COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

SUFFOLK, SS. NO. SJC-13237

MARTIN EL KOUSSA & OTHERS,

v.

ATTORNEY GENERAL & ANOTHER.

ON RESERVATION AND REPORT FROM THE
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

BRIEF OF APPELLEES THE ATTORNEY GENERAL AND SECRETARY OF THE COMMONWEALTH

MAURA HEALEY
Attorney General

Jesse M. Boodoo (BBO No. 678471)
Assistant Attorney General
Government Bureau
One Ashburton Place, 18th Floor
Boston, Massachusetts 02108
617-963-2592
Jesse.Boodoo@mass.gov

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QUESTIONS PRESENTED

I. Did the Attorney General correctly certify that the laws proposed by the two challenged initiative petitions satisfy the "relatedness" requirement of Amendment Article 48 of the Massachusetts Constitution where all their parts operationally relate to defining and regulating the relationship between network companies and app-based drivers?

II. Did the Attorney General prepare "fair" and "concise" summaries of the two challenged initiative petitions where, consistent with long-standing precedent and the discretion afforded to her in the drafting of summaries, the Attorney General neutrally described the main features of the petitions without commentary on their possible effect on existing law?

STATEMENT OF THE CASE

This case presents a challenge to the Attorney General's certification and summaries of Initiative Petition Nos. 21-11 and 21-12, both entitled "A Law Defining and Regulating the Contract-Based Relationship Between Network Companies and App-Based Drivers," and both presently on track to appear on the November 2022 statewide election ballot.[1]

[1] Due to printing deadlines for the Information Voters Guide, the Secretary of the Commonwealth respectfully requests that this Court issue an order resolving this case by July 1, 2022, with opinion(s) to follow if necessary.

I. Prior Proceedings.

On January 18, 2022, twelve registered voters filed a complaint in the county court seeking: (i) a declaration that Initiative Petition Nos. 21-11 and 21-12 do not comply with the requirements of Article 48; (ii) a declaration that the Attorney General's summaries of Initiative Petition Nos. 21-11 and 21-12 are invalid; and (iii) an order enjoining the Secretary of the Commonwealth from placing the measures on the November 2022 statewide election ballot. RA 4-6; Def. Add. 55-62. Ten original signers of the petitions intervened to defend the Attorney General's certification decisions and summaries. RA 5.

In the county court, the plaintiffs filed a motion to include several hundred pages of SEC statements, websites, and pleadings from other cases as part of the record on appeal. RA 5-5A. The Attorney General opposed and, on March 1, 2022, the county court (Lowy, J.) denied the plaintiffs' motion without reserving and reporting the issue. RA 5.

The parties thereafter jointly filed a statement of agreed facts, RA 6-9, and a joint motion to reserve and report, which was allowed on March 3, 2022, RA 5A. The plaintiffs did not notice an appeal from the county court's denial of their motion to include documents as part of the record. RA 5-5A.[2]

[2] In their statement of the case, the plaintiffs ask this Court to take judicial notice of many of the same documents that they unsuccessfully sought permission to include in the record in the county court. *See* Pl. Br. 14-22 & nn. 6-14; *see also* RA 5-5A

II. Statement of Facts.

A. Procedural History of the Proposed Laws.

On August 4, 2021, at least ten registered voters filed with the Attorney General two initiative petitions entitled "A Law Defining and Regulating the Contract-Based Relationship Between Network Companies and App-Based Drivers (Version A)" and "A Law Defining and Regulating the Contract-Based Relationship Between Network Companies and App-Based Drivers (Version B)." RA 7. In keeping with the order in which she received them, the Attorney General numbered the petitions 21-11 and 21-12. RA 7. On September 1, 2021, the Attorney General certified to the Secretary of the Commonwealth that both petitions were in proper form for submission to the people; that they were not, either affirmatively or negatively, substantially the same as any measure qualified for submission to the people at either of the two preceding biennial state elections; and that they contained only matters that are related or mutually dependent and not excluded from the initiative process under Amendment Article 48. RA 7.

(denying motion). The plaintiffs do not argue in their appellate brief, and did not contend in their complaint, *see* Def. Add. 55-62, that the Attorney General abused her discretion in declining to take official notice of any of the documents, *see Carney v. Attorney General*, 451 Mass. 803, 809-10 (2008); *Bogertman v. Attorney General*, 474 Mass. 607, 619-20 (2016). As such, any argument that particular documents should have been officially noticed by the Attorney General has been waived. *See* Mass. R. App. P. 16(a)(9)(A).

On or before the first Wednesday in December 2021, the proponents of the petitions gathered and filed sufficient additional voter signatures to require the Secretary to transmit the measures to the Legislature, which the Secretary then did. RA 7, 40, 42. Consequently, if the proponents meet the remaining procedural requirements under Article 48, Initiative Petitions Nos. 21-11 and 21-12 are both on track to be placed on the ballot for the November 2022 biennial statewide election. *See* Amend. Art. 48, The Init., Part IV, §§ 2, 4, 5.

B. The Proposed Laws.

i. Initiative Petition No. 21-11 (Version A).

Initiative Petition No. 21-11 (Version A) proposes a law, to be known as the "Relationship Between Network Companies and App-Based Drivers Act," that would classify drivers for rideshare and delivery companies who accept requests through digital applications as "independent contractors" and establish alternative minimum compensation and benefits for such drivers. RA 10-22. The proposed law's stated purpose, in relevant part, is to "define and regulate the contract-based relationship between network companies and app-based drivers as independent contractors with required minimum compensation, benefits, and training standards." RA 10.

As a general matter, the proposed law would apply to "Transportation network company drivers" and "Delivery Network Company couriers." RA 10-13. A

"Transportation network company" (or "TNC") is already defined by G. L. c. 159A1/2 as an "entity that uses a digital network" or "online-enabled application" to "connect riders to drivers to pre-arrange and provide transportation." G. L. c. 159A1/2, § 1.[3] A "Delivery Network Company" (or "DNC") would be defined as a business that "maintains an online-enabled application or platform used to facilitate delivery services within the Commonwealth" and that tracks the services provided by its delivery people. RA 10-13. Together, "Transportation network companies" and "Delivery Network Companies" would be known as "network companies." RA 10-13.

A "Transportation network company driver" would be defined as a person who uses a TNC's network to provide transportation or livery services to passengers picked up within the Commonwealth. RA 10-13. A "Delivery Network Company courier" would be defined as a person who uses a DNC's network to fulfill no more than 30 delivery requests at a time, with at least the pickup of the items occurring in the Commonwealth, to customers within 50 miles of the pickup location. RA 10-13.

The substantive provisions of the proposed law would extend to "TNC drivers" and "DNC couriers" who are not: (i) required to work days or hours

[3] The Transportation Network Company Division of the Department of Public Utilities oversees TNCs. G. L. c. 25, § 23(a). To operate in the Commonwealth, TNCs must receive a permit issued by the Division. 220 CMR 274.03(1).

prescribed by the network company; (ii) required to accept specific transportation or delivery requests prescribed by the network company; (iii) restricted from working for multiple network companies; and (iv) restricted from working any other lawful occupation or business. RA 10. "TNC drivers" and "DNC couriers" who meet these four conditions would be known as "app-based drivers" or "drivers." RA 10. The law's classification provision states that "[n]otwithstanding any other law to the contrary . . . an app-based driver . . . shall be deemed to be an independent contractor and not an employee or agent for all purposes with respect to his or her relationship with the network company." RA 10.

The other substantive provisions of the proposed law would establish a new compensation and benefits scheme for "independent contractor" drivers. As to compensation, drivers would be guaranteed to earn a minimum amount, known as the "net earnings floor." RA 14-15. The "net earnings floor" would be equal to 120% of the Massachusetts minimum wage for time spent actively completing requests for transportation or delivery, plus an inflation-adjusted per-mile amount (starting at 26 cents) for each mile driven in a privately-owned vehicle while completing a request. RA 14-15. A driver whose earnings, not including tips and gratuities, falls below the "net earnings floor" would be paid the difference to be brought up to the minimum compensation amount. RA 14-15.

As to benefits, the proposed law would require network companies to provide: (i) paid "driver safety training" on certain topics; (ii) healthcare stipends to drivers who meet certain minimum hours requirements; (iii) certain amounts of paid sick time; (iv) occupational accident insurance for some drivers insuring them against being injured or killed in a job-related accident; (v) anti-discrimination protections based on race, sex, sexual orientation, religion or other protected characteristics unless the network company's actions are "based upon a bona fide occupational qualification or public or app-based driver safety need"; and (vi) contributions toward driver coverage under the Massachusetts Paid Family and Medical Leave Act ("PFML"), G. L. c. 175M, unless the driver declines coverage in writing. RA 13-21. Under the PFML provisions, drivers would be treated as "covered contract workers," *see* G. L. c. 175M, § 1, except that drivers would not be eligible for PFML benefits until contributions have been made on the driver's behalf for at least 2 quarters, RA 18. In accordance with G. L. c. 175M, network companies would be required to make contributions to the PFML's trust fund for drivers who have not declined coverage. G. L. c. 175M, § 6.

The proposed law would also require that contracts between network companies and app-based drivers be in writing and would deem all such contracts to incorporate the training requirements, guaranteed minimum compensation, healthcare stipend, paid sick time, PFML, and occupational accident insurance

provisions described above. RA 20-21. Specific contracts could include "supplemental terms which do not conflict" with the terms deemed incorporated by the law. RA 20-21.

Finally, the proposed law sets forth three principles of interpretation: (i) the law "shall govern the contract-based civil relationship between network companies and drivers"; (ii) that, "[n]otwithstanding any other general or special law to the contrary," the law "shall not be interpreted or applied, either directly or indirectly, in a manner that treats network companies as employers of app-based drivers, or app-based drivers as employees of network companies, and any party seeking to establish that a person is not an app-based driver bears the burden of proof"; and (iii) the law shall not be "construed to impair any contracts in existence as of its effective date." RA 21.

ii. Initiative Petition No. 21-12 (Version B).

Version B of the proposed law omits the "driver safety training" provisions appearing in Section 4 of Version A, omits references to the "driver safety training" provisions in other sections, and renumbers the sections of Version B accordingly. RA 23-34. In all other respects, Version B is identical to Version A. RA 23-34.

iii. The Attorney General's Summaries.

Upon certifying Initiative Petition Nos. 21-11 and 21-12, the Attorney General issued summaries for both measures as required by Article 48. RA 7. The

Attorney General's official summaries are reproduced in the addendum. Def. Add. 88-91. The Attorney General's official summaries of Initiative Petition Nos. 21-11 and 21-12 are identical except for the omission in the summary of Initiative Petition No. 21-12 of a single sentence stating: "Companies would be required to provide drivers with mandatory safety training." Def. Add. 88-91.

SUMMARY OF THE ARGUMENT

The Attorney General properly concluded that the two petitions contain only subjects that are related, as Article 48 requires. The stated purpose of the petitions is to "define and regulate the contract-based relationship between network companies and app-based drivers," and all the provisions of the petitions are germane to this purpose. Together, the provisions of the proposed laws would operate to prescribe a unique "independent contractor" status for app-based drivers characterized by a unique new benefits scheme. In particular, the proposed laws would classify drivers as "independent contractors" and then prescribe the terms of this "independent contractor" relationship by specifying certain precise minimum benefits and compensation that must be provided to drivers. The provisions of the proposed laws thus all operationally relate to legislating the relationship between network companies and drivers. Because the provisions of a proposed law must be reasonably germane to the law's common purpose, but need not be mutually

dependent on one another, the two petitions meet the relatedness requirement of Article 48. *See infra* pp. 18-32.

Contrary to the plaintiffs' argument, the proposed laws would not regulate private tort litigation in the Commonwealth. Read plainly and consistently with their stated purpose, the proposed laws evince no intent to do any such thing. But, even if the petitions might, as the plaintiffs contend, have some foreseeable bearing on private tort litigation, the relatedness analysis would remain the same. As this Court has long emphasized, the provisions of a proposed law need not be drafted with strict internal consistency. So long as a provision is operationally related to the purpose of the proposed law as a whole, the potential ancillary consequences of that provision cannot impair certification under Article 48. *See infra* pp. 32-38.

The Attorney General's summaries of the proposed laws are "fair" and "concise," as required by Article 48. The two summaries provide a fair and accurate conception of the main outlines of the petitions themselves, and the plaintiffs do not argue otherwise. The plaintiffs' suggestion that the Attorney General is required to summarize a measure's unstated effects on existing law is contrary to the plain text of Article 48, decades of settled precedent, and common sense. In this case, the Attorney General appropriately exercised her discretion in the drafting of summaries, and appropriately declined to adopt the plaintiffs' proposals, where those proposals veer from the text of the petitions in describing existing law, incorporate

disputed legal assumptions, and pose unacceptable risk of voter confusion. *See infra* pp. 38-51.

ARGUMENT

The Attorney General correctly certified Initiative Petition Nos. 21-11 and 21-12 as containing "only subjects . . . which are related," and prepared summaries that are "fair" and "concise." In both respects, the Attorney General followed well-settled precedent establishing that, in both her relatedness review and her drafting of summaries, the Attorney General need not conduct a comprehensive legal analysis or engage in disputed questions over whether a measure will have its intended effects. This Court should affirm her determinations.

I. The Proposed Laws Contain Only Subjects That Are Related Within the Meaning of Article 48.

The Attorney General's determination that the proposed laws contain only "related" subjects follows directly from this Court's precedent. The framers of Article 48 declined to adopt a requirement that initiative petitions be limited to a single subject. At the same time, however, they were concerned about the possibility of voter confusion without such a limitation. *See Carney v. Attorney General*, 447 Mass. 218, 226-30 (2006) ("*Carney I*"). As a result, Article 48 requires that petitions contain only "subjects . . . which are related or which are mutually dependent." Amend. Art. 48, The Init., Pt. II, § 3; *see Weiner v. Attorney General*, 484 Mass. 687, 692 (2020). In accordance with this balance struck in Article 48, this Court has

repeatedly held that an "initiative petition can address more than one subject if those subjects are related." *Albano v. Attorney General*, 437 Mass. 156, 161 (2002), citing *Mass. Teachers Ass'n v. Sec'y of the Commonwealth*, 384 Mass. 209, 219 (1981) ("*MTA*"). "[T]he related subjects requirement is met where one can identify a common purpose to which each subject of an initiative petition can reasonably be said to be germane." *Weiner*, 484 Mass. at 692 (internal citations and quotation marks omitted); *see Opinion of the Justices*, 422 Mass. 1212, 1220 (1996).

As this Court has often acknowledged, reading a petition's purpose too broadly would render the related subjects limitation meaningless, but reading it too narrowly would import the "single subject" requirement that the Article 48 framers considered and rejected. *See MTA*, 384 Mass. at 219-21. Common purposes of suitably constrained scope have included "legaliz[ing] marijuana (with limits) for adult use," *Hensley v. Attorney General*, 474 Mass. 651, 658 (2016); "establish[ing] and enforc[ing] nurse-to-patient ratios in facilities in the Commonwealth," *Oberlies v. Attorney General*, 479 Mass. 823, 831 (2018); and "lifting . . . restrictions on the number and allocation of licenses for the retail sale of alcoholic beverages," *Weiner*, 484 Mass. at 692. Unacceptably broad common purposes, in contrast, have included "making government more accountable to the people," *Opinion of the Justices*, 422 Mass. at 1220-21; "promoting . . . more humane treatment of dogs," *Carney I*, 447 Mass. at 224; and "elementary and secondary education," *Gray v. Attorney General*,

474 Mass. 638, 647 (2016). Since the enactment of Article 48, this Court has held on only "few occasions" that "a petition did not meet the related subjects requirement." *Anderson v. Attorney General*, 479 Mass. 780, 790 (2018).

With respect to the relationship of the component parts of a proposed law to a "common purpose" and to each other, the Court has set forth two evaluative inquiries:

> First, do the similarities of an initiative's provisions dominate what each segment provides separately so that the petition is sufficiently coherent to be voted on yes or no by the voters?
>
> Second, does the initiative petition express an operational relatedness among its substantive parts that would permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy?

Dunn v. Attorney General, 474 Mass. 675, 680-81 (2016) (internal citations, quotation marks, and punctuation omitted); *see Weiner*, 484 Mass. at 691-93. While "[t]here is no single 'bright-line' test for determining whether an initiative meets the related subjects requirement," these two evaluative inquiries frame whether an initiative meets the relatedness requirement. *Weiner*, 484 Mass. at 691-93 (internal citations and quotation marks omitted). The Attorney General's determination that a proposed law meets the relatedness requirement is reviewed *de novo*, but always against the background understanding that Article 48 "is to be construed to support the people's prerogative to initiate and adopt laws." *Id.* at 690-91 (internal citations

and quotation marks omitted); *see Carney v. Attorney General*, 451 Mass. 803, 814 (2008) ("*Carney II*").

