COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
SJC-13237

MARTIN EL KOUSSA, ET AL.,
Plaintiffs-Appellants,

v.

MAURA HEALEY, in her official capacity as the Attorney General of the Commonwealth of Massachusetts, and

WILLIAM F. GALVIN, in his official capacity as the Secretary of the Commonwealth of Massachusetts,
Defendants-Appellees, and

CHRISTINA M. ELLIS-HIBBET, ET AL.,
Intervenor Defendants-Appellees.

ON RESERVATION AND REPORT FROM THE SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY, NO. SJ-2022-0023

BRIEF OF INTERVENOR-DEFENDANTS

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April 6, 2022

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I. QUESTIONS PRESENTED

(1) Whether the Attorney General correctly certified that the proposed laws satisfy Article 48's relatedness requirement, where each of their provisions operationally relate to a common purpose of establishing a new worker classification that defines and regulates the contract-based relationship between Network Companies and App-Based Drivers.

(2) Whether the Attorney General's summaries of the Petitions are fair and concise where the summaries correctly describe the main features of the Petitions and are complete and not misleading.

II. STATEMENT OF THE CASE

Article 48 allows ten voters to propose initiative petitions that, when supported by the requisite number of signatures, are presented to the voters of the Commonwealth on the state election ballot. It is a "firmly established principle that Art. 48 is to be construed to support the people's prerogative to initiate and adopt laws." *Yankee Atomic Elec. Co. v. Secretary of the Commonwealth*, 403 Mass. 203, 211 (1988) (citing *Buckley v. Secretary of the Commonwealth*, 371 Mass. 195, 199 (1976)). Once the Attorney General certifies that an initiative petition complies with Article 48's procedural requirements, does not pertain to a constitutionally specified list of prohibited topics, and contains only subjects that are related or

mutually dependent, the Attorney General prepares "a fair, concise summary . . . of the proposed measure." Art. 48, The Initiative, II, § 3, as amended by art. 74, § 3.

Intervenor Defendant-Appellees (the "Original Signers"), all registered voters in the Commonwealth, proposed two similar initiative petitions both titled "A Law Defining and Regulating the Contract-Based Relationship Between Network Companies and App-Based Drivers," designated by the Attorney General as Initiative Petitions 21-11 and 21-12 (the "Petitions").[1] Record Appendix ("R.A.") at 0010-0038. The Petitions would create a new, free-standing comprehensive statutory scheme that defines and regulates the legal relationship between transportation network companies and delivery network companies (collectively, "Network Companies") and the drivers who use those companies' technology platforms ("App-Based Drivers"). While the Petitions include several sections, each section furthers a single common purpose: defining and regulating this new statutory worker classification for this specific and narrowly-defined set of workers.

[1] All parties agree that the minor differences between the Petitions are not material to whether the Petitions comply with Article 48. *See* Plaintiffs' Brief (*hereinafter* "Pl. Br.") at 12, n.1. For this reason, this brief will refer to the Petitions collectively. For ease of reference, this brief will adopt the convention used by Plaintiffs and reference the section numbers in Petition 21-11.

The Attorney General correctly certified that the Petitions comply with Article 48. The Original Signers and other proponents of the measure then obtained more than the 80,239 signatures required to place the Petitions before the General Court. If the General Court does not pass the proposed laws by the first Wednesday in May, and the Original Signers and other proponents are able to collect the signatures of an additional 13,374 registered voters by July 6, the Secretary of the Commonwealth will place the questions on the 2022 General Election ballot and the citizens of Massachusetts will vote on the merits of the proposals.

Plaintiffs challenge the Attorney General's certification of the Petitions on two grounds: first, that the Petitions contain subjects that are neither related nor mutually dependent, and second, that the Attorney General's summaries of the Petitions are unfair. Plaintiffs are wrong in both respects under well-established precedent.

With respect to the first argument, Plaintiffs disregard the common purpose of the Petitions' provisions — plain on the Petitions' face — which is to define the legal contours of a new statutory worker classification unique to App-Based Drivers. With respect to the second argument, Plaintiffs demand that the summaries be phrased in a manner that prejudges the outcome of pending litigation in the Superior Court (in which the Attorney General has alleged that App-Based Drivers for two Network Companies should be classified as employees under

current law),[2] rather than neutrally summarize what the Petitions actually propose. Neither position has merit. The Petitions comply with the requirements of Article 48, and the Attorney General's certification decision and summaries should be upheld.

A. Statement of the Facts

1. Background

a. Network Companies and App-Based Drivers

The Petitions would define and regulate the contract-based legal relationship between Network Companies and App-Based Drivers. Network Companies are technology companies (whether Transportation Network Companies ("TNCs") or Delivery Network Companies ("DNCs")), that use smartphone applications ("apps") to connect users of those apps to one another. Specifically, TNCs connect individuals seeking rides to other individuals who can provide pre-arranged transportation; similarly, DNCs connect individuals seeking the delivery of goods to other individuals who can deliver those goods. These apps connect supply-side drivers with demand-side users (*e.g.*, riders who use a TNC; users who order food delivery via a DNC's app), thereby reducing transaction costs that may otherwise hinder an exchange. Network Companies do not *themselves* provide any of the

[2] *Attorney Gen. v. Uber Tech., Inc.*, Mass. Sup. Ct., No. 2084CV01519-BLS1 (2020).

transportation or delivery services offered on their respective technology platforms.

Network Companies have been operating in the United States for over a decade. Since their introduction, the industry has grown rapidly. In 2015 alone, 217,000 workers began using TNC apps to operate as App-Based Drivers.[3] DNCs have seen substantial growth as well, with approximately 40.6 million people using DNC services in 2017 and an increase to well over 66 million users in 2022.[4]

App-Based Drivers have substantial flexibility in determining when they want to work.[5] App-Based Drivers are able to set their own schedule, which they can "adapt on an hour-by-hour basis to changes in demands on [their] time."[6] App-Based Drivers also have broad autonomy over where they work and the ability to work as much or as little as they want. For example, App-Based Drivers are free to choose not to take a particular ride if it will take them far from their homes when they are planning on finishing work soon. As a result, individuals who highly value

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[3] Ian Hathaway & Mark Muro, *Ridesharing Hits Hyper-Growth*, Brookings (https://www.brookings.edu/blog/the-avenue/2017/06/01/ridesharing-hits-hyper-growth/).
[4] *Number of Users Forecast for the Online Food Delivery Market in United States from 2017 to 2024*, Statista (https://www.statista.com/forecasts/891084/online-food-delivery-users-by-segment-in-united-states).
[5] Keith Chen, et. al., *The Value of Flexible Work: Evidence from Uber Drivers*, Working Paper 23296, National Bureau of Economic Research, at 11 (https://www.nber.org/papers/w23296).
[6] *Id.* at 44.

flexibility — including busy parents, students, retirees, or small business owners — are attracted to the types of opportunities found on Network Company platforms.[7, 8]

b. Current Worker Classification Status of Drivers

Since Network Companies began operating in Massachusetts in 2011,[9] App-Based Drivers have been independent contractors. Drivers sign agreements with Network Companies permitting them to access a Network Company's technology platform, facilitating the App-Based Driver's ability to connect with and provide service to the App-Based Driver's customers. For instance, App-Based Drivers who use Uber's technology platform agree to the Platform Access Agreement ("PAA"), which states that Uber is not "hiring or engaging [the App-Based Driver]

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[7] *Id.* at 45.

[8] In their opening brief, Plaintiffs make a series of misleading accusations about the practices and safety of Network Companies. *See* Pl. Br., at 17-22. Not only do these allegations lack merit, they are also wholly irrelevant to the question of whether the Petitions comply with Article 48, as evidenced by the Plaintiffs' failure to raise any of these assertions in their argument. For example, Plaintiffs discuss a variety of torts—including sexual assault, fatal motor vehicle crashes, and fatal physical assaults—that Uber and Lyft report on in their safety reports. *See* Pl. Brief, at 19-20. Plaintiffs conveniently omit the fact that such critical safety incidents occurred in a tiny fraction of total rides (0.0003% of all rides for Uber, and in 0.0002% of all rides for Lyft). *See* Uber, Inc., *2017-2018 U.S. Safety* Report, (https://www.uber.com/us/en/about/reports/us-safety-report/); Lyft, Inc., *Community Safety Report* and *Appendix* (https://www.lyft.com/blog/posts/lyfts-community-safety-report).

[9] 4 Years Moving Boston, *Uber Blog* (https://www.uber.com/blog/boston/4-years-moving-boston/) (stating that Uber launched in October 2011 in Massachusetts).

to provide any service," but rather the App-Based Driver is "engaging [Uber] to provide [the App-Based Driver] access to [the technology platform]," so that the App-Based Driver may engage in the "separate and distinct business enterprise" of transporting passengers who use Uber.[10]

Again, it is crucial to emphasize that Network Companies are technology companies, not transportation or delivery companies. They do not direct or control App-Based Drivers. Network Companies do not decide when, where, or whether an App-Based Driver will use a Network Company's platform to find potential customers. Nor do Network Companies provide transportation or delivery services using the technology platform. App-Based Drivers are not obligated to accept any minimum number of rides or deliveries to access a Network Company's technology platform.[11] App-Based Drivers are free to decide, on a minute-by-minute basis, when, where, and whether to use a Network Company's platform.

Independent contractor status enables App-Based Drivers to maintain broad freedom and flexibility to control when they work using a Network Company's

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[10] PAA, § 1.1 (https://tb-static.uber.com/prod/reddog/country/UnitedStates/licensed/f5f1f4a9-4e6d-4810-8aa3-21b663290294.pdf).

