

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

No. SJC-13559

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

v.

ANDREA JOY CAMPBELL, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL
OF THE COMMONWEALTH OF MASSACHUSETTS, AND WILLIAM FRANCIS
GALVIN, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE COMMONWEALTH OF
MASSACHUSETTS,
Defendants-Appellees,

CHARLES ELLISON, ET AL.,
Intervenor Defendants-Appellees.

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

**BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES
OF AMERICA AND ASSOCIATED INDUSTRIES OF MASSACHUSETTS
AS *AMICI CURIAE* SUPPORTING
DEFENDANTS-APPELLEES AND INTERVENORS**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Mass. R. App. P. 17(c)(1) and Supreme Judicial Court Rule 1:21, *Amici Curiae* Chamber of Commerce of the United States of America and Associated Industries of Massachusetts, by their undersigned counsel, hereby discloses the following:

1. Parent Corporation(s) of Chamber of Commerce of the United States of America: None.
2. Publicly Held Corporation(s) Owning More Than 10% of Chamber of Commerce of the United States of America: None.
3. Parent Corporation(s) of Associated Industries of Massachusetts: None.
4. Publicly Held Corporation(s) Owning More Than 10% of Associated Industries of Massachusetts: None.

/s/ Kevin P. Martin
Kevin P. Martin

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ISSUE PRESENTED

Whether the Attorney General correctly certified Initiative Petitions 23-25, 23-29, 23-30, 23-31 and 23-32 as compliant with Article 48 of the Amendments to the Massachusetts Constitution, and whether the summaries of those initiative petitions comply with Article 48.

INTEREST OF THE *AMICI CURIAE*¹

The Chamber of Commerce of the United States of America (the “Chamber”) is the world’s largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every economic sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation’s business community.

¹ The Chamber and AIM declare, in accordance with Mass. R. App. P. 17(c)(5), that: (1) no party, nor any party’s counsel, has authored this brief in whole or in part; (2) no party, nor any party’s counsel, has contributed money that was intended to fund preparing or submitting this brief; (3) no person or entity—other than the Chamber and AIM, their members, or their counsel—has contributed money that was intended to fund preparing or submitting this brief; and (4) neither the Chamber nor AIM nor their counsel represents or has represented one of the parties to this case in another proceeding involving similar issues, or was a party or represented a party in a proceeding or legal transaction that is at issue in the present appeal.

The Chamber has a significant interest in the question before the Court. One of the Chamber's key priorities is protecting innovation and entrepreneurialism against policies that stifle economic growth. Many of the Chamber's members rely on the flexibility of independent contractor relationships, including by working alongside so-called "gig" workers who deliver goods and services to the public. Gig work provides millions of people the opportunity to own their own business, set their own hours, and navigate the changing economic landscape. Today, work outside the traditional employment model accounts for tens of millions of jobs and trillions of dollars in economic activity, figures that are increasing every year. The Chamber therefore encourages this Court to affirm the ballot certification, which protects such relationships.

Founded more than one hundred years ago, Associated Industries of Massachusetts ("AIM") is a nonprofit association located in Boston. With over 3,400 employer members doing business in Massachusetts, AIM is the largest business association in the Commonwealth. AIM's mission is to promote the well-being of its members and their employees and the prosperity of the Commonwealth by improving the economic climate of Massachusetts, proactively advocating for fair and equitable public policy, and providing relevant and reliable information and excellent services.

The issues presented in the case are of interest to AIM because they directly concern the regulation of business in the Commonwealth. As the state’s largest employer organization, AIM is primarily concerned with protecting the Massachusetts business climate and ensuring that companies can thrive. In response to this Court’s request for *amicus* briefing on this important legal question, AIM has filed this brief to provide a perspective that may assist the Court in reaching a sound decision.