Here, the common purpose of the proposed laws is to define and regulate the legal relationship between network companies and drivers. Because all the provisions of the proposed laws are reasonably germane to this common purpose, the Attorney General properly certified both petitions as meeting the relatedness requirement of Article 48.

A. The Proposed Laws Have a Suitably Constrained Common Purpose, to Which Each Provision Need Only Be Reasonably Germane.

The stated purpose of the proposed laws is to "define and regulate the contract-based relationship between network companies and app-based drivers as independent contractors with required minimum compensation, benefits, and [in Version A] training standards." RA 10, 23.[4] This statement of purpose, in turn, tracks the title of the proposed laws ("Relationship Between Network Companies and App-Based Drivers Act"), RA 10, 23, their first principle of interpretation ("This chapter shall govern the contract-based civil relationship between network-companies and app-based drivers"), RA 21, 33, and their substance as a whole.

[4] "[W]here [the Court has] been called upon to interpret the meaning of laws adopted by initiative petition, [it has] been guided by statements of purpose." *Dunn*, 474 Mass. at 683-84. Statements of purpose provided by the drafters of a petition are, however, not binding on the Attorney General or this Court. *See Oberlies*, 479 Mass. at 831 n.8.

If enacted, the proposed laws would classify drivers for rideshare and delivery companies who accept requests through digital applications, and who choose their requests and working hours, as "independent contractors." At the same time, the laws would prescribe the terms of this "independent contractor" relationship by specifying the precise minimum compensation, health care stipends, paid sick time and leave, occupational insurance, protections from termination, and (in Version A) paid safety training that must be provided to drivers. In essence, the laws would impose a uniform baseline employment contract on all app-based drivers in the Commonwealth—a contract which would include the specific terms prescribed by the laws, and which would be deemed to create an "independent contractor" relationship.

The plaintiffs do not argue that the common purpose of the two petitions is too broad, *see* Pl. Br. 29-36, and the Attorney General agrees that the common purpose of the petitions is suitably constrained in scope, *see supra* pp. 18-20; *Oberlies*, 479 Mass. at 826, 831 (permissible for a petition to prescribe the employment terms of nurses across the Commonwealth); *Hensley*, 474 Mass. at 655-58 (permissible for a petition to set forth a detailed plan for creating and regulating the legal marijuana industry). Thus, the basic question—and indeed the only question—before the Court is whether the provisions of the proposed laws "can

reasonably be said to be germane" to their common purpose. *Weiner*, 484 Mass. at 691-92 (internal citations and quotation marks omitted).

It is wrong to say, as the plaintiffs do, that "the subjects of an initiative must be *both* 'related' *and* 'mutually dependent' on each other." Pl. Br. 30 (emphasis in the plaintiffs' brief). This Court held in *Anderson* that "operationally related subjects need not be mutually dependent," 479 Mass. at 792, and applied that rule as recently as two years ago in *Weiner*, where the petition included several related but not mutually dependent provisions, 484 Mass. at 692-93 (petition to lift restrictions on licenses for the retail sale of alcohol also included new age-verification requirements and increased funding for enforcement). All of this Court's Article 48 precedent is in accord. *See Dunn*, 474 Mass. at 681 (regulating farming practices in Massachusetts could stand independently from regulating the sale of food from outside Massachusetts); *Hensley*, 474 Mass. at 658-59 (decriminalizing marijuana possession could stand independently from creating a commercial industry for the production and distribution of marijuana); *MTA*, 384 Mass. at 215-16 (allowing deduction of rental payments from state income tax could stand independently from limiting local property taxes).

Because, as further set forth below, the provisions of the proposed laws are all reasonably germane to the laws' common purpose, it does not matter that certain of the provisions might have stood on their own. The plaintiffs' argument to the

contrary, *see* Pl. Br. 29-34, is erroneous and contrary to decades of settled law. The Attorney General properly concluded that the proposed laws meet the relatedness requirement of Article 48.

B. Each Section of the Proposed Laws Serves the Common Purpose of Defining and Regulating the Relationship Between Network Companies and Drivers.

The proposed laws satisfy this Court's first evaluative inquiry because the similarities of their provisions "dominate what each segment provides separately so that the petition[s] [are] sufficiently coherent to be voted on 'yes' or 'no' by the voters." *Dunn*, 474 Mass. at 680, quoting *Abdow v. Attorney General*, 468 Mass. 478, 501 (2014); *see Weiner*, 484 Mass. at 691-92. Each provision of the proposed laws advances or facilitates the legislative goal of classifying app-based drivers as independent contractors and regulating the terms of that independent-contractor relationship.

The classification provision of the proposed laws provides that "[n]otwithstanding any other law to the contrary . . . an app-based driver . . . shall be deemed to be an independent contractor and not an employee or agent for all purposes with respect to his or her relationship with the network company." RA 10, 23. The other substantive provisions of the proposed laws further specify the terms of this independent-contractor relationship by prescribing minimum employment terms applicable to all employment contracts for app-based drivers in the

Commonwealth. Specifically, the proposed laws would require network companies to pay drivers certain minimum compensation, RA 14-15, 26-27; provide some drivers with healthcare stipends, RA 15-16, 27-28; provide drivers with certain amounts of paid sick time, RA 17, 29; contribute to PFML coverage for family and medical leaves to drivers, RA 18, 30; and purchase occupational accident insurance for drivers, RA 18-20, 30-32. The proposed laws would also require contracts between drivers and network companies to be in writing, deem the substantive provisions of the proposed laws to be incorporated into these contracts, guarantee a right for drivers to appeal their termination, and offer certain qualified anti-discrimination protections. RA 20-21, 32-33. Version A of the proposed law would require network companies to provide drivers with paid driver safety training on certain topics. RA 13-14.

Considered together, these provisions form "piece[s] of [a] proposed integrated scheme," *Oberlies*, 479 Mass. at 832, quoting *Hensley*, 479 Mass. at 659, for legislating the relationship between drivers and network companies. Much as the many provisions in *Hensley* were all related because they together formed "a detailed plan . . . to create a system" for the legalized consumption and sale of marijuana, the provisions here form a detailed plan for creating a unique new legal status for app-based drivers. As such, "one cannot rightly say that [these provisions] are unrelated." *Abdow*, 468 Mass. at 499, quoting *MTA*, 384 Mass. at 219.

The plaintiffs' concern that some voters may have conflicting feelings about different provisions within the proposed laws is immaterial. *See* Pl. Br. 35. It may be true that some voters would support offering better benefits to drivers but disagree with classifying drivers as "independent contractors" instead of "employees." But a proposed law may address multiple subjects about which voters may have conflicting views so long as "the proposed act does not place anyone in the untenable position of casting a single vote on two or more *dissimilar* subjects." *Hensley*, 474 Mass. at 659 (internal citations and quotation marks omitted) (emphasis in original); *see Dunn*, 474 Mass. at 682 (similar). It is "[un]necessary that all of an initiative's supporters share the same motivations" because, so long as the initiative's provisions are related, "all who favor the petition need not support it for the same reason." *Abdow*, 468 Mass. at 503.

Here, the classification provision and the benefits provisions of the proposed laws do not relate to dissimilar subjects. They are, in fact, all directed to prescribing a new legal status for drivers characterized by a unique mix of statutory benefits. A voter who believes that this new status, considered in its entirety, is inappropriate for drivers may choose to vote against the petition. A voter who believes that this new status, considered in its entirety, is appropriate for drivers may choose to vote for the petition. In the final analysis, however, the mere fact that the policy proposal may entail both disadvantages and advantages for drivers does not render the

provisions of the proposed laws unrelated. Because the proposed laws set forth an integrated scheme that will prescribe a unique new status for drivers characterized by a unique new mix of statutory benefits, they are "sufficiently coherent to permit a 'yes' or 'no' vote" by the voters, *Weiner*, 484 Mass. at 693, and the Attorney General's decision to certify them was correct.

The plaintiffs' suggestion that the PFML provisions of the proposed law are unrelated to the relationship between drivers and network companies, *see* Pl. Br. 42-45, is without merit. The PFML creates a state program that offers up to 26 weeks of paid leave from work for family or medical reasons, and which is funded through joint contributions from "covered business entit[ies]" and "employee[s] or covered contract worker[s]." G. L. c. 175M, §§ 4, 6; 458 CMR 2.05(5). "Covered business entit[ies]" may deduct portions of the total contribution amount from the paychecks of "covered contract worker[s]," and then must remit the total contribution amount to the Commonwealth's Family and Employment Security Trust Fund. G. L. c. 175M, §§ 6(a), 6(e)(1)-(2). Under current law, properly classified independent contractors are not considered "covered contract workers," 458 CMR 2.02, and companies are therefore not required to make PFML contributions on behalf of such properly classified independent contractors, 458 CMR 2.03(4), 2.05(3); *see* Pl. Br. 43 n.28.

The PFML provisions of the proposed laws would treat drivers as "covered contract workers" unless they opt-out, thereby requiring network companies to pay PFML contributions on behalf of such drivers and allowing such drivers to take paid family or medical leaves so long as "contributions have been made on the driver's behalf for at least 2 quarters of the driver's last 4 completed quarters." RA 18, 30. By presumptively requiring network companies to make contributions toward PFML family or medical leaves for drivers, funded in part through payroll deductions from drivers' paychecks and in part by network companies themselves, the proposed laws would directly regulate the relationship between drivers and network companies. That the PFML payments themselves would be paid to drivers who take leave by the Commonwealth, and not directly by network companies, *see* Pl. Br. 42-43, is beside the point.

Also beside the point is the plaintiffs' observation that the proposed laws would impliedly "amend[] the PFML." Pl. Br. at 44. This Court's case law makes clear that relatedness is not "to be evaluated in terms of an initiative's effect on existing law." *Weiner*, 484 Mass. at 693. In other words, measures like those at issue here do "not fail the relatedness requirement just because [they] affect[] more than one statute, as long as the provisions of the petition[s] are related by a common purpose." *Albano*, 437 Mass. at 161; *accord Abdow*, 468 Mass. at 503.

C. All Provisions of the Proposed Laws Operationally Relate to Defining and Regulating the Relationship Between Network Companies and Drivers.

The proposed laws also satisfy this Court's second evaluative inquiry because they "express an operational relatedness among [their] substantive parts that would permit a reasonable voter to affirm or reject the entire petition[s] as a unified statement of public policy." *Oberlies*, 479 Mass. at 832, quoting *Abdow*, 468 Mass. at 501. Operational relatedness exists where the parts of a proposed law work together to achieve or support a common goal. *See Weiner*, 484 Mass. at 692-93; *Dunn*, 474 Mass. at 681-82. As described above, all parts of these proposed laws work together to create an "independent contractor" status for drivers in the Commonwealth characterized by a new mix of statutory benefits. Functioning as they do as constituent parts of an "over-all detailed plan," *Hensley*, 474 Mass. at 658, for "defin[ing] and regulat[ing] the contract-based relationship between network companies and app-based drivers," RA 10, the provisions are operationally related.

Although that recognition alone is sufficient, the provisions of the proposed laws are operationally related in another respect as well. This Court's case law on relatedness teaches that the provisions of a proposed law may be directed to "anticipat[ing] and mitigat[ing] the foreseeable consequence[s]" of a proposal, *Weiner*, 484 Mass. at 692, and provisions that preemptively address foreseeable consequences of, or plausible objections to, the main thrust of the law are

operationally related to the whole, *see id.*; *Dunn*, 474 Mass. at 681; *Oberlies*, 479 Mass. at 832; *Mazzone v. Attorney General*, 432 Mass. 515, 529 (2000).[5] That principle is directly applicable here.

The classification provision of the proposed laws would deem app-based drivers to be "independent contractor[s] and not . . . employee[s] or agent[s] for all purposes with respect to [their] relationship with the network company." RA 10, 23. Under current Massachusetts law, however, a worker classified as an independent contractor lacks "many important [statutory] benefits and protections, such as minimum wages and overtime pay, unemployment insurance, and workers' compensation." *Ives Camargo's Case,* 479 Mass. 492, 502 (2018) (Gants, C.J., concurring); *see Patel v. 7-Eleven, Inc.*, -- Mass. --, 2022 WL 869486, at *2 (Mass. Mar. 24, 2022) (similar); G. L. c. 152, § 1 (workers' compensation statute does not apply to independent contractors); G. L. c. 151A, § 2 (unemployment statute does not apply to independent contractors); G. L. c. 149, §§ 148B, 148C (Massachusetts

[5] In *Weiner*, for example, a petition to lift restrictions on licenses for the retail sale of alcohol also added new procedures to prevent the sale of alcohol to minors and new resources for the enforcement of alcohol laws. 484 Mass. at 690-92. This Court held that the age-verification and increased funding provisions were operationally related to the centerpiece licensing provisions because retail stores newly permitted to sell alcohol might have "less experience . . . in the sale of alcoholic beverages," and thus less ability to prevent alcohol sales to minors. *Id.* at 692. The age-verification and increased funding provisions were, as this Court explained, reasonably viewed as addressing and mitigating this negative consequence of the licensing provisions. *Id.*

Earned Sick Time law does not apply to independent contractors); G. L. c. 149, § 148B and G. L. c. 151, §§ 1, 1A (minimum wage and overtime statutes do not apply to independent contractors); G. L. c. 151B, § 1(6) (anti-discrimination law does not apply to independent contractors); *cf. Capriole v. Uber Techs., Inc.*, 7 F.4th 854, 857 (9th Cir. 2021) (noting concern that drivers for network companies are mostly "classified as 'independent contractors,' a status conferring flexibility but little security").

The proposed laws respond to the lack of statutory protections for independent contractors by proposing a substitute benefits scheme under which drivers would be entitled to certain wage, insurance, and anti-discrimination protections, as well as certain amounts of earned sick time, healthcare stipends, and paid leave. This scheme would parallel, but materially differ from, the existing statutory schemes that protect "employees" in the Commonwealth. *See* G. L. c. 149; G. L. c. 151; G. L. c. 151A; G. L. c. 151B; G. L. c. 152; G. L. c. 175M.

Importantly, the resolution of this case does not require the Court to vouch for the adequacy or merits of this proposed parallel scheme. It may be true, as the plaintiffs suggest, that many may conclude as a policy matter that this substitute scheme is an inadequate alternative to "employment" status for drivers. *See* Pl. Br. 22, 50-54. In any case, the analysis remains the same, as a provision need not perfectly or completely "mitigate[] the foreseeable consequence[s]" of a proposal.

Weiner, 484 Mass. at 692. It is enough that the provision be operationally directed to the goal of mitigation. *See Abdow*, 468 Mass. at 503 ("Provided the subjects are sufficiently related, the choice as to the scope of an initiative petition is a matter for the petitioners, not the courts."). Whether these provisions as a whole can be said to reflect a wise policy choice is a question for the voters to decide. *See Mazzone*, 432 Mass. at 529 ("The plaintiffs' disagreements with the petition's purpose, [and] the methods chosen to achieve that purpose . . . notwithstanding, the petition satisfies the relatedness requirement of art. 48.").

Because all the provisions of the proposed laws work together to create a unique "independent contractor" status for drivers characterized by a unique mix of statutory benefits, the provisions are operationally related. In addition, because the benefits provisions of the proposed laws aim to mitigate some of the inherent insecurity of the "independent contractor" classification, the provisions are all operationally related in that sense as well.

D. The Plaintiffs' Arguments About the Purported Effects of the Proposed Laws on Tort Litigation Are Without Merit.

Finally, the plaintiffs argue that certain parts of certain provisions of the proposed laws are unrelated to the laws' common purpose because they might, in the plaintiffs' view, combine to regulate "the civil legal relationship between Network Companies and members of the public who are injured by torts committed

by Drivers." Pl. Br. 36-41.[6] This argument misreads the language of the petitions, takes an unduly narrow view of the provisions at issue, and improperly mistakes the petitions' potential legal effects with their common purpose.