[11] *See* U.S. Chamber of Commerce, Employment Policy Division, *Ready, Fire, Aim: How State Regulators are Threatening the Gig Economy and Millions of Workers and Consumers*, at 12-13 (https://www.uschamber.com/assets/documents/ready_fire_aim_report_on_the_gig_economy.pdf).

platform.[12] As independent contractors, App-Based Drivers can optimize their schedules and choose to work during periods of high demand for their services, while employees work according to schedules set by their employers.

Unfortunately, current law discourages Network Companies from offering guaranteed minimum compensation or benefits to App-Based Drivers, as doing so would undermine the independent contractor relationship. Under current Massachusetts law, when a company offers a worker such benefits, those benefits are treated as evidence of an employment relationship, and as evidence *against* independent contractor status.[13] The Petitions would leave behind this either/or dichotomy and create an entirely new statutory worker classification in Massachusetts law, under which App-Based Drivers would remain independent contractors *and* obtain guaranteed minimum compensation and benefits.

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[12] Chen, *supra* n.3 ("While traditional workplaces do compete to provide flexibility to workers, the literature suggests that lower-wage, lower-skill workers typically have limited ability to respond to everyday shocks.").

[13] *See An Advisory from the Attorney General's Fair Labor Division on M.G.L. c. 149, § 148B 2008/1*, at 5 (https://www.mass.gov/doc/attorney-generals-advisory-on-the-independent-contractor-law/download); *IRS Guidelines, Employer's Supplemental Tax Guide, 2022 Pub. 15-A*, at 7 (https://www.irs.gov/pub/irs-pdf/p15a.pdf).

c. Pending Superior Court Litigation

In July 2020, the Attorney General filed a complaint in Suffolk Superior Court against two TNCs, Uber Technologies, Inc. ("Uber") and Lyft, Inc. ("Lyft") seeking declaratory judgment that drivers utilizing those companies' technology platforms are employees under G.L. c. 149, § 148B (and other state employment laws) and seeking an injunction requiring Uber and Lyft to classify those drivers as employees for purposes of the Massachusetts wage and hour laws. *See Attorney Gen. v. Uber Tech., Inc.*, Mass. Sup. Ct., No. 2084CV01519-BLS1 (2020). This case remains pending before the Superior Court. In January 2022, the Superior Court granted a motion pursuant to Mass. R. Civ. P. 56(f) by Uber and Lyft to continue discovery in the face of a premature summary judgment motion filed by the Attorney General. On March 30, 2022, the parties submitted a joint motion requesting a deadline of October 21, 2022 for either party to file a motion for summary judgment. Any ruling by the Superior Court on the merits is not expected to occur in that case until after the deadline for the Secretary to publish the Information for Voters Guide.[14]

[14] The Secretary must publish the Information for Voters Guide preceding the election. The Information for Voters Guide includes information for each ballot question that will be presented to the voters in the upcoming election, including the full text of the petition, the summary, and a statement regarding the results of a

2. Procedural History

On August 4, 2021, the Original Signers submitted the Petitions to the Attorney General, who numbered them as Initiative Petitions 21-11 and 21-12 respectively. On September 1, 2021, the Attorney General certified that the Petitions were in the proper form for submission to the people and met the requirements under Article 48. The Attorney General prepared summaries of the Petitions, and the Secretary of the Commonwealth subsequently prepared and distributed blank signature forms. The Original Signers and other proponents of the Petitions collected more than the 80,239 signatures required to place a question on the state election ballot and filed those certified petitions with the Secretary on or before December 1, 2021. If the Original Signers submit sufficient additional signatures to the Secretary by July 6, 2022, the Secretary will include the proposed law in the Information for Voters Guide and print the Petition on the ballot for presentation to the voters of Massachusetts this November.

Plaintiffs, registered voters in the Commonwealth of Massachusetts, commenced this action in the Supreme Judicial Court for Suffolk County. The complaint sought relief in the nature of certiorari and mandamus to quash the

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"yes" vote and a "no" vote. *See* Art. 48, General Provisions, IV, as amended by Art. 108; G. L. c. 54, §§ 53, 54.

Attorney General's certification of the Petitions, to declare the Attorney General's summaries of the Petitions invalid, and to enjoin the Secretary from placing the Petitions on the 2022 statewide ballot. On February 9, 2022, the Original Signers filed an unopposed Motion to Intervene. On March 2, 2022, on a joint motion and agreed statement of facts, the Single Justice reserved and reported the case for consideration by the full Court.

3. Substance of the Petitions

The Petitions would define and regulate the contract-based relationship between App-Based Drivers and Network Companies by establishing a new statutory worker classification for App-Based Drivers. The legal rights and obligations of the Network Companies and the App-Based Drivers to each other would be set forth in a new Chapter 159AA in the General Laws. The Petitions would not amend G.L. c. 149, §148B, or any other current laws in the Commonwealth.

Section 1 establishes the chapter's title, the "Relationship Between Network Companies and App-Based Drivers Act." Section 2 provides the chapter's purpose: "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 which will operate uniformly

throughout Massachusetts and guarantee App-Based Drivers the freedom and flexibility to choose when, where, how, and for whom they work."

Section 3 establishes defined terms. The Petitions limit their scope of applicability by adopting a clear and specific definition of an "App-Based Driver." App-Based Drivers are defined as DNC couriers or TNC drivers who meet each of the following four conditions:

> (1) the network company does not unilaterally prescribe specific dates, times, or a minimum number of hours during which the driver must be logged into the network company's online platform;
>
> (2) the network company may not terminate the contract of the driver for not accepting a specific transportation or delivery service request;
>
> (3) the network company does not prohibit the driver from performing services through other network companies except while the driver is performing services through the network company's online platform;
>
> (4) the network company does not contractually restrict the driver from working in any other lawful occupation or business.

Individuals who meet this definition are 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."

The balance of the new Chapter 159AA establishes the legal rights and obligations that are integral to defining the scope of the new statutory worker classification for App-Based Drivers. Section 4 requires Network Companies to pay App-Based Drivers to attend mandatory occupational safety trainings.[15] Under this section, Network Companies must provide training regarding recognition and prevention of sexual assault and other misconduct; collision avoidance, defensive driving, and identification of collision-causing elements for App-Based Drivers using private passenger motor vehicles; and food safety information for App-Based Drivers delivering prepared food or groceries.

Section 5 creates a guaranteed earnings floor for App-Based Drivers. App-Based Drivers would be guaranteed to earn at least an amount equal to 120 percent of the minimum wage for all engaged time, plus a per-mile compensation amount. The per-mile compensation amount is set at 26 cents per engaged mile in 2023 and adjusted for inflation every five years.

Sections 6 through 8 allow App-Based Drivers to qualify for certain benefits. Section 6 requires Network Companies to provide App-Based Drivers who work a specified number of hours each quarter with a healthcare stipend to enroll in plans on the Commonwealth's Health Connector. Section 7 requires

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[15] Section 4 is only included in Petition 21-11. *See supra* note 1.

Network Companies to provide earned paid sick time to App-Based Drivers, and Section 8 entitles App-Based Drivers to paid family and medical leave under G.L. c. 175M.

Section 9 mandates that Network Companies purchase occupational accident insurance for all App-Based Drivers. These policies are required to cover medical expenses and lost income resulting from injuries suffered while the App-Based Driver is online with a Network Company's technology platform.[16] Network Companies will be required to file a copy of each policy with the Division of Insurance annually.

Section 10 addresses contract formation and termination between Network Companies and App-Based Drivers, providing App-Based Drivers rights of appeal and prohibiting discrimination in contracting based on numerous protected classes already recognized under Massachusetts laws. Section 11 addresses the interpretation of the proposed chapter and provides that compliance with the proposed law will not be interpreted or applied, directly or indirectly, in a manner that treats Network Companies as employers of App-Based Drivers, nor in a way that treats App-Based Drivers as employees of Network Companies. Parties

[16] App-Based Drivers are necessarily online with a Network Company's technology platform when engaged in passenger transport or delivery activities.

seeking to establish that a person is not an App-Based Driver bear the burden of proof. Section 12 sets the effective date.

III. SUMMARY OF ARGUMENT

The Attorney General correctly certified that the Petitions contain only subjects that are related or mutually dependent. Art. 48, The Initiative, II, § 3. Article 48's relatedness requirement is met where each of an initiative's provisions share a common purpose, *i.e.*, where the "similarities of an initiative's provisions dominate what each segment provides separately" and the petition expresses "an operational relatedness among its substantive parts. . . ." *Weiner v. Attorney Gen.*, 484 Mass. 687, 691-92 (2020). Here, all provisions of the Petitions share a common purpose: defining and regulating the scope of the legal relationship between Network Companies and App-Based Drivers by creating a new statutory worker classification for App-Based Drivers. All of the Petitions' provisions are elements of this comprehensive statutory scheme. Specifically, any person who meets the definition of an App-Based Driver would retain the flexibility of being an independent contractor, while also being entitled to guaranteed minimum compensation, benefits, and training from the Network Company. The Petitions satisfy Article 48's relatedness requirement because each provision is operationally related to this single integrated statutory scheme. (p. 25-33).

Plaintiffs raise three relatedness objections, but fail to identify any provisions that do *not* further the Petitions' common purpose.

First, Plaintiffs argue that the Petitions do not satisfy Article 48's relatedness requirement because a guaranteed earnings floor and benefits are not mutually dependent upon whether an App-Based Driver is an independent contractor. However, it is not only reasonable, but arguably essential, that any new comprehensive worker classification articulate the central rights and obligations of the parties within that relationship. Plaintiffs' contention amounts to an assertion that voters must be forced to vote piecemeal on each of the Petitions' provisions, despite the Court's previous express rejections of that theory. *Anderson* expressly establishes that a petition's provisions need only be operationally related to one another, *not* that they must also be mutually dependent. Plaintiffs' repeated assertion to the contrary is simply not the law.

