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, RENEELEONA DOZIER, JANICE GUZMAN, AND YAMILA RUIZ,

Plaintiffs/Appellants

v.

ATTORNEY GENERAL and SECRETARY OF THE COMMONWEALTH,

Defendants/Appellees

CHRISTINA M. ELLIS-HIBBET, KATHERINE MARYWITMAN, ABIGAIL KENNEDY HORRIGAN, RICHARD M. POWER, MEGHAN J. BOROWSKI, CHAD B. CHOKEL, DANIEL SVIRSKY, MICHAELSTRICKMAN, MARCUS ALAN COLE, and JAMES WILLIAM ISAAC HILLS,

Intervenors

On Reservation and Report from the
Supreme Judicial Court for Suffolk County

REPLY BRIEF OF PLAINTIFFS/APPELLANTS

Dated: April 20, 2022

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ARGUMENT

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A. The Attorney General and Intervenors' Argument that the Proposed Laws Create an Integrated Scheme is too Abstract and Circular.

Intervenors have framed the Petitions as presenting a single policy question for voters: "whether to create a new worker classification ('App-Based Driver') with new legal rights and obligations." Intervenors' Br. at 23. They maintain that such rights are part of an integrated scheme that allows App-Based Drivers to receive benefits they would not otherwise receive if classified as independent contractors under the Commonwealth's current statutory framework's presumption of employment. *Id*. at 30-31.

This Court asks two questions in deciding whether the "relatedness" test is met – "First, '[d]o the similarities of an initiative's provisions dominate what each segment provides separately so that the petition is sufficiently coherent to be voted on "yes" or "no" by the voters?' . . . Second, does the initiative petition 'express an operational relatedness among its substantive parts that would permit a reasonable voter to affirm or reject the entire petition as a unified statement of public

policy'?" *Hensley v. Attorney Gen.*, 474 Mass. 651, 658 (2016) (citations omitted). Any logical application of Intervenors' proposed policy question to the subjects of the Petitions demonstrates that the question fails the relatedness test. Plaintiffs address the Court's second question first.

1. The Proposed Laws Do Not Express an Operational Relatedness Among its Substantive Parts That Would Permit a Reasonable Voter to Affirm or Reject the Entire Petition as a Unified Statement of Public Policy.

To be submitted to the voters, an initiative "must contain a single common purpose and express a unified public policy." *Anderson v. Attorney Gen.*, 479 Mass. 780, 791 (2018). This purpose "may not be so broad as to render the relatedness limitation 'meaningless.'" *Carney v. Attorney Gen.*, 447 Mass. 218, 225 (2006) (*Carney I*). "At some high level of abstraction, any two laws may be said to share a 'common purpose.'" *Id*. at 226. "[R]elatedness cannot be defined so broadly that it allows the inclusion in a single petition of two or more subjects . . . which could place [voters] in the untenable position of casting a single vote on two or more dissimilar subjects." *Abdow v. Attorney Gen.*, 468 Mass. 478, 499 (2014) (citing *Carney I*, 447 Mass. at 224-232).

Contrary to the position taken by Defendants, the Proposed Laws do not present an integrated scheme on which the electorate may vote. Intervenors' Br. at 32; AG's Br. at 27. This Court's jurisprudence distinguishes between those cases that present a unified statement of policy, and those that do not. Those that do are

concrete and focused; those that do not are abstract and broad. For example, an "integrated scheme" that asked whether recreational marijuana should be legalized easily satisfied the related subjects requirement of art. 48. *Hensley*, 474 Mass. at 658-59. Proponents presented a "detailed plan to legalize marijuana (with limits) for adult use and to create a system that would license and regulate the businesses involved in the cultivation, testing, manufacture, distribution, and sale of marijuana and that would tax the retail sale of marijuana to consumers." *Id*. at 658. Similarly, in *Weiner v. Attorney General*, 484 Mass. 687, 692 (2020), the various detailed provisions of the initiative all related to a common purpose: "the lifting of restrictions on the number and allocation of licenses for the retail sale of alcoholic beverages to be consumed off the premises."