To start, there is no reason to conclude that the proposed laws, if enacted, would have any effect on private tort litigation in the Commonwealth. The classification provision of the proposed laws is limited in scope, providing that drivers will be "deemed . . . independent contractor[s] and not . . . employee[s] or

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[6] The classification provision of the proposed laws provides:

> Notwithstanding any other law to the contrary, a DNC courier and/or TNC driver who is an app-based driver as defined herein shall be deemed to be an independent contractor and not an employee or *agent* for all purposes with respect to his or her relationship with the network company.

RA 10, 23 (emphasis added). The "[i]nterpretation of this chapter" section of the proposed laws provides:

> (a) This chapter shall govern the contract-based civil relationship between network-companies and app-based drivers.
>
> (b) Notwithstanding any general or special law to the contrary, compliance with the provisions of this chapter shall not be interpreted or applied, either directly or *indirectly*, in a manner that treats network companies as employers of app-based drivers, or app-based drivers as employees of network companies, and *any party* seeking to establish that a person is not an app-based driver bears the burden of proof.
>
> (c) Nothing in this Act shall be construed to impair any contracts in existence as of its effective date.

RA 21, 33 (emphasis added). The plaintiffs argue that the italicized words, in combination, evince an intent to regulate private tort litigation. Pl. Br. 36-41.

agent[s] for all purposes" but only "*with respect to [their] relationship with the network company*." RA 10, 23 (emphasis added). This limitation, in turn, is consistent with the title and statement of purpose of the proposed laws, as well as their first principle of interpretation, which are all tied to the "contract-based relationship between network companies and app-based drivers." RA 10, 23. This limitation is also consistent with the other substantive provisions of the proposed laws, which enumerate drivers' rights and network companies' obligations, but say nothing to define or adjust the legal rights or duties of third parties. RA 10-34. The Attorney General therefore believes that the petitions, read plainly and consistently with their purpose and text as a whole, *see Town of Sudbury v. Scott*, 439 Mass. 288, 296 n.11 (2003), are limited to the "contract-based relationship between network companies and app-based drivers," and would not regulate private tort lawsuits, *see Peters v. Haymarket Leasing, Inc*., 64 Mass. App. Ct. 767, 774 (2005) (how parties privately label their employment relationship is relevant but not controlling as to the rights of third-parties in tort litigation); *Dias v. Brigham Med. Assocs., Inc*., 438 Mass. 317, 322 (2002) (similar).[7]

[7] Moreover, as a general principle, the fact that a person is held to be an "independent contractor," even as to third parties in private tort litigation, does not eliminate the possibility of vicarious liability for the employer. *See Corsetti v. Stone Co.*, 396 Mass. 1, 10 (1985) ("[I]f the employer retains the right to control the work [of an independent contractor] in any of its aspects, including the right to initiate and maintain safety measures and programs, he must exercise that control with reasonable care for the safety of others, and he is liable for damages caused by his

The bits and pieces of language the plaintiffs rely upon, *see supra* note 6, do not suggest anything different. While the classification provision states that drivers will be "independent contractor[s] and not employee[s] or agent[s]," RA 10, 23, the term "agent" is often used as a mere antonym for "independent contractor," rather than a vessel for importing the law of agency as a whole.[8] And there is no basis for reading the petitions' *second* principle of interpretation as expanding the substantive reach of the petitions, especially where the petitions' *first* principle of interpretation indicates only the narrow intent to "govern the contract-based civil relationship between network-companies and app-based drivers," RA 21, 33; *see Reves v. Ernst & Young*, 507 U.S. 170, 183 (1993) (construction clauses within a statute are an aid to interpretation and "not an invitation to apply [the statute] to new purposes"). At best, the plaintiffs' textual argument, *see* Pl. Br. 36-42, suggests a debatable question of statutory interpretation. And such debatable questions, as this Court has

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failure to do so."); Charles F. Krause & Alfred W. Gans, 1A American Law of Torts § 4:27 (2021) ("There are so many exceptions to the general rule of nonliability [for independent contractor torts] that that rule is to be applied only where no good reason is found for departing from it or for not applying it."); *Whalen v. Shivek*, 326 Mass. 142, 150 (1950) (similar).

[8] *See e.g., Spencer v. Doyle*, 50 Mass. App. Ct. 6, 9 (2000), citing *Shea v. Bryant Chucking & Grinder Co.*, 336 Mass. 312, 314 (1957); *Coghlin Elec. Contractors, Inc. v. Gilbane Bldg. Co.*, 472 Mass. 549, 551 n.3 (2015); *Linkage Corp. v. Trustees of Bos. Univ.*, 425 Mass. 1, 23 (1997); *Walker v. Collyer*, 85 Mass. App. Ct. 311, 324 (2014); *see also* Restatement (Second) of Agency § 14N cmt. a (1958) ("Colloquial use of the term excludes independent contractor from the category of agent . . . .").

explained, must await post-enactment litigation, and are not properly considered as part of the relatedness analysis. *See Oberlies*, 479 Mass. at 835, quoting *Abdow*, 468 ("When determining whether an initiative meets the requirements of art. 48, we exercise 'restraint in deciding whether a measure would or would not have the legal effect intended . . . .' The proper interpretation of the[] provisions is not dispositive of the question of relatedness.").

Finally, even if, as the plaintiffs contend, the petitions might have some foreseeable bearing on private tort suits, the relatedness analysis remains the same. As this Court explained in *Weiner*, relatedness is not "to be evaluated in terms of an initiative's effect on existing law." 484 Mass. at 693. The provisions the plaintiffs seize upon, read naturally and as a whole, are directed to supporting the petitions' classification of drivers as "independent contractors," including by placing the burden of proof in future misclassification litigation on the party claiming that drivers are "employees." *See supra* note 6. Because the provisions of a measure need not "be drafted with strict internal consistency" so long as they are joined by common purpose, *Mazzone*, 432 Mass. at 528-29, the provisions challenged by the plaintiffs—considered in their entirety rather than word-by-word—are all related.

The plaintiffs' erroneous focus on the purported consequences of certain words within these challenged provisions recalls *Mazzone*, which concerned a petition to expand and fund drug treatment programs in the Commonwealth. 432

Mass. at 529. Opponents of the petition argued that certain of its provisions might result in a "de facto decriminalization of enumerated drug laws" and interact with existing law "to permit repeat drug dealers to avoid prosecution." *Id.* at 532-33. The Court granted that such consequences could be "significant." *Id.* Nevertheless, the relevant provisions, "[v]iewed in the context of the petition as a whole," did "no more than support the petition's main goal of expanding the scope of the Commonwealth's drug treatment program." *Id.* The petition therefore satisfied the relatedness requirement, "the possible effects on the criminal prosecution of the Commonwealth's drug laws notwithstanding." *Id.* at 529; *see also Dunn*, 474 Mass. at 682 ("ancillary" consequences of a provision do not bear on the relatedness inquiry).

The analysis is the same here. Notwithstanding any secondary effects they could arguably have on tort law, the provisions challenged by the plaintiffs remain related to the petitions' common purpose of defining and regulating the relationship between drivers and network companies. No more than that is required. *See Weiner*, 484 Mass. at 694, citing *Mazzone*, 432 Mass. at 528-29.

The plaintiffs plainly have strong policy objections to the petitions. *See* Pl. Br. 17-22. The relatedness requirement of Article 48 cannot, however, be interpreted to foreclose controversial policy choices under the guise of voter protection. The plaintiffs will surely use the political process to argue to voters that enactment of the

proposed laws will be worse for drivers and the public than the status quo. But such policy arguments must be reserved for the electoral process. The Attorney General's determination that the two petitions satisfy the relatedness requirement of Article 48 should be affirmed.

II. The Attorney General's Summaries of the Proposed Laws Are "Fair" and "Concise."

Under Article 48, the Attorney General must prepare a "fair, concise summary" of each initiative petition she certifies. Art. 48, Init., pt. II, § 3, as amended by Art. 74, § 1. "[I]t must not be partisan, colored, argumentative, or in any way one sided." *Sears v. Treasurer & Receiver General*, 327 Mass. 310, 324 (1951); *accord Mazzone*, 432 Mass. at 531. "[M]ention must be made of at least the main features of the measure." *Sears*, 327 Mass. at 324. But "details may be omitted or in many instances covered by broad generalizations." *Id*. "Conciseness is emphasized . . . and conciseness and completeness are often incompatible." *Bowe v. Sec'y of the Comm*., 320 Mass. 230, 243 (1946).[9]

[9] Prior to 1944, Article 48 required a "description" of the measure, which "had been interpreted as implying a very substantial degree of detail and had resulted in very long and cumbersome statements of details of proposed laws." *Sears*, 327 Mass. at 324. In 1944, Article 48 was amended by Article 74 to require the Attorney General to prepare "a fair, concise summary" of the measure. Article 74 was intended "to relax the requirements which had been found implicit in the word description" and emphasize conciseness. *Bowe*, 320 Mass. at 243.

The Attorney General's judgment about what constitutes a fair and concise summary of a petition is entitled to deference. *See Abdow*, 468 Mass. at 507; *MTA*, 384 Mass. at 230 ("The exercise of discretion by the Attorney General, a constitutional officer with an assigned constitutional duty, should be given weight in any judicial analysis of the fairness and adequacy of a summary."). Accordingly, this Court will not substitute its judgment for the Attorney General's on "a matter of degree." *MTA*, 384 Mass. at 230, quoting *Opinion of the Justices*, 357 Mass. at 800; *see Ash v. Attorney General*, 418 Mass. 344, 349 (1994); *First v. Attorney General*, 437 Mass. 1025, 1026 (2002) (rescript).

In this case, the Attorney General appropriately exercised her discretion, and followed Article 48 and this Court's case law, by issuing summaries that neutrally described the main features of the petitions without commentary on their possible effect on existing law. The plaintiffs' claim that the Attorney General should have done otherwise is without merit.

A. Article 48 Does Not Require the Attorney General to Summarize the Possible Effects of a Measure on Existing Law.

As this Court has explained, "the Constitution requires a summary of the proposed measure and not of . . . existing law." *Sears*, 327 Mass. at 325-26. That is, in preparing a summary, the Attorney General is not required to offer a "legal interpretation." *Associated Indus. of Massachusetts v. Sec'y of Com.*, 413 Mass. 1, 12 (1992). Nor is the Attorney General "required to conduct a comprehensive legal

analysis of the measure, including possible flaws." *Abdow*, 468 Mass. at 505, quoting *Mazzone*, 432 Mass. at 532.[10]

This rule follows directly from the plain text of Article 48, which requires "a fair, concise summary *of the measure*," and not a summary of existing law. Art. 48, Init., pt. II, § 3, as amended by Art. 74, § 1 (emphasis added). It is also rooted in several prudential concerns. The ways in which a not-yet-enacted measure may interact with existing law, and the possible consequences of those interactions, are often difficult to assess in the absence of factually concrete disputes, *see Mazzone*, 432 Mass. at 532-33 & n.17; *Abdow*, 468 Mass. at 506-08 & n.20; *MTA*, 384 Mass. at 232, and forward-looking descriptions of a measure's anticipated legal effects therefore pose an inherent risk of mistake, *see Bowe*, 320 Mass. at 245; *Hensley*, 474 Mass. at 665-66 & n.25. Consequently, "[t]he same general principles that restrain [the Court] from deciding, before an initiative measure is passed, whether the measure would be unconstitutional" also demand that the Attorney General, in

[10] It is incorrect to suggest, as the plaintiffs do, that the Attorney General need not "engage in legal analysis or interpretation[s]" in order to understand "whether the main features of [a] proposed law would change existing law and, if so, how." Pl. Br. 46. These are two sides of the same coin. Where, as is often the case, a measure does not cite to the existing law it would change, the Attorney General cannot know how the measure might affect existing law without conducting her own independent survey of law in the area and her own independent assessment of how the measure might interact with such law. That is precisely the kind of "legal interpretation" that is not required as part of the summarization process. *Associated Indus. of Massachusetts*., 413 Mass. at 12.

preparing a "fair" and "concise" summary, exercise "restraint in deciding whether a measure would or would not have the legal effect intended." *Abdow*, 468 Mass. at 507.

In addition, it is typically not possible for the Attorney General to summarize the ancillary legal effects of a measure, even if she wished to do so, and even if she were confident in what those effects might be. In cases where a petition touches on many different areas of law, the Attorney General could not describe the full range of existing law at issue while still being "concise." *See MTA*, 384 Mass. at 228 ("The summary, if cluttered with detailed explanation and discussion, could no longer rightly be called a summary.").[11] Nor could the Attorney General easily draw lines about which particular effects to describe, and which to ignore, while still being "fair." And, of course, existing law may change during the fourteen-month period

[11] The petition in *Albano*—which would have amended the Constitution to provide that "only the union of one man and one woman shall be valid or recognized as a marriage in Massachusetts"—is instructive. 437 Mass. at 157. If adopted, the petition would have impliedly affected all statutes in the Commonwealth referring to marital status. *See id.* Indeed, like the proposed laws in this case, the *Albano* petition would have potentially impacted statutes touching on workers' compensation, *see* G. L. c. 152, §§ 31, 32, 35A, paid time off, *see* G. L. c. 149, § 52D, taxation, *see* G. L. c. 62C, §§ 6, 81, and arguably tort law, *see* G. L. c. 229, §§ 1-2. The Attorney General's summary could not and did not describe the potential effect of the measure on all existing law, instead generally stating that the petition would prohibit relationships other than "the union of one man and one woman" from "receiving the benefits or incidents exclusive to marriage" or "being recognized as a marriage or its legal equivalent." Def. Add. 102-03 (Text and Summary of Initiative Petition No. 01-09).

between the time when summaries are issued and voters go to the polls. A summary that does describe existing law thus always risks, to at least some degree, being rendered inaccurate or confusing by legislative or judicial action beyond the Attorney General's control.

Beyond all this, "the summary is not the only source of voter information" capable of informing the electorate about the relationship between a measure and existing law. *Hensley*, 474 Mass. at 665. Within the Secretary's Information for Voters Guide, voters receive: (i) copies of the full text of the proposed law; (ii) 150-word arguments drafted by supporters and opponents of the proposed law; (iii) one-sentence statements describing, respectively, the effect of a "yes" vote and the effect of a "no" vote on the proposed law; and (iv) any legislative committee reports favoring or opposing the proposed law. *See MTA*, 384 Mass. at 228 & n.16, citing *Opinion of the Justices*, 357 Mass. 787, 801 (1970); Art. 48, Gen. Prov., pt. IV ("Information for Voters"); G. L. c. 54, § 53. Based on these materials, and within the 150-word arguments that appear alongside the Attorney General's summaries, opponents of a measure "certainly can attempt to persuade the voters that the measure should be defeated." *Gilligan v. Attorney General*, 413 Mass. 14, 20 (1992). Ultimately, it is this public debate, and not the Attorney General's summary, that must inform the electorate about the "practical effect[s]," *Mazzone*, 432 Mass. at 533, "possible legal flaws," *Abdow*, 468 Mass. at 508, and public policy

"controvers[ies]," *Hensley*, 474 Mass. at 665, of a measure. "All the Constitution demands [from the Attorney General] is a summary." *Mazzone*, 432 Mass. at 532.

B. The Attorney General Appropriately Declined to Summarize the Effects of the Two Measures on Existing Law.

The Attorney General has separately brought an action against Uber Technologies, Inc. and LYFT Inc. on the grounds that drivers for network companies are properly classified as "employees" and not "independent contractors." *See Healey v. Uber Techs., Inc.*, No. 2084CV01519-BLS1, 2021 WL 1222199 (Mass. Super. Mar. 25, 2021). However, that case remains pending, and neither this Court, nor the Appeals Court, nor the First Circuit has ruled on the issue presented in the Superior Court as a matter of current Massachusetts law.

Mindful of the active litigation dispute and that no appellate court has resolved that question, the Attorney General stated as follows in the first two sentences of her summaries:

> This proposed law would classify drivers for rideshare and delivery companies who accept requests through digital applications as "independent contractors," and not "employees" or "agents," for all purposes under Massachusetts law. This proposed law would establish alternative minimum compensation and benefits for these "independent contractors."

Def. Add. 88. These sentences closely track the language of the petitions themselves and highlight that the petitions would generally deem drivers to be "independent contractors" and not "employees" under Massachusetts law. And by indicating that the proposed law would establish an "alternative" benefits scheme for drivers, these

two sentences convey that the proposed law would change the status quo for drivers (*i.e.,* establish an "alternative"), without taking any position on what the status quo is. These two initial sentences thus offered "a fair and intelligent conception of the main outlines" of the classification provision, which was appropriately untouched by any partisanship or advocacy. *Sears*, 327 Mass. at 324. As required by Article 48 and this Court's precedent, they imply no position on the merits of the petitions and they leave to the petitions' supporters and opponents to offer elsewhere their competing arguments as to whether drivers should be seen as "independent contractors" or "employees" under current law. *See Hensley*, 474 Mass. at 654.

