

---

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT  
NO. SJC-13237

---

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

v.

ATTORNEY GENERAL AND SECRETARY OF THE COMMONWEALTH,  
Defendants-Appellees

CHRISTINA M. ELLIS-HIBBET, KATHERINE MARY WITMAN,  
ABIGAIL KENNEDY HARRIGAN, RICHARD M. POWER, MEGHAN J. BOROWSKI,  
CHAD B. CHOKEL, DANIEL SVIRSKY, MICHAEL STRICKMAN,  
MARCUS ALAN COLE, AND JAMES WILLIAM ISAAC HILLS,  
Intervenors

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

---

BRIEF OF THE CITY OF BOSTON AS AMICUS CURIAE  
IN FAVOR OF THE PLAINTIFFS/APPELLANTS

---

Adam Cederbaum  
Corporation Counsel  
BBO#661549  
Randall Maas  
Assistant Corporation Counsel  
BBO#684832  
City of Boston  
One City Hall Square, Room 615  
Boston, MA 02201  
(617) 635-4034  
[Adam.Cederbaum@boston.gov](mailto:Adam.Cederbaum@boston.gov)  
[Randall.Maas@boston.gov](mailto:Randall.Maas@boston.gov)

Dated: April 14, 2022

Counsel for Amicus

TABLE OF CONTENTS

	<u>Pages</u>
Statement of Interest	1
Statement of the Issues	2
Argument	2
The Petitions Fail the Relatedness Test of Article 48	2
The Adoption of the Petitions Would Have a Negative Effect on the City of Boston and Its Workers	3
Payment of Subminimum Wage	3
Inadequate Sick Time and Health Insurance Benefits	7
Denial of Legal Protections	11
Insulating Network Companies from Liability	12
Conclusion	14
Certificate of Compliance	15
Certificate of Service	15

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Pages</u>
<u>Comey v. Hill</u> , 387 Mass. 11 (1982) . . . . .	11
<u>Oberlies v. Attorney General</u> , 479 Mass. 823 (2018) . . . . .	3
 <u>STATUTES</u>	
G.L. c. 149, § 148C(d) (1) . . . . .	8
G.L. c. 151, § 1, as amended by St.2018, c. 121, § 20, effective January 1, 2019 - January 1, 2023 . . . . .	4
G.L. c. 151B . . . . .	11
 <u>CITY ORDINANCES</u>	
Boston, Mass., Rev. Ordinances ch. 24-1, as amended by Ord. 1998, c. 5, § 1 . . . . .	7
Boston, Mass., Rev. Ordinances ch. 24-1 (2021) . . . . .	7
 <u>ARTICLES AND PUBLICATIONS</u>	
John Manuel Barrios, Yael V. Hochberg, and Hanyi Yi, <i>The Cost of Convenience: Ridehailing and Traffic Fatalities</i> (April 3, 2019), available at SSRN: <a href="https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3361227">https://papers.ssrn.com/ sol3/papers.cfm?abstract_id=3361227</a> . . . . .	13
Greg Bensinger, "Why Uber Won't Call the Police," N.Y. Times (Dec. 22, 2021), <a href="https://www.nytimes.com/2021/12/22/opinion/uber-safety-ride-sharing.html">https://www.nytimes.com/2021/12/22/ opinion/uber-safety-ride-sharing.html</a> . . . . .	12