INTRODUCTION

The initiative petitions in this case address the legal relationship between independent drivers who use digital platforms to find consumers, and the network companies² that create and run such platforms. In 2022, a pair of petitions came before this Court that also addressed this legal relationship. *See El Koussa v. Attorney General*, 489 Mass. 823 (2022) (“*El Koussa I*”). This Court held that those petitions violated the relatedness requirement, stating that they were ambiguously phrased and could be read to concern *both* the contractual relationship between independent drivers and network companies *and* the legal relationships between

² The petitions define “network company” to be a company that is a “transportation network company” or a “delivery network company” (or both), meaning companies that provide online platforms for transportation (such as Lyft) and/or delivery services (such as Doordash). *E.g.*, Record Appendix (“R.A.”) 26-27.

those parties and third parties. In August 2023, Massachusetts voters filed more narrowly crafted petitions that solve the problem the Court identified and satisfy the related subjects requirement. The Attorney General therefore certified these petitions for the November 2024 ballot.

Plaintiffs nonetheless challenge the Attorney General's certification once again. Their brief is grounded largely in policy considerations that have little relevance to the legal analysis of the petitions. *See, e.g.*, Br. of Plaintiffs/Appellants at 37-50. To the extent public policy is relevant to the constitutional issues presented here, it is a basis to uphold the petitions, not to strike them down. Preserving the independence and flexibility of the "gig economy" is vital to the Commonwealth and its citizens.

As explained below, app-based drivers and network companies are part of the gig economy. Such entrepreneurs are not tied down to a traditional job or a single employer. Instead, app-based drivers set their own schedules and choose their own projects. These drivers are a new example of a familiar type: the independent contractor. Although independent contractors always have been part of the workforce, technology has reduced the barriers that previously made it difficult for independent contractors to connect with consumers. As a result, millions of independent-contractor jobs have been created and workers have embraced the independence and flexibility that gig work allows.

The petitions at issue here help preserve app-based drivers' autonomy by protecting their ability to work as independent contractors. The petitions would codify what is already clear: that drivers using rideshare and delivery apps are independent contractors, not employees. Certain of the petitions would further establish a framework to govern the economic relationship between app-based drivers and network companies, addressing issues such as compensation and insurance. All the petitions represent a carefully constructed response to a single public-policy question.

It should be clear that Plaintiffs' primary concern is not with the petitions' consistency with Article 48; their ultimate goal is to classify app-based drivers as employees. But classifying app-based drivers as employees would be harmful to drivers, network companies, and consumers. Drivers would suffer, as businesses might be forced to control how drivers provide services, thus eliminating the very flexibility that drivers value. Network companies may scale back their businesses or adjust their operations to save costs, which could limit options for consumers. Plaintiffs' brief entirely ignores the numerous benefits that independent contractor status provides to app-based drivers and ignores the economic harms of treating app-based drivers as employees.

Accordingly, for the reasons set forth herein, as well as those given in the briefs of the Defendants-Appellees and the Intervenors, the Court should reject Plaintiffs' challenge to the certification and summaries of the initiative petitions.

ARGUMENT

I. APP-BASED INDEPENDENT CONTRACTING HAS TRANSFORMED THE MODERN ECONOMY.

1. Independent contracting has long been an important alternative to the traditional employee model. Unlike traditional 9-to-5 employment—in which employees “report five days a week to a single firm, take regular direction from management for their hours, activities and methods of operation, and are dependent on a single employer for all or nearly all of their earned income”—independent contractors “earn income by selling goods or services to multiple customers, at times and on terms of their own choosing.” Jeffrey A. Eisenach, *The Role of Independent Contractors in the U.S. Economy*, Navigant Econs. 4 (Dec. 2010), <https://bit.ly/3UuyAou>. The “economic benefits” of the model are manifold: “workforce flexibility, avoidance of fixed costs, the ability to ‘pay for performance,’ the avoidance of legal and economic barriers in efficient contracting, and, perhaps most important, the satisfaction of workers’ desires to ‘be their own boss.’” *Id.* at i. Because of these benefits, there always have been independent contractors in many trades: electricians, plumbers, and house painters are all well-known examples of contractors working multiple jobs for multiple employers.