In contrast, this Court found that the drafters' stated purpose of making Massachusetts government more accountable to the people was "unacceptably broad," given that "[o]ne could imagine a multitude of diverse subjects all of which would 'relate' to making government more accountable to the people." *Opinion of the Justices*, 422 Mass. 1212, 1220-21 (1996). Similarly, *In Carney I*, the broad goal of "promoting more humane treatment of dogs" did not connect initiative provisions abolishing parimutuel dog racing and amending criminal animal abuse statutes. 447 Mass. at 224, 231-32. It also rejected an initiative that would have joined together staffing ratios and financial reporting for hospitals

under the "general common purpose" of "regulation of hospitals." *Oberlies v. Attorney Gen.*, 479 Mass. 823, 836 (2018). Finally, this Court in *Gray v. Attorney General,* 474 Mass. 638, 648–49 (2016), rejected the Attorney General's argument that various sections of the proposed law were "operationally related" because they served a common purpose of imposing "new procedural requirements on the development and implementation of educational standards." It concluded that joining a proposed policy of rejecting a particular set of curriculum standards—common core—with a proposed policy of increasing transparency in the standardized testing process were two separate public policy issues. *Id*.

The teaching of the above cases is that the various subjects presented by proposed laws must present a uniform policy question to meet the requirements of Article 48. The policy question Intervenors propose, "whether to create a new worker classification ("App-Based Driver") with new legal rights and obligations," is too broad because it speaks to a "new worker classification" and to regulating and defining a contract-based relationship between Network Companies and Drivers. But the phrases, "new worker classification," and "defining a contract-based relationship" do not present voters with a single or even interrelated set of focused policy questions. Even the most attenuated subject could be part of a "new worker classification" or contract-based relationship. As in *Opinion of the Justices*, "[o]ne could imagine a multitude of diverse subjects all of which would

'relate' to" a new worker classification and regulating and defining a contract-based relationship. 422 Mass. at 1221. This is especially true here where the Proposed Laws contain a provision that says, "[t]he parties to such contracts may agree to supplemental terms which do not conflict with the terms deemed to be included by this chapter."[1]

Intervenors and the Attorney General argue that the Proposed Laws' provisions are operationally related, but their arguments are circular and conclusory. Intervenors assert "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." Intervenors' Br. at 36 n.17. The Attorney General maintains that the common purpose among the Petitions' provisions is "prescribing a new legal status for drivers characterized by a unique mix of statutory benefits." AG's brief at 26. Yet, neither Defendant answers the questions, "why" and "how" the minimum compensation and benefits are intrinsically and necessarily related to the creation of the new worker classification.[2]

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[1] R.A. 0020, ¶ 10(b).

[2] The reason is understandable; they are not actually operationally related to each other. Under current practice, the Network Companies treat Drivers as independent contractors. They do not offer Drivers minimum compensation and/or

By Defendants' logic, any ballot initiative could pass art. 48 muster if it could be superficially described as a unique statutory scheme "characterized" by its particular statutory provisions, all of which "relate" to the purpose of defining the legal contours of some new worker classification. That would open the door to untold purported statutory "schemes." The electorate does not vote on schemes: they vote on whether to affirm or reject unified statements of public policy. *Oberlies*, 479 Mass. at 830-31.

2. The Various Segments of the Proposed Laws are Not Sufficiently Coherent to be Voted on "Yes" or "No" by the Voters.

As noted, the other question this Court asks in a relatedness inquiry is, "'[d]o 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?'" *Hensley*, 474 Mass. at 658 (internal citations and quotation marks omitted). Alternatively, are the subjects sufficiently dissimilar so as to place the voter 'in the untenable position of casting a single vote on two or more *dissimilar* subjects.'" *Id*. at 659 (emphasis in original).

