the amendment means that the State will enact a new tax structure where only those making above \$250,000 a year will see their taxes go up.” (Ex. 7, Ballot and Pamphlet Resolution: Pamphlet).

150. Moreover, the Pamphlet is also misleading when it states “upon passage of this Amendment, a new tax structure will go into effect where 97% of taxpayers will pay the same or less, while only those making more than \$250,000 a year will see a tax increase.”

151. Nothing in the PIT Amendment means that only those making above \$250,000 a year will see tax increase.

152. Moreover, the statements referenced in paragraphs 149 and 150 imply that, if the PIT Amendment passes, taxes will never increase for those making \$250,000 or less.

153. The statements referenced in paragraphs 149 and 150 ignore sales tax or property tax. Even if the PIT Amendment passes, individuals making \$250,000 or less could still experience increases in sales taxes, local taxes, or property taxes.

154. The statements referenced in paragraphs 149 and 150 do not reveal that if the PIT Amendment passes, individuals making \$250,000 or less could experience increases in income taxes levied by cities, municipalities, and other local units of government other than the State of Illinois.

155. The statement referenced in paragraph 149 is also misleading because it suggests that if the PIT amendment passes “only those making more than \$250,000 a year will see a tax increase[,]” even though the PIT Amendment does not prohibit the General Assembly from choosing, at some point in the future, to increase taxes on taxpayers with incomes of \$250,000 or less a year.

156. The statements referenced in paragraphs 149 and 150 also ignore the fact that, in the future, the General Assembly is reasonably likely to impose higher taxes on those making \$250,000 or less.

157. The misleading statements referenced in paragraphs 149 and 150 constitute additional information tending to confuse or misinform voters in the exercise of their right to make a free choice.

158. The Pamphlet is also misleading when it describes the purpose for income taxes imposed pursuant to the PIT Amendment.

159. Specifically, the Pamphlet states in the Arguments in Favor that “a Graduated System Would Lower that Burden and Fund Critical Programs such as Education and Human Services.” However, nothing in the PIT Amendment requires that revenue raised through new or higher income taxes will be used to fund “critical programs such as education and human services.” Rather, the General Assembly is free to choose to use the revenue for any lawful purpose it sees fit.

160. Accordingly, the Arguments in Favor of the PIT Amendment mailed to voters in the Pamphlet state a different and more limited list of purposes for the revenue than the more expansive purposes that would be permitted if the PIT Amendment is adopted by the voters. As such, the Arguments in Favor of the PIT Amendment are misleading.

161. Finally, the Pamphlet is misleading when it states that under the current non-graduated (or flat) tax system that “billionaires pay the same tax rate as regular people.”

162. Specifically, due to deductions and exemptions provided under law, a taxpayer’s effective tax rate rises as income levels rise.

163. Data from the Illinois Department of Revenue for tax year 2017 show that taxpayers in the lowest quintile of income earners pay an effective tax rate of 1.6% while taxpayer sin the highest quintile (those making more than \$500,000) per year, pay an effective tax rate of 4.2% of their income.

164. Failing to differentiate between effective tax rates and statutory tax rates misleads voters by leaving out the necessary context for voters to understand both the current income tax system and the effect of the PIT Amendment.

#### **H. The Misleading Statements Conceal the Threat of Taxes on Retirement Income**

165. The misleading statements in the Ballot Explanation and Pamphlet are particularly dangerous to retirees and conceal the threat of taxes on retirement income.

166. The Pamphlet is misleading when it states in the Arguments in Favor that: “This amendment does not tax retirement income.”

167. The statement referenced in paragraph 166 concerning retirement income is not necessary to explain the language of the PIT Amendment.

168. In fact, neither the existing language in Article IX, Section 3 of the Illinois Constitution, nor the proposed language in the PIT Amendment mention retirement income.

169. Therefore, the reference to retirement income is additional information.

170. The statement referenced in paragraph 166 suggests that voting in favor of the PIT Amendment means that the General Assembly will not impose a tax on retirement income.

171. Moreover, some voters may interpret the statement in the Pamphlet – “This amendment does not tax retirement income” – to mean that voting in favor of the PIT Amendment is specifically vote against the imposition of a tax on retirement income.

172. Accordingly, the statement referenced in paragraph 166 constitutes additional information that is likely to confuse or misinform voters in the exercise of voters' free choice.

173. Furthermore, some evidence suggests that passing the PIT Amendment is a precondition to imposing a tax on retirement income.

