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Maine legal, business and health care leaders: Proposed 3.8% income surtax is bad tax policy; initiative also violates labor and privacy laws, and is unconstitutional ———

**——— Experts reveal significant flaws with measure that “is not what it appears to be,”
and would be the largest tax increase in Maine history**

On Wednesday, May 2, 2018, leaders and experts from Maine’s legal, business and health care communities met in Augusta on Wednesday to outline significant flaws with the proposed 3.8 percent income surtax on the ballot in November. The proposed tax increase to fund universal home care for seniors and people with disabilities is bad tax policy, would be the largest tax increase in Maine history, and the initiative violates the Maine and U.S. Constitutions, as well as federal labor and privacy laws.

“The 3.8 percent income surtax on the ballot this November is terrible tax policy and parts of the initiative are unconstitutional,” said Dana Connors, president of the Maine State Chamber of Commerce. “It would be the largest tax increase in Maine history, hit Maine’s self-employed, small and family-owned business owners especially hard, and the tax would apply to all sources of income and combined family income. Because it violates both the Maine and U.S. Constitutions, if passed, it also would create a legal mess that would be difficult and costly to clean up.”

Dan Wathen, former Chief Justice of the Maine Supreme Judicial Court (pictured at podium), spoke to the measure’s unconstitutionality (see reverse). It would violate the Maine Constitution by delegating to private entities the authority to elect persons to discharge a governmental function and does so without providing sufficient standards to guide the govern-



ing board in designing and administering the program.

The measure violates the U.S. Constitution and federal labor law by authorizing a dues checkoff provision that is preempted by federal law and by subjecting individual home health care providers employed directly by families or individuals to a service fee for a labor union that they do not choose to join.

Additionally, passage of the ballot initiative raises serious privacy concerns. The home addresses, contact information, and sensitive health information about the elderly and disabled could be turned over to private groups without their permission. The measure also gives an unac-

countable private organization power to control and spend hundreds of millions of tax dollars each year, without requiring any independent oversight or public audit of how the tax dollars are spent.

“These significant flaws with the proposed 3.8 percent income surtax are just the tip of the iceberg,” said Jeff Austin of the Maine Hospital Association. “The problems with the initiative would have been uncovered had a public hearing and work session been held in the normal course of the Legislature’s business. Maine voters need to understand this referendum question is not what it appears to be and should not be adopted.” □

**“Here we
go again...”**

by Dana Connors

As many of you know, this is the eighth time in three years that citizen’s initiatives have dominated the legislative agenda – in fact, five of the seven referenda passed, and with one exception, have consumed an enormous amount of the legislature’s time.

You may also recall our opposition to a recent campaign to impose a 3% tax on household incomes above \$200,000 in order to fund education. There is a referendum on the November ballot that will have a deeper, harsher impact on Maine’s economy — an effort to impose a higher income surtax (3.8%) on a lower household income threshold (\$128,000) to fund universal home care for seniors and people with disabilities. This proposal is deeply flawed, despite its good intentions to provide aid and care. It may, unfortunately, cause more harm than help, in the long run.

Concerns about the possible unconstitutionality of the proposal (see sidebar) generate significant issues for patient care, quality, safety, and confidentiality. Legal analysis indicates that the initiative could violate the Maine Constitution by delegating to private entities the authority to elect persons to discharge a governmental function and, by delegating this significant governmental function, it does so without providing sufficient standards to guide the governing board in designing and administering the program.

Another concern is the violation of federal labor laws by insisting that individual home health care providers pay a service fee for a mandatory labor union. In addition, this sets forth an expectation of care, for which \$310 million won’t be enough, resulting in increasing waiting lists, cut services, and disappointed clients.

Let us not forget – or understate – the economic impact of this proposal. This tax will apply to individuals, families, businesses and employers, and to all sources of income – everything that is “adjusted

Executive Summary...

**Proposed tax referendum violates
Maine Constitution, federal Constitution,
and federal labor and privacy laws,
and is bad tax policy**

The \$310 million income surtax referendum proposed for the November ballot is deeply flawed. At a May 2 press conference, a former Chief Justice of the Maine Supreme Judicial Court and two other prominent legal experts detailed the most significant flaws within the proposal. These are by no means the only issues, but only the most serious problems of which the public and policymakers should be aware.

State Constitutional Violations...

- 1 Violates the Maine Constitution by delegating to private entities the authority to elect persons to discharge a governmental function.
- 2 Violates the Maine Constitution by delegating a significant governmental function and does so without providing sufficient standards to guide the governing board in designing and administering the program.

Federal Constitutional and Federal Labor Law Violations...

- 3 Violates the U.S. Constitution and federal labor law by authorizing a dues checkoff provision that is preempted by federal law and by subjecting individual home health care providers employed directly by families or individuals to a service fee for a labor union that they do not choose to join.

Federal Health Law Violations...

- 4 Likely violates federal health privacy law by requiring the government to disclose the protected health information of elderly and disabled Mainers without their prior permission to third parties for purposes of elections and campaigns.

Tax Policy Problems...

- 5 Increases state income tax rate by 3.8 points to 10.95% (an increase of more than 50% to the top tax rate) to the third highest state rate in the country and highest state rate for some taxpayers.
- 6 Applies the tax to individuals, families, businesses and employers.
- 7 Applies the tax to all sources of income, including, wages, social security and pension income, farm and fishing income, and even alimony and unemployment compensation – everything that is “adjusted gross income.”

These are merely the most significant flaws with this proposal that would have been uncovered had a public hearing and work session been held in the normal course of business. Maine voters need to understand that the referendum question is not what it appears to be, has never been considered by the legislature, and should not be adopted with such major flaws. □

gross income.” The income level targets a larger portion of taxpayers at a rate higher than the proposal last November, and this increase of the state income tax rate to 10.95% (an increase of more than 50% to the top tax rate) ranks Maine in the top three highest state rates nationally. It is also important to note that California’s highest rate kicks in at \$1 million, and Hawaii’s at \$400,000, a level far higher

than the proposal’s \$128,000 for Maine.

In the near future, the Maine State Chamber and a coalition of business and health care leaders will form to oppose this referendum. We will work with stakeholders and other interested parties to further understand the implications of this citizen’s initiative and look forward to sharing it with you in the coming months. □