Nevertheless, the plaintiffs take issue with these two sentences because, they say, the Attorney General should have "state[d] that drivers are presumed to be employees under current law" and that the proposed laws would "change existing law by reversing the presumption." Pl. Br. 50-53, citing G. L. c. 149, § 148B. The plaintiffs also argue, more broadly, that the Attorney General should be required in every summary to "advise voters whether the main features of [a] proposed law would change existing law and, if so, how those features would change existing law." Pl. Br. 46-57. But, again, the law is clear that Article 48 requires a summary "of the measure" and not of existing law, *see supra* pp. 39-43, and that rule is dispositive of the plaintiffs' argument, *see Sears*, 327 Mass. at 325-26 ("[T]he Constitution requires a summary of the proposed measure and not of . . . existing

law."); *MTA*, 384 Mass. at 216, 231 (summary was not required to state that provision would repeal existing law); *Mazzone*, 432 Mass. at 532 (rejecting argument that summary was unfair because it did not mention aspect of petition that challengers claimed violated federal law); *Associated Indus. of Massachusetts*, 413 Mass. at 12 (summary is accurate when "it tracks the basic language of the measure").

Nor would including the plaintiffs' proposal have been advisable, particularly where the proposed laws themselves nowhere cite to or reference G. L. c. 149, § 148B, the law from which the plaintiffs draw their summary proposal. Including the plaintiffs' proposed language would have been confusing at best, and may have subjected the Attorney General to claims of bias as well. While there exists a statutory presumption applicable in misclassification litigation that individuals performing services are "employees," *see Sebago v. Bos. Cab Dispatch, Inc*., 471 Mass. 321, 327 (2015), citing G. L. c. 149, § 148B, the question whether drivers are employees under current law is a central issue in ongoing litigation. Had the Attorney General described the proposed laws as "reversing the presumption that . . . drivers . . . are employees," Pl. Br. 53, the legalistic reference to a "presumption" would have been too easily misunderstood as a statement that drivers *are* currently "employees," and her summary would almost certainly have been seen as unfair by the petitions' proponents. *See Hensley*, 474 Mass. at 665-66 (explaining that the

Attorney General should "avoid" offering "technically correct" statements about effects on existing law that may be misunderstood by voters).

This also explains why the Attorney General could not have stated, as the plaintiffs propose, that the petitions would "change existing law with respect to calculation of drivers' guaranteed compensation" because "drivers are presumed to be employees under existing law" such that "rideshare and delivery companies are required to pay drivers minimum compensation equal to the Massachusetts minimum wage for working time." Pl. Br. 54. The plaintiffs' proposed language takes as a premise that drivers are currently "employees" under Massachusetts law and are therefore covered by minimum wage laws and regulations. The Attorney General determined that it would be neither fair nor appropriate to incorporate that premise into her summaries, since that question is currently a matter of dispute in hotly contested litigation involving the Attorney General and supporters of the petitions. *See Abdow*, 468 Mass. at 508-09 (suggesting that summaries should avoid addressing disputed questions about legal effects). Moreover, it would not have been fair for the Attorney General to summarize certain legal effects that opponents of the petitions wish to highlight, while ignoring others that proponents might wish to highlight—and it definitely would not have been concise, or even reasonably possible, for the Attorney General to address within the summary every single

possible interaction between the petitions and existing law. *See supra* p. 41 & note 11.

C. The Plaintiffs Misunderstand Prior Summaries Issued by the Attorney General.

Citing a number of prior summaries, the plaintiffs contend that "in substantially all cases where a proposed law would or would not change existing law, the Attorney General has referenced that change or non-change in her summary." Pl. Br. 48-49 & n.31. The plaintiffs are incorrect. In every instance mentioned in the plaintiffs' brief, the measure at issue either expressly amended or repealed a specific existing law, or expressly stated an intent to change (or not change) some specific body of existing law. By describing the anticipated changes to existing law in these cases, the Attorney General was describing the measures themselves. She was not summarizing ways in which the measures might affect laws unreferenced in the text of the measures, which is what the plaintiffs would have had her do here.

The full versions of the petitions that the plaintiffs purport to rely upon, *see* Pl. Br. 48-49 & n.31, are instructive. For example, Initiative Petition 21-29, as certified by the Attorney General last year, provides:

> Article XLV of the articles of amendment to the constitution, as amended by Article CV and Article LXXVI of said articles of amendment, is hereby annulled and the following is adopted in place thereof:-

> Article XLV. The general court shall have power to provide by law for the manner of voting, in the choice of any officer to be elected or upon any question submitted at an election, by qualified voters of the commonwealth.

Def. Add. 96. The Attorney General summarized the petition by stating:

> This proposed constitutional amendment would repeal the provision authorizing the Legislature to permit absentee voting only for reasons of absence, physical disability, or religious conflict and would give the Legislature the power to make laws governing voting by qualified voters.

Def. Add. 97.

Similarly, in *Abdow*, where the proposed law would have expressly struck out and replaced a specific section in G. L. c. 4, the Attorney General's summary explained that the measure would "change the definition of 'illegal gaming' under Massachusetts law." *Abdow*, 468 Mass. at 505, 511. And where Initiative Petition No. 19-11 would have expressly struck out and replaced a particular paragraph within G. L. c. 118E, § 13D, Def. Add. 98, the Attorney General's summary explained that the measure "would change how reimbursement rates for nursing homes and rest homes paid by the state are established by the state Executive Office of Health and Human Services," Def. Add. 100.

In all of these instances, the Attorney General summarized effects on existing law not because any rule required her to, but because: (i) the existing law was expressly incorporated by reference into the petitions; (ii) the petitions' effects on existing law were straightforward and undisputed; and (iii) the Attorney General concluded, in the exercise of her discretion, that a description of existing law beyond

mere statutory citations—that is, a description of what the petitions expressly proposed to repeal, replace, or amend—was necessary to a summary of the proposed laws that would be intelligible to voters.[12]

Contrary to the plaintiffs' suggestion, *see* Pl. Br. 47-48, the Attorney General's approach is fully consistent with *Sears*, which holds that the Attorney General may, but is not required to, summarize effects on existing law. The petition in *Sears* would have expressly struck out and replaced G. L. c. 118A, which concerned payments to aged persons in need of relief and support. 327 Mass. at 313, 325. The proposed revised G. L. c. 118A consisted of "eight pages of rather fine print" describing how the funding for the payments was to be obtained and how the payments would be administered. *Id.* at 325-26. The Court held that a one-sentence summary omitting mention of most of the main features of the measure was not "fair." *Id.* In so holding, the Court explained that the Attorney General effectively had two alternatives for fairly summarizing the measure: (i) he might have explained

[12] In a footnote, the plaintiffs cite nine other summaries in which the Attorney General "explained how the proposed law would or would not change existing law." Pl. Br. 48-49 & n.31. Seven out of the nine summaries involved petitions that, like the three discussed above, would have expressly repealed or amended the existing law mentioned in the Attorney General's summary. The two other summaries—for Question 4 in 2016, as discussed in *Hensley*, and Question 3 in 2012—involved petitions that expressly stated an intent to change or not change the existing law at issue. RA 74-86, 111-15. This Court later suggested that at least one of the Attorney General's references to existing law in the summary for Question 4 in 2016 was confusing and should have been omitted. *See Hensley*, 474 Mass. at 665-66.

that the petition was "a repeal of and substitute for existing law" and "point[ed] out the differences between a proposed measure and the existing law"; or (ii) he might have "summarize[ed] the entire proposed measure." *Id.* That choice, however, would belong to the Attorney General because "the Constitution requires a summary of the proposed measure and not of the existing law." *Id.* at 326.

D. There Is No Basis for Striking the Petitions.

Finally, even if the Court perceived an error in the Attorney General's summaries, there would be no basis for striking the petitions, a drastic step that this Court has only taken once since the enactment of Article 48. *See Sears*, 327 Mass. at 325-26 (one-sentence summary of "a complete revision of c. 118A" filling "nearly eight pages of rather fine print"). In determining whether a summary is "fair," an error or omission "must be assessed in the context of the entire proposal and its likely impact on the voters." *MTA*, 384 Mass. at 234-36. An error cannot invalidate a measure unless "in the context of the entire proposal, [the summary] is significantly misleading and likely to have a major impact on voters." *First*, 437 Mass. at 1026; *see MTA*, 384 Mass. at 234-36 (summary was fair despite multiple omissions and one clear error); *Opinion of the Justices*, 357 Mass. at 798–801 (five Justices found summary to be fair despite omission of certain details in summary of proposed constitutional amendment); *Hensley*, 474 Mass. at 664-67 (summary was fair despite one omission and some risk of confusion).

Here, where the Attorney General's summaries undisputedly offered an accurate summary of all the main features of the measures as written, and where Article 48 and this Court's case law have never required anything more, there is no basis for the relief the plaintiffs seek. If the plaintiffs believe that voters should know more about the relationship between the petitions and existing law, they may make their arguments "in the 'against' statement and in their public campaign to defeat the initiative petition." *Hensley*, 474 Mass. at 654. The Attorney General "is not required under art. 48, however, to advocate [the opponents'] position." *Gilligan*, 413 Mass. at 20.

CONCLUSION

For the foregoing reasons, the Court should: (i) conclude that the Attorney General properly certified and summarized the petitions; and (ii) remand the case to the county court for dismissal of the complaint.

Respectfully Submitted,

ATTORNEY GENERAL, MAURA HEALEY, AND SECRETARY OF THE COMMONWEALTH, WILLIAM F. GALVIN,

By their attorney,

MAURA HEALEY
ATTORNEY GENERAL

/s/ Jesse M. Boodoo
Jesse M. Boodoo, BBO No. 678471
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108-1698
617-963-2592
Jesse.Boodoo@mass.gov

Dated: April 6, 2022

CERTIFICATION PURSUANT TO MASS. R. APP. P. 16(k)

I, Jesse Boodoo, hereby certify that the foregoing brief complies with all of the rules of court that pertain to the filing of briefs, including, but not limited to, the requirements imposed by Rules 16 and 20 of the Massachusetts Rules of Appellate Procedure. The brief complies with the applicable length limit in Rule 20 because it contains 10,899 words in 14-point Times New Roman font (not including the portions of the brief excluded under Rule 20), as counted in Microsoft Word.

/s/ Jesse M. Boodoo_____
Jesse M. Boodoo

CERTIFICATE OF SERVICE

I hereby certify that on this day, April 6, 2022, I caused this brief to be served by email on counsel for the plaintiffs:

Thomas O. Bean (BBO No. 548072)
Sarah Grossnickle (admitted pro hac vice)
Verrill Dana LLP
One Boston Place – Suite 1600
Boston, Massachusetts 02109
(617) 309-2600
tbean@verrill-law.com

Thaddeus Heuer (BBO #666730)
Andrew London (BBO #690782)
Seth Reiner (BBO #707644)
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210-2600
Phone: 617.832.1000
theuer@foleyhoag.com
alondon@foleyhoag.com
sreiner@foleyhoag.com

/s/ Jesse M. Boodoo_____
Jesse M. Boodoo

ADDENDUM

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

MARTIN EL KOUSSA, MELODY CUNNINGHAM, JULIET SCHOR, COLTON ANDREWS, DORCAS BETHSAIDA GRIFFITH, ALCIBIADES VEGA, JR., GABRIEL CAMACHO, EDWARD MICHAEL VARTABEDIAN, FRED TAYLOR, RENEELEONA DOZIER, JANICE GUZMAN, AND YAMILA RUIZ, Plaintiffs, v. ATTORNEY GENERAL AND SECRETARY OF STATE OF THE COMMONWEALTH OF MASSACHUSETTS, Defendants.	)	Civil Action No. SJ-2022-_____

COMPLAINT FOR
DECLARATORY RELIEF AND RELIEF IN THE NATURE OF MANDAMUS

NATURE OF THE ACTION

This action for declaratory relief and relief in the nature of mandamus arises from the Attorney General's erroneous certification under amend. art. 48 of the Massachusetts Constitution of two Initiative Petitions she numbered 21-11 and 21-12 entitled, "A Law Defining and Regulating the Contract-Based Relationship between Network Companies and App-Based Drivers" (individually and together, the "Petitions"), and invalid "summaries" of those Petitions.

Plaintiffs seek (a) declaratory judgments that (i) the Attorney General erred in certifying the Petitions as compliant with amend. art. 48, (ii) the Attorney General's summaries of the Petitions are invalid because they do not comply with amend. art. 48, and (b) entry of an order in the nature of mandamus prohibiting the Secretary of State from placing the Petitions on the November 2022 state ballot.

PARTIES

1. Plaintiff, Martin El Koussa, is a registered voter in Boston, Massachusetts.

2. Plaintiff, Melody Cunningham, is a registered voter in Weymouth, Massachusetts.

3. Plaintiff, Juliet Schor, is a registered voter in Newton, Massachusetts.

4. Plaintiff, Colton Andrews, is a registered voter in Clarksville, Massachusetts.

5. Plaintiff, Dorcas Bethsaida Griffith, is a registered voter in Dedham, Massachusetts.

6. Plaintiff, Alcibiades Vega, Jr., is a registered voter in Jamaica Plain, Massachusetts.

7. Plaintiff, Gabriel Camacho, is a registered voter in Watertown, Massachusetts.

8. Plaintiff, Edward Michael Vartabedian, is a registered voter in Arlington, Massachusetts.

9. Plaintiff, Fred Taylor, is a registered voter in Worcester, Massachusetts.

10. Plaintiff, Reneeleona Dozier, is a registered voter in Brockton, Massachusetts.

11. Plaintiff, Janice Guzman, is a registered voter in Worcester, Massachusetts.

12. Plaintiff, Yamila Ruiz, is a registered voter in Lynn, Massachusetts.

13. The Attorney General, who is sued only in her official capacity, has certain official duties under amend. art. 48 of the Massachusetts Constitution.

14. The Secretary of State, who is sued only in his official capacity, has certain official duties under amend. art. 48 of the Massachusetts Constitution.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction over this matter under:

A. G.L. c. 214, § 1, because this Court has original jurisdiction in all matters of equity cognizable under the general principles of equity jurisprudence;

B. G.L. c. 231A, § 1, because it satisfies the requirements for a declaratory judgment action in that there is an actual controversy as to whether the Attorney General wrongfully certified the Petitions as compliant with art. 48 and whether the Attorney General's summaries of the Petitions are invalid; and

C. G.L. c. 249, § 5, because this action satisfies the requirements for mandamus in that Plaintiffs seek entry of an order barring the Secretary from placing the Petitions on the ballot for the 2022 state election.

16. This Court has statewide jurisdiction, and therefore has personal jurisdiction over the Attorney General and the Secretary.

17. As this Court has jurisdiction throughout the Commonwealth, venue as to the Plaintiffs is proper in this Court. G.L. c. 214, § 1, G.L. c. 231A, § 1, et seq. and G.L. c. 249, § 5.

FACTS

18. On or before the first Wednesday in August 2021, proponents of the Petitions filed the Petitions with the Attorney General in accordance with art. 48. True and accurate copies of the Petitions as posted on the Attorney General's website as of January 18, 2022, are attached hereto as Exhibits A and B.

19. During the month of August 2021, opponents of certification of the Petitions delivered memoranda to the Attorney General explaining the reasons the Petitions did not comply with art. 48. These reasons included that the Petitions contain multiple subjects that are not related and not mutually dependent on one another. Opponents also provided the Attorney General with a draft summary of the Petitions, and memoranda commenting on draft summaries the Attorney General prepared.

20. On the first Wednesday in September 2021, the Attorney General

A. certified the Petitions as compliant with art. 48; and

B. published "summaries" of the Petitions she had prepared. True and accurate copies of the summaries appearing on the Attorney General's website as of January 18, 2022, are attached hereto as Exhibits C and D (the "Summaries").