Although independent contractors have been around “[f]or centuries,” “[u]ntil recently ... connecting customers and workers took time.” James Sherk, *The Rise of the “Gig” Economy: Good for Workers and Consumers*, (Oct. 7, 2016) (“*Rise of the Gig Economy*”), <https://bit.ly/49M2BEE>; see also Richard R. Carlson, *Why The Law Still Can’t Tell an Employee When It Sees One and How It Ought to Stop Trying*, 22 Berkeley J. Emp. & Lab. L. 295, 303 & fn. 35 (2001) (discussing early origins of the term “independent contractor”). The process of connecting consumers to independent contractors and negotiating a transaction was plagued by what economists call “transaction costs”—*i.e.*, costs accompanying a transaction apart from the cost of the good or service itself—which “can be so prohibitively high that they can prevent otherwise mutually beneficial deals from taking place.”³ For example, consumers traditionally needed to rely on word-of-mouth, local publications, and their own research to find an independent contractor. Independent contractors, for their part, needed to rely on customer referrals or to “wait by the phone” in hopes of finding work. These communication barriers posed a particular problem in suburban and rural areas, where the odds of happening upon a contractor or a consumer looking to hire a contractor were lower than in urban areas.

³ John O. McGinnis, *The Sharing Economy as an Equalizing Economy*, 94 Notre Dame L. Rev. 329, 342 (2018).

That all changed with the Internet and the widespread availability of smartphone technology. While “home-sharing and ride-hailing ... existed long before the emergence of Uber and Airbnb, transaction costs previously limited such activities to an ad-hoc or informal basis or within close-knit communities.” Kellen Zale, *When Everything is Small: The Regulatory Challenge of Scale in the Sharing Economy*, 53 San Diego L. Rev. 949, 977 (2016). But new technologies now allow entrepreneurs to instantly connect with potential consumers on a mass scale. Thus, network “companies like Uber and Airbnb ... have harnessed technological developments such as GPS location services, smartphones, and app software to lower transaction costs of what were often previously expensive or inconvenient exchanges.” *Id.*

These new network companies are diverse in size and scope. Some specialize in a particular service, such as Gigster (software engineering) and Airbnb (short-term accommodations). Others offer a variety of services, such as Thumbtack (home, business, wellness, creative design) and Upwork (accounting, copy editing, personal fitness). All told, network companies offer services in virtually every industry: not just transportation and delivery services, but also real estate, healthcare, law, finance, and consulting, among other fields.

The result is a dramatically expanded gig economy, in which a large portion of the workforce “is hired, often through a digital marketplace, to work on demand”

for “a single project or task.” Elka Torpey & Andrew Hogan, *Working in a gig economy*, U.S. Bureau of Lab. Stat. (May 2016) (“*Working in a gig economy*”), <https://bit.ly/49Mo54k>; 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* 13-17 (Jan. 2020) (“*Ready, Fire, Aim*”), <https://bit.ly/3vWi47q> (cataloguing data on size of gig economy). This innovation “is changing the face of the US economy.” Samantha Delouya, *The rise of gig workers is changing the face of the US economy*, CNN (July 25, 2023) (“*The rise of gig workers*”), <https://cnn.it/4bavyem>. Economists have observed that “the rapid growth of platform work” is a “defining feature of twenty-first century capitalism.” Juliet B. Schor & Steven P. Vallas, “Labor and the Platform Economy,” in *Reengineering the Sharing Economy: Design, Policy, and Regulation* 83 (Babak Heydari et al. eds. 2023). Indeed, the independent workforce is growing at a rate three times faster than the overall U.S. workforce; if that growth rate stays steady, independent workers may be the majority of the U.S. workforce by 2027. Freelancers Union & Upwork, *Freelancing in America: 2017* 3 (2017), <https://bit.ly/3xpmvaQ>.

The numbers demonstrate the importance of this work to independent contractors, consumers, and the economy. A recent report estimates that there were “7.3 million active drivers and delivery partners on major rideshare and delivery

platforms” in 2022. Public First, *U.S. App-Based Rideshare and Delivery: Economic Impact Report 6* (2024) (“*Economic Impact Report*”), <https://bit.ly/4cYFeKJ>. A Pew nationwide survey found that 16% of Americans have used a network platform to earn money. Monica Anderson et al., *The State of Gig Work in 2021*, Pew Rsch. Ctr. (Dec. 8, 2021), <https://bit.ly/3TGXP5g>. Globally, the World Bank estimates that the number of active online gig workers could be around 435 million—a remarkable 12.5% of the global labor force. Namita Datta et al., World Bank, *Working Without Borders: The Promise and Peril of Online Gig Work*, at 58 (2023), <https://bit.ly/3JzctXC>. Overall, this explosion of activity contributed “an estimated \$212 billion to the U.S. economy.” *Economic Impact Report, supra*, at 6.