174. Specifically, the Illinois State Treasurer, Michael Frerichs is reported as stating at a Chamber of Commerce event that “[o]ne thing a progressive tax would do is make clear you can have graduated rates when you are taxing retirement income, and, I think that’s something that’s worth discussion” or words to that effect.

175. Moreover, in the United States, 32 states have adopted progressive income taxes, and all 32 such states tax retirement income.

176. Further, the State of Connecticut is the most recent state to have adopted a progressive income tax, and the State of Connecticut currently taxes retirement income.

177. Therefore, despite the statement in the Arguments in Favor that the PIT Amendment “does not tax retirement income[,]” the evidence shows that adopting the PIT Amendment will make a tax on retirement income more likely.

178. Accordingly, the additional information concerning retirement income in the Pamphlet is likely to misinform and confuse voters so as to affect voters' free choice.

## **I. The Form of the Ballot is Misleading**

179. When the General Assembly adopted the Ballot and Pamphlet Resolution, the General Assembly published the “Form of the Ballot.” (Ex. 7, Ballot and Pamphlet Resolution: Form of Ballot).

180. The Form of the Ballot does not provide the actual text of the PIT Amendment.

181. The Form of the Ballot only repeats the language as in the Ballot Explanation.

182. Therefore, as alleged in the paragraphs above, the Form of the Ballot is not a fair portrayal of the PIT Amendment, is misleading, demonstrates partisan coloring, and provides additional information tending to confuse or misinform voters so as to affect voter free choice.

**J. The Illinois Policy Institute endeavors to inform voters on the PIT Amendment**

183. Plaintiff Illinois Policy Institute has endeavored to inform voters on impact of the PIT Amendment.

184. Plaintiff Illinois Policy Institute is a nonpartisan research organization that promotes responsible government and free market principles.

185. Plaintiff Illinois Policy Institute has undertaken sustained efforts to educate voters, citizens, and lawmakers to ensure the people of Illinois have, among other things, an honest, efficient, and transparent government, economic policies that create jobs and opportunity, limited taxation.

186. Plaintiff Illinois Policy Institute, by and through its researchers and policy advisors, has investigated claims by proponents of the PIT Amendment for accuracy and fairness and studied the impact the PIT Amendment would have on Illinois, the Illinois economy, and Illinois taxpayers.

187. Between February 2020 and the present, Plaintiff Illinois Policy Institute has released multiple reports and articles concerning the PIT Amendment.

188. On or around February 12, 2020, Plaintiff Illinois Policy Institute published an article authored by Orphe Divounguy, Chief Economist for the Illinois Policy Institute and Bryce Hill, Senior Research Analyst for the Illinois Policy Institute, concerning implications the PIT Amendment would have on Illinois taxpayers who are married and file jointly.

189. A true and correct copy of the article referenced in paragraph 188 is attached as **Exhibit 10**.

190. On or around May 18, 2020, Plaintiff Illinois Policy Institute published an article authored by Bryce Hill, Senior Research Analyst at the Illinois Policy Institute, how the PIT Amendment could result in up to a 47% increase in taxes on Illinois small businesses.

191. A true and correct copy of the article referenced in paragraph 190 is attached as **Exhibit 11**.

192. On or around July 3, 2020, Plaintiff Illinois Policy Institute published an article authored by Austin Berg, Vice President of Marketing for the Illinois Policy Institute, concerning the implications of the PIT Amendment on a tax on retirement income.

193. A true and correct copy of the article referenced in paragraph 192 is attached as **Exhibit 12**.

194. On or about July 13, 2020, Plaintiff Illinois Policy Institute published an article authored by Ben Szalinski, writer for the Illinois Policy Institute, regarding the consequences of the PIT Amendment, including potential imposition of a retiree tax, double taxation, and city income taxes.

195. A true and correct copy of the article referenced in paragraph 194 is attached as **Exhibit 13**.

196. On or about August 27, 2020, Plaintiff Illinois Policy Institute published an article authored by Orphe Divounguy Chief Economist for the Illinois Policy Institute, Adam Schuster, Senior Director of Budget and Tax Research for the Illinois Policy Institute, and Bryce Hill, Senior Research Analyst, intended to serve as the “Progressive Income Tax Study Guide.”

197. A true and correct copy of the article referenced in paragraph 196 is attached as **Exhibit 14**.

198. On or about August 27, 2020, Plaintiff Illinois Policy Institute published an article authored by Orphe Divounguy, Chief Economist for the Illinois Policy Institute and Bryce Hill, Senior Research Analyst for the Illinois Policy Institute, concerning five unfair claims made in support of the PIT Amendment.