Chris Brenner, Erin Johansson, Kung Feng, and Hays Witt, <i>On-Demand and On-the-Edge: Ride-Hailing and Delivery Workers in San Francisco</i> , UC Santa Cruz Institute for Social Transformation (May 5, 2020), <a href="https://transform.ucsc.edu/on-demand-and-on-the-edge/">https://transform.ucsc.edu/ on-demand-and-on-the-edge/</a> . . . . .	5
Christy England, <i>The Gig Economy by the Numbers</i> , The Employee Rights Advocacy Institute for Law and Policy (2020), <a href="http://employeerightsadvocacy.org/wp-content/uploads/2020/10/Gig-Economy-By-The-Numbers-The-Institute-2020.pdf">http://employeerightsadvocacy.org/ wp-content/uploads/2020/10/Gig-Economy-By-The- Numbers The-Institute 2020.pdf</a> . . . . .	11
Ken Jacobs and Michael Reich, <i>Massachusetts Uber/Lyft Ballot Proposition Would Create Subminimum Wage: Drivers Could Earn as Little as \$4.82 an Hour</i> , UC Berkeley Labor Center (Sept. 29, 2021), <a href="https://laborcenter.berkeley.edu/mass-uber-lyft-ballot-proposition-would-create-subminimum-wage/">https://laborcenter.berkeley.edu/mass-uber-lyft- ballot-proposition-would-create-subminimum-wage/</a> . . . . .	4
Kaitlin Piper, Ada Youk, A. Everette James III, and Supriya Kumar, <i>Paid Sick Days and Stay-at-Home Behavior for Influenza</i> , Plos One (Feb. 2, 2017), <a href="https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0170698&amp;type=printable">https://journals.plos.org/ plosone/article/file?id=10.1371/ journal.pone.0170698&amp;type=printable</a> . . . . .	9
Tom W. Smith and Jibum Kim, <i>Paid Sick Days: Attitudes and Experiences</i> , National Opinion Research Center at the University of Chicago, at 6 (June 2010), <a href="https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-sick-days/paid-sick-days-attitudes-and-experiences.pdf">https://www.nationalpartnership.org/ our-work/resources/economic-justice/paid-sick-days/ paid-sick-days-attitudes-and-experiences.pdf</a> . . . . .	8
Yusheng Zhai, Tammy A. Santibanez, Katherine E. Kahn, Carla L. Black, and Marie A. de Perio, <i>Paid Sick Leave Benefits, Influenza Vaccination, and Taking Sick Days Due to Influenza-Like Illness Among U.S. Workers</i> , Vaccine Vol. 36, Issue 48 (Nov. 19, 2018) . . . . .	9

OTHER AUTHORITIES

City of Boston, *Fiscal Year 2022 Adopted Budget, Health and Human Services*,  
<https://content.boston.gov/sites/default/files/file/2022/01/V3%2012-%2022%20A%20Health-and-Human-Service-Cabinet.pdf> . . . . . 5-6, 10

City of Boston, *Fiscal Year 2022 Adopted Budget, Housing and Neighborhood Development*,  
<https://content.boston.gov/sites/default/files/file/2021/10/V3%2013-%2022%20A%20Housing-and-Neighborhood-Development-Cabinet.pdf> . . . . . 6

Fehr & Peers, *Estimated TNC Share of VMT in Six US Metropolitan Regions*, (Aug. 8, 2019),  
[https://issuu.com/fehrandpeers/docs/tnc\\_vmt\\_findings\\_memo\\_08.06.2019](https://issuu.com/fehrandpeers/docs/tnc_vmt_findings_memo_08.06.2019) . . . . . 13

Internal Revenue Service, *IRS Issues Standard Mileage Rates for 2022* (Dec. 17, 2021),  
<https://www.irs.gov/newsroom/irs-issues-standard-mileage-rates-for-2022> . . . . . 4-5

Lyft, Inc., *Community Safety Report and Appendix*,  
<https://www.lyft.com/blog/post/lyfts-community-safety-report> . . . . . 13

Massachusetts Department of Public Utilities, Transportation Network Company Division,  
*2019 Rideshare Data Report*,  
<https://tnc.sites.digital.mass.gov/> . . . . . 1

Massachusetts Department of Public Utilities, Transportation Network Company Division,  
*2020 Rideshare Data Report* (June 14, 2021),  
<https://www.mass.gov/info-details/2020-rideshare-data-report> . . . . . 1

Uber, Inc., *2017-2018 U.S. Safety Report*,  
<https://www.uber.com/us/en/about/reports/us-safety-report/> . . . . . 13

## STATEMENT OF INTEREST

The City of Boston (“Amicus”) is the capital and largest municipality in the Commonwealth and the hub of the regional economy. Boston is greatly impacted by the operations of Transportation Network Companies (“network companies” or “rideshare companies”) and the people who drive for them (“drivers”). Tens of millions of rideshare trips originate in Boston each year, amounting to approximately half of all rideshare trips in Massachusetts.<sup>1</sup> In 2019, before the COVID-19 pandemic, the total was nearly 125,000 trips per day, more than one trip starting in Boston per second.<sup>2</sup>