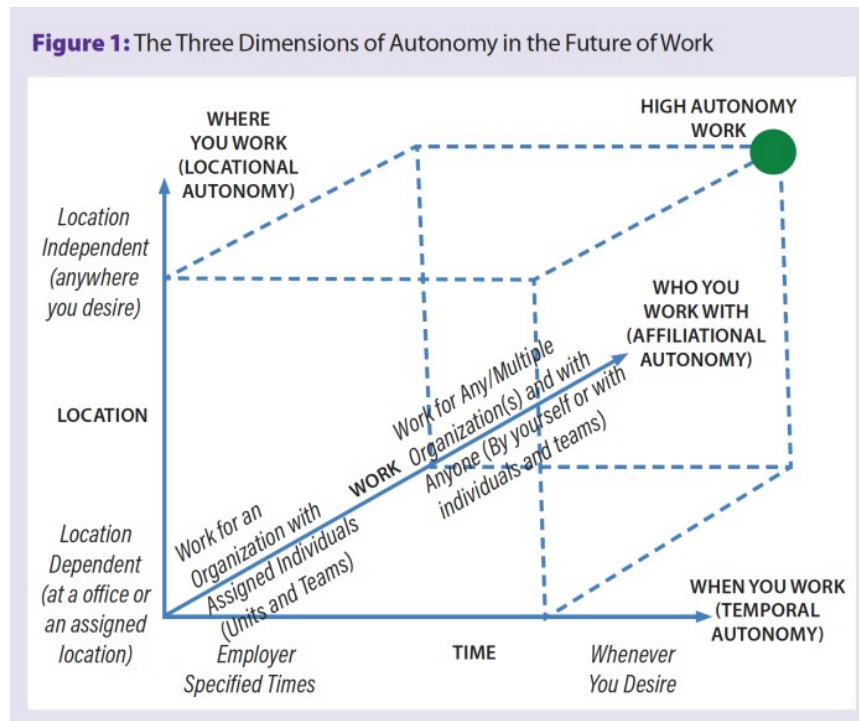
The gig economy is significant in Massachusetts. Nearly 5% of Massachusetts’s overall workforce engages in app-based work. Alex Fitzpatrick, Kavya Beheraj & Mike Deehan, *Nearly 5% of Mass. workforce is doing app-based work, study finds*, Axios (Apr. 3, 2024), <https://bit.ly/3QFN0jt>. This amounts to approximately 170,000 drivers and app-based gig workers, making about 120 million trips and deliveries, and contributing \$5.3 billion to the state economy. *See Economic Impact Report, supra*, at 15.

2. Workers in the gig economy enjoy all the traditional advantages of independent contracting, such as flexibility and autonomy, but on a greater scale.

Independent contractors may take full advantage of the flexible working relationships facilitated through apps by “toggling back and forth between different ... companies and personal clients, and by deciding how best to obtain business,” such that their personal profits are “increased through their initiative, judgment, or foresight—all attributes of the typical independent contractor.” *Saleem v. Corp. Transp. Grp., Ltd.*, 854 F.3d 131, 144 (2d Cir. 2017) (internal quotation marks and alterations omitted). A driver might use multiple rideshare apps over the course of a morning, choosing platforms and rides based on convenience and pricing; then switch at noon to delivering lunch through DoorDash or groceries through Postmates; then stop in the afternoon to pick up her children from school, run her own small business from home, or pursue a hobby. Or a student might help finance his studies by giving rides through Uber between classes. *See Ready, Fire, Aim, supra*, at 16 (noting that 37% of workers aged 18 to 29 reported engaging in gig work in the previous year, two-thirds of whom were students). The result, as one worker in the gig economy explained, is “a dream come true” for someone who wants “the freedom to set my own hours” and to “do what I do anywhere there’s an Internet connection.” *Working in a gig economy, supra*.