Moreover, Plaintiffs contend that voters are improperly being asked to decide three questions: first, whether App-Based Drivers should be classified as independent contractors; second, whether App-Based Drivers should receive minimum compensation; and third, whether App-Based Drivers should receive benefits. This argument fails to recognize that the Petitions ask voters to make only *one* decision: whether to create a new worker classification ("App-Based Driver") with new legal rights and obligations. (p. 33-37).

Second, Plaintiffs argue that the Petitions contain unrelated subjects because the proposed law may affect civil tort relationships between Network Companies and the public, not just the relationship between Network Companies and App-Based Drivers. Neither the stated purpose nor content of the proposed laws evince any such intent. Moreover, any incidental impact on the general public from the passage of the Petitions arises solely from the common purpose of establishing the legal relationship between Network Companies and App-Based Drivers. Contrary to Plaintiffs' assertion, the Court has repeatedly held that a provision's potential ancillary effects on other areas of the law do not mean that the provision itself is not germane to the petition's common purpose. (p. 37-42).

Third, Plaintiffs argue that the Petitions regulate the relationship between the Commonwealth and its citizens by "proposing to amend" the Massachusetts Paid Family and Medical Leave Act ("PFMLA"). The Petitions do not amend the PFMLA. Further, regulating when and how Network Companies will make PFMLA payments for the benefit of App-Based Drivers furthers the Petitions' common purpose of establishing the rights and responsibilities of the parties within the new worker classification for App-Based Drivers. (p. 42-44).

Article 48 also requires that the Attorney General prepare a "fair, concise summary" of initiative petitions. Art. 48, the Initiative, II, § 3, as amended by Art. 74, § 3. A summary is fair if it gives the voter a fair and intelligent conception of

the main outlines of the proposed measure. Here, the Attorney General's summaries of the Petitions are fair and concise because they provide sufficiently complete descriptions of the main features of the measures and are not incomplete or misleading. (p. 44-46).

Plaintiffs' argument that the summaries are insufficient because they do not describe the existing independent contractor statute fails because (1) neither Article 48, as amended, nor any binding precedent requires the Attorney General to summarize existing law (p. 46-50), and (2) the changes Plaintiffs demand mischaracterize existing law, and therefore would be improper to include in the summary in any event. (p. 50-53). Plaintiffs' policy advocacy for the binary classification system in G.L. c. 149, § 148B may have its place in the Information for Voters Guide to be issued in accordance with G.L. c. 54, § 53, but not within the neutral summaries themselves. (p. 46-53).

IV. ARGUMENT

A. The Attorney General Correctly Determined that the Petitions Meet Article 48's Relatedness Requirement.

1. Article 48's Relatedness Requirement Permits Voters to Propose New Laws Where a Common Purpose Dominates an Initiative with Multiple Provisions.

Article 48 requires initiative petitions to contain only those subjects that are "related or which are mutually dependent." Mass. Const., Art. 48, The Initiative, § 3. The relatedness requirement, however, may not be construed so narrowly as to

"frustrate the ability of voters to use the popular initiative as the people's process to bring important matters of concern directly to the electorate by effectively confining each petition to a single subject." *Hensley v. Attorney Gen.*, 474 Mass. 651, 657 (2016). The delegates to the 1917 constitutional convention that approved Article 48 "permit[ted] more than one subject to be included in a petition," and this Court has not been "so restrictive in the definition of relatedness that [it] effectively eliminate[s] that possibility." *Abdow v. Attorney Gen.*, 468 Mass. 478, 499 (2014). Instead, the "proper approach" to determining relatedness "is to assess what a proposed initiative does in its various aspects or subjects and to determine whether there is a common purpose to which each element is germane, or, at least, to which it cannot rightly be said to be unrelated." *Mass Teachers Ass'n v. Secretary of the Commonwealth*, 384 Mass. 209, 221 (1981).

To determine if subjects share a common purpose, the Court examines whether 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," and whether the petition expresses "an operational relatedness among its substantive parts." *Hensley*, 474 Mass. at 657-58 (quoting *Abdow*, 468 Mass. at 500-01).

Crucially, whether provisions are "mutually dependent" is ***not*** a separate hurdle that a petition must clear provided its provisions survive the relatedness

inquiry. This Court has been crystal clear that "operationally related subjects need not be mutually dependent." *Anderson v. Attorney Gen.*, 479 Mass. 780, 792 (2018). The delegates to the constitutional convention that adopted Article 48 added the words "or which are mutually dependent" to the relatedness requirement in order to assist the Attorney General and the court "to examine a petition to determine if its core purpose 'dominate[s] what each segment provides separately.'" *Id.* at 793.

Significantly, the legal proposition upon which Plaintiffs base their case — that this Court in *Anderson* "conclude[ed] that the subjects of an initiative must be *both* 'related' *and* 'mutually dependent' on each other" (Pl. Br. at 30, emphasis in original) — is not only misleading, but is outright wrong. *Anderson* stands for the unremarkable proposition that construing the phrase "'or which are mutually dependent' as *eliminating* the requirement of relatedness" would be improper, 479 Mass. at 793 (emphasis supplied) — in other words, even if subjects are mutually dependent, they must also be related to pass constitutional muster. Yet *Anderson* did *not* make the reciprocal holding – that related subjects must *also* be mutually dependent. Contrary to Plaintiffs' assertion, *Anderson* stated the exact opposite: "[O]perationally related subjects need not be mutually dependent." *Id*. at 792. The Court then reaffirmed this rule just two years ago in *Weiner* (484 Mass. at 692-93).

The Court should not countenance Plaintiffs' mischaracterization of the controlling legal standard.

Hensley illustrates how the Court implements the relatedness inquiry in practice. In *Hensley*, the petitioners sought to legalize adult use marijuana, regulate the commercial distribution of marijuana, and tax the retail sale of marijuana. As part of that petition, the proposed law would have permitted existing medical marijuana treatment centers already operating under pre-existing state law to begin to operate adult use facilities in the same location.

The *Hensley* plaintiffs argued that the petition contained two unrelated subjects — "the legalization of marijuana for adult use and a change in the restrictions on medical marijuana treatment centers." *Hensley*, 474 Mass. at 656. The Court rejected that argument, holding that the participation of medical marijuana treatment centers in the commercial distribution of marijuana was one piece of the "proposed integrated scheme" with a common purpose to "legalize marijuana (with limits) for adult use and to create a system that would license and regulate the business involved . . . ." *Id.* at 658. The Court reasoned that a measure "does not fail the relatedness requirement just because it affects more than one statute, as long as the provisions of the petition are related by a common purpose." *Id.* at 659 (*quoting Albano v. Attorney Gen.*, 437 Mass. 156, 161 (2002)).

Further, the Court held that while drafters of the *Hensley* petition could have chosen to prohibit existing medical marijuana treatment centers from also obtaining an adult use license, that drafting choice did "not affect the coherence of the proposal as a unified statement of public policy that is a proper subject for a 'yes' or 'no' vote." *Id.* Voters who favored the legalization of marijuana but not the participation in the retail market of entities registered as medical marijuana treatment centers were free to vote "no" if they thought that the dangers of mixing medical marijuana distribution with retail distribution outweighed the benefits of the proposal, but the proposed act did not place anyone "in the untenable position of casting a single vote on two or more *dissimilar* subjects." *Id.* (emphasis in original). Thus, the petition "easily satisfie[d] the related subjects requirement." *Id.* at 658.

Similarly, in *Weiner* the petitioners sought to create a "new type of liquor license" allowing the sale of wine and malt beverages by retail food stores for off-premises consumption, eliminate the per-entity limit on off-premises licenses, add new age verification requirements for all liquor stores, and increase funding for enforcement of laws concerning alcoholic beverages. 484 Mass. at 689-90. Plaintiffs argued that the age verification requirements and funding for enforcement were unrelated to the creation of new liquor licenses, but the Court disagreed. Instead, the Court concluded that each of these provisions related to the

common purpose of "lifting . . . restrictions on the number and allocation of licenses for the retail sale of alcoholic beverages. . . ." *Weiner*, 484 Mass. at 692. While the drafters of the *Weiner* petition could have chosen to allow for new liquor licenses for food stores without adding the new age verification requirements for all liquor stores and increasing funding for enforcement, the age verification and funding requirements permissibly "anticipate[d] and address[ed] a potential consequence" of the petition's common purpose. *Id*. For this reason, the age verification and enforcement provisions were "operationally related" to the other provisions. *Id.* at 692-93.

2. Each of the Petitions' Provisions Relate to the Common Purpose of Defining and Regulating a New Worker Classification for App-Based Drivers.

The Petitions would define and regulate the legal relationship between Network Companies and App-Based Drivers by establishing a new statutory worker classification for App-Based Drivers. Specifically, a person who meets the Petitions' definition of an App-Based Driver will be "an independent contractor and not an employee or agent" and entitled to specific rights, including guaranteed minimum compensation and benefits. This new worker classification allows App-Based Drivers to receive benefits they would not otherwise receive if classified as independent contractors under the current independent contractor/employee dichotomy.