The Proposed Laws present many distinct policy questions to voters including, but not limited to, whether (1) Drivers should be classified as

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benefits. This demonstrates that the three elements—independent contractor status, minimum compensation, and minimum benefits—operate independently of one another. Plaintiffs' Opening Br. at 32-34.

independent contractors for purposes of multiple areas of law (*i.e*. the Wage Act, unemployment compensation, workers compensation, antidiscrimination law, and tax law) and, if they should be; (2) Drivers should receive guaranteed minimum compensation based on "engaged time" rather than "working time"; (3) Drivers should receive some but not all statutorily-mandated benefits of employment; (4) Drivers should receive benefits based on "engaged time" rather than "working time"; (5) Drivers should receive protection from discrimination based upon their status within a statutorily protected category; and (6) the Network Companies may be held responsible, as corporations operating in the Commonwealth, for the same financial obligations to the Commonwealth in maintaining social safety net entitlements, as any other corporation operating in the Commonwealth.

Intervenors claim that their question is coherent because it is limited to whether voters support "a narrowly-defined classification of App-Based Drivers . . . [with] legal rights of those App-Based Drivers and the Network Companies [established] within that contractual relationship." Intervenors' Br. at 33. Similarly, the Attorney General maintains, "[b]ecause the proposed laws set forth an integrated scheme that will prescribe a unique new status for drivers characterized by a unique new mix of statutory benefits, they are 'sufficiently coherent to permit a "yes" or "no" vote' by the voters." AG's Br. at 27.

The Defendants' attempt to gloss over multiple, unrelated policy issues belies the Proposed Laws' breadth and incoherence. Framing the question as, "whether to create a new worker classification ('App-Based Driver') with new legal rights and obligations," Intervenors' Br. at 23, is no less broad than whether voters should enact "new procedural requirements on the development and implementation of educational standards",[3] and whether legislators should be held more accountable.[4] These questions are arguably coherent at a broad level of abstraction, but not at a more granular level. The more granularly these questions are examined, the more dissimilar and lacking in coherence they are as a group, ultimately putting the voter in the untenable position of casting a single vote on multiple dissimilar subjects. Defendants cannot solve the coherence problem by reciting the mantra that all the separate policy questions presented by the Proposed Laws are part of a statutory scheme.

B. The Proposed Laws Seek to Regulate Two Unrelated and Non-Mutually Dependent Subjects: the Civil Legal Relationship Between Network Companies and Members of the Public and the Contractual Relationship Between Network Companies and Drivers.

Under art. 48, if a petition addresses multiple subjects, those subjects must be "related or . . . mutually dependent." *Oberlies*, 479 Mass. at 829. Defendants

[3] *Gray*, 474 Mass. at 648.

[4] *Opinion of the Justices*, 442 Mass. at 1220-21.

maintain that the Proposed Laws seek to "create a new civil relationship between the Network Companies and App-Based Drivers in the form of a new statutory worker classification." Intervenors' Br. at 36; *accord* AG's Br. at 26. Not only do the Proposed Laws seek to regulate multiple areas of law with respect to the relationship between the companies and the drivers, but the Proposed Laws also seek to regulate the civil legal relationship between Network Companies and members of the public. For the reasons set forth below, the Proposed Laws seek to do both, and, contrary to Defendants' position, the latter is ***not*** simply a consequence of the former.

Intervenors acknowledge that Section 11 of Petition 21-11 could 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*." Intervenors' Br. at 40 (emphasis in original). Intervenors maintain, however, that any impact on the civil legal relationship Companies and members of the public is "merely a downstream effect of related provisions." *Id.* at 37. They claim that any legal consequences for persons other than Network Companies and App-Based Drivers are "follow-on effects [that] arise from and are 'logically related' to the Petitions' common purpose. *Id*. at 40. The Attorney General takes the similar

position that the Proposed Laws merely have "secondary" effects on third party tort litigation. AG's Br. at 37.

However, the Intervenors' and Attorney General's arguments ignore the fact that section 11(b) includes language pertinent to parties ***in addition to*** Drivers. Analysis of the text reveals that that language would be superfluous if it were not designed to regulate the civil legal relationship between the Network Companies and members of the public; its presence demonstrates that the Proposed Laws' regulation of the civil legal relationship between Networks Companies and members of the public is not simply a "follow-on effect."