The autonomy that characterizes workers in the gig economy is multifaceted. These workers “enjoy both locational and temporal autonomy”—*i.e.*, they can choose where and when they work—as well as “affiliative autonomy,” which allows

them to work with whichever platforms they wish. Arvind Malhotra et al., *A Future of Work and Organizations*, Management and Business Review (Spring 2021), <https://bit.ly/4d4LLUi>. Individuals might choose more or less autonomy on each of these issues, as they see fit, to reach their own personal ideal:



Id.

Flexibility is enormously important to app-based drivers, because it enables them to quickly adjust to “shocks”—that is, workers are able to stop or start working in response to various unexpected developments (e.g., a child’s illness, new expenses, or another job opportunity). M. Keith Chen et al., *The Value of Flexible Work: Evidence from Uber Drivers*, 127 J. Pol. Econ. 2735, 2740-41 (2019); *see id.* at 2791 (“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.”).⁴ This flexibility has real value to app-based drivers, with one study quantifying its value to Uber drivers as equal to “increases in wages of more than 50 percent.” *Id.* at 2792.⁵ Another study put the value of flexibility to app-based drivers at \$11 billion per year. *Economic Impact Report, supra*, at 21.

Indeed, “[i]n survey after survey, gig workers report that the primary benefit of gig work is flexibility. They gravitate to gig work because it allows them to make their own schedules and choose their own projects. They like feeling like their own boss.” *Ready, Fire, Aim, supra*, at 36. As a result, “77% of independent workers reported being very satisfied with independent work” and “78% plan to continue,” while “[o]nly 16% say they plan to seek a full or part-time traditional job.” MBO Partners, *Stronger Together: State of Independence in America 2023* 13 (2023),

⁴ See also Jonathan V. Hall & Alan B. Krueger, *An Analysis of the Labor Market for Uber’s Driver-Partners in the United States*, 71(3) ILR Rev. 705, 707 (2018) (“*Uber’s Driver-Partners*”), <https://bit.ly/3w9l68c> (survey of Uber drivers suggesting app-based work “can ... help workers smooth fluctuations in other sources of income”).

⁵ See Jyoti Madhusoodanan, *Gig Workers Value their Flexibility...a Lot*, Yale Insights: Research (Apr. 16, 2019), <https://bit.ly/3QgxjPn> (finding “that drivers would require almost twice as much pay to accept the inflexibility of the taxi schedule”).

<https://bit.ly/3xRKLCU>.⁶ In fact, 66% reported that they “felt *more secure* working independently” than in more traditional jobs. *Id.* (emphasis added).

Independent workers in the gig economy are not just happier with their jobs; they are also out-earning their peers. Drivers’ and delivery partners’ “app-based earnings are worth an average of 24% more than their next best alternative source of income.” *Economic Impact Report, supra*, at 21.⁷ The ability to take on discrete jobs using network-based apps also allows drivers to supplement their incomes from other sources (e.g., full-time employment in a traditional job), replace income while looking for new full-time employment, and control their own costs and benefits. *Id.* at 20.⁸

⁶ See also *Uber’s Driver-Partners, supra*, at 706, 712 (finding that a remarkably diverse group of Americans, including “students,” older workers who have “retired” from their 9-to-5 jobs, and “stay-at-home parents,” are drawn to app-based gigs due to the “nature of the work, the flexibility, and the compensation”); see also *id.* at 715 (finding “81% of driver-partners said they are very satisfied or somewhat satisfied with Uber in 2015”).

⁷ See also *Uber’s Driver-Partners, supra*, at 713 (majority of Uber drivers surveyed report that their work with Uber “has increased their overall income”); Lyft, *Economic Impact Report 2022 (Massachusetts)* 1 (“*Lyft Mass. Report 2022*”), <https://bit.ly/4b1JGa8> (finding a similarly diverse and satisfied workforce among Massachusetts drivers using Lyft); BW Rsch. P’ship & Mass Insight Glob. P’ships, *Hourly Earnings of App-Based Rideshare Drivers and Food Delivery Workers in Massachusetts* (March 2022), <https://bit.ly/49QxLL9> (finding similar economic benefits for drivers using rideshare and delivery apps in Massachusetts).