The Petitions satisfy Article 48's relatedness requirement for the same reason this Court concluded that the petition to legalize adult use marijuana passed constitutional muster in *Hensley*: the Petitions' provisions form a "detailed plan . . . to create a system" defining and regulating the scope of a new civil relationship between the Network Companies and App-Based Drivers in the form of a new statutory worker classification. *See Hensley*, 474 Mass. at 659. In Section 3, the Petitions establish who constitutes an App-Based Driver and that App-Based Drivers will be classified as independent contractors. Sections 4 through 10 detail the rights integral to defining the scope of the new integrated statutory worker classification for App-Based Drivers. These provisions address and mitigate various issues that "one might reasonably be" concerned with in defining and regulating a new worker classification: worker training, wages, health insurance, paid sick time, and family and medical leave. *See Weiner*, 484 Mass. at 692 (provisions are related where they address and anticipate foreseeable issues stemming from other areas of other provisions). Defining a new worker classification requires defining what benefits those workers receive. *See* G.L. c. 151 § 1A (exempting different worker classifications from overtime laws); G.L. c. 175M § 1 (defining worker classification of "self-employed individual" for purpose of benefits under the Paid Family Medical Leave Act).

While the Original Signers could have chosen to define the rights and obligations of Network Companies and App-Based Drivers differently, each of the Petitions' provisions is a part of a comprehensive integrated scheme defining this new classification of App-Based Drivers. *See Hensley*, 474 Mass. at 659 ("The fact that the initiative's proponents might have chosen instead to prohibit medical marijuana treatment centers from participation in the retail market does not affect the coherence of the proposal.").

Further, the provisions' common purpose — to establish a new statutory worker classification for App-Based Drivers — "is sufficiently coherent" to "permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy." *Hensley*, 474 Mass. at 658. In *Hensley*, for example, the common purpose was "to control the production and distribution of marijuana under a system that licenses, regulates and taxes the businesses involved in a manner similar to alcohol and to make marijuana legal for adults [twenty-one] years of age or older." 474 Mass. at 653. Under this broadly defined purpose, the petition "easily satisf[ied] the related subjects requirement." *Id.* at 658. Likewise, in *Abdow* and *Mass Teachers*, the Court rejected relatedness challenges claiming overly broad purposes. *See Abdow*, 468 Mass. at 479 (common purpose of defining scope of permissive gaming); *Mass. Teachers Ass'n*, 384 Mass. at 215 (common purpose of limiting taxes).

Here, the scope of the common purpose served by the Petitions is even narrower than those cases: The Petitions create a narrowly-defined classification of App-Based Drivers and establish the legal rights of those App-Based Drivers and the Network Companies within that contractual relationship. This purpose is "sufficiently coherent to be voted on yes or no by the voters[.]" *Abdow*, 468 Mass. at 500.

3. Plaintiffs Fail to Identify Any Provisions that Are Not Related to the Petitions' Common Purpose.

a. What Existing Law Does (or Does Not) Allow is Irrelevant Where the Legal Standard is Operational Relatedness.

Plaintiffs argue that the Petitions fail Article 48's relatedness requirement because whether App-Based Drivers are currently classified as independent contractors is not "mutually dependent" on whether Network Companies pay them guaranteed "minimum compensation and/or minimum benefits." Pl. Br. at 31. As noted, this test is simply not the law: This Court has affirmatively held that "operationally related subjects need not be mutually dependent." *Anderson*, 479 Mass. at 792. Plaintiffs' assertion that a petition does not satisfy Article 48 if its provisions are not also mutually dependent (Pl. Br. at 36) fundamentally mischaracterizes this Court's decisions on relatedness.

Contrary to the incorrect legal standard Plaintiffs wish were applicable, the controlling standard is whether the provisions' similarities dominate what each

segment provides separately. *Hensley*, 474 Mass. at 658; *see also Mass. Teachers Ass'n*, 384 Mass. at 220 ("It is not for courts to say that logically and consistently other matters might have been included or that particular subjects might have been dealt with differently.").

In *Hensley*, for example, the Court held that inclusion of medical marijuana treatment centers as potential commercial retailers was operationally related to the integrated scheme of legalizing and regulating the business of adult use marijuana. 474 Mass. at 658. Notably, the inclusion of medical marijuana treatment centers as potential retailers in the commercial market was not mutually dependent with the legalization of adult-use marijuana: existing medical treatment centers had already been operating without any commercial marijuana sales. The "fact that the initiative's proponents might have chosen instead to prohibit medical marijuana treatment centers from participation in the retail market [did] not affect the coherence of the proposal." *Id.* at 659; *see also Dunn v. Attorney Gen.*, 474 Mass. 675, 682 (2016) (finding the inclusion of pigs, chicken, and calves in a proposed law regarding the treatment of livestock went to the scope of the law, not to whether the subjects were sufficiently related).

Plaintiffs' insistence that *Anderson* holds to the contrary is misplaced. Pl. Br. at 33. In *Anderson*, the petition sought to surtax incomes over $1 million and use that increased revenue to fund education and transportation. The petitioners

asserted that the purported common purpose of the petition was to "set[] a foundation for inclusive growth." *Anderson*, 479 Mass. at 795. Yet regardless of whether the graduated income tax and spending for public education and transportation in *Anderson* were or were not mutually dependent, the Petition in *Anderson* ultimately failed because funding for education and funding for transportation did not relate to a sufficiently definite common purpose. *Id.* at 798. The Court did more than conclude that the purported common purpose between the funding of education and transportation — to "set[] a foundation for inclusive growth" — was too broad. *Id.* at 796. The Court also explicitly rejected the precise argument Plaintiffs make here, that "mutual dependence" is required where subjects *are* operationally related. *See id.* at 792 ("[O]perationally related subjects *need not be mutually dependent*.") (emphasis added).

Plaintiffs' argument that the Petitions' provisions require (but lack) "mutual dependence" not only misreads *Anderson*, but *Weiner* as well. Plaintiffs incorrectly claim that "if receiving guaranteed minimum compensation and or benefits were mutually dependent on Drivers being independent contractors, Network Companies would necessarily offer such compensation and benefits to their Drivers now." Pl. Br. at 32. But whether the Legislature chose to enact similar legislation without some provisions does not evidence a lack of relatedness of those provisions for purposes of Article 48. *See Weiner*, 484 Mass. at 693 ("[W]e

have never held that relatedness is to be evaluated in terms of an initiative's effect on existing law").

Put differently, Plaintiffs fundamentally misconstrue the Petitions. The Petitions do not, as Plaintiffs contend, first classify App-Based Drivers as independent contractors under current law, and then ask voters to decide whether those App-Based Drivers should receive minimum compensation and benefits. Pl. Br. at 34. Instead, the Petitions ask voters to make only *one* decision: whether to create a new civil relationship between the Network Companies and App-Based Drivers in the form of a new statutory worker classification. The Petitions do not amend the existing independent contractor law, but create an entirely new chapter of the General Laws regulating a new specific category of worker.[17]

The particular manner in which the Petitions define rights and obligations that derive from this new classification speaks to the scope of the Petitions, not to the relatedness of their provisions. *See Dunn*, 474 Mass. at 682 (that petitions

[17] Furthermore, what Plaintiffs deride as "sweeteners," Pl. Br. at 34-35, are integral to delineating the new statutory worker classification the Petitions seek to create. Here, the minimum compensation and benefits provisions are intrinsically and necessarily related to the creation of the new worker classification, in which App-Based Drivers are independent contractors guaranteed certain minimum compensation and benefits. The meaning of a new worker classification is derived from the scope of the legal rights it conveys, and the guaranteed earning floor and benefit provisions define those legal rights for App-Based Drivers.

chose to protect three specific species of farm animals "pertains to the scope of the law"). It is of no moment that the Original Signers *could* have drafted the petition to guarantee minimum compensation without offering additional benefits, or vice versa. "[T]he choice as to the scope of an initiative petition is a matter for the petitioners, not the courts." *Abdow*, 468 Mass. at 503.

b. Any Impact on Civil Tort Relationships Between Companies and the Public Is Merely a Downstream Effect of Related Provisions.

Next, Plaintiffs argue that the Petitions contain unrelated subjects because the proposed law may affect not just the relationships between the Network Companies and App-Based Drivers, but also the civil tort relationships between Network Companies and the public. The Plaintiffs make this assertion with respect to two provisions: (1) Section 11, which mandates that compliance with the law shall not be interpreted, directly or indirectly, in a manner that treats App-Based Drivers as employees, and (2) Section 3, which provides that App-Based Drivers are not "agents." Both provisions, however, plainly speak to defining the newly created contractual legal relationship between Network Companies and App-Based Drivers, which is the title, purpose, and subject of the Petitions. While these provisions could also incidentally affect third parties, these incidental effects merely arise from the proposed law's common purpose: to define the contours of

the legal relationship between Network Companies and App-Based Drivers under the new statutory worker classification.

In such circumstances, this Court has consistently held that a measure's provisions are related where the effect on different state laws "arises from" the common purpose. *Albano*, 437 Mass. at 161. "Article 48 requires that the subjects in an initiative be related or mutually dependent on *each other* and says nothing about their relationship to other law." *Weiner*, 484 Mass. at 693 (emphasis in original).

For example, in *Abdow*, petitioners proposed an initiative that would have amended the definition of "illegal gaming" to prohibit casinos, slots parlors, and simulcast greyhound wagering. *Abdow*, 468 Mass. at 483. The petition's opponents argued that the measure failed the relatedness requirement because a change in the definition of "illegal gaming" would have consequences for an assortment of other statutes, including those regulating the relationships between landlords and tenants, and the incorporation of charitable corporations. *Id.* at 503. The Court disagreed, concluding that the petition satisfied the relatedness requirement because the effects on other laws were "logically related" to the petition's common purpose of limiting types of gambling. *Id.* at 504; *see also Albano*, 437 Mass. at 161 ("[a]lthough the plaintiffs list many statutes that may be affected should the

measure be adopted, each statute affected creates a benefit or responsibility that arises from [the legal] status").