Section 11(b) reads:

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

(R.A. 0021 (emphases added).) Beginning a sentence with the phrase, "Notwithstanding any general or special law to the contrary" demonstrates an intent to supplant existing law. Plaintiffs' Opening Br. at 37. Inclusion of the phrase, "or indirectly," is intended to ensure that the section applies to actions brought "indirectly" against a Network Company, such as a suit by a member of the public seeking to hold a Network Company vicariously, *i.e.*, "indirectly," liable for torts committed by a Driver. *Id.* at 37-38. The word "indirectly" would be

surplusage unless it were meant to apply to suits by non-Drivers based on claims of vicarious liability.

The last clause in section 11(b) supports this conclusion. It reads: "***any party*** seeking to establish that a person is not an app-based driver bears the ***burden of proof***." The phrases, "any party" and "burden of proof," contemplate a lawsuit. In addition, the words "any party" makes clear that it applies to a lawsuit brought by "any" party, such as a member of the public or a third-party entity, and not just one brought by a Driver against the Network Company. If the section were "merely a downstream effect of related provisions," the Petitions would have used the word "Driver" instead of the much broader phrase, "any party."

The AG's brief addresses whether the Proposed Law's effort to regulate the civil legal relationship between Network Companies and members of the public would be effective. She writes, "the plaintiffs' textual argument [analyzing section 11(b) and the word "agent"], suggests a debatable question of statutory interpretation." AG's Br. at 35. Then she quotes *Abdow* for the proposition, "[w]hen determining whether an initiative meets the requirements of art. 48, we exercise 'restraint in deciding whether a measure would or would not have the legal effect intended . . . .' The proper interpretation of the[] provisions is not dispositive of the question of relatedness." AG's Br. at 36.

Plaintiffs and the Attorney General agree that whether the Petitions would or would not have proponents' desired effect of regulating the civil legal relationship between Network Companies and members of the public is not pertinent to the art. 48 analysis. *Abdow*, 468 Mass. at 508 ("the proper time for deciding definitively whether the measure has the desired legal effect will come if and when the measure is passed.") Rather, the question properly before this Court today in an art. 48 analysis is, do the Proposed Laws ***seek to*** regulate the civil legal relationship between Network Companies and members of the public so as to create another "subject" of the Petitions. Because section 11(b) makes clear that they do seek to regulate that relationship, and because the Proposed Laws indisputably also seek to regulate the contractual relationship between Drivers and Network Companies, and those two subjects are not related to or mutually dependent on one another, the Attorney General erred in certifying the Proposed Laws.

C. The Attorney General and Intervenors do not Show that the PFMLA Provision is Operationally Related to Defining and Regulating the Contract-Based Relationship between Network Companies and Drivers.

The Attorney General and Intervenors misconstrue Plaintiffs' argument that Section 8 of the Proposed Laws, which defines app-based drivers as "covered contract workers" under the Paid Family Medical Leave Act ("PFMLA"), is unrelated to the stated purpose of regulating the contract-based relationship

between a Network Company and a Driver. Plaintiffs do not argue that Section 8 is unrelated because it "amends" the PFMLA by defining a new category of covered worker subject to different rules from other covered workers, as Defendants suggest. AG's Br. at 28; Intervenors' Br. at 42. Rather, Plaintiffs contend that it is unrelated because it does not define or regulate a "contract-based relationship" between app-based drivers and Network Companies, the express purpose of the Petitions. Plaintiffs' Opening Br. at 45.

Section 8 touches on the Driver-Network Company relationship only to the extent that it requires Network Companies to remit contributions to the Commonwealth on drivers' behalf; Network Companies otherwise have no role in, or discretion regarding, the operation of the state entitlement program. Further, the benefits that app-based drivers would obtain through Section 8 are, contrary to Intervenors' contention, not "in the same vein" as the Petitions' minimum compensation and benefits provisions. Intervenors' Br. at 44. While Network Companies would be responsible for paying drivers' compensation and providing occupational insurance and training, the PFMLA program is like unemployment insurance: it is administered entirely by the state. It is not compensation or a benefit provided by the Network Companies. Instead, by regulating how drivers "fit[] within the PFMLA," *id.* at 42, Section 8 regulates the companies' and Drivers' relationship with the Commonwealth, not the drivers' relationship with

the Network Companies.[5] Regulation of the Driver-Network Company relationship is not related to or mutually dependent on the Proposed Laws' efforts to regulate their relationship with the Commonwealth.