199. A true and correct copy of the article referenced in paragraph 198 is attached as **Exhibit 15**.

200. On or about September 18, 2020, Plaintiff Illinois Policy Institute published an article by Adam Schuster, Senior Director of Budget and Tax Research for the Illinois Policy Institute, concerning misleading statements in the Pamphlet.

201. A true and correct copy of the article referenced in paragraph 200 is attached as **Exhibit 16**.

202. On or about September 25, 2020, Plaintiff Illinois Policy Institute published an article authored by Adam Schuster, Senior Director of Budget and Tax Research for the Illinois Policy Institute concerning threats by Governor JB Pritzker and Lieutenant Governor Juliana Stratton to increase taxes by 20% if voters do not adopt the PIT Amendment.

203. A true and correct copy of the article referenced in paragraph 202 is attached as **Exhibit 17**.

204. On or about September 29, 2020, Plaintiff Illinois Policy Institute published an article authored by Joe Tabor, Senior Policy Analyst for the Illinois Policy Institute, regarding how the language of the PIT Amendment was revised to remove any requirement that income taxes be “fair.”

205. A true and correct copy of the article referenced in paragraph 204 is attached as **Exhibit 18**.

206. As described above, Plaintiff Illinois Policy Institute has taken substantial efforts described above to educate and inform voters, citizens, and lawmakers about the impact of the PIT Amendment on middle and low income earners, small businesses, and retirees.

207. Additionally, Plaintiff Illinois Policy Institute is committed to promoting an honest, efficient, and transparent government, including, but not limited to, a government that protects the rights of all people to a free and equal election.

208. However, Plaintiff Illinois Policy Institute’s efforts described above have been, and will continue to be, frustrated by the constitutionally impermissible defects in the Ballot Explanation and Pamphlet without judicial relief.

**J. Plaintiffs are entitled to Injunctive Relief**

209. Plaintiffs have clear and fundamental rights and interests in a free and equal election concerning the PIT Amendment.

210. Plaintiff’s rights need legal protection.

211. Plaintiffs seek injunctive relief until such time as those rights can be adjudicated.

212. Plaintiffs have a substantial likelihood of success on the merits.

213. Plaintiffs will suffer irreparable injury for which they have no adequate remedy at law because damages alone cannot compensate them for the injury if Plaintiffs are denied a free and equal election or the PIT Amendment is adopted by the electors of the State through a constitutionally defective election. Damages cannot adequately compensate plaintiffs for the deprivation of such fundamental constitutional rights.

214. Defendants will not be injured by granting Plaintiffs injunctive relief.

215. The benefits of granting injunctive relief outweigh any purported potential injury to Defendants because failure to grant injunctive relief could lead to additional voters casting votes based on a constitutionally defective ballot that denies all voters a free and equal election as guaranteed by the Illinois and United States Constitutions.

216. The public interest favors the entry of declaratory and injunctive relief against Defendants because a free and equal election is an essential principle of liberty and free government. The public interest strongly favors entry of declaratory and injunctive relief to ensure that elections over propositional ballots are free of misleading information that misinforms voters in the exercise of their rights to freely choose whether to vote for or against a propositional amendment, such as the vote over the PIT Amendment.

217. Time is of the essence. Voting has already begun, and each day that goes by without judicial intervention aggravates the injuries and harms caused to the Plaintiffs and the public by the constitutionally impermissible defects in the Ballot Explanation and Pamphlet.

#### **COUNT I: DECLARATORY JUDGMENT**

218. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 217 as if fully set forth herein.

219. Article I, Section 2 of the Illinois Constitution provides that the state shall not deprive any person of due process and equal protection of the laws. Ill. Const. 1970, Art. I, § 2.

220. Article III, Section 3 of the Illinois Constitution guarantees that all elections shall be “free and equal.” Ill. Const. 1970, Art. III, § 3.

221. The Fourteenth Amendment to the United States Constitution provides, in part, that “[n]o state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const., Amend. XIV.

222. The due process and equal protection guarantees in Article I, Section 2, and the “Free and Equal” requirements of Article III, Section 3, of the Illinois Constitution are in effect those of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. *Fumarolo v. Chicago Bd. of Educ.*, 142 Ill. 2d 54, 71 (1990)

223. The right to free and equal elections protected by the Illinois and United States Constitutions apply to all Plaintiffs.