⁸ Researchers examining data on unemployment claims and credit card debt before and after Uber’s arrival in a particular region also found that people who can work on the Uber platform are less likely to rely on unemployment insurance and credit

The flexibility of the gig economy also has been shown to create new opportunities for entrepreneurship. A 2023 study found that “individuals who previously received income from the gig economy are significantly more likely to start new” companies, and that this “effect is amplified for individuals with lower income, who are relatively younger, and who might benefit from flexibility.” Matthew Denes et al., *Entrepreneurship and the Gig Economy: Evidence from U.S. Tax Returns* 38 (Oct. 31, 2023), <https://bit.ly/4aORuw6>. Economists have described this effect as “launching with a parachute,” explaining that “the introduction of the gig economy creates fallback opportunities for would-be entrepreneurs that reduce risk and encourage new business formation.” John M. Barrios et al., *Launching with a parachute: The gig economy and new business formation*, 144(1) *J. Fin. Econ.* 22 (2022). Summarizing these benefits, a recent Federal Reserve article states that “the gig economy provides services that people value, and it also has a spillover: It encourages entrepreneurial activity by supplementing and smoothing the income of entrepreneurs.” Scott A. Wolla, *How Does the Gig Economy Support*

debt, amounting to nearly 5% reduction in unemployment claims and 3% reduction in credit delinquencies. Dylan Walsh, *How the gig economy can reduce unemployment and debt*, MIT Mgmt. Sloan School, Ideas Made to Matter (Sept. 29, 2020), <https://bit.ly/3W9I89G>. As one scholar succinctly put it, “[p]eople who have access to the gig economy borrow less money than people who don’t.” *The rise of gig workers, supra.*

Entrepreneurship?, Econ. Rsch., Fed. Reserve Bank of St. Louis (Apr. 2024), <https://bit.ly/4bcHvQL>.

Given these many benefits of working in the gig economy, it is no surprise that app-based independent contractors do not want to be reclassified as employees. Indeed, a number of surveys of Massachusetts app-based independent contractors show that the large majority favor the same measures advanced by the initiative petitions at issue here, and that a majority would cease their app-based work were they to lose their independence.⁹

3. The rise of the gig economy also has benefited the public. Now a “customer can quickly and easily find someone willing to perform the service she needs.” *Ready, Fire, Aim, supra*, at 12. Rideshare and delivery apps of the sort addressed by the initiative petitions illustrate the theme. In the past, robust on-hire transportation services generally were limited to certain urban areas, such that “[o]rdering a taxi outside well-traveled areas [could] involve waiting a half-hour or more.” *Rise of the Gig Economy, supra*. Today, app-based platforms connect “drivers straight to the nearest customer—dramatically reducing wait times.” *Id.* One study found that rideshare apps are “more than twice as fast” at connecting

⁹ *Lyft Mass. Report 2022, supra*, at 1; Beacon Rsch., *Key findings from March survey of app-based drivers* (Mar. 31, 2023), <https://bit.ly/44h3cwP>.

drivers to riders as traditional taxi services. *Id.* The same study also found that ridesharing apps are less expensive for consumers than traditional taxis. *Id.*

Consumers recognize these benefits and have “strongly positive” attitudes toward these platforms. Aaron Smith, *Shared, Collaborative, and On Demand: The New Digital Economy*, Pew Rsch. Ctr. 5 (May 2016), <https://bit.ly/3Qjqv3l>. “[U]sers are in near-universal agreement that ride-hailing saves them time and stress, and that these services offer good jobs for people who prioritize flexible working hours.” *Id.* Indeed, a recent survey found that 91% of Massachusetts consumers who get rides through the Lyft app “believe that Lyft increases access to transportation in their communities.” *Lyft Mass. Report 2022, supra*, at 2. These benefits have been felt beyond wealthy communities—the same survey shows that “55% of rides start or end in low-income areas.” *Id.*