Amicus believes that the strength of Boston’s economy depends on workers’ receiving fair wages, workplace protections, and job-related benefits, and that a business that operates within the City should be accountable for providing wages and benefits in a manner that addresses the burdens the business

---

<sup>1</sup> In 2020, almost 16 million rideshare trips started in Boston, out of a total of approximately 35 million trips in Massachusetts. See Massachusetts Department of Public Utilities, Transportation Network Company Division, *2020 Rideshare Data Report* (June 14, 2021), <https://www.mass.gov/info-details/2020-rideshare-data-report>. In 2019, the year before the pandemic, 45.3 million rideshare trips started in Boston out of 91.1 million total rides in Massachusetts. See Massachusetts Department of Public Utilities, Transportation Network Company Division, *2019 Rideshare Data Report*, <https://tnc.sites.digital.mass.gov/>.

<sup>2</sup> See Massachusetts Department of Public Utilities, Transportation Network Company Division, *2019 Rideshare Data Report*, <https://tnc.sites.digital.mass.gov/>.

places on the community. By allowing effective wages, benefits, and legal protections that are below the state minimum, the two initiative petitions entitled "A Law Defining and Regulating the Contract-Based Relationship Between Network Companies and App-Based Drivers" (the "Petitions") harm workers and weaken the local economy and put more strain on state and local benefits programs. For this reason, Amicus opposes the placement of the Petitions on the November 2022 ballot.

No party in this action or counsel for any party authored the proposed brief in whole or in part, and no person or entity made a monetary contribution intended to fund its preparation or submission.

#### STATEMENT OF THE ISSUES

- I. Whether the Petitions fail the relatedness test of Article 48.
- II. Whether the adoption of the Petitions would have a negative effect on the City of Boston and its workers.

#### ARGUMENT

- I. THE PETITIONS FAIL THE RELATEDNESS TEST OF ARTICLE 48.

Amicus agrees with the arguments presented in the Plaintiffs-Appellants' brief that the Petitions do not comply with Article 48 because they contain multiple subjects that are not related to or mutually dependent on one another. (Plts. Br.

29-45). Amicus will not repeat those arguments at length, but underscores that the Petitions contain several disparate features, including the classification of rideshare drivers as independent contractors, the setting of minimum compensation and job-related benefits that rideshare companies are required to pay based on drivers' "engaged time," an amendment of the Massachusetts Paid Family Leave and Medical Leave Act ("PFMLA") to establish eligibility requirements for rideshare drivers, and an effective disclaimer of rideshare companies' liability for torts committed by rideshare drivers against members of the public. Not only do these provisions "exist independently" of each other, Oberlies v. Attorney Gen., 479 Mass. 823, 829 (2018), but these provisions would also cause various harmful impacts to Boston.

## II. THE ADOPTION OF THE PETITIONS WOULD HAVE A NEGATIVE EFFECT ON THE CITY OF BOSTON AND ITS WORKERS.

The adoption of the Petitions would negatively impact Boston and its economy in several ways.

### Payment of Subminimum Wage

Under the Petitions, rideshare drivers could be paid an effective wage that is far less than the Commonwealth's minimum wage. Although the Petitions purport to establish a "net earnings floor" of 120% of the state minimum wage, a recent academic study analyzing the effect of the petition on rideshare

drivers in Massachusetts estimated that most drivers would make as little as the equivalent of \$4.82 per hour,<sup>3</sup> far lower than the state minimum wage of \$14.25 per hour.<sup>4</sup> Several features of the Petitions would reduce rideshare drivers' effective pay. Most notably, drivers are not paid for the time they spend waiting for passengers, cleaning or maintaining their vehicles, or taking vital work breaks. Instead, the "net earnings floor" set forth in the Petitions applies only to drivers' "engaged time," which is the time "from when a driver accepts a request for delivery or transportation services to when the driver fulfills that request." See Petition,<sup>5</sup> Section 3, Definition of "Engaged Time." Uber's own data indicates that "engaged time" constitutes only 67% of the time drivers spend working behind the wheel.<sup>6</sup>