Plaintiffs' arguments here fail for the same reasons: both provisions Plaintiffs cite as affecting Network Companies' relationships with third parties are "logically related" to the new worker classification relationship that the petitions establish between Network Companies and App-Based Drivers.

First, Plaintiffs argue that Section 11 is unrelated to the remainder of the provisions because it "indirectly," and thus apparently improperly, regulates the civil relationship between Network Companies and third parties. Pl. Br. at 37-38. Section 11 does nothing of the sort. It merely emphasizes that all provisions of the proposed law establishing the relationship between Network Companies and App-Based Drivers must be construed with internal *consistency*, with no provision to be "directly or indirectly" interpreted as treating Network Companies as employers of App-Based Drivers (or as treating App-Based Drivers as employees of Network Companies). Plaintiffs' attack on the use of the word "notwithstanding" in Section 11(b) is curious, since that provision merely establishes a default rule for statutory interpretation that ensures the Petitions are not themselves superseded by other laws. It cannot reasonably be said that a rule on the interpretation and application of the provisions of the proposed law can be *unrelated* to those very provisions.

By its own terms, Section 11 could only possibly bear "indirectly" on the civil relationship between Network Companies and third parties to the extent a third party's claims turned on the legal relationship the Petitions establish *between the Network Companies and the App-Based Driver*. To the extent that the Petitions have legal consequences for persons other than Network Companies and App-Based Drivers, those follow-on effects arise from and are "logically related" to the Petitions' common purpose. *See Abdow*, 468 Mass. at 503-04 (change in definition of "illegal gaming" satisfied Article 48's relatedness requirement despite resulting consequences for landlord-tenant statute); *Albano*, 437 Mass. at 157-58, 161-62 (rejecting relatedness challenge notwithstanding the potential consequences for the interpretation of various state statutes not being amended by the proposed petition).

Nor does the clause in Section 11 providing that "any party seeking to establish that a person is not an app-based driver bears the burden of proof" stray from the central purpose of the Petitions. Instead, this clause "anticipate[s] and address[es]" a potential consequence of the new worker classification. *Weiner*, 484 Mass. at 692. It is entirely reasonable to anticipate that some individuals may challenge whether they should be classified as App-Based Drivers. Designating a burden of proof in these potential challenges provides operational requirements for implementation of the proposed laws.

Second, Plaintiffs argue that the Petitions evidence an unrelated purpose by providing not only that App-Based Drivers will be affirmatively classified under the new statutory framework as independent contractors, but by also declaring that App-Based Drivers are not "agents" of Network Companies. Pl. Br. at 39-40.Yet once again, whether an App-Based Driver is or is not an agent of the Network Company establishes the nature of the legal relationship between the App-Based Driver and the Network Company. Agency, by its nature, defines the scope of the relationship between the agent and principal. *See Fergus v. Ross*, 477 Mass. 563, 566 (2017) ("an agency relationship is created by express or implied mutual consent that an agent will act on behalf and for the benefit of the principal, and subject to the principal's control."); Restatement (3d) of Agency, § 1.01 ("Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act.").

It is irrelevant for purposes of Article 48 that under current law independent contractors may or may not be agents of the parties to whom they contract depending on the circumstances. *See Weiner*, 484 Mass. at 693 ("[W]e have never held that relatedness is to be evaluated in terms of an initiative's effect on existing law"). Nor is it relevant for relatedness purposes that the nature of the relationship

between App-Based Drivers and Network Companies may have some ancillary effects on third parties. *See Albano*, 437 Mass. at 161; *Dunn*, 474 Mass. at 682 ("ancillary" consequences are of no relevance to determining relatedness) Instead, the Petitions satisfy Article 48's relatedness requirement because whether an App-Based Driver is an agent of a Network Company speaks directly to the nature of the relationship between those two parties.

c. The Petitions' Impacts on the Massachusetts Paid Family and Medical Leave Act are Related to the New Worker Classification for Drivers.

Finally, Plaintiffs argue that by "proposing to amend the [Massachusetts Paid Family and Medical Leave Act ("PFMLA"), G.L. c. 175M], the Proposed Laws . . . seek to regulate the relationship between the Commonwealth and its citizens, not the 'contract-based relationship' between Network Companies and Drivers" and, as such, regulate two unrelated subjects. Pl. Br. at 45. This argument fails for three reasons.

First, and most obviously, the Petitions do *not* in fact amend the PFMLA. If the Petitions pass, the text of G.L. c. 175M will remain unchanged, as will the rights of all citizens who are currently eligible for PFMLA. The Petitions merely define how this new classification of App-Based Drivers fits within the PFMLA.[18]

[18] Under current law, App-Based Drivers do not qualify for benefits under the PFMLA because they are not "required to report payment for services on IRS

Second, as Plaintiffs appear to concede, even if the Petitions did amend the PFMLA, "[a] measure does not fail the relatedness requirement just because it affects more than one statute." *Weiner*, 484 Mass. at 693; Pl. Br. at 28 ("an initiative petition may amend multiple laws"). "Article 48 requires that the subjects in an initiative be related . . . and says nothing about their relationship to other law." *Weiner*, 484 Mass. at 693.

Third, regulating how Network Companies will make PFMLA payments for the benefit of App-Based Drivers furthers the Petitions' common purpose of establishing the rights and responsibilities of the parties within this new worker classification. While these provisions could theoretically incidentally affect "the Commonwealth's relationship," Pl. Br. at 42, with App-Based Drivers, these incidental effects merely arise from the proposed law's common purpose. *See Albano*, 437 Mass. at 158-59. While the PFMLA is administered by the Commonwealth, Section 8 of the Petitions specify when Network Companies are required to make payments in accordance with the PFMLA on an App-Based Driver's behalf. G.L. c. 175M, §§ 6-7. As such, Section 8 is operationally related to the Petitions' common purpose to define and regulate the relationship between

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Form 1099-MISC." G.L. c. 175M, §1. App-Based Drivers are required to use IRS Form 1099-NEC or 1099-K.

the Network Companies and App-Based Drivers. In this way, the Petitions are no different than the petition the Court upheld in *Hensley*, which legalized the commercial sale of marijuana and dictated how the new integrated statutory scheme aligned with the existing regulation of medical marijuana. 474 Mass. at 645, 651.

Further, the benefits that App-Based Drivers will obtain through Section 8 of the Petitions are in the same vein as the guarantee of certain minimum compensation and benefits App-Based Drivers will obtain through Sections 5, 6, and 7. While the Original Signers could have chosen not to make App-Based Drivers eligible for paid leave under the PFMLA, or chosen a different mechanism for how Network Companies make payments under the PFMLA, "[i]t is not for the courts to say that logically and consistently other matters might have been included or that particular subjects might have been dealt with differently." *Mass. Teachers Ass'n*, 384 Mass. at 220.

B. The Attorney General's Summaries are Fair and Concise Because They Provide a Complete Description of the Main Features of the Petitions.

The Attorney General prepared "fair, concise summar[ies]" of the Petitions. Art. 48, The Initiative, II, § 3. A summary is fair if it is not "partisan, colored, argumentative, or in any way one-sided," and is "complete enough to serve its purpose of giving the voter who is asked to sign a petition or who is present in a

polling booth a fair and intelligent conception of the main outlines of the measure." *Sears v. Treasurer & Receiver Gen.*, 327 Mass. 310, 324 (1951). The summaries here meet those requirements.

Article 48 imposes an intentionally relaxed requirement for ballot summaries. The initial version of Article 48, in effect prior to 1944, 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 proposed measure." Article 74 was intended "to relax the requirements which had been found implicit in the word description" and emphasize conciseness. *Bowe v. Secretary of the Commonwealth*, 320 Mass. 230, 243 (1946)*; see also Mass. Teachers Ass'n*, 384 Mass. at 227 ("Economy of language and fairness are now emphasized"). Whether a summary is fair must be "assessed in the context of the entire proposal and its likely impact on the voters." *Mass. Teachers Ass'n*, 384 Mass. at 234.

The Attorney General's summaries clearly describe the main features of the proposed laws. Specifically, the summaries state that the Petitions would (1) define who is considered an App-Based Driver; (2) classify App-Based Drivers as independent contractors; (3) detail the compensation and benefits to which App-

Based Drivers are entitled; and (4) establish other legal protections to be afforded App-Based Drivers. *See* Summary of No. 21-11, R.A. 35; Summary of No. 21-12, R.A. 37. The summary of Petition 21-11 also states that Network Companies would be required to provide App-Based Drivers with mandatory safety training. *See* Summary of No. 21-11, R.A. 35.

Plaintiffs' central complaint is that the summaries do not sufficiently describe the main features of the measure because they do not declare that the Petitions "reverse [the] presumption" that App-Based Drivers are employees. *See* Pl. Br. at 50-51. Plaintiffs' argument fails because (1) the Attorney General is not required to describe the current law in the summary and (2) such a statement would misstate existing law.

1. The Attorney General is Not Required to Describe Existing Law in the Summary.

Plaintiffs first argue that the Attorney General's summaries here are unfair and incomplete because the Attorney General did not describe the existing independent contractor statute or employee minimum wage regulations in the summaries. Pl. Br. at 50-52. Yet the Attorney General is not *required* to describe existing law in the summaries. "[T]he Constitution requires a summary of the proposed measure and not of . . . existing law." *Sears*, 327 Mass. at 325-26. The Attorney General's summary need only present "'a fair and intelligent conception

of the main outlines of the measure.'" *Hensley*, 474 Mass. at 660 (quoting *Sears*, 327 Mass. at 324); *see also Abdow*, 468 Mass. at 505-06.