The vibrant and emerging gig economy has ripple effects for the public that extend far beyond the economic, underscoring why voters should have the opportunity to consider the legal regime that governs app-based drivers and network companies. For example, a forthcoming study reports “that ridesharing reduces total U.S. traffic fatalities by 5.2% in areas where it operates,” largely due to the decrease in drunk-driving related accidents. Michael L. Anderson & Lucas W. Davis, *Uber and Traffic Fatalities*, 106 *The Review of Economics and Statistics*, at 3 (forthcoming 2024), <https://bit.ly/44f6sZK>; *see id.* at 17 (estimating “that Uber

saved 627 lives in 2019, a reduction of 5.2%,” and noting that “[t]his calculation includes lives saved by Uber only; total lives saved by ridesharing would also include the impacts of competitors like Lyft”).¹⁰

As another example, many lower-income Americans live in “food deserts”—areas with low access to stores selling fresh, healthy food. Yet a recent study shows that 90% of people living in food deserts have at least one digital food access option—and the service rate exceeds 95% in food deserts within metropolitan areas. Caroline George & Adie Tomer, *Delivering to Deserts: New data reveals the geography of digital access to food in the U.S.*, Brookings (May 11, 2022), <https://brook.gs/3NI3YcG>. By matching workers with consumers, the gig economy has enabled all Americans to access the goods and services they need.

* * *

In summary, independent contractors have become a pillar of the modern economy. An increasingly large and diverse bloc of Americans work in the gig economy and are happy with that model. Consumers are happy, too, because app-

¹⁰ See also Brad N. Greenwood & Sunil Wattal, *Show Me the Way to Go Home: An Empirical Investigation of Ride-Sharing and Alcohol Related Motor Vehicle Fatalities*, 41 MIS Quarterly 163, 164-65 (2017), <https://bit.ly/3WgsVUu> (“results indicate that the entrance of Uber X results in a 3.6% to 5.6% decrease in the rate of motor vehicle fatalities per quarter in the state of California”).

based independent contracting has made vital services, including rideshares and deliveries, available at competitive prices nationwide, including in Massachusetts.

II. THE PETITIONS ARE LIMITED TO DEFINING THE CLASSIFICATION OF APP-BASED DRIVERS.

1. In 2022, in *El Koussa I*, this Court examined two initiative petitions that sought to regulate the relationship between app-based drivers and network companies. Both petitions included two distinct “classification provisions.” 489 Mass. at 833. The first provision would have classified “any covered app-based driver as ‘an independent contractor and not an employee or agent’ of a network company ‘for all purposes with respect to his or her relationship with the network company.’” *Id.* at 825-26. The second stated that network companies would not be “indirectly” treated as employers of app-based drivers. *Id.* at 826. This Court recognized that the first provision likely “appl[ied] only to regulate the voluntary relationship between network companies and app-based drivers.” *Id.* at 833. But it had concerns that the second provision was ambiguous and could be read to establish “that app-based drivers may not be deemed agents or employees of network companies ... in lawsuits brought by third parties,” thus “redefin[ing] the scope of tort recovery for third parties.” *Id.* at 833-34.

Ultimately, this Court concluded that the petitions violated Article 48’s relatedness requirement because the scope of network companies’ tort liability to third parties for the acts of app-based drivers was “a separate, significant policy

decision” from whether the app-based drivers should be deemed employees or independent contractors in their contractual relationships with the network companies. *El Koussa I*, 489 Mass. at 839. It therefore overturned the Attorney General’s certification decision.

2. The five initiative petitions at issue here were crafted following *El Koussa I* and avoid the defects this Court identified in the 2022 petitions. In particular, the proposed laws do not contain what this Court deemed to be “confusingly vague and open-ended provisions” that could be read “to limit the network companies’ liability to third parties injured by app-based drivers’ tortious conduct.” 489 Mass. at 830. Instead, the five petitions propose variations on what *El Koussa I* described as the “first classification provision,” *id.* at 825-26, which was focused on defining the contract-based relationship between network companies and app-based drivers.

The five initiative petitions at issue can be usefully divided, as the Intervenor-Defendants explain, into two groups: two “Short-Form Petitions” (Version F and I) and three “Long-Form Petitions” (Version B, G, and H). *See* Br. of Intervenor-Defendants at 17-18.