When workers make a lower wage<sup>7</sup> than what they would otherwise be entitled to under the law, state and local

---

<sup>3</sup> Ken Jacobs and Michael Reich, *Massachusetts Uber/Lyft Ballot Proposition Would Create Subminimum Wage: Drivers Could Earn as Little as \$4.82 an Hour*, UC Berkeley Labor Center (Sept. 29, 2021), <https://laborcenter.berkeley.edu/mass-uber-lyft-ballot-proposition-would-create-subminimum-wage/>.

<sup>4</sup> G.L. c. 151, § 1, as amended by St.2018, c. 121, § 20, effective January 1, 2019 - January 1, 2023.

<sup>5</sup> Amicus cites the text of Initiative Petition No. 21-11.

<sup>6</sup> Jacobs and Reich, supra.

<sup>7</sup> Other features of the Petition would further reduce drivers' real minimum wage. The mileage reimbursement rate set by the Petitions is 26 cents per mile, Petition, Section 5(c)(4)(ii)(B), or less than half the IRS standard. See Internal Revenue Service, *IRS Issues Standard Mileage Rates for*

governments are often forced to make up for this gap through expanded public benefits programs. National studies have shown that many workers rely on need-based benefit programs even while working full time for rideshare companies.<sup>8</sup> One example of such a benefit program is nutrition support. The City of Boston offers a number of programs to ensure food access for all Boston residents, including Boston Eats, which increases the number of open sites for summer and after-school meals, and Double Up Food Bucks, a SNAP incentive program for the purchase of fresh fruits and vegetables.<sup>9</sup> During the COVID-19 pandemic, the City of Boston also received federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding to support congregate meal sites and home-delivered meals.<sup>10</sup> Boston's Fiscal Year 2022 Budget increased funding for nutrition support programs over the

---

2022 (Dec. 17, 2021), <https://www.irs.gov/newsroom/irs-issues-standard-mileage-rates-for-2022>. In addition, rideshare drivers are not reimbursed for expenses they incur while they are not directly engaged to provide services to customers. See Petition, Section 5(c)(4)(ii)(A) (per-mile compensation for vehicle expenses applies only to "engaged miles").

<sup>8</sup> Chris Brenner, Erin Johansson, Kung Feng, and Hays Witt, *On-Demand and On-the-Edge: Ride-Hailing and Delivery Workers in San Francisco*, UC Santa Cruz Institute for Social Transformation, at 20 (May 5, 2020), <https://transform.ucsc.edu/on-demand-and-on-the-edge/>.

<sup>9</sup> City of Boston, *Fiscal Year 2022 Adopted Budget, Health and Human Services*, at 131, <https://content.boston.gov/sites/default/files/file/2022/01/V3%2012-%202022%20A%20Health-and-Human-Service-Cabinet.pdf>.

<sup>10</sup> *Id.* at 135, 145.

previous year,<sup>11</sup> but the city's resources are finite, and the wage provisions of the Petitions would only increase demand for these kinds of programs.

Low wages also have an effect on workers' ability to afford stable housing in Boston. The City of Boston, through its Office of Housing, funds housing programs like emergency shelters and supportive housing.<sup>12</sup> In addition, since the start of the COVID-19 pandemic in 2020, Boston has received millions of dollars in federal grant funding to provide rental assistance for low-income households.<sup>13</sup> Rideshare drivers and their families may need to draw on resources like these as a result of being paid subminimum wages under the Petitions.

The wage provisions of the Petitions would make it extremely difficult, if not impossible, for drivers in Boston to earn a decent living for themselves and their families. Although the City works every day to alleviate the problem of affordability, the cost of living in Boston and the surrounding region is high. The Commonwealth's minimum wage standards are designed to ensure that workers in the state are paid enough to meet their basic food and housing needs. By tying drivers' pay

---

<sup>11</sup> *Id.* at 131.