21. The Attorney General erred in certifying the Petitions as compliant with art. 48 because, among other things, the Petitions contain multiple subjects that are not "related or mutually dependent." Specifically, but without limitation,

A. the stated "purpose" of the Petitions "is to define and regulate the contract-based relationship between network companies and app-based drivers as independent contractors with minimum compensation, benefits," etc. Yet, the Petitions also seek to regulate the relationship between the Network Companies and members of the public who are injured by torts committed by their drivers, e.g., injuries caused in automobile accidents, a purpose not related to or mutually dependent on the Petitions' stated purpose;

B. the Petitions seek to protect the Network Companies from liability by classifying drivers as independent contractors while "sweetening" the pot by offering drivers

some benefits they could offer without the drivers being classified as independent contractors; and

C. the Petitions regulate the relationship between drivers and the Network Companies in multiple disparate areas of employment law that are not related to or mutually dependent on one another, including laws relating to wages and hours, unemployment compensation, workers' compensation, discrimination, and tax.

22. The Attorney General also erred in publishing the Summaries she prepared because those Summaries are not "fair." They are not "fair" because they are incomplete and misleading. For example, but without limitation, although the Attorney General has described in multiple summaries of laws proposed under art. 48 that the proposed law would change existing law and how it would do so, she failed to do so here. Instead, she stated in the Summaries that the Petitions would classify drivers as independent contractors and establish "alternative" minimum compensation and benefits for app-based drivers working for the Network Companies. Yet, she failed to state that the Petitions would reverse the presumption that drivers are employees of Network Companies and deprive drivers of the compensation and benefits they would receive under existing law if the Petitions were not adopted. In so doing, she failed to describe the compensation and benefits drivers would receive as employees under existing law.

23. On December 22, 2021, the Secretary concluded that proponents of the Petitions had secured sufficient signatures to allow the Petitions to continue in the art. 48 process. True and accurate copies of the Secretary's letters confirming that proponents of the Petitions had secured sufficient signatures are attached hereto as Exhibits E and F.

COUNT I
(For Declaratory Relief With Respect to Certification)

24. Plaintiffs restate and reallege the allegations of the paragraphs set forth above as if restated and realleged herein.

25. The Attorney General certified the Petitions as compliant with art. 48 of the Massachusetts Constitution.

26. Notwithstanding the foregoing, the Petitions fail to comply with the Constitutional requirement that an initiative petition "contain[ ] only subjects . . . which are related or which are mutually dependent." Art. 48, The Initiative, II, § 3, as amended by art. 74.

27. There are actual controversies between the Plaintiffs and the Attorney General as to whether the Petitions comply with amend. art. 48.

WHEREFORE, Plaintiffs request the relief set forth below:

COUNT II
(For Declaratory Relief With Respect to the Summaries)

28. Plaintiffs restate and reallege the allegations of the paragraphs set forth above as if restated and realleged herein.

29. The Attorney General's Summaries do not comply with amend. art. 48 because they are not "fair" in that they are misleading, one-sided, and incomplete. Although the Attorney General has described in multiple summaries of laws proposed under art. 48 that the proposed law would change existing law and how it would do so, she failed to do so here. Instead, she stated in the Summaries that the Petitions would classify drivers as independent contractors and establish "alternative" minimum compensation and benefits for app-based drivers working for the Network Companies. Yet, she failed to state that the Petitions would

reverse the presumption that drivers are employees of Network Companies and deprive drivers of the compensation and benefits they would receive under existing law if the Petitions were not adopted. In so doing, she failed to describe the compensation and benefits drivers would receive as employees under existing law.

30. There are actual controversies between the Plaintiffs and the Attorney General as to whether the Summaries she published comply with art. 48.

WHEREFORE, Plaintiffs request the relief set forth below:

COUNT III
(For Relief in the Nature of Mandamus pursuant to G.L. c. 249, § 5)

31. Plaintiffs restate and reallege the allegations of the paragraphs set forth above as if restated and realleged herein.

32. The Secretary is obliged to publish on the state ballot in November 2022 those petitions under art. 48 the Attorney General has certified and her summaries of those petitions.

33. Because the Attorney General (a) erred in certifying the Petitions, and (b) published Summaries of the Petitions that do not comply with amend. art. 48, the Secretary should be barred from placing the Petitions on the state ballot in November 2022.

WHEREFORE, Plaintiffs request the relief set forth below:

PRAYERS FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment:

A. On Count I, declaring that the Attorney General erred in certifying the Petitions as compliant with amend. art. 48 of the Massachusetts Constitution;

B. On Count II, declaring that the Attorney General's Summaries of the Petitions are invalid because they fail to comply with amend. art. 48;

C. On Count III, granting Plaintiffs relief in the nature of mandamus, barring the Secretary from placing the Petitions on the November 2022 state ballot; and

D. On all Counts, granting the Plaintiffs such other relief as may be appropriate and just.

Respectfully submitted,

MARTIN EL KOUSSA, MELODY CUNNINGHAM, JULIET SCHOR, COLTON ANDREWS, DORCAS BETHSAIDA GRIFFITH, ALCIBIADES VEGA, JR., GABRIEL CAMACHO, EDWARD MICHAEL VARTABEDIAN, FRED TAYLOR, RENEELEONA DOZIER, JANICE GUZMAN, AND YAMILA RUIZ

By their attorneys,

Dated: January 18, 2022

/s/ Thomas O. Bean
Thomas O. Bean, BBO #548072
Sarah Grossnickle, pro hac vice application to be filed
Verrill Dana, LLP
One Federal Street – 20th Floor
Boston, MA 02110
(617) 309-2600 (Tel)
(617) 309-2601 (Fax)
tbean@verrill-law.com
sgrossnickle@verrill-law.com

INITIATIVE PETITION FOR A LAW

Be it enacted by the People, and by their authority:

A Law Defining and Regulating the Contract-Based Relationship Between Network Companies and App-Based Drivers

SECTION 1. The General Laws are hereby amended by inserting after chapter 159A1/2 the following chapter:

Chapter 159AA

Section 1. Title. This chapter shall be known as the "Relationship Between Network Companies and App-Based Drivers Act."

Section 2. Purpose. The purpose of this Act is to define and regulate the contract-based relationship between network companies and app-based drivers as independent contractors with required minimum compensation, benefits, and training standards that will operate uniformly throughout the commonwealth, guaranteeing drivers the freedom and flexibility to choose when, where, how, and for whom they work.

Section 3. Definitions. For the purposes of this chapter, the following words shall have the following meanings:

"App-based driver" or "driver", a person (a) who is a DNC courier and/or TNC driver; and (b) for whom the following conditions are satisfied: (1) the network company does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the DNC courier and/or TNC driver must be logged into the network company's online-enabled application or platform; (2) the network company may not terminate the contract of the DNC courier and/or TNC driver for not accepting a specific transportation service or delivery service request; (3) the network company does not restrict the DNC courier and/or TNC driver from performing services through other network companies except while performing services through the network company's online-enabled application or platform; and (4) the network company does not contractually restrict the DNC courier and/or TNC driver from working in any other lawful occupation or business. Notwithstanding any other law to the contrary, a DNC courier and/or TNC driver who is an app-based driver as defined herein shall be deemed to be an independent contractor and not an employee or agent for all purposes with respect to his or her relationship with the network company.

"Average ACA contribution", 82 per cent of the dollar amount of the average monthly Health Connector premium.

"Average hourly earnings", an app-based driver's earnings from, or facilitated by, the network company during the 365 days immediately prior to the day that earned paid sick time is used, divided by the total hours of engaged time worked by the app-based driver on that network company's online-enabled application or platform during that period.

"Average monthly Health Connector premium", the dollar amount published pursuant to subsection (f) of section 6 of this chapter.

"Contract," a written agreement, which may be electronic, between an app-based driver and a network company.

"Delivery Network Company" or "DNC", a business entity that (a) maintains an online-enabled application or platform used to facilitate delivery services within the Commonwealth and (b) maintains a record of the amount of engaged time and engaged miles accumulated by DNC couriers.

"Delivery Network Company Courier" or "DNC courier", a person who provides delivery services through a DNC's online-enabled application or platform.

"Delivery services", the fulfillment of a delivery request, meaning the pickup from any location in the Commonwealth of any item or items and the delivery of the items using a private passenger motor vehicle, bicycle, electric bicycle, motorized bicycle, scooter, motorized scooter, walking, public transportation, or other similar means of transportation, to a location selected by the customer located within 50 miles of the pickup location. A delivery request may include more than 1, but not more than 30, distinct orders placed by different customers. Delivery services may include the selection, collection, or purchase of items by a DNC courier, as well as other tasks incident to a delivery. Delivery services do not include assistance with residential moving services.

"Earnings", all amounts, including incentives and bonuses, remitted to an app-based driver, provided that the amount does not include toll fees, cleaning fees, airport fees, or other customer pass-throughs. Amounts remitted are net of service fees or similar fees charged to the app-based driver by the network company. Amounts remitted do not include tips or gratuities.

"Engaged miles", all miles driven during engaged time in a private passenger motor vehicle that is not owned, leased, or rented by the network company, or any of its affiliates. Network

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companies may exclude miles if doing so is reasonably necessary to remedy or prevent fraudulent use of the network company's online-enabled application or platform.

"Engaged time", (a) subject to the conditions set forth in subsection (b) in this definition, the period of time, as recorded in a network company's online-enabled application or platform, from when a driver accepts a request for delivery or transportation services to when the driver fulfills that request. For requests that are scheduled in advance and for which the driver accepts the request but is not immediately en route to fulfill that request, a driver shall only be considered engaged on a network company's platform when the driver is en route to fulfill that scheduled request, regardless of when the driver accepted the request.

(b) Engaged time shall not include (1) any time spent performing delivery or transportation services after the request has been cancelled by the customer; or (2) any time spent on a request for delivery or transportation services where the driver abandons performance of the service prior to completion. Network companies may also exclude time if doing so is reasonably necessary to remedy or prevent fraudulent use of the network company's online-enabled application or platform.

"Health Connector", the Commonwealth Health Insurance Connector Authority established by chapter 58 of the acts of 2006 and section 2 of chapter 176Q of the Massachusetts General Laws.

"Network company", a DNC and/or TNC.

"Person", shall have the same definition as provided in clause twenty-third of section 7 of chapter 4 of the Massachusetts General Laws.

"Private passenger motor vehicle," any passenger vehicle which has a vehicle weight rating or curb weight of 6,000 lbs. or less as per manufacturer's description of said vehicle or is a sport utility vehicle, passenger van, or pickup truck.

"Qualifying health plan", a health insurance plan in which the app-based driver is the subscriber, that is not paid for in full or in part by any current or former employer, and that is not a Medicare or Medicaid plan.

"Quarter", each of the following 4 time periods: (a) January 1 through March 31; (b) April 1 through June 30; (c) July 1 through September 30; (d) October 1 through December 31.

"Transportation network company" or "TNC", has the same meaning as provided in section 1 of chapter 159A1/2 of the Massachusetts General Laws.

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"Transportation network company driver" or "TNC driver", a Transportation network driver, as defined in section 1 of chapter 159A1/2 of the Massachusetts General Laws, that provides transportation services, or a person operating a livery vehicle as defined in 540 CMR 2.00 on a TNC's digital network, as defined in section 1 of chapter 159A1/2.

"Transportation services", the provision of transportation facilitated by the digital network, as defined in section 1 of chapter 159A1/2 of the Massachusetts General Laws, of a TNC for which the pickup of the passenger occurs in the Commonwealth.

Section 4. Paid Occupational Safety Training Requirement.

(a) A network company shall require an app-based driver to complete a training session or sessions as described in this section prior to allowing the driver to utilize the network company's online-enabled application or platform. A network company shall compensate the driver at a rate of 120 per cent of the minimum wage described in paragraph (1) of subsection (c) of section 5 of this chapter for the time designated to complete a training session, which shall be due and payable no later than during the next earnings period in which the driver fulfills at least one request for delivery or transportation services. No payment shall be required for any training session that is not completed or for any discretionary time spent reviewing training materials outside of a designated training session.

(b) Each network company shall provide each app-based with driver safety training, which shall include the following:

(1) Recognition and prevention of sexual assault and misconduct, including, at a minimum: a description and specific examples of sexual assault and misconduct; techniques for bystander intervention; and standards of professionalism.

(2) For drivers using a private passenger motor vehicle: collision avoidance; defensive driving techniques; and identification of collision-causing elements such as excessive speed, DUI, and distracted driving.

(3) For drivers delivering prepared food or groceries: food safety information relevant to the delivery of food, including temperature control.

(c) The training may, at the discretion of the network company, be provided via online, video, or in-person training.

(d) Notwithstanding subsection (a), any app-based driver that entered into a contract with a network company prior to January 1, 2023 to provide transportation services or delivery services

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through the network company's online-enabled application or platform shall have until July 31, 2023 to complete the training required by this section, and may continue to provide transportation services or delivery services through the network company's online-enabled application or platform until that date. On and after August 1, 2023, all app-based drivers described in this subsection must complete the training required by this section in order to continue providing transportation services and delivery services through the network company's online-enabled application or platform.

(e) In addition to the training required in this section, a network company may provide additional voluntary training, education, or upskilling courses or materials.

Section 5: Guaranteed Earnings Floor.

(a) A network company shall ensure that for each earnings period, a driver is compensated at not less than the net earnings floor as set forth in this section. The net earnings floor establishes a guaranteed minimum level of compensation for drivers that cannot be reduced. In no way does the net earnings floor prohibit drivers from earning a higher level of compensation.

(b) For each earnings period, a network company shall compare a driver's net earnings against the net earnings floor for that driver during the earnings period. In the event that the driver's net earnings in the earnings period are less than the net earnings floor for that earnings period, the network company shall include an additional sum accounting for the difference in the driver's earnings no later than during the next earnings period.

(c) For purposes of this section, the following definitions apply:

(1) "Minimum wage", means the state mandated minimum wage for all industries as provided by section 1 of chapter 151 of the Massachusetts General Laws.

(2) "Earnings period", means a pay period, set by the network company, not to exceed 14 consecutive calendar days.

(3) "Net earnings", means all earnings received by an app-based driver in an earnings period.

(4) "Net earnings floor", means, for any earnings period, a total amount that consists of:

(i) For all engaged time, the sum of 120 per cent of the minimum wage for that engaged time.

(ii)(A) The per-mile compensation for vehicle expenses set forth in this clause multiplied by the total number of engaged miles.

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1. CEH	5.	9.	13.	17.
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(B) After the effective date of this chapter and for the 2023 calendar year, the per-mile compensation for vehicle expenses shall be 26 cents per engaged mile. For calendar years after 2023, the amount per engaged mile shall be adjusted pursuant to the following subclause (C).

(C) For calendar years following 2023, the per-mile compensation for vehicle expenses described in subclause (B) shall be adjusted every five years to reflect any change in inflation as measured by the Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Bureau of Labor Statistics, or any successor index or agency. The commissioner of administration shall calculate and publish the adjustments required by this subclause.

(d) Nothing in this section shall be interpreted to require a network company to provide a particular amount of compensation to a driver for any given transportation or delivery request, as long as the driver's net earnings for each earnings period equals or exceeds that driver's net earnings floor for that earnings period as set forth in subsection (b) of this section.

Section 6. Healthcare Stipend.

(a) Consistent with the average contributions required under the federal Patient Protection and Affordable Care Act, Pub. L. 111-148 (March 23, 2010), a network company shall provide a quarterly healthcare stipend to app-based drivers who meet the conditions set forth in this section. An app-based driver that averages the following amounts of engaged time per week on a network company's platform during a quarter that commences on or after January 1, 2023 shall receive the following stipends from that network company:

(1) For an average of 25 hours or more per week of engaged time in the quarter, a payment greater than or equal to 100 per cent of the average ACA contribution for the applicable average monthly Health Connector premium for each month in the quarter.

(2) For an average of at least 15 but less than 25 hours per week of engaged time in the quarter, a payment greater than or equal to 50 per cent of the average ACA contribution for the applicable average monthly Health Connector premium for each month in the quarter.

(b) At the end of each earnings period, a network company shall provide to each app-based driver the following information:

(1) The number of hours of engaged time the app-based driver recorded in the network company's online-enabled application or platform during that earnings period.

(2) The number of hours of engaged time the app-based driver has recorded in the network company's online-enabled application or platform during the current quarter up to that point.

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(c) The Health Connector may adopt or amend regulations as it deems appropriate to implement this section, including to permit app-based drivers receiving stipends pursuant to this section to enroll in health plans offered through the Health Connector.

(d)(1) As a condition of providing the healthcare stipend set forth in subsection (a), a network company may require an app-based driver to submit proof of current enrollment in a qualifying health plan as of the last day of the quarter for which the stipend would be provided. Proof of current enrollment may include, but is not limited to, health insurance membership or identification cards, evidence of coverage and disclosure forms from the health plan, or claim forms and other documents necessary to submit claims.