Plaintiffs' reliance on the Attorney General's summaries of Petitions 19-11, 19-14, 21-29, and the summary at issue in *Abdow* is inapt. First, it does not follow that a summary is unfair simply because it does not track a formula sometimes used in summarizing prior petitions. For any given petition, there is no single way of constructing and phrasing a summary; it is enough that it gives "the voter a fair and intelligent conception of the main outlines of the measure" devoid of partisan coloration. *Sears*, 327 Mass. at 324. Second, the reason the Attorney General referenced a change in law in the summaries Plaintiffs cite is because the text of each of those measures — unlike the Petitions here — proposed amending an *existing* statute or constitutional provision.[19]

In contrast, despite Plaintiffs' factually inexplicable assertion that the Petitions here "repeal[] and replace[]" the independent contractor law (G.L. c. 149, §148B), Pl. Br., at 51, it is plain from the text of the Petitions that they do not amend the independent contractor statute or any other existing law. They do not even mention the statute. Instead, the Petitions establish a *new*, free-standing

[19] IP 19-11 amended G.L. c. 118E, § 13D; IP 19-14 amended numerous sections of G.L. c. 138; IP 21-29 would annul and replace Article XLV of the Massachusetts Constitution; and the petition in *Abdow* amended G.L. c. 23K and G.L. c. 4, § 7.

chapter of the General Laws, leaving existing statutes untouched and unamended. "It is well established that [a] statute is not to be deemed to repeal or supersede a prior statute [in] whole or in part in the absence of express words to that effect or of clear implication.'" *Commonwealth v. Palmer*, 464 Mass. 773, 777 (2013) (internal citation omitted).

Similarly, Plaintiffs also incorrectly assert that the Petitions "repeal and replace" employee minimum wage regulations, which state that employees must be compensated based on working time. Pl. Br., at 51-52; *see also* 454 C.M.R. § 27.02 and 454 C.M.R. § 27.04(2). Again, the Petitions do not amend, or even mention, these regulations. Instead, the Petitions clarify that certain types of workers (App-Based Drivers) are not employees, and are thus by definition not subject to those regulations.

Plaintiffs' reliance on *Sears* is similarly misplaced. The petition in *Sears* was a proposed law to strike out entirely the existing provisions of G.L. c. 118A, and replace that chapter with a new Chapter 118A. *Sears*, 327 Mass. at 312. The *Sears* petition involved substantial changes to Chapter 118A, which provides assistance to the aged and disabled, by introducing new benefits that would require substantial spending and new taxes on meals, horse and dog racing, and liquor licenses. Yet the Attorney General provided only a single-sentence summary, consisting of under 50 words. *Id.* at 324-25. The summary did not provide any

information on numerous critical provisions in the proposed law—including how funds would be obtained to administer the chapter if the new taxes were insufficient, who would administer the chapter, the process for administering the program, or what type of assistance would be provided to beneficiaries under the chapter. *Id.* at 325.

The Court found the *Sears* summary insufficient because (1) the "matters not mentioned in the 'summary' are the subject of express provisions in the measure itself;" and (2) the summary "does not mention the fact that the measure is a repeal of and substitute for existing law." *Id.* at 325-26. The Court also pointed out that the summary is "no more than would fairly serve as a title for the measure. In no sense is it a summary of the contents—much less a 'fair' summary." *Id.* at 326. The summary in *Sears* is a far cry from the detailed summaries the Attorney General issued here.

Furthermore, Plaintiffs concede the applicable legal standard is "that the voters understand *the law upon which they are voting*." Pl. Br. at 46 (quoting *Opinion of the Justices*, 357 Mass. 787, 800 (1970) (citing *Evans v. Secretary of the Commonwealth*, 306 Mass. 296, 298-99 (1940))). Neither Article 48 nor this Court's precedents require discussion of *existing* law in the Attorney General's summary. Indeed, Plaintiffs' argument implies that voters will be surprised to learn that a "yes" vote will create new law unless they are told as much. But it is

axiomatic that initiative petitions create new laws—otherwise they would be mere resolutions, which are not the proper subjects of an initiative. *Cf. Opinion of the Justices*, 262 Mass. 603 (1928) (holding that Article 48 requires an initiative petition to propose a "law" or "constitutional amendment").

In short, the Petitions do *not* repeal and replace any existing law, and the Attorney General need not summarize existing laws, particularly where no existing laws are being amended by the Petitions. The Attorney General's summaries were both fair and concise.

2. Plaintiffs Mischaracterize the State of Existing Law.

To support their contention that the summaries are unfair and incomplete, the Plaintiffs mischaracterize existing law and ask this Court to collaterally rule on matters currently pending before the Superior Court.

Plaintiffs first argue that the petitions "reverse" current law. Pl. Br. at 51. The Petitions do no such thing. The Petitions would define a particular type of worker (an App-Based Driver) under a *new* statutory worker classification—one with both the flexibility and autonomy of an independent contractor *and* the right to minimum compensation and certain benefits. The existing independent contractor law is neither repealed nor changed.

Nor would the Petitions "reverse" employee minimum wage regulations that require that employees are compensated for on-duty time. *See* 454 C.M.R. § 27.02,

27.04(2). The Petitions neither repeal nor change the existing regulations. Rather, they (1) state that App-Based Drivers are not employees, which necessarily means that App-Based Drivers are not subject to those regulations, and (2) provide that App-Based Drivers are compensated for "engaged time." The Attorney General's summary must describe the proposed law upon which the people are *voting*, not an existing law that is not being amended or repealed. *See Opinion of the Justices*, 357 Mass. at 800.

Second, Plaintiffs' demand that the Summaries declare that App-Based Drivers are employees under current law is based on arguments being made by the Attorney General in a *separate* litigation, currently pending in Superior Court about the application of the current G.L. c. 149, §148B to drivers who use Uber and/or Lyft. *Attorney Gen. v. Uber Technologies, Inc.*, Mass. Sup. Ct., No. 2084CV01519-BLS1 (2020). As such, Plaintiffs effectively ask this Court to collaterally rule on issues pending before the Superior Court, and to establish a substantive precedent under the guise of evaluating the procedural compliance of a ballot question summary. Such a determination would almost by definition render the summary unfair.

Indeed, had the Attorney General said in the summaries what Plaintiffs have demanded (Pl. Br. at 50-53), the Original Signers could (and would) have equally alleged that the summaries were unfair, because such a summary would have

presumed an interpretation of state law that is the subject of pending litigation. Incorporating a legal opinion on either side of this matter in the neutral summary would insert an "argumentative" and "one-sided" point that could improperly affect the pre-election debate. *See Hensley*, 474 Mass. at 660. Further, the "Attorney General's judgment concerning the form and content of the summary is entitled to some deference." *Associated Indus. of Mass. v. Secretary of the Commonwealth*, 413 Mass. 1, 11 (1992). If ever there was a place to exercise that judgment and discretion over content, it would be in avoiding emphasizing the Attorney General's own litigation position in a pending case under the guise of a neutral summary for an initiative petition. The place for such policy arguments is in the advocacy section of the Information for Voters Guide. It is not in the neutral summaries.

Regardless, even if the Petitions' effect on existing law were not disputed, it is well-established that the Attorney General "is not required under art. 48 . . . to advocate the plaintiffs' position," *Gilligan v. Attorney Gen.*, 413 Mass. 20 (1992), or "to state a legal interpretation of the measure." *Associated Indus.*, 413 Mass. at 12; *see also Ash v. Attorney Gen.*, 418 Mass. 344, 349 (1994) ("All the Constitution demands is a summary."); *Mazzone v. Attorney Gen.*, 432 Mass. 515, 532 (2000) ("It is presumed that public debate will educate the electorate as to the matters the plaintiffs highlight.").

As required, the summaries summarize the main measures of the Petitions in a clear, concise manner and are not incomplete or misleading. For these reasons, the summaries are fair, concise, and comply with the requirements of Article 48. [20]

CONCLUSION

For the foregoing reasons, the Intervenor Defendants-Appellees request that the Court enter an order declaring that the Attorney General correctly certified the Petitions as meeting the requirements under Article 48 to be placed on the ballot and that the summaries are fair and concise.

Respectfully submitted,

THE ORIGINAL SIGNERS,

By their attorneys,

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[20] Plaintiffs argue that if the Court determines the summaries are unfair or incomplete, this Court must enjoin the Secretary from placing the Petitions on the ballot. Pl. Br. at 54. In support of this argument, Plaintiffs rely exclusively on dicta from *Hensley* in which the Court declined to order changes to the Attorney General's summary. *Hensley*, 474 Mass. at 667, n. 26. It would be inequitable in the extreme to proponents — and inconsistent with the principles embodied by Article 48 — to allow opponents to commence a challenge well after all initial signatures had been collected using that summary, and to then prevent an entirely conforming petition from being put to the voters solely because of decisions of the Attorney General that were outside of proponents' control. Indeed, such a policy would also create a perverse incentive for future Attorneys General, who could exercise an effective veto over any Petition with which they disagreed by intentionally drafting a summary that was biased or unfair.

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CERTIFICATE OF COMPLIANCE

I, Thaddeus Heuer, certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including but not limited to: Mass. R. A. P. 16(a)(13) (addendum); Mass. R. A.P. 16(e) (references to the record); Mass. R. A. P. 18 (appendix to the brief): Mass. R. A. P. 20 (form and length of briefs, appendices, and other documents); and Mass. R. A. P. 21 (redaction).

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. A. P. 20 because it is produced in in the proportional font Times New Roman 14-point font, and contains 10,249 total non-excluded words under Mass. R. A. P. 20(a)(2). The brief was composed in Microsoft Word 2016. I ascertained the word count using Microsoft Word 2016's word count function.