224. Elections are not “free and equal” within the meaning of the Free and Equal Elections Clause of the Illinois Constitution, when, in the case of a propositional ballot, the language on the ballot, including the ballot explanation, is misleading, does not contain a fair portrayal of the proposition’s chief features in plain words in such a manner that the voter has a clear opportunity to express his or her choice either for or against it, is not clouded by undue detail or additional information that tends to confuse or misinform a voter so as to affect his or her free choice, contains partisan coloring, is not free from any misleading tendency, whether of

amplification, of omission, or of fallacy, or induces a voter and taxpayer to vote a tax upon him or herself to be used for other and different purposes than those specified in the call of the election and the ballot.

225. Moreover, the Court should conclude that Elections are also not “free and equal” within the meaning of the Free and Equal Elections Clause of the Illinois Constitution, when, in the case of a proposed constitutional amendment, the language on the pamphlet mailed to voters before election day is misleading, does not contain a fair portrayal of the proposition’s chief features in plain words in such a manner that the voter has a clear opportunity to express his or her choice either for or against it, is not clouded by undue detail or additional information that tends to confuse or misinform a voter so as to affect his or her free choice, contains partisan coloring, is not free from any misleading tendency, whether of amplification, of omission, or of fallacy, or induces a voter and taxpayer to vote a tax upon him or herself to be used for other and different purposes than those specified in the Pamphlet.

226. In the context of the election over the PIT Amendment, the Ballot, Ballot Explanation, and Pamphlet are misleading, do not contain a fair portrayal of the proposition’s chief features in plain words in such a manner that the voter has a clear opportunity to express his or her choice either for or against it, are not clouded by undue detail or additional information that tends to confuse or misinform a voter so as to affect his or her free choice, contain partisan coloring, are not free from any misleading tendency, whether of amplification, of omission, or of fallacy, and induce voters and taxpayers to vote a tax upon themselves to be used for other and different purposes than those specified in the call of the Pamphlet.

227. Plaintiffs allege that they have interests in a fair and free election as protected by the Free and Equal Elections Clause as well as the Due Process and Equal Protection Clauses of the Illinois and United States Constitutions.

228. Plaintiffs allege that constitutionally impermissible defects in the Ballot Explanation and Pamphlet, as alleged above, have denied their rights to a free and equal election as guaranteed by the Free and Equal Elections Clause.

229. Plaintiffs further allege that the constitutionally impermissible defects in the Ballot Explanation and Pamphlet, unless immediately and sufficiently remedied, will render the election void in accordance with applicable law.

230. Plaintiffs also allege that the constitutionally impermissible defects in the Ballot Explanation and Pamphlet violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.

231. Plaintiffs further allege that enacting the PIT Amendment despite the constitutionally impermissible and defective Ballot Explanation and Pamphlet would constitute deprivations of Plaintiff's fundamental rights to free and equal elections without due process of law in violation of the due process clauses of both the Illinois and United States Constitutions.

232. By virtue of Plaintiffs' allegations that the language in the Ballot Explanation and Pamphlet violate the rights of Illinois voters, including Plaintiffs, of their rights under the Illinois and United States Constitutions, an actual case or controversy exists with respect to the rights of Plaintiffs regarding the language on the Ballot, Ballot Explanation, and Pamphlet concerning the proposal to amend Article IX, Section 3 of the Illinois Constitution as set forth in the PIT Amendment.

233. Plaintiffs ask this Court to declare that the Ballot, Ballot Explanation, and Pamphlet violate the Illinois and United States Constitutions.

**WHEREFORE**, Plaintiffs prays that this Court enter judgment in their favor and against Defendants as follows:

- A. Declare that the language in the Ballot Explanation, and in the Pamphlet violate the Free and Equal Elections Clause of Article III, Section 3 of the Illinois Constitution;
- B. Declare that the language in the Ballot Explanation, and in the Pamphlet violate the Article I, Section 2 of the Illinois Constitution and the Fourteenth Amendment to the United States Constitution.
- C. Temporarily restrain, and preliminarily and permanently enjoin Defendants from violating Plaintiffs' rights to Free and Equal Election as protected by the Illinois and United States Constitutions and order the Defendants to prepare and publish to all voters by mail, distribute to all county clerks and boards of election commissioners, and cause to be included in all ballots, a Corrective Notice, in accordance with *Chicago Bar Association v. White*, 386 Ill. App. 3d 955, 960 (1st Dist. 2008), that complies with the form requirements of Section 16-6 of the Illinois Election Code and states as follows:

**CORRECTIVE NOTICE**

By order of the Court of the Circuit Court of Cook County, voters are advised that the explanation on the ballot for the proposed amendment to Article IX, Section 3 of the Illinois Constitution is misleading. Voters should instead use the following explanation of the proposed amendment:

The proposed amendment grants the State authority to impose different income tax rates on different income levels, which is how the federal government does it. The proposed amendment would remove the portion of the Revenue Article of the Illinois Constitution that is sometimes referred to as the "flat tax," that requires all taxes on income to be at the same tax rate. The proposed amendment does not itself change tax rates. The General Assembly would continue to have the authority to establish income tax rates. You are asked to decide whether the proposed amendment should become a part of the Illinois Constitution.