(2) An app-based driver shall have not less than 15 calendar days from the end of the quarter to provide proof of enrollment as set forth in paragraph (1) of this subsection.

(3) A network company shall provide a healthcare stipend due for a quarter under subsection (a) within 15 days of the end of the quarter or within 15 days of the app-based driver's submission of proof of enrollment as set forth in paragraph (1) of this subsection, whichever is later.

(e) Nothing in this section shall be interpreted to prevent an app-based driver from receiving a healthcare stipend from more than one network company for the same quarter.

(f)(1) On or before 14 days following the effective date of this section, and on or before each September 1 thereafter, the Health Connector shall publish the average statewide monthly premium paid, or anticipated to be paid, by an individual for the following calendar year for a Health Connector bronze tier health insurance plan, or any future successor equivalent plan.

(2) When computing the average as required by paragraph (1) of this subsection, the Health Connector shall divide the total monthly premium paid, or anticipated to be paid, by all enrollees in an individual Health Connector bronze tier health insurance plan, or any future successor equivalent plan, by the total number of individuals in the commonwealth who are enrolled in, or anticipated to be enrolled in, such plans.

(g) This section shall become inoperative in the event that the United States or the commonwealth implements a single-payer universal healthcare system or substantially similar system that expands coverage to the recipients of stipends under this section.

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1. CEH	5.	9.	13.	17.
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Section 7. Paid Sick Time. Network companies shall provide app-based drivers with earned paid sick time as set forth in this section.

(a) "Earned paid sick time", is the time provided by a network company to an app-based driver as calculated under subsection (c) of this section. For each hour of earned paid sick time used by an app-based driver, the network company shall compensate the driver at a rate equal to the greater of the following:

(1) The app-based driver's average hourly earnings.

(2) 120 per cent of the minimum wage described in paragraph (1) of subsection (c) of section 5 of this chapter.

(b) An app-based driver shall only use earned paid sick time for the same reasons set forth for employees in paragraph (1) through paragraph (4) of subsection (c) of section 148C of chapter 149 of the Massachusetts General Laws.

(c) A network company shall provide a minimum of one hour of earned paid sick time for every 30 hours of engaged time recorded on or after the effective date of this section by an app-based driver in the network company's online-enabled application or platform. App-based drivers shall be entitled to first use accrued earned paid sick time upon recording 90 hours of engaged time on the network company's online-enabled application or platform. From that day forward, an app-based driver may use earned sick time as it accrues. A contract between a network company and an app-based driver may require the driver to use earned paid sick time in increments of up to 4 hours.

(d) App-based drivers may carry over up to 40 hours of unused earned paid sick time to the next calendar year, but are not entitled to use more than 40 hours in one calendar year. Network companies shall not be required to pay out unused earned paid sick time. If an app-based driver does not record any engaged time in a network company's online-enabled application or platform for 365 or more consecutive days or the app-based driver's contract with a network company is terminated, any unused earned paid sick time accrued up to that point with that network company shall no longer be valid or recognized.

(e) A network company may require certification when an app-based driver makes a request to use more than 24 hours of earned paid sick time in a 72-hour period or when reasonably necessary to prevent fraud. Any reasonable documentation signed by a health care provider indicating the need for earned paid sick time taken shall be deemed acceptable certification for absences. Nothing in this section shall be construed to require an app-based driver to provide as

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certification any information from a health care provider that would be in violation of federal law.

Section 8. Paid Family and Medical Leave.

(a) An app-based driver shall be entitled to coverage in the family leave and medical leave programs established by chapter 175M of the Massachusetts General Laws as set forth in this section unless the driver declines coverage via a written notification, which may be electronic, to the network company. Such declination shall continue to be effective until revoked by the driver. A network company shall provide an opportunity for an app-based driver to revoke a declination not less than annually. A declination or revocation of a declination shall be effective 15 days following an app-based driver's submission of a written notification to the network company.

(b) For purposes of this section and chapter 175M of the Massachusetts General Laws only, all of the following shall apply:

(1) An app-based driver who has not declined coverage, or revoked a previous declination, shall be considered a covered individual, as defined in section 1 of chapter 175M of the Massachusetts General Laws, on the same basis as a covered contract worker, as defined in chapter 175M; provided, however, that an app-based driver shall not be eligible for benefits until contributions have been made on the driver's behalf for at least 2 quarters of the driver's last 4 completed quarters.

(2) A network company shall be considered a covered business entity, as defined in chapter 175M of the Massachusetts General Laws, for the limited purpose of making contributions, as defined in chapter 175M, to the Family and Employment Security Trust Fund for each app-based driver who has not declined coverage in the family leave and medical leave programs pursuant to subsection (a). Contributions under this paragraph shall be made in the same manner as provided in section 6 of chapter 175M for covered contract workers, as defined in chapter 175M.

Section 9. Occupational Accident Insurance.

(a) For the purposes of this section, the following words shall have the following meanings:-

(1) "Average weekly earnings", the app-based driver's total earnings from all network companies during the 28 days prior to the accident divided by four.

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3. _____	7. _____	11. _____	15. _____	19. _____
4. _____	8. _____	12. _____	16. _____	20. _____

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(2) "Online", means the time when an app-based driver is utilizing a network company's online-enabled application or platform and can receive requests for transportation services or delivery services from the network company, or during engaged time.

(3) "Maximum weekly compensation rate", has the same meaning as provided in section 1 of chapter 152 of the Massachusetts General Laws.

(4) "Minimum weekly compensation rate", has the same meaning as provided in section 1 of chapter 152 of the Massachusetts General Laws.

(b) Each network company, within 240 days of the effective date of this act, shall purchase occupational accident insurance, as described in this section, for all drivers who provide transportation or delivery services through the network company's online-enabled application or platform.

(c) Each network company shall file with the division of insurance, no later than 30 days after the commencement of a new policy year, a copy of the policy it has purchased for DNC couriers and TNC drivers, respectively. The division of insurance shall be treated by the insurer as a certificate holder for purposes of receiving notice of cancellation of the policy.

(d) The occupational accident insurance policy required under subsection (b) shall cover medical expenses and lost income resulting from injuries suffered while the app-based driver is online with a network company's online-enabled application or platform. Policies shall at a minimum include a total combined single limit of $1,000,000 per accident and provide for payment of benefits to a covered individual as follows:

(1) Coverage for medical expenses incurred, up to at least $1,000,000 and for up to 156 weeks following the injury;

(2) Continuous total disability payments, temporary total disability payments, and partial disability payments for injuries that occur while the driver is online equal to 66 per cent of the driver's average weekly earnings as of the date of injury but not more than the maximum weekly compensation rate, unless the average weekly earnings of the driver is less than the minimum weekly compensation rate, in which case the weekly compensation shall be equal to the driver's average weekly earnings. Payments under this paragraph shall be made for up to the first 156 weeks following the injury;

(3) For the benefit of spouses, children, or other dependents of drivers, accidental death insurance in the amount equal to 66 per cent of the driver's average weekly earnings as of the date of injury but not more than the maximum weekly compensation rate, unless the average

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weekly earnings of the driver is less than the minimum weekly compensation rate, in which case the weekly compensation shall be equal to the driver's average weekly earnings, times 156 weeks for injuries suffered by an app-based driver while the driver is online with the network company's online-enabled application or platform that result in death; and

(4) When injuries suffered by an app-based driver while the app-based driver is online result in death, an amount to pay for reasonable burial expenses not to exceed eight times the maximum weekly compensation rate.

(e) Occupational accident insurance under subsection (d) of this section shall not be required to cover an accident that occurs while online but outside of engaged time where the injured driver is in engaged time on one or more other network company platforms or where the driver is engaged in personal activities. If an accident is covered by occupational accident insurance maintained by more than one network company, the insurer of the network company against whom a claim is filed is entitled to contribution for the pro-rata share of coverage attributable to one or more other network companies up to the coverages and limits in subsection (d).

(f) Any benefits provided to a driver under this section shall be considered amounts payable under a driver's compensation law or disability benefit for the purpose of determining amounts payable under any insurance provided under section 113L of chapter 175 of the Massachusetts General Laws or for personal injury protection, as defined in section 34A of chapter 90 of the Massachusetts General Laws.

Section 10. Contract Formation and Termination.

(a) A contract between a network company and an app-based driver shall be made in writing, which may be electronic.

(b) Every contract between an app-based driver and a network company with regard to delivery services or transportation services shall be deemed to include terms incorporating the requirements in sections 4 through 9 of this chapter. The parties to such contracts may agree to supplemental terms which do not conflict with the terms deemed to be included by this chapter.

(c) A network company shall not terminate a contract with an app-based driver, except on grounds specified in the contract or as is required by law.

(d) A contract between a network company and an app-based driver shall provide drivers whose contracts are terminated by the network company the opportunity to appeal such termination with the network company.

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(e) A network company shall not, unless based upon a bona fide occupational qualification or public or app-based driver safety need, refuse to contract with or terminate the contract of an app-based driver based upon race, color, religious creed, national origin, sex, gender identity, genetic information, ancestry, status as a veteran, pregnancy or a condition related to said pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child, or sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object.

Section 11. Interpretation of this chapter.

(a) This chapter shall govern the contract-based civil relationship between network-companies and app-based drivers.

(b) Notwithstanding any general or special law to the contrary, compliance with the provisions of this chapter shall not be interpreted or applied, either directly or indirectly, in a manner that treats network companies as employers of app-based drivers, or app-based drivers as employees of network companies, and any party seeking to establish that a person is not an app-based driver bears the burden of proof.

(c) Nothing in this Act shall be construed to impair any contracts in existence as of its effective date.

Section 12. Effective Date.

(a) Except as provided in subsection (b), chapter 159AA of the Massachusetts General Laws shall take effect on the later of January 1, 2023, or as provided in Article 48 of the Amendments to the Massachusetts Constitution, as amended.

(b) Notwithstanding subsection (a), sections 3 and 5 of chapter 159AA shall take effect as provided in Article 48 of the Amendments to the Massachusetts Constitution, as amended.

The undersigned qualified voters of the Commonwealth of Massachusetts have personally reviewed the final text of this initiative petition, fully subscribe to its contents, agree to be one of its original signers and have signaled that agreement by initialing each page, and hereby submit the measure for approval by the people pursuant to Article 48 of the articles of amendment of the Constitution of the Commonwealth of Massachusetts, as amended by Article 74 of said articles of amendment.

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INITIATIVE PETITION FOR A LAW

Be it enacted by the People, and by their authority:

A Law Defining and Regulating the Contract-Based Relationship Between Network Companies and App-Based Drivers

SECTION 1. The General Laws are hereby amended by inserting after chapter 159A1/2 the following chapter:

Chapter 159AA

Section 1. Title. This chapter shall be known as the "Relationship Between Network Companies and App-Based Drivers Act."

Section 2. Purpose. The purpose of this Act is to define and regulate the contract-based relationship between network companies and app-based drivers as independent contractors with required minimum compensation and benefits standards that will operate uniformly throughout the commonwealth, guaranteeing drivers the freedom and flexibility to choose when, where, how, and for whom they work.

Section 3. Definitions. For the purposes of this chapter, the following words shall have the following meanings:

"App-based driver" or "driver", a person (a) who is a DNC courier and/or TNC driver; and (b) for whom the following conditions are satisfied: (1) the network company does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the DNC courier and/or TNC driver must be logged into the network company's online-enabled application or platform; (2) the network company may not terminate the contract of the DNC courier and/or TNC driver for not accepting a specific transportation service or delivery service request; (3) the network company does not restrict the DNC courier and/or TNC driver from performing services through other network companies except while performing services through the network company's online-enabled application or platform; and (4) the network company does not contractually restrict the DNC courier and/or TNC driver from working in any other lawful occupation or business. Notwithstanding any other law to the contrary, a DNC courier and/or TNC driver who is an app-based driver as defined herein shall be deemed to be an independent contractor and not an employee or agent for all purposes with respect to his or her relationship with the network company.

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"Average ACA contribution," 82 per cent of the dollar amount of the average monthly Health Connector premium.

"Average hourly earnings", an app-based driver's earnings from, or facilitated by, the network company during the 365 days immediately prior to the day that earned paid sick time is used, divided by the total hours of engaged time worked by the app-based driver on that network company's online-enabled application or platform during that period.

"Average monthly Health Connector premium", the dollar amount published pursuant to subsection (f) of section 5 of this chapter.

"Contract," a written agreement, which may be electronic, between an app-based driver and a network company.

"Delivery Network Company" or "DNC", a business entity that (a) maintains an online-enabled application or platform used to facilitate delivery services within the Commonwealth and (b) maintains a record of the amount of engaged time and engaged miles accumulated by DNC couriers.

"Delivery Network Company Courier" or "DNC courier", a person who provides delivery services through a DNC's online-enabled application or platform.

"Delivery services", the fulfillment of a delivery request, meaning the pickup from any location in the Commonwealth of any item or items and the delivery of the items using a private passenger motor vehicle, bicycle, electric bicycle, motorized bicycle, scooter, motorized scooter, walking, public transportation, or other similar means of transportation, to a location selected by the customer located within 50 miles of the pickup location. A delivery request may include more than 1, but not more than 30, distinct orders placed by different customers. Delivery services may include the selection, collection, or purchase of items by a DNC courier, as well as other tasks incident to a delivery. Delivery services do not include assistance with residential moving services.

"Earnings", all amounts, including incentives and bonuses, remitted to an app-based driver, provided that the amount does not include toll fees, cleaning fees, airport fees, or other customer pass-throughs. Amounts remitted are net of service fees or similar fees charged to the app-based driver by the network company. Amounts remitted do not include tips or gratuities.

"Engaged miles", all miles driven during engaged time in a private passenger motor vehicle that is not owned, leased, or rented by the network company, or any of its affiliates. Network

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companies may exclude miles if doing so is reasonably necessary to remedy or prevent fraudulent use of the network company's online-enabled application or platform.

"Engaged time", (a) subject to the conditions set forth in subsection (b) in this definition, the period of time, as recorded in a network company's online-enabled application or platform, from when a driver accepts a request for delivery or transportation services to when the driver fulfills that request. For requests that are scheduled in advance and for which the driver accepts the request but is not immediately en route to fulfill that request, a driver shall only be considered engaged on a network company's platform when the driver is en route to fulfill that scheduled request, regardless of when the driver accepted the request.

(b) Engaged time shall not include (1) any time spent performing delivery or transportation services after the request has been cancelled by the customer; or (2) any time spent on a request for delivery or transportation services where the driver abandons performance of the service prior to completion. Network companies may also exclude time if doing so is reasonably necessary to remedy or prevent fraudulent use of the network company's online-enabled application or platform.

"Health Connector", the Commonwealth Health Insurance Connector Authority established by chapter 58 of the acts of 2006 and section 2 of chapter 176Q of the Massachusetts General Laws.

"Network company", a DNC and/or TNC.

"Person", shall have the same definition as provided in clause twenty-third of section 7 of chapter 4 of the Massachusetts General Laws.

"Private passenger motor vehicle," any passenger vehicle which has a vehicle weight rating or curb weight of 6,000 lbs. or less as per manufacturer's description of said vehicle or is a sport utility vehicle, passenger van, or pickup truck.

"Qualifying health plan", a health insurance plan in which the app-based driver is the subscriber, that is not paid for in full or in part by any current or former employer, and that is not a Medicare or Medicaid plan.

"Quarter", each of the following 4 time periods: (a) January 1 through March 31; (b) April 1 through June 30; (c) July 1 through September 30; (d) October 1 through December 31.

"Transportation network company" or "TNC", has the same meaning as provided in section 1 of chapter 159A1/2 of the Massachusetts General Laws.

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"Transportation network company driver" or "TNC driver", a Transportation network driver, as defined in section 1 of chapter 159A1/2 of the Massachusetts General Laws, that provides transportation services, or a person operating a livery vehicle as defined in 540 CMR 2.00 on a TNC's digital network, as defined in section 1 of chapter 159A1/2.

"Transportation services", the provision of transportation facilitated by the digital network, as defined in section 1 of chapter 159A1/2 of the Massachusetts General Laws, of a TNC for which the pickup of the passenger occurs in the Commonwealth.

Section 4: Guaranteed Earnings Floor.

(a) A network company shall ensure that for each earnings period, a driver is compensated at not less than the net earnings floor as set forth in this section. The net earnings floor establishes a guaranteed minimum level of compensation for drivers that cannot be reduced. In no way does the net earnings floor prohibit drivers from earning a higher level of compensation.