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of April, 2022, I caused a true and accurate copy of the foregoing Brief of Intervenor Defendant-Appellees to be served by email upon counsel for the Defendant-Appellees and Plaintiff-Appellants:

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ADDENDUM

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MASSACHUSETTS CONSTITUTION

Article XLVIII.

I. Definition.

Legislative power shall continue to be vested in the general court; but the people reserve to themselves the popular initiative, which is the power of a specified number of voters to submit constitutional amendments and laws to the people for approval or rejection; and the popular referendum, which is the power of a specified number of voters to submit laws, enacted by the general court, to the people for their ratification or rejection.

The Initiative.

II. Initiative Petitions

Section 1. *Contents.* An initiative petition shall set forth the full text of the constitutional amendment or law, hereinafter designated as the measure, which is proposed by the petition.

Section 2. *Excluded Matters.* - No measure that relates to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal, recall or compensation of judges; or to the reversal of a judicial decision; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the commonwealth; or that makes a specific appropriation of money from the treasury of the commonwealth, shall be proposed by an initiative petition; but if a law approved by the people is not repealed, the general court shall raise by taxation or otherwise and shall appropriate such money as may be necessary to carry such law into effect.

Neither the eighteenth amendment of the constitution, as approved and ratified to take effect on the first day of October in the year nineteen hundred and eighteen, nor this provision for its protection, shall be the subject of an initiative amendment.

No proposition inconsistent with any one of the following rights of the individual, as at present declared in the declaration of rights, shall be the subject of an initiative or referendum petition: The right to receive compensation for private property appropriated to public use; the right of access to and protection in courts of justice; the right of trial by jury; protection from unreasonable search, unreasonable bail and the law martial; freedom of the press; freedom of speech; freedom of elections; and the right of peaceable assembly.

No part of the constitution specifically excluding any matter from the operation of the popular initiative and referendum shall be the subject of an initiative petition; nor shall this section be the subject of such a petition.

The limitations on the legislative power of the general court in the constitution shall extend to the legislative power of the people as exercised hereunder.

[Section 3. *Mode of Originating.* - Such petition shall first be signed by ten qualified voters of the commonwealth and shall then be submitted to the attorney-general, and if he shall certify that the measure is in proper form for submission to the people, and that it is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people within three years of the succeeding first Wednesday in December and that it contains only subjects not excluded from the popular initiative and which are related or which are

mutually dependent, it may then be filed with the secretary of the commonwealth. The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed measure as such description will appear on the ballot together with the names and residences of the first ten signers. All initiative petitions, with the first ten signatures attached, shall be filed with the secretary of the commonwealth not earlier than the first Wednesday of the September before the assembling of the general court into which they are to be introduced, and the remainder of the required signatures shall be filed not later than the first Wednesday of the following December.] [Section 3 superseded by section 1 of Amendments, Art. LXXIV.]

Section 4. *Transmission to the General Court.* - If an initiative petition, signed by the required number of qualified voters, has been filed as aforesaid, the secretary of the commonwealth shall, upon the assembling of the general court, transmit it to the clerk of the house of representatives, and the proposed measure shall then be deemed to be introduced and pending.

III. Legislative Action. General Provisions

Section 1. *Reference to Committee.* - If a measure is introduced into the general court by initiative petition, it shall be referred to a committee thereof, and the petitioners and all parties in interest shall be heard, and the measure shall be considered and reported upon to the general court with the committee's recommendations, and the reasons therefor, in writing. Majority and minority reports shall be signed by the members of said committee.

Section 2. *Legislative Substitutes.* - The general court may, by resolution passed by yea and nay vote, either by the two houses separately, or in the case of a constitutional amendment by a majority of those voting thereon in joint session in each of two years as hereinafter provided, submit to the people a substitute for any measure introduced by initiative petition, such substitute to be designated on the ballot as the legislative substitute for such an initiative measure and to be grouped with it as an alternative therefor.

IV. Legislative Action on Proposed Constitutional Amendments

[Section 1. *Definition.* - A proposal for amendment to the constitution introduced into the general court by initiative petition shall be designated an initiative amendment, and an amendment introduced by a member of either house shall be designated a legislative substitute or a legislative amendment.

Section 2. *Joint Session.* - If a proposal for a specific amendment of the constitution is introduced into the general court by initiative petition signed by not less than twenty-five thousand qualified voters, or if in case of a proposal for amendment introduced into the general court by a member of either house, consideration thereof in joint session is called for by vote of either house, such proposal shall, not later than the second Wednesday in June, be laid before a joint session of the two houses, at which the president of the senate shall preside; and if the two houses fail to agree upon a time for holding any joint session hereby required, or fail to continue the same from time to time until final action has been taken upon all amendments pending, the governor shall call such joint session or continuance thereof.] [Section 2 superseded by section 1 of Amendments, Art. LXXXI.]

Section 3. *Amendment of Proposed Amendments.* - A proposal for an amendment to the constitution introduced by initiative petition shall be voted upon in the form in which it was introduced, unless such amendment is amended by vote of three-fourths of the members voting thereon in joint session, which vote shall be taken by call of the yeas and nays if called for by any member.

Section 4. *Legislative Action.* - Final legislative action in the joint session upon any amendment shall be taken only by call of the yeas and nays, which shall be entered upon the journals of the two houses; and an unfavorable vote at any stage preceding final action shall be verified by call of the yeas and nays, to be entered in like manner. At such joint session a legislative amendment receiving the affirmative votes of a majority of all the members elected, or an initiative amendment receiving the affirmative votes of not less than one-fourth of all the members elected, shall be referred to the next general court.

Section 5. *Submission to the People.* If in the next general court a legislative amendment shall again be agreed to in joint session by a majority of all the members elected, or if an initiative amendment or a legislative substitute shall again receive the affirmative votes of a least one-fourth of all the members elected, such fact shall be certified by the clerk of such joint session to the secretary of the commonwealth, who shall submit the amendment to the people at the next state election. Such amendment shall become part of the constitution if approved, in the case of a legislative amendment, by a majority of the voters voting thereon, or if approved, in the case of an initiative amendment or a legislative substitute, by voters equal in number to at least thirty per cent of the total number of ballots cast at such state election and also by a majority of the voters voting on such amendment.

V. Legislative Action on Proposed Laws.

[Section 1. *Legislative Procedure.* - If an initiative petition for a law is introduced into the general court, signed by not less than twenty thousand qualified voters, a vote shall be taken by yeas and nays in both houses before the first Wednesday of June upon the enactment of such law in the form in which it stands in such petition. If the general court fails to enact such law before the first Wednesday of June, and if such petition is completed by filing with the secretary of the commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August, not less than five thousand signatures of qualified voters, in addition to those signing such initiative petition, which signatures must have been obtained after the first Wednesday of June aforesaid, then the secretary of the commonwealth shall submit such proposed law to the people at the next state election. If it shall be approved by voters equal in number to at least thirty per cent of the total number of ballots cast at such state election and also by a majority of the voters voting on such law, it shall become law, and shall take effect in thirty days after such state election or at such time after such election as may be provided in such law.] [Section 1 superseded by section 2 of Amendments, Art. LXXXI.]

[Section 2. *Amendment by Petitioners.* If the general court fails to pass a proposed law before the first Wednesday of June, a majority of the first ten signers of the initiative petition therefor shall have the right, subject to certification by the attorney-general filed as hereinafter provided, to amend the measure which is the subject of such petition. An amendment so made shall not invalidate any signature attached to the petition. If the measure so amended, signed by a majority of the first ten signers, is filed with the secretary of the commonwealth before the first Wednesday of the following July, together with a certificate signed by the attorney-general to the effect that the amendment made by such proposers is in his opinion perfecting in its nature and does not materially change the substance of the measure, and if such petition is completed by filing with the secretary of the commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August, not less than five thousand signatures of qualified voters, in addition to those signing such initiative petition, which signatures must have been obtained after the first Wednesday of June aforesaid, then the secretary of the commonwealth shall submit the measure to the people in its amended form.] [Section 2 superseded by section 3 of Amendments, Art. LXXXI.]

VI. Conflicting and Alternative Measures.

If in any judicial proceeding, provisions of constitutional amendments or of laws approved by the people at the same election are held to be in conflict, then the provisions contained in the measure that received the largest number of affirmative votes at such election shall govern.

A constitutional amendment approved at any election shall govern any law approved at the same election.

The general court, by resolution passed as hereinbefore set forth, may provide for grouping and designating upon the ballot as conflicting measures or as alternative measures, only one of which is to be adopted, any two or more proposed constitutional amendments or laws which have been or may be passed or qualified for submission to the people at any one election: provided, that a proposed constitutional amendment and a proposed law shall not be so grouped, and that the ballot shall afford an opportunity to the voter to vote for each of the measures or for only one of the measures, as may be provided in said resolution, or against each of the measures so grouped as conflicting or as alternative. In case more than one of the measures so grouped shall receive the vote required for its approval as herein provided, only that one for which the largest affirmative vote was cast shall be deemed to be approved.

The Referendum.

I. When Statutes shall take Effect.

No law passed by the general court shall take effect earlier than ninety days after it has become a law, excepting laws declared to be emergency laws and laws which may not be made the subject of a referendum petition, as herein provided.