<sup>12</sup> City of Boston, *Fiscal Year 2022 Adopted Budget, Housing & Neighborhood Development*, at 248-9, <https://content.boston.gov/sites/default/files/file/2021/10/V3%2013-%2022%20A%20Housing-and-Neighborhood-Development-Cabinet.pdf>.

<sup>13</sup> *Id.* at 250-253.

to their “engaged time,” the Petitions would undermine the minimum wage laws and force drivers to rely on already-strained public benefits programs.

Amicus has long recognized that promoting a living wage for all workers benefits Boston itself, and in 1998 enacted a living wage ordinance to ensure that all employees of city vendors are paid a living wage that exceeds the state minimum wage.<sup>14</sup> In 2021, Amicus redoubled its commitment to paying fair wages to employees of city vendors by amending the living wage ordinance to ensure that “City dollars are not used to undercut the prevailing standards that have been attained by building service workers.”<sup>15</sup> Forcing businesses in Boston to compete against a growing business model that is legally exempt from state wage laws directly undermines the work Amicus has been engaged in since 1998 to support the ability of low-wage workers in Boston and the area to be paid a living wage.

#### Inadequate Sick Time and Health Insurance Benefits

The health benefits afforded to rideshare drivers under the Petitions are inadequate. To begin with, just as rideshare

---

<sup>14</sup> See Boston, Mass., Rev. Ordinances ch. 24-1, as amended by Ord. 1998, c. 5, § 1 (“The purpose of this Chapter is to assure that employees of vendors who contract with the City of Boston to provide services earn an hourly wage that is sufficient for a family of four (4) to live at or above the Federal poverty level.”).

<sup>15</sup> See Boston, Mass., Rev. Ordinances ch. 24-1 (2021).

drivers are compensated only for engaged time, so too would they accumulate paid sick time only when they are directly engaged to provide services customers. Compare Petition, Section 7(c) (rideshare companies “shall provide a minimum of one hour of earned paid sick time for every 30 hours of engaged time”) with G.L. c. 149, § 148C(d)(1) (earned sick time statute provides that “[a]n employer shall provide a minimum of one hour of earned sick time for every thirty hours worked by an employee”). If rideshare drivers are engaged with customers only 67% of the time that they are working (as the network companies themselves acknowledge), then they will accumulate paid sick time at two-thirds the rate that other employees in the Commonwealth do. The denial of paid sick time to drivers will have a harmful effect on the health of our communities, because workers who lack paid sick leave are more likely than workers with paid sick leave to go to work while contagious.<sup>16</sup> Access to paid sick leave has also been associated with a higher prevalence of

---

<sup>16</sup> Tom W. Smith and Jibum Kim, *Paid Sick Days: Attitudes and Experiences*, National Opinion Research Center at the University of Chicago, at 6 (June 2010), <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-sick-days/paid-sick-days-attitudes-and-experiences.pdf>.

staying home for infectious diseases<sup>17</sup> and with a lower rate of community spread of respiratory illnesses.<sup>18</sup>

Second, like the paid sick leave provision, the healthcare stipend section of the Petitions states that rideshare companies' contributions to drivers' health insurance premiums are based on weekly "engaged time." See Petition, Section 6(a)(1) & (2). This means that rideshare drivers will have to work far in excess of the 25-hour or 15-hour contribution thresholds to receive a healthcare stipend. Moreover, the Petitions would raise the eligibility requirements for rideshare drivers to receive Paid Family and Medical Leave benefits. See Petition, Section 7(b)(1). As noted in the brief of the Plaintiffs-Appellants (Plts. Br. 42-43), this section of the Petitions adds rideshare-specific criteria to a state entitlement program that is administered by the Commonwealth for the benefit of all workers.

If the Petitions are adopted, the provisions concerning drivers' health benefits will place a strain on the public

---

<sup>17</sup> Kaitlin Piper, Ada Youk, A. Everette James III, and Supriya Kumar, *Paid Sick Days and Stay-at-Home Behavior for Influenza*, Plos One, at 10 (Feb. 2, 2017), <https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0170698&type=printable>.