(b) For each earnings period, a network company shall compare a driver's net earnings against the net earnings floor for that driver during the earnings period. In the event that the driver's net earnings in the earnings period are less than the net earnings floor for that earnings period, the network company shall include an additional sum accounting for the difference in the driver's earnings no later than during the next earnings period.

(c) For purposes of this section, the following definitions apply:

(1) "Minimum wage", means the state mandated minimum wage for all industries as provided by section 1 of chapter 151 of the Massachusetts General Laws.

(2) "Earnings period", means a pay period, set by the network company, not to exceed 14 consecutive calendar days.

(3) "Net earnings", means all earnings received by an app-based driver in an earnings period.

(4) "Net earnings floor", means, for any earnings period, a total amount that consists of:

(i) For all engaged time, the sum of 120 per cent of the minimum wage for that engaged time.

(ii)(A) The per-mile compensation for vehicle expenses set forth in this clause multiplied by the total number of engaged miles.

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(B) After the effective date of this chapter and for the 2023 calendar year, the per-mile compensation for vehicle expenses shall be 26 cents per engaged mile. For calendar years after 2023, the amount per engaged mile shall be adjusted pursuant to the following subclause (C).

(C) For calendar years following 2023, the per-mile compensation for vehicle expenses described in subclause (B) shall be adjusted every five years to reflect any change in inflation as measured by the Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Bureau of Labor Statistics, or any successor index or agency. The commissioner of administration shall calculate and publish the adjustments required by this subclause.

(d) Nothing in this section shall be interpreted to require a network company to provide a particular amount of compensation to a driver for any given transportation or delivery request, as long as the driver's net earnings for each earnings period equals or exceeds that driver's net earnings floor for that earnings period as set forth in subsection (b) of this section.

Section 5. Healthcare Stipend.

(a) Consistent with the average contributions required under the federal Patient Protection and Affordable Care Act, Pub. L. 111-148 (March 23, 2010), a network company shall provide a quarterly healthcare stipend to app-based drivers who meet the conditions set forth in this section. An app-based driver that averages the following amounts of engaged time per week on a network company's platform during a quarter that commences on or after January 1, 2023 shall receive the following stipends from that network company:

(1) For an average of 25 hours or more per week of engaged time in the quarter, a payment greater than or equal to 100 per cent of the average ACA contribution for the applicable average monthly Health Connector premium for each month in the quarter.

(2) For an average of at least 15 but less than 25 hours per week of engaged time in the quarter, a payment greater than or equal to 50 per cent of the average ACA contribution for the applicable average monthly Health Connector premium for each month in the quarter.

(b) At the end of each earnings period, a network company shall provide to each app-based driver the following information:

(1) The number of hours of engaged time the app-based driver recorded in the network company's online-enabled application or platform during that earnings period.

(2) The number of hours of engaged time the app-based driver has recorded in the network company's online-enabled application or platform during the current quarter up to that point.

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(c) The Health Connector may adopt or amend regulations as it deems appropriate to implement this section, including to permit app-based drivers receiving stipends pursuant to this section to enroll in health plans offered through the Health Connector.

(d)(1) As a condition of providing the healthcare stipend set forth in subsection (a), a network company may require an app-based driver to submit proof of current enrollment in a qualifying health plan as of the last day of the quarter for which the stipend would be provided. Proof of current enrollment may include, but is not limited to, health insurance membership or identification cards, evidence of coverage and disclosure forms from the health plan, or claim forms and other documents necessary to submit claims.

(2) An app-based driver shall have not less than 15 calendar days from the end of the quarter to provide proof of enrollment as set forth in paragraph (1) of this subsection.

(3) A network company shall provide a healthcare stipend due for a quarter under subsection (a) within 15 days of the end of the quarter or within 15 days of the app-based driver's submission of proof of enrollment as set forth in paragraph (1) of this subsection, whichever is later.

(e) Nothing in this section shall be interpreted to prevent an app-based driver from receiving a healthcare stipend from more than one network company for the same quarter.

(f)(1) On or before 14 days following the effective date of this section, and on or before each September 1 thereafter, the Health Connector shall publish the average statewide monthly premium paid, or anticipated to be paid, by an individual for the following calendar year for a Health Connector bronze tier health insurance plan, or any future successor equivalent plan.

(2) When computing the average as required by paragraph (1) of this subsection, the Health Connector shall divide the total monthly premium paid, or anticipated to be paid, by all enrollees in an individual Health Connector bronze tier health insurance plan, or any future successor equivalent plan, by the total number of individuals in the commonwealth who are enrolled in, or anticipated to be enrolled in, such plans.

(g) This section shall become inoperative in the event that the United States or the commonwealth implements a single-payer universal healthcare system or substantially similar system that expands coverage to the recipients of stipends under this section.

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Section 6. Paid Sick Time. Network companies shall provide app-based drivers with earned paid sick time as set forth in this section.

(a) "Earned paid sick time", is the time provided by a network company to an app-based driver as calculated under subsection (c) of this section. For each hour of earned paid sick time used by an app-based driver, the network company shall compensate the driver at a rate equal to the greater of the following:

(1) The app-based driver's average hourly earnings.

(2) 120 per cent of the minimum wage described in paragraph (1) of subsection (c) of section 4 of this chapter.

(b) An app-based driver shall only use earned paid sick time for the same reasons set forth for employees in paragraph (1) through paragraph (4) of subsection (c) of section 148C of chapter 149 of the Massachusetts General Laws.

(c) A network company shall provide a minimum of one hour of earned paid sick time for every 30 hours of engaged time recorded on or after the effective date of this section by an app-based driver in the network company's online-enabled application or platform. App-based drivers shall be entitled to first use accrued earned paid sick time upon recording 90 hours of engaged time on the network company's online-enabled application or platform. From that day forward, an app-based driver may use earned sick time as it accrues. A contract between a network company and an app-based driver may require the driver to use earned paid sick time in increments of up to 4 hours.

(d) App-based drivers may carry over up to 40 hours of unused earned paid sick time to the next calendar year, but are not entitled to use more than 40 hours in one calendar year. Network companies shall not be required to pay out unused earned paid sick time. If an app-based driver does not record any engaged time in a network company's online-enabled application or platform for 365 or more consecutive days or the app-based driver's contract with a network company is terminated, any unused earned paid sick time accrued up to that point with that network company shall no longer be valid or recognized.

(e) A network company may require certification when an app-based driver makes a request to use more than 24 hours of earned paid sick time in a 72-hour period or when reasonably necessary to prevent fraud. Any reasonable documentation signed by a health care provider indicating the need for earned paid sick time taken shall be deemed acceptable certification for absences. Nothing in this section shall be construed to require an app-based driver to provide as

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certification any information from a health care provider that would be in violation of federal law.

Section 7. Paid Family and Medical Leave.

(a) An app-based driver shall be entitled to coverage in the family leave and medical leave programs established by chapter 175M of the Massachusetts General Laws as set forth in this section unless the driver declines coverage via a written notification, which may be electronic, to the network company. Such declination shall continue to be effective until revoked by the driver. A network company shall provide an opportunity for an app-based driver to revoke a declination not less than annually. A declination or revocation of a declination shall be effective 15 days following an app-based driver's submission of a written notification to the network company.

(b) For purposes of this section and chapter 175M of the Massachusetts General Laws only, all of the following shall apply:

(1) An app-based driver who has not declined coverage, or revoked a previous declination, shall be considered a covered individual, as defined in section 1 of chapter 175M of the Massachusetts General Laws, on the same basis as a covered contract worker, as defined in chapter 175M; provided, however, that an app-based driver shall not be eligible for benefits until contributions have been made on the driver's behalf for at least 2 quarters of the driver's last 4 completed quarters.

(2) A network company shall be considered a covered business entity, as defined in chapter 175M of the Massachusetts General Laws, for the limited purpose of making contributions, as defined in chapter 175M, to the Family and Employment Security Trust Fund for each app-based driver who has not declined coverage in the family leave and medical leave programs pursuant to subsection (a). Contributions under this paragraph shall be made in the same manner as provided in section 6 of chapter 175M for covered contract workers, as defined in chapter 175M.

Section 8. Occupational Accident Insurance.

(a) For the purposes of this section, the following words shall have the following meanings:-

(1) "Average weekly earnings", the app-based driver's total earnings from all network companies during the 28 days prior to the accident divided by four.

(2) "Online", means the time when an app-based driver is utilizing a network company's online-enabled application or platform and can receive requests for transportation services or delivery services from the network company, or during engaged time.

(3) "Maximum weekly compensation rate", has the same meaning as provided in section 1 of chapter 152 of the Massachusetts General Laws.

(4) "Minimum weekly compensation rate", has the same meaning as provided in section 1 of chapter 152 of the Massachusetts General Laws.

(b) Each network company, within 240 days of the effective date of this act, shall purchase occupational accident insurance, as described in this section, for all drivers who provide transportation or delivery services through the network company's online-enabled application or platform.

(c) Each network company shall file with the division of insurance, no later than 30 days after the commencement of a new policy year, a copy of the policy it has purchased for DNC couriers and TNC drivers, respectively. The division of insurance shall be treated by the insurer as a certificate holder for purposes of receiving notice of cancellation of the policy.

(d) The occupational accident insurance policy required under subsection (b) shall cover medical expenses and lost income resulting from injuries suffered while the app-based driver is online with a network company's online-enabled application or platform. Policies shall at a minimum include a total combined single limit of $1,000,000 per accident and provide for payment of benefits to a covered individual as follows:

(1) Coverage for medical expenses incurred, up to at least $1,000,000 and for up to 156 weeks following the injury;

(2) Continuous total disability payments, temporary total disability payments, and partial disability payments for injuries that occur while the driver is online equal to 66 per cent of the driver's average weekly earnings as of the date of injury but not more than the maximum weekly compensation rate, unless the average weekly earnings of the driver is less than the minimum weekly compensation rate, in which case the weekly compensation shall be equal to the driver's average weekly earnings. Payments under this paragraph shall be made for up to the first 156 weeks following the injury;

(3) For the benefit of spouses, children, or other dependents of drivers, accidental death insurance in the amount equal to 66 per cent of the driver's average weekly earnings as of the date of injury but not more than the maximum weekly compensation rate, unless the average

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weekly earnings of the driver is less than the minimum weekly compensation rate, in which case the weekly compensation shall be equal to the driver's average weekly earnings, times 156 weeks for injuries suffered by an app-based driver while the driver is online with the network company's online-enabled application or platform that result in death; and

(4) When injuries suffered by an app-based driver while the app-based driver is online result in death, an amount to pay for reasonable burial expenses not to exceed eight times the maximum weekly compensation rate.

(e) Occupational accident insurance under subsection (d) of this section shall not be required to cover an accident that occurs while online but outside of engaged time where the injured driver is in engaged time on one or more other network company platforms or where the driver is engaged in personal activities. If an accident is covered by occupational accident insurance maintained by more than one network company, the insurer of the network company against whom a claim is filed is entitled to contribution for the pro-rata share of coverage attributable to one or more other network companies up to the coverages and limits in subsection (d).

(f) Any benefits provided to a driver under this section shall be considered amounts payable under a driver's compensation law or disability benefit for the purpose of determining amounts payable under any insurance provided under section 113L of chapter 175 of the Massachusetts General Laws or for personal injury protection, as defined in section 34A of chapter 90 of the Massachusetts General Laws.

Section 9. Contract Formation and Termination.

(a) A contract between a network company and an app-based driver shall be made in writing, which may be electronic.

(b) Every contract between an app-based driver and a network company with regard to delivery services or transportation services shall be deemed to include terms incorporating the requirements in sections 4 through 8 of this chapter. The parties to such contracts may agree to supplemental terms which do not conflict with the terms deemed to be included by this chapter.

(c) A network company shall not terminate a contract with an app-based driver, except on grounds specified in the contract or as is required by law.

(d) A contract between a network company and an app-based driver shall provide drivers whose contracts are terminated by the network company the opportunity to appeal such termination with the network company.

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(e) A network company shall not, unless based upon a bona fide occupational qualification or public or app-based driver safety need, refuse to contract with or terminate the contract of an app-based driver based upon race, color, religious creed, national origin, sex, gender identity, genetic information, ancestry, status as a veteran, pregnancy or a condition related to said pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child, or sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object.

Section 10. Interpretation of this chapter.

(a) This chapter shall govern the contract-based civil relationship between network-companies and app-based drivers.

(b) Notwithstanding any general or special law to the contrary, compliance with the provisions of this chapter shall not be interpreted or applied, either directly or indirectly, in a manner that treats network companies as employers of app-based drivers, or app-based drivers as employees of network companies, and any party seeking to establish that a person is not an app-based driver bears the burden of proof.

(c) Nothing in this Act shall be construed to impair any contracts in existence as of its effective date.

Section 11. Effective Date.

(a) Except as provided in subsection (b), chapter 159AA of the Massachusetts General Laws shall take effect on the later of January 1, 2023, or as provided in Article 48 of the Amendments to the Massachusetts Constitution, as amended.

(b) Notwithstanding subsection (a), sections 3 and 4 of chapter 159AA shall take effect as provided in Article 48 of the Amendments to the Massachusetts Constitution, as amended.

The undersigned qualified voters of the Commonwealth of Massachusetts have personally reviewed the final text of this initiative petition, fully subscribe to its contents, agree to be one of its original signers and have signaled that agreement by initialing each page, and hereby submit the measure for approval by the people pursuant to Article 48 of the articles of amendment of the Constitution of the Commonwealth of Massachusetts, as amended by Article 74 of said articles of amendment.

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SUMMARY OF NO. 21-11

This proposed law would classify drivers for rideshare and delivery companies who accept requests through digital applications as "independent contractors," and not "employees" or "agents," for all purposes under Massachusetts law. This proposed law would establish alternative minimum compensation and benefits for these "independent contractors."

The proposed law would apply to drivers for rideshare and delivery companies who use digital applications and who are not (1) required to work specific days or hours; (2) required to accept specific requests; (3) restricted from working for multiple rideshare or delivery companies; or (4) restricted from working in any other lawful occupation or business. Drivers who meet these conditions would be deemed to be "independent contractors," and not "employees" or "agents," for all purposes under Massachusetts law.

The proposed law would require rideshare and delivery companies to provide drivers with a guaranteed amount of minimum compensation, equal to 120% of the Massachusetts minimum wage for time spent completing requests for transportation or delivery, plus an inflation-adjusted per-mile amount (starting at 26 cents) for each mile driven in a privately-owned vehicle while completing a request. The minimum compensation calculation would not include time spent by a driver between

requests. A driver whose earnings, not including tips and gratuities, fall below the minimum compensation amount would be paid the difference to be brought up to the minimum compensation amount.

The proposed law would require rideshare and delivery companies to provide drivers with paid sick time, to treat drivers as eligible to take medical or family leave under the Massachusetts Paid Family and Medical Leave Act, and to provide healthcare stipends to some drivers. Drivers would earn a minimum of 1 hour of paid sick time for every 30 hours spent completing requests for transportation or delivery.

The proposed law would require rideshare and delivery companies to purchase accident insurance for drivers who are injured or killed while fulfilling or accepting requests and not engaging in personal activities. Companies would be required to provide drivers with mandatory safety training.

The proposed law would prohibit rideshare and delivery companies from terminating the contract of a driver, or refusing to contract with a driver, based on race, sex, sexual orientation, or other protected characteristics unless based upon a bona fide occupational qualification or a safety need. Companies would be required to provide a driver who is terminated with an opportunity to appeal their termination.

SUMMARY OF NO. 21-12

This proposed law would classify drivers for rideshare and delivery companies who accept requests through digital applications as "independent contractors," and not "employees" or "agents," for all purposes under Massachusetts law. This proposed law would establish alternative minimum compensation and benefits for these "independent contractors."

The proposed law would apply to drivers for rideshare and delivery companies who use digital applications and who are not (1) required to work specific days or hours; (2) required to accept specific requests; (3) restricted from working for multiple rideshare or delivery companies; or (4) restricted from working in any other lawful occupation or business. Drivers who meet these conditions would be deemed to be "independent contractors," and not "employees" or "agents," for all purposes under Massachusetts law.

The proposed law would require rideshare and delivery companies to provide drivers with a guaranteed amount of minimum compensation, equal to 120% of the Massachusetts minimum wage for time spent completing requests for transportation or delivery, plus an inflation-adjusted per-mile amount (starting at 26 cents) for each mile driven in a privately-owned vehicle while completing a request. The minimum compensation calculation would not include time spent by a driver between

requests. A driver whose earnings, not including tips and gratuities, fall below the minimum compensation amount would be paid the difference to be brought up to the minimum compensation amount.