Voters who received by mail from the Office of the Secretary of State a Pamphlet setting forth an explanation of the amendment, and arguments in favor and against the proposed amendment should be advised to disregard any references in such Pamphlet to a "new tax structure where only those making above \$250,000 a year will see their taxes go up" and the statement in the Pamphlet that said: "This amendment does not tax retirement income."

Voters are encouraged to read the language of the proposed amendment for themselves and decide whether to vote or against the proposed amendment based on the language of the amendment itself, which is set forth below:

### SECTION 3. LIMITATIONS ON INCOME TAXATION

(a) The General Assembly shall provide by law for the rate or rates of any tax on or measured by income imposed by the State. A tax on or measured by income shall be at a non-graduated rate. At any one time there may be no more than one such tax imposed by the State for State purposes on individuals and one such tax so imposed on corporations. In any such tax imposed upon corporations

the highest rate shall not exceed the highest rate imposed on individuals by more than a ratio of 8 to 5.

(b) Laws imposing taxes on or measured by income may adopt by reference provisions of the laws and regulations of the United States, as they then exist or thereafter may be changed, for the purpose of arriving at the amount of income upon which the tax is imposed.

(Source: Illinois Constitution.)

- D. Award Plaintiffs, as applicable and in accordance with law, reasonable attorney's fees and court costs;
- E. Award Plaintiffs such other relief as the Court deems equitable, proper, and just.

Dated: October 5, 2020

Respectfully submitted,

---

Attorney for Plaintiffs

Jack Vrett (ARDC# 6318863)  
Honigman LLP  
155 N. Wacker Ave  
Suite 3100  
Chicago, Illinois 60606  
312-701-9343  
[jvrett@honigman.com](mailto:jvrett@honigman.com)  
Firm No. 64346

**VERIFICATION**

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, Adam Schuster certifies that he is the Senior Director of Budget and Tax Research of the Illinois Policy Institute, that he has read the foregoing **Verified Complaint for Declaratory and Injunctive Relief**, that the facts stated therein are based on his personal knowledge and on documents and information available to him by reason of his position as Senior Director of Budget and Tax Research of the Illinois Policy Institute, and that the matters stated therein are true and correct to the best of his knowledge, except to such matters he alleged on information and belief, and as to such matters he certifies that he believes the same to be true.

\_\_\_\_\_  
Adam Schuster

Dated: \_\_\_\_\_

**VERIFICATION**

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, Donald W. Wojtowicz certifies that he has read the foregoing **Verified Complaint for Declaratory and Injunctive Relief**, that the facts stated in paragraphs 10, 15 and 19 and elsewhere concerning himself are based on his personal knowledge and on documents and information available to him, and that the matters stated therein are true and correct to the best of his knowledge, except to such matters he alleged on information and belief, and as to such matters he certifies that he believes the same to be true.

---

Donald W. Wojtowicz

Dated: \_\_\_\_\_

**VERIFICATION**

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, Barbara J. McGann certifies that she has read the foregoing **Verified Complaint for Declaratory and Injunctive Relief**, that the facts stated in paragraphs 10, 16, and 20, and elsewhere concerning herself, are based on her personal knowledge and on documents and information available to her, and that the matters stated therein are true and correct to the best of her knowledge, except to such matters she alleged on information and belief, and as to such matters she certifies that she believes the same to be true.

\_\_\_\_\_  
Barbara J. McGann

Dated: \_\_\_\_\_

**VERIFICATION**

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, John E. Sutherland certifies that he has read the foregoing **Verified Complaint for Declaratory and Injunctive Relief**, that the facts stated in paragraphs 10, 17, and 21 and elsewhere concerning himself, are based on his personal knowledge and on documents and information available to him, and that the matters stated therein are true and correct to the best of his knowledge, except to such matters he alleged on information and belief, and as to such matters he certifies that he believes the same to be true.

\_\_\_\_\_  
John E. Sutherland

Dated: \_\_\_\_\_