<sup>18</sup> Yusheng Zhai, Tammy A. Santibanez, Katherine E. Kahn, Carla L. Black, and Marie A. de Perio, *Paid Sick Leave Benefits, Influenza Vaccination, and Taking Sick Days Due to Influenza-Like Illness Among U.S. Workers*, *Vaccine* Vol. 36, Issue 48, at 7316-7323 (Nov. 19, 2018).

health infrastructure, especially in light of the ongoing COVID-19 pandemic. Drivers who are deprived of health benefits may suffer higher rates of serious illness and hospitalization as a result of being unable to pay or make time for medically necessary treatments. They will also be less likely to take time off from work in the event that they contract an infectious disease like COVID-19, which poses a risk for their passengers and the wider public. Our communities may be forced to spend more money on public health services to make up for the lack of benefits in the Petitions. In 2021-2022, the City of Boston provided more than \$100 million in funding for the Boston Public Health Commission, a public agency that protects and promotes the health of Boston residents, particularly the most vulnerable.<sup>19</sup> A law reducing workers' access to paid sick leave and insurance coverage in a growing industry will pass more of the burden of managing the health impacts to institutions like the Boston Public Health Commission.

Taken together, the sections of the Petitions dealing with drivers' wages and drivers' benefits set a dangerous precedent. These provisions put other employers in Boston--employers without exemptions from wage and benefit laws--at a disadvantage

---

<sup>19</sup> City of Boston, *Fiscal Year 2022 Adopted Budget, Health and Human Services*, at 195-203, <https://content.boston.gov/sites/default/files/file/2022/01/V3%2012-%202022%20A%20Health-and-Human-Service-Cabinet.pdf>.

in relation to network companies. Amicus is concerned that the adoption of the Petitions could accordingly trigger a “race to the bottom,” in which employers in Massachusetts use employee misclassification and other means to “save” on labor costs, thereby pushing those costs onto state and local governments and ultimately onto taxpayers.

#### Denial of Legal Protections

The Petitions would also cause harm to Boston by depriving drivers and residents of important protections afforded by Massachusetts law. Notably, because they are classified as independent contractors under the Petitions, drivers would not be able to sue rideshare companies under the state antidiscrimination statute, G.L. c. 151B, for discrimination at the workplace on the basis of race, color, religion, national origin, sex, gender identity, or sexual orientation. See *Comey v. Hill*, 387 Mass. 11, 15 (1982) (holding that G.L. c. 151B does not apply to independent contractors). The lack of legal protection against employment discrimination is all the more troubling given that more than 40% of gig workers nationwide are black or Latinx.<sup>20</sup>

---

<sup>20</sup> Christy England, *The Gig Economy by the Numbers*, The Employee Rights Advocacy Institute for Law and Policy, at 6 (2020), <http://employeerightsadvocacy.org/wp-content/uploads/2020/10/Gig-Economy-By-The-Numbers-The-Institute-2020.pdf>.

## Insulating Network Companies from Liability

As shown in the brief of Plaintiffs-Appellants (Plts. Br. 36-42), Section 11 of the Petitions would immunize network companies from liability for torts caused by drivers against the members of the public. See Petition, Section 11(b) (providing that compliance with proposed law “shall not be interpreted or applied, either directly or indirectly,” in manner that treats rideshare companies as employers of app-based drivers and “any party seeking to establish that a person is not an app-based driver bears the burden of proof”) (emphasis added). This disclaimer of liability would have far-reaching effects on our communities and on Boston in particular. One area of concern is the safety and well-being of rideshare passengers. Safety reports issued by Uber and Lyft indicate that thousands of incidents of sexual assault took place on those platforms between 2017 and 2019.<sup>21</sup> Rideshare companies’ insistence that their drivers are independent contractors has meant that their agents do not call the police in the event of a safety incident or suggest that victims call the police themselves.<sup>22</sup>

---

<sup>21</sup> Uber, Inc., *2017-2018 U.S. Safety Report*, <https://www.uber.com/us/en/about/reports/us-safety-report/>, and Lyft, Inc., *Community Safety Report and Appendix*, <https://www.lyft.com/blog/post/lyfts-community-safety-report>.