The proposed law would require rideshare and delivery companies to provide drivers with paid sick time, to treat drivers as eligible to take medical or family leave under the Massachusetts Paid Family and Medical Leave Act, and to provide healthcare stipends to some drivers. Drivers would earn a minimum of 1 hour of paid sick time for every 30 hours spent completing requests for transportation or delivery.

The proposed law would require rideshare and delivery companies to purchase accident insurance for drivers who are injured or killed while fulfilling or accepting requests and not engaging in personal activities.

The proposed law would prohibit rideshare and delivery companies from terminating the contract of a driver, or refusing to contract with a driver, based on race, sex, sexual orientation, or other protected characteristics unless based upon a bona fide occupational qualification or a safety need. Companies would be required to provide a driver who is terminated with an opportunity to appeal their termination.

EXHIBIT E

The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Elections Division

December 22, 2021

Christina M. Ellis-Hibbet
563 Ashmont Street
Boston, MA 02122

Dear Ms. Ellis-Hibbet:

I am writing to you as the first of the original ten signers of "A Law Defining and Regulating the Contract-Based Relationship Between Network Companies and App-Based Drivers (Version A)." As you are aware, 80,239 certified signatures are required to qualify an initiative petition for a law to be transmitted to the General Court. I am pleased to inform you that 101,738 certified signatures of the 106,395 received by this Office on or before December 1, 2021, have been allowed. The remaining signatures have been disallowed for not being certified, not in conformance with the interpretation of G. L. c. 53, § 22A as set forth in Walsh v. Secretary of the Commonwealth, 430 Mass. 103 (1999), and Hurst v. State Ballot Law Commission, 427 Mass. 825 (1998), or in excess in the allowed number per county. The breakdown is as follows:

County	Total Filed	ALLOWED	DISQUALIFIED[1]	UNCERTIFIED[2]	COUNTY EXCESS[3]
Barnstable	6,143	6,031	97	15	0
Berkshire	1,893	1,844	42	7	0
Bristol	11,804	11,547	243	14	0
Dukes	15	15	0	0	0
Essex	15,062	14,329	671	62	0
Franklin	2,051	1,864	186	1	0
Hampden	4,454	4,356	93	5	0
Hampshire	3,440	3,339	60	41	0
Middlesex	19,397	18,898	451	48	0
Nantucket	0	0	0	0	0
Norfolk	6,557	6,278	243	36	0
Plymouth	10,498	10,205	266	27	0
Suffolk	3,027	2,972	55	0	0
Worcester	22,054	20,060	583	18	1,393
TOTAL	106,395	101,738	2,990	274	1,393

One Ashburton Place, 17th Floor, Boston, Massachusetts 02108
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website: www.sec.state.ma.us/ele • e-mail: elections@sec.state.ma.us

Therefore, the initiative petition will be transmitted to the Clerk of the House of Representatives, as required by the Constitution.

Very truly yours,

Michelle K. Tassinari
Director/Legal Counsel
Elections Division

cc: Meredith Fierro

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[1] "Disqualified" refers to signatures on petitions that were not "exact" copies or that contained any extraneous markings such as highlighting, underlining, or other information, which do not meet the requirements of G. L. c. 53, § 22A as set forth in Walsh v. Secretary of the Commonwealth, 430 Mass. 103 (1999), and Hurst v. State Ballot Law Commission, 427 Mass. 825 (1998).

[2] "Uncertified" refers to signatures on petitions that are not signed by at least three registrars of voters or election commissioners as required by 950 C.M.R. § 55.02(7).

[3] "County Excess" refers to the number of signatures in that county that exceed one-quarter of the total number of certified signatures required for transmission. The maximum number of allowable certified signatures per county is 20,060.

EXHIBIT F

The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Elections Division

December 22, 2021

Christina M. Ellis-Hibbet
563 Ashmont Street
Boston, MA 02122

Dear Ms. Ellis-Hibbet:

I am writing to you as the first of the original ten signers of "A Law Defining and Regulating the Contract-Based Relationship Between Network Companies and App-Based Drivers (Version B)." As you are aware, 80,239 certified signatures are required to qualify an initiative petition for a law to be transmitted to the General Court. I am pleased to inform you that 100,692 certified signatures of the 104,299 received by this Office on or before December 1, 2021, have been allowed. The remaining signatures have been disallowed for not being certified, not in conformance with the interpretation of G. L. c. 53, § 22A as set forth in Walsh v. Secretary of the Commonwealth, 430 Mass. 103 (1999), and Hurst v. State Ballot Law Commission, 427 Mass. 825 (1998), or in excess in the allowed number per county. The breakdown is as follows:

County	Total Filed	ALLOWED	DISQUALIFIED[1]	UNCERTIFIED[2]	COUNTY EXCESS[3]
Barnstable	6,138	5,894	240	4	0
Berkshire	1,820	1,750	70	0	0
Bristol	11,774	11,304	456	14	0
Dukes	13	13	0	0	0
Essex	14,382	13,833	512	37	0
Franklin	2,087	1,942	145	0	0
Hampden	4,380	4,242	129	9	0
Hampshire	3,271	3,225	42	4	0
Middlesex	18,979	18,596	332	51	0
Nantucket	0	0	0	0	0
Norfolk	6,599	6,341	130	128	0
Plymouth	10,114	9,880	214	20	0
Suffolk	3,788	3,726	62	0	0
Worcester	20,954	19,946	583	425	0
TOTAL	104,299	100,692	2,915	692	0

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website: www.sec.state.ma.us/ele • e-mail: elections@sec.state.ma.us

Therefore, the initiative petition will be transmitted to the Clerk of the House of Representatives, as required by the Constitution.

Very truly yours,

Michelle K. Tassinari
Director/Legal Counsel
Elections Division

cc: Meredith Fierro

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[1] "Disqualified" refers to signatures on petitions that were not "exact" copies or that contained any extraneous markings such as highlighting, underlining, or other information, which do not meet the requirements of G. L. c. 53, § 22A as set forth in Walsh v. Secretary of the Commonwealth, 430 Mass. 103 (1999), and Hurst v. State Ballot Law Commission, 427 Mass. 825 (1998).

[2] "Uncertified" refers to signatures on petitions that are not signed by at least three registrars of voters or election commissioners as required by 950 C.M.R. § 55.02(7).

[3] "County Excess" refers to the number of signatures in that county that exceed one-quarter of the total number of certified signatures required for transmission. The maximum number of allowable certified signatures per county is 20,060.

INITIATIVE PETITION FOR A CONSTITUTIONAL AMENDMENT TO PROVIDE FOR NO-EXCUSE ABSENTEE VOTING

Be it enacted by the People, and by their authority:
Article XLV of the articles of amendment to the constitution, as amended by Article CV and Article LXXVI of said articles of amendment, is hereby annulled and the following is adopted in place thereof:-

Article XLV. The general court shall have power to provide by law for the manner of voting, in the choice of any officer to be elected or upon any question submitted at an election, by qualified voters of the commonwealth.

I have personally reviewed the final text of this Constitutional Amendment, fully subscribe to its contents, and agree to be one of its original signers.

Name: Michael D'Ortenzio Jr.
Address: 40 Russell Road, Wellesley

Name: Cynthia Buser
Address: 158 Hampshire Rd., Wellesley

Name: Edwina W. Schuler
Address: 27 Washington St. Apt. #347 Wellesley MA 02481

Name: CIMARRON BUSER
Address: 158 HAMPSHIRE RD, WELLESLEY, MA

Name: JOHN G. SCHULER
Address: 27 WASHINGTON ST. APT. 347 WELLESLEY 02481

Name: Elaine M Pipes
Address: 385 Weston, Wellesley

Name: MARY C. SULLIVAN
Address: 7 DEXTER RD WELLESLEY 02482

Name: Helen W Turner
Address: 385 Weston Rd Wellesley

Name: R. RENATE OLSEN
Address: 7 College Rd. Wellesley 02482

Name: Diane R. Hemond
Address: 303 Weston Rd Wellesley MA

SUMMARY OF NO. 21-29

This proposed constitutional amendment would repeal the provision authorizing the Legislature to permit absentee voting only for reasons of absence, physical disability, or religious conflict and would give the Legislature the power to make laws governing voting by qualified voters.

AN ACT ESTABLISHING ADEQUATE FUNDING FOR
RESIDENTS OF MASSACHUSETTS NURSING HOMES

Be it enacted by the People, and by their authority:

SECTION 1. Section 13D of chapter 118E of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

Such rates for nursing homes and rest homes, as defined under section 71 of chapter 111, shall be established as of October 1 of each year. In setting such rates, the executive office shall use as base year costs for rate determination purposes the reported costs of the calendar year not more than 2 years prior to the current rate year, and shall incorporate any audit findings applicable to said base year costs. In calculating rates, the occupancy standard for nursing homes shall be set at the statewide average from the base year. Notwithstanding any other general or special law or regulation to the contrary, the rate that is set for each provider of services, whether funded directly or indirectly by MassHealth, or through any Medicaid replacement plan, shall be sufficient to pay, and such funds shall be used to pay, 100 percent of the allowable cost to providers of caring for patients who are beneficiaries of section 9A of this chapter, and 100 percent of additional allowable costs, and fees and assessments, such as the nursing facility user fee, associated with the implementation of any state or federal law, regulation, or other governmental mandate, all to the extent permissible by the United States Department of Health and Human Services Centers for Medicare and Medicaid Services Centers for Medicare and Medicaid Services, and including the full amount of the annual increase in the applicable market basket index as determined by said Centers for Medicare and Medicaid Services; provided that any additional costs incurred by a provider of services as a result of this paragraph shall be added to the rate for said provider. In addition, each governmental unit shall pay to a provider of services and each state institution shall charge as a provider of health care services, as the case may be, the rates for general health supplies, care and rehabilitative services and accommodations determined and certified by the executive office. In establishing rates of payment to providers of services, the executive office shall comply with the above methods and standards and shall ensure reimbursement for those costs which are incurred in the ordinary course of business. In calculating rates pursuant to this paragraph, the executive office shall apply 101 CMR 206.00, et seq., in effect as of January 25, 2019, to the extent consistent with this paragraph, which regulation shall not be changed or superseded after January 25, 2019. Rates produced using these methods and standards shall be in conformance with Title XIX of the Federal Social Security Act, including the upper limit on provider payments. This paragraph shall only be amended by a 2/3 vote taken by a call of the yeas and nays of each branch of the general court.

M - CPS-RG-D.G - LL - BS - CK - M.L. - CABN - SS - EB
DMB - CEO - JRM - [illegible]

Signatures: Each of the undersigned has personally reviewed the final text of this Initiative Petition, fully subscribes to its contents, and agrees to be one of the original signers of the petition.

SIGNATURE	PRINT NAME	ADDRESS
	RICHARD JASIAK	18 GRANITE ST HAVERHILL METHUEN
Charles P Samra	CHARLES SAMRA	395 MERRIMACK ST
	Ryan Gagne	7 Coachman LN Methuen
Diane Gagne	Diane Gagne	7 Coachman Lane Methuen, MA 01844
	Lisa Lannon	8 Arrowwood St Methuen, MA
Barbara Sirois	Barbara Sirois	9 BRANDON RD Haverhill MA
Charles Kolofoles	CHARLES KOLOFOLES	33 AMES ST LAWRENCE, MA
	MICHAEL F. LUPI	21 MACON AVE. HAVERHILL, MA
Clement J Bonanno Jr	CLEMENT J BONANNO JR	66 BONANNO CT METHUEN MA.
Stephanie Santamaria	Stephanie Santamaria	70 A Bonanno Ct Methuen MA
	Erika Bonanno	70A Bonanno Ct Methuen MA
Deanna M Milone Bonanno	Deanna Milone Bonanno	66 Bonanno Ct Methuen Ma
Everest E Olenio	Everest E. Olenio	1 Macon Ave. Haverhill Mass.
	JAMIE MORRIS	10 Old Amesbury Ln Bx. Haverhill, MA 01830
	Robert W. Woodcock	130 Pearl St. North Andover, MA 01845

SUMMARY OF NO. 19-11

This proposed law would change how reimbursement rates for nursing homes and rest homes paid by the state are established by the state Executive Office of Health and Human Services.

The proposed law would require the Executive Office to use historical costs from a "base year" not more than two years before the current year in calculating a provider's reimbursement rates. The proposed law would eliminate the Executive Office's ability to make adjustments for reasonableness, remove the current restriction against providers using costs from years other than the chosen base year to appeal the reimbursement rates established by the Executive Office, and set the occupancy standard for nursing homes used in calculating a nursing home's reimbursement rate as the statewide average from the base year.

The proposed law would require that the rates set for each provider be sufficient to pay all allowable costs of caring for beneficiaries of the state's MassHealth program and all allowable costs of implementation of any state or federal law, regulation, or other governmental mandate to the extent permissible by the United States Department of Health and Human Services Centers for Medicare and Medicaid Services. Any additional costs incurred by a provider as a result of the rate-setting process established by the proposed law would also be

included in that provider's rate.

The proposed law would require the Executive Office, in compliance with the methods and standards described above, to determine and certify rates for general health supplies, care, rehabilitative services, and accommodations incurred in the ordinary course of running a facility.

The proposed law would require that the Executive Office apply the regulations governing the calculation of nursing home rates in effect on January 25, 2019, to the extent that those regulations are consistent with the proposed law, when establishing rates for the covered facilities.

The proposed law could be amended only by a two-thirds roll-call vote of the Legislature.

[AG Petition # 01-09]

PETITION FOR A CONSTITUTIONAL AMENDMENT RELATIVE TO

THE PROTECTION OF MARRIAGE

The Constitution of the Commonwealth of Massachusetts shall be amended by adding to the articles of amendment thereto the following article:--

> It being the public policy of this Commonwealth to protect the unique relationship of marriage in order to promote, among other goals, the stability and welfare of society and the best interests of children, only the union of one man and one woman shall be valid or recognized as a marriage in Massachusetts. Any other relationship shall not be recognized as a marriage or its legal equivalent, nor shall it receive the benefits or incidents exclusive to marriage from the Commonwealth, its agencies, departments, authorities, commissions, offices, officials and political subdivisions.

Pursuant to Article 48 of the articles of amendment of the Constitution of the Commonwealth of Massachusetts, as amended by Article 74 of said articles of amendment, the undersigned qualified voters of the Commonwealth of Massachusetts hereby submit the foregoing measure for approval by the people.

Bryan G. Rudnick
45 Charlesbank Way, Apt A
Waltham, MA 02453

Sarah M. Pawlick
26 Bullard Street
Sherborn, MA 01770

Edward P. Kirby
379 Harvard Street
Whitman, MA 02382

Naftoly Bier
63 R Union Street
Brookline, MA 02135

Ira Axelrod
127 Winthrop
Brookline, MA 02445

Joseph J. Reilly, Jr.
202 Ash Street
Waltham, MA 02453

Evelyn T. Reilly
202 Ash Street
Waltham, MA 02453

Joseph R. Nolan
242 Common Street
Belmont, MA 02478

James L. Neal
8 Whittier Place, #3J
Boston, MA 02114

Marshal T. Moriarty
127 Lumae Street
Springfield, MA 01119

Philip F. Lawler
3 Heritage Lane
Lancaster, MA

Jack E. Robinson, III
61 Arborway
Boston, MA

J. Edward Pawlick
26 Bullard Street
Sherborn, MA 01770

Virginia Messmore
371 Washington Street
Norwood, MA 02062

C. Joseph Doyle
175 School Street, #2
Boston, MA

Laurie A. Letourneau
561 South Street
Shrewsbury, MA 01545
01824

Rebecca Nicol Jackson
77 Upland Road
Waltham, MA 02451

Sandra B. Martinez
1 Carter Drive
Chelmsford, MA

Bruce Hall
18 Old Meadow Rd
Dover, MA 02030

Thomas Duggan, Jr.
21 Brookfield Street
Lawrence, MA 01843

SUMMARY OF NO. 01-09

This proposed constitutional amendment would add to the state Constitution a provision that only the union of one man and one woman shall be valid or recognized as a marriage in Massachusetts. It would prohibit any other relationship from either (1) receiving the benefits or incidents exclusive to marriage from the state or from any of its authorities, cities or towns, or other political subdivisions; or (2) being recognized as a marriage or its legal equivalent. The proposed amendment would also declare the state's public policy to be that marriage is a unique relationship and is to be protected in order to promote the stability and welfare of society and the best interests of children.