II. The Attorney General Makes Multiple Admissions in Her Brief that Undermine any Contention that Her Summary is "Fair."

The Attorney General implicitly admits that she was obliged to alert voters that the Petitions would change existing law when she states: "by indicating that the proposed law would establish an 'alternative' benefits scheme for drivers, [the Summaries] convey that the proposed law would change the status quo for drivers (*i.e.*, establish an 'alternative'), without taking any position on what the status quo is." AG's Br. at 43-44. The Attorney General's unexplained reference to an "alternative" wage and benefits scheme does not, however, satisfy her obligation to provide a "fair" summary of the proposed laws "complete enough" to give voters a "fair and intelligent conception of the main outlines of the measure"[6] because her summary leaves the voter with the unanswered question, "alternative to what?"

The Attorney General's refusal to answer the question because she does not want to "take a position on the status quo" is quite troubling, particularly when she

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[5] Similarly, as explained in the amicus brief submitted by MELA, the Proposed Laws also attempt to regulate a relationship other than the one directly between the Companies and the Drivers, by declaring that Drivers are independent contractors for purposes of unemployment insurance, workers' compensation, and state taxes.

[6] *Abdow*, 468 Mass. at 505.

has sued Uber and Lyft seeking a declaration that Drivers are employees under the Wage Act.[7] The status quo is settled law, based on G.L. c. 149 § 148B and this Court's decision in *Somers v. Converged Access, Inc.*, 454 Mass. 582 (2009). That statute prescribes that "an individual who performs services shall be considered to be an employee, for purposes of G.L. c. 149 and G.L. c. 151, unless the employer satisfies its burden of proving by a preponderance of the evidence that" it is able to satisfy three statutory criteria. *Somers*, 454 Mass. at 589. None of the Network Companies has satisfied the three statutory criteria. There simply was no good reason for the Attorney General not to summarize the status quo.

The Attorney General then responds to Plaintiffs' request that the summaries "advise voters whether the main features of [a] proposed law would change existing law and, if so, how those features would change existing law," Plaintiffs' Opening Br. at 46, by arguing that art. 48 requires a summary "of the measure" and not of existing law . . .and that rule is dispositive of the plaintiffs' argument." AG's Br. at 44. Plaintiffs are ***not*** requesting the Attorney General be required to "summarize existing law." They are seeking to require her to summarize "whether the main features of [a] proposed law would ***change*** existing law and, if so, how

[7] The Attorney General's interpretation of the Wage Act is entitled to deference. *Smith v. Winter Place LLC*, 447 Mass. 363, 367-68 (2006).

those features would ***change*** existing law,"[8] a request consistent with the laws of at least four other states.[9] How is the average voter supposed to decide whether to support the existing law or the proposed change in the law without the Attorney General summarizing both?

The Attorney General then makes the following remarkable statement:

> [T]he plaintiffs contend that "in substantially all cases where a proposed law would or would not change existing law, the Attorney General has referenced that change or non-change in her summary." . . . The plaintiffs are incorrect. In every instance mentioned in the plaintiffs' brief, the measure at issue either expressly amended or repealed a specific existing law, or expressly stated an intent to change (or not change) some specific body of existing law.

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[8] Plaintiffs' Opening Br. at 46.

[9] While the standards in those states for a satisfactory summary is admittedly different from the "fair, concise" standard in Massachusetts, those states have concluded that a summary was "misleading" or "not impartial" when it did not describe how the proposed law would change existing law. *See, e.g.*, *Askew v. Firestone*, 421 So. 2d 151, 155-56 (Fla. 1982) (summary of a ballot measure that proposed to permit former state officials to lobby their state agencies only if they filed certain financial disclosures was misleading because it failed to disclose that the measure would end the existing two-year prohibition on such lobbying); *City & Cty. of Honolulu v. State*, 143 Haw. 455, 468 (2018) **(**proposed ballot question's failure to inform voters that an amendment would change existing law by depriving counties of their exclusive authority to tax real estate was "misleading to the public concerning material changes to an existing constitutional provision"); *Rasmussen v. Kroger*, 351 Or. 195, 198 (2011) ("When the major effect of a proposed measure would be a substantive change in existing law, the ballot[] should inform the reader of the scope of the change."); *Fairness & Accountability in Ins. Reform v. Greene*, 180 Ariz. 582, 592 (1994) (initiative that amended a small number of distinct constitutional provisions but failed to include some reference in the summary to each affected provision was not "impartial").