<sup>22</sup> See Greg Bensinger, “Why Uber Won’t Call the Police,” N.Y. Times (Dec. 22, 2021), <https://www.nytimes.com/2021/12/22/opinion/uber-safety-ride-sharing.html>.

The liability provision of the Petitions would also undermine efforts to protect the safety of pedestrians and other drivers on Boston's streets. A recent study estimated that the introduction of ridesharing services nationally accounted for an approximately 3 percent annual increase in roadway deaths, or almost 1000 people each year.<sup>23</sup> Moreover, Uber and Lyft state in their own safety reports that hundreds of motor vehicle fatalities have occurred in connection with their platforms; these statistics do not even take non-fatal accidents into account.<sup>24</sup> It is unacceptable that rideshare companies would use the residents of the Commonwealth as a customer base but at the same time disclaim all liability in the certain event that a rideshare driver is involved in an accident with a resident. Amicus devotes considerable public resources to pursuing road and pedestrian safety, running a "Vision Zero" program seeking to eliminate traffic and pedestrian deaths by 2030. The Mayor of Boston's proposed Fiscal Year 2023 budget devotes \$45 million to improving pedestrian safety. Companies that account for approximately 8% of total vehicle miles traveled in Suffolk

---

<sup>23</sup> John Manuel Barrios, Yael V. Hochberg, and Hanyi Yi, *The Cost of Convenience: Ridehailing and Traffic Fatalities* (April 3, 2019). Available at SSRN: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3361227](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3361227).

<sup>24</sup> Uber, Inc., *2017-2018 U.S. Safety Report*, <https://www.uber.com/us/en/about/reports/us-safety-report/>, and Lyft, Inc., *Community Safety Report and Appendix*, <https://www.lyft.com/blog/post/lyfts-community-safety-report>.

County<sup>25</sup> should play a major role in this project of protecting the public from vehicle accidents, a role that is undermined by insulating them from liability for their drivers' conduct.

#### CONCLUSION

The adoption of the Petitions would have a negative effect both on Boston workers employed by network companies and on the larger city economy. Under the Petitions, rideshare drivers would receive lower wages than they would otherwise be entitled to under the laws of the Commonwealth, putting more strain on state and local public benefits programs. They would also receive meager benefits that would make them more likely to draw on public health resources. Finally, the Petitions' classification of drivers as independent contractors rather than employees would deny drivers the protection of antidiscrimination law, and would immunize rideshare companies from tort liability involving both drivers and the wider public. Amicus urges this Court to rule that the Petitions fail the relatedness test of Article 48, and to bar the Secretary of State from placing the Petitions on the November ballot.

---

<sup>25</sup> Fehr & Peers, *Estimated TNC Share of VMT in Six US Metropolitan Regions*, at 12 (Aug. 8, 2019), [https://issuu.com/fehrandpeers/docs/tnc\\_vmt\\_findings\\_memo\\_08.06.2019](https://issuu.com/fehrandpeers/docs/tnc_vmt_findings_memo_08.06.2019).

Date: April 14, 2022

Respectfully submitted,

FOR THE CITY OF BOSTON,

*/s/ Randall Maas*

---

Adam Cederbaum  
Corporation Counsel  
BBO#661549  
Randall Maas  
Assistant Corporation Counsel  
BBO#684832  
City of Boston  
One City Hall Square, Room 615  
Boston, MA 02201  
(617) 635-4034  
[adam.cederbaum@boston.gov](mailto:adam.cederbaum@boston.gov)  
[randall.maas@boston.gov](mailto:randall.maas@boston.gov)

CERTIFICATE OF COMPLIANCE

I, Randall Maas, hereby certify that this brief complies with the rules of court pertaining to the filing of briefs, including, but not limited to, Mass. R.A.P. 16, 17, and 20. This brief is produced in monospaced font and contains 15 pages.

*/s/ Randall Maas*

---

Randall Maas  
Assistant Corporation Counsel

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2022, I filed this brief electronically through the Supreme Judicial Court's e-filing system and that all counsel of record are shown as having received electronic notice.

*/s/ Randall Maas*

---

Randall Maas  
Assistant Corporation Counsel