II. Emergency Measures.

A law declared to be an emergency law shall contain a preamble setting forth the facts constituting the emergency, and shall contain the statement that such law is necessary for the immediate preservation of the public peace, health, safety or convenience. [A separate vote shall be taken on the preamble by call of the yeas and nays, which shall be recorded, and unless the preamble is adopted by two-thirds of the members of each house voting thereon, the law shall not be an emergency law; but] if the governor, at any time before the election at which it is to be submitted to the people on referendum, files with the secretary of the commonwealth a statement declaring that in his opinion the immediate preservation of the public peace, health, safety or convenience requires that such law should take effect forthwith and that it is an emergency law and setting forth the facts constituting the emergency, then such law, if not previously suspended as hereinafter provided, shall take effect without suspension, or if such law has been so suspended such suspension shall thereupon terminate and such law shall thereupon take effect: but no grant of any franchise or amendment thereof, or renewal or extension thereof for more than one year shall be declared to be an emergency law. [See Amendments, Art. [See Amendments, Art. LXVII.]

III. Referendum Petitions.

Section 1. *Contents.* - A referendum petition may ask for a referendum to the people upon any law enacted by the general court which is not herein expressly excluded.

Section 2. *Excluded Matters.* No law that relates to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal or compensation of judges; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the commonwealth; or that appropriates money for the current or ordinary expenses of the commonwealth or for any of its departments, boards, commissions or institutions shall be the subject of a referendum petition.

Section 3. *Mode of Petitioning for the Suspension of a Law and a Referendum Thereon.* - A petition asking for a referendum on a law, and requesting that the operation of such law be suspended, shall

first be signed by ten qualified voters and shall then be filed with the secretary of the commonwealth not later than thirty days after the law that is the subject of the petition has become law. [The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed law as such description will appear on the ballot together with the names and residences of the first ten signers. If such petition is completed by filing with the secretary of the commonwealth not later than ninety days after the law which is the subject of the petition has become law the signatures of not less than fifteen thousand qualified voters of the commonwealth, then the operation of such law shall be suspended, and the secretary of the commonwealth shall submit such law to the people at the next state election, if thirty days intervene between the date when such petition is filed with the secretary of the commonwealth and the date for holding such state election; if thirty days do not so intervene, then such law shall be submitted to the people at the next following state election, unless in the meantime it shall have been repealed; and if it shall be approved by a majority of the qualified voters voting thereon, such law shall, subject to the provisions of the constitution, take effect in thirty days after such election, or at such time after such election as may be provided in such law; if not so approved such law shall be null and void; but no such law shall be held to be disapproved if the negative vote is less than thirty per cent of the total number of ballots cast at such state election.] [Section 3 amended by section 2 of Amendments, Art.LXXIV and section 4 of Amendments, Art. LXXXI]

Section 4. *Petitions for Referendum on an Emergency Law or a Law the Suspension of Which is Not Asked for.* - A referendum petition may ask for the repeal of an emergency law or of a law which takes effect because the referendum petition does not contain a request for suspension, as aforesaid. Such petition shall first be signed by ten qualified voters of the commonwealth, and shall then be filed with the secretary of the commonwealth not later than thirty days after the law which is the subject of the petition has become law. [The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed law as such description will appear on the ballot together with the names and residences of the first ten signers. If such petition filed as aforesaid is completed by filing with the secretary of the commonwealth not later than ninety days after the law which is the subject of the petition has become law the signatures of not less than ten thousand qualified voters of the commonwealth protesting against such law and asking for a referendum thereon, then the secretary of the commonwealth shall submit such law to the people at the next state election, if thirty days intervene between the date when such petition is filed with the secretary of the commonwealth and the date for holding such state election. If thirty days do not so intervene, then it shall be submitted to the people at the next following state election, unless in the meantime it shall have been repealed; and if it shall not be approved by a majority of the qualified voters voting thereon, it shall, at the expiration of thirty days after such election, be thereby repealed; but no such law shall be held to be disapproved if the negative vote is less than thirty per cent of the total number of ballots cast at such state election.] [Section 4 superseded by section 3 of Amendments, ArtLXXIV and section 5 of Amendments, Art. LXXXI.]

General Provisions.

I. Identification and Certification of Signatures.

Provision shall be made by law for the proper identification and certification of signatures to the petitions hereinbefore referred to, and for penalties for signing any such petition, or refusing to sign it, for money or other valuable consideration, and for the forgery of signatures thereto. Pending the passage of such legislation all provisions of law relating to the identification and certification of signatures to petitions for the nomination of candidates for state offices or to penalties for the forgery of such signatures shall apply to the signatures to the petitions herein referred to. The general court may provide by law that no co-partnership or corporation shall undertake for hire or reward to circulate petitions, may require individuals who circulate petitions for hire or reward to be licensed, and may make other reasonable regulations to prevent abuses arising from the circulation of petitions for hire or reward.

II. Limitation on Signatures.

Not more than one-fourth of the certified signatures on any petition shall be those of registered voters of any one county.

III. Form of Ballot.

Each proposed amendment to the constitution, and each law submitted to the people, shall be described on the ballots by a description to be determined by the attorney-general, subject to such provision as may be made by law, and the secretary of the commonwealth shall give each question a number and cause such question, except as otherwise authorized herein, to be printed on the ballot in the following form:-

In the case of an amendment to the constitution: Shall an amendment to the constitution (here insert description, and state, in distinctive type, whether approved or disapproved by the general court, and by what vote thereon) be approved?

In the case of a law: Shall a law (here insert description, and state, in distinctive type, whether approved or disapproved by the general court, and by what vote thereon) be approved?

IV. Information for Voters.

The secretary of the commonwealth shall cause to be printed and sent to each registered voter in the commonwealth the full text of every measure to be submitted to the people, together with a copy of the legislative committee's majority and minority reports, if there be such, with the names of the majority and minority members thereon, a statement of the votes of the general court on the measure, and a description of the measure as such description will appear on the ballot; and shall, in such manner as may be provided by law, cause to be prepared and sent to the voters other information and arguments for and against the measure.] [Subheadings *III* and *IV* superseded by section 4 of Amendments, Art. LXXIV.][Subheading *IV* superseded by Amendments,Art. CVIII.]

V. The Veto Power of the Governor.

Subject to the veto power of the governor and to the right of referendum by petition as herein provided, the general court may amend or repeal a law approved by the people.

VI. The General Court's Power of Repeal.

Subject to the veto power of the governor and to the right of referendum by petition as herein provided, the general court may amend or repeal a law approved by the people.

VII. Amendment Declared to be Self-executing.

This article of amendment to the constitution is self-executing, but legislation not inconsistent with anything herein contained may be enacted to facilitate the operation of its provisions.

VIII. Articles IX and XLII of Amendments of the Constitution Annulled.

Article IX and Article XLII of the amendments of the constitution are hereby annulled.

MASSACHUSETTS CONSTITUTION

Article LXXIV.

Section 1. Article XLVIII of the amendments to the constitution is hereby amended by striking out section three, under the heading "THE INITIATIVE. III. *Initiative Petitions.*", and inserting in place thereof the following: -

Section 3. *Mode of Originating.* - Such petition shall first be signed by ten qualified voters of the commonwealth and shall be submitted to the attorney-general not later than the first Wednesday of the August before the assembling of the general court into which it is to be introduced, and if he shall certify that the measure and the title thereof are in proper form for submission to the people, and that the measure is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people at either of the two preceding biennial state elections, and that it contains only subjects not excluded from the popular initiative and which are related or which are mutually dependent, it may then be filed with the secretary of the commonwealth. The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a fair, concise summary, as determined by the attorney-general, of the proposed measure as such summary will appear on the ballot together with the names and residences of the first ten signers. All initiative petitions, with the first ten signatures attached, shall be filed with the secretary of the commonwealth not earlier than the first Wednesday of the September before the assembling of the general court into which they are to be introduced, and the remainder of the required signatures shall be filed not later than the first Wednesday of the following December.

Section 2. Section three of that part of said Article XLVIII, under the heading "**THE REFERENDUM**. III. *Referendum Petitions.*", is hereby amended by striking out the words "The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed law as such description will appear on the ballot together with the names and residences of the first ten signers.", and inserting in place thereof the words "The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a fair, concise summary of the proposed law as such summary will appear on the ballot together with the names and residences of the first ten signers."

Section 3. Section four of that part of said Article XLVIII under the heading "**THE REFERENDUM**. III. *Referendum Petitions.*", is hereby amended by striking out the words "The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed law as such description will appear on the ballot together with the names and residences of the first ten signers.", and inserting in place thereof the words "The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a fair, concise summary of the proposed law as such summary will appear on the ballot together with the names and residences of the first ten signers."

Section 4. Said Article XLVIII is hereby further amended by striking out, under the heading "GENERAL PROVISIONS", all of subheading "*III. Form of Ballot.*" and all of subheading "*IV. Information for Voters.*", and inserting in place thereof the following:--

III. Form of Ballot.

A fair, concise summary, as determined by the attorney general, subject to such provision as may be made by law, of each proposed amendment to the constitution, and each law submitted to the people, shall be printed on the ballot, and the secretary of the commonwealth shall give each

question a number and cause such question, except as otherwise authorized herein, to be printed on the ballot in the following form:--

In the case of an amendment to the constitution: Do you approve of the adoption of an amendment to the constitution summarized below, (here state, in distinctive type, whether approved or disapproved by the general court, and by what vote thereon)?

[Set forth summary here]

In the case of a law: Do you approve of a law summarized below, (here state, in distinctive type, whether approved or disapproved by the general court, and by what vote thereon)?

[Set forth summary here]

IV. Information for Voters.

The secretary of the commonwealth shall cause to be printed and sent to each registered voter in the commonwealth the full text of every measure to be submitted to the people, together with a copy of the legislative committee's majority and minority reports, if there be such, with the names of the majority and minority members thereon, a statement of the votes of the general court on the measure, and a fair, concise summary of the measure as such summary will appear on the ballot; and shall, in such manner as may be provided by law, cause to be prepared and sent to the voters other information and arguments for and against the measure.] [See Amendments, Art. CVIII.]