AG's Br. at 47. The Attorney General's view seems to be that if a proposed law explicitly amends or repeals a specific existing law, or expressly states an intent to change or not change a body of existing law, she will discuss it in the summary. But, as exemplified by her refusal to discuss how the Proposed Laws would change the status quo, if a proposed law would change the law, but does not expressly mention that change in the text of the proposed law, she will not discuss it in the summary.

The Attorney General's approach promotes casuistry. Savvy drafters of a proposed initiative now know that if they want to change existing law and ***not*** have the Attorney General summarize that change, all they need to do is write, "Notwithstanding any law to the contrary . . ."

That is precisely what the drafters of the Proposed Laws did here when they wrote:

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

R.A. 0010, § 3, Definition of "app-based driver" (emphasis added); and

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

R.A. 0021, § 11(b) (emphasis added).

The Attorney General's approach to summarizing some changes to the law, but not those resulting from the use of the phrase, "Notwithstanding any other law to the contrary," elevates the *form* of the petition over its *substance*. This Court has consistently rejected elevating form over substance.[10]

The Attorney General gives yet another reason for not summarizing the Proposed Laws' changes in existing law. She maintains "the legalistic reference to a 'presumption' would have been too easily misunderstood as a statement that drivers *are* currently 'employees'." AG's Br. at 45. But Drivers ***are*** currently considered "employees." *See Somers*, 454 Mass. at 589.

The Attorney General also admits that referencing the law's presumption that Drivers are employees in "her summary would almost certainly have been seen as unfair by the petitions' proponents" and "may have subjected the Attorney General to claims of bias as well." AG's Br. at 45. This statement suggests that she was more concerned with avoiding criticism from the Network Companies than with writing "fair" summaries. The Attorney General's art. 48 responsibility is to

[10] *See, e.g.*, *Ferreira v. Chrysler Grp. LLC*, 468 Mass. 336, 346 (2014) ("we do not believe the Legislature intends to exalt form over substance"); *Estate of Gavin v. Tewksbury State Hosp.*, 468 Mass. 123, 135 (2014) ("Demanding such stringency would elevate form over substance; we decline to do so.").

summarize the "sum and substance" of the Petitions.[11] Fear of potential claims of bias is no justification for not fulfilling her constitutional duty. Besides, explaining how the Proposed Laws would change *Somers* and the presumption would not make her summaries "biased." It would have been part of making them "fair."

[11] *Hensley*, 474 Mass. at 661 (citation omitted).

CONCLUSION

For the foregoing reasons and the reasons stated in Plaintiffs' opening brief, Plaintiffs request that the Court declare that the Petitions and Summaries thereof do not comply with art. 48 of the Massachusetts Constitution and bar the Secretary from placing the Petitions on the November 2022 ballot.

Dated: April 20, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Thomas O. Bean, hereby certify that on the 20th day of April 2022, I caused a true and accurate copy of the Reply Brief of the Plaintiffs/Appellants to be served by email on all counsel of record.

/s/Thomas O. Bean
Thomas O. Bean

CERTIFICATE OF COMPLIANCE

I, Thomas O. Bean, hereby certify that this 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)(3) (addendum), 16(e) (references to the record); Mass. R. A. P. 18 (appendix to the briefs); and Mass. R. A. P. 20 (form of briefs, appendices and other documents).

This brief is printed in Times New Roman, a proportionally spaced font, in 14-point type. The "word count" feature on Microsoft WORD 2019, determined that the sections of the brief required by Mass. R. A. P. 16(a)(5)-(11) contain 4,488 words.

/s/ Thomas O. Bean