Short-Form Petitions: Versions F and I each state that their “purpose ... is to clarify that app-based drivers are not employees, and network companies are not employers” for specified purposes, thus “guaranteeing app-based drivers the freedom and flexibility to choose when, where, how, and for whom they work.”

R.A. 55, 80. Version F would create a new Chapter 159AA of the General Laws providing that, “for purposes of chapters 149, 151, 151A, or 152, an app-based driver[] ... is not an employee with respect to his or her relationship with a network company and a network company is not an employer with respect to its relationship with an app-based driver.” R.A. 55. Those chapters address employment-law issues such as wage and hour, safety, insurance, and workers’ compensation requirements. Version I is similar, directly amending several of those individual provisions. *See* R.A. 80.

Long-Form Petitions: Versions B, G, and H also clarify that app-based drivers are independent contractors and not employees of the network companies. They further require that certain benefits for app-based drivers be incorporated into all new contracts with network companies, including specific provisions for guaranteed minimum compensation, healthcare stipends, sick time, and accident insurance. *See* R.A. 28-38 (Version B), 58-68 (Version G), 69-79 (Version H). Thus, their stated purpose “is to define and regulate the relationship between network companies and app-based drivers,” including by “requir[ing] network companies to provide app-based drivers with minimum compensation, healthcare stipends, earned paid sick time, and occupational accident insurance that will operate uniformly throughout the commonwealth, while protecting app-based drivers’

freedom and flexibility to choose when, how long, how often, and for whom they work.” R.A. 28, 58, 69.

In this respect, the long-form petitions preserve the flexibility of independent contracting for app-based drivers while also providing extensive protections tailored to the needs of those drivers. For example, the petitions include provisions that guarantee drivers certain compensation, health insurance, and coverage for injuries. These petitions are thus more protective of independent contractors than the historic baseline, which has excluded independent contractors from workers’ compensation laws. *E.g.*, *Ives Camargo’s Case*, 479 Mass. 492, 494-95 (2018) (explaining that independent contractors are not covered by the Massachusetts workers-compensation statute). Far from stripping drivers of protections, the petitions strike a balance between offering drivers more protections than they would have obtained under prior schemes, while ensuring they can retain the flexibility associated with the independent contractor status. In that respect, they are similar to efforts throughout the country to enact laws striking a similar balance.¹¹

¹¹ See Sean P. Redmond, *California Voters Pass Proposition 22*, U.S. Chamber of Commerce (Nov. 12, 2020), <https://bit.ly/3UyDQaO> (similar California measure passed by a roughly 17% margin); Brad Dress, *Washington passes first-ever state law creating minimum pay for ride-hailing companies*, TheHill.com (Apr. 1, 2022), <https://bit.ly/3w4pOUT> (discussing passage of similar law in Washington); Chris Marr, *Uber, Lyft Driver Pay Proposals in 2024 Shaped by New York Deal*, Bloomberg Law (Dec. 27, 2023), <https://bit.ly/4bbo0YU> (discussing agreement

In short, the initiative petitions reflect that an app-based driver uses a different business model than a traditional employee, warranting different regulatory treatment. Disagreement with that conclusion should not influence the constitutional analysis. The voters of the Commonwealth should be given the opportunity to consider this question and to recognize these realities with respect to app-based drivers.

between Uber, Lyft, and New York regulators containing similar terms to those in the initiative petitions here).

CONCLUSION

The Court should hold that the Attorney General properly certified the initiative petitions under Article 48 and reject Plaintiffs' challenge to the Attorney General's summaries of the initiative petitions.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Kevin P. Martin, counsel for *Amici Curiae*, certify pursuant to Rule 17(c)(9) of the Massachusetts Rules of Appellate Procedure, that this brief complies with the rules of court that pertain to the filing of briefs, including but not limited to Mass. R. App. P. 16, 17 and 20. This brief contains 5,075 words, excluding the parts of the brief exempted by Mass. R. App. P. 20(a)(2)(D). The brief has been prepared in a proportionally spaced typeface, 14-point Times New Roman font, using Microsoft Word 2010.

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COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

CERTIFICATE OF SERVICE

I, Kevin P. Martin, counsel for *Amici Curiae*, hereby certify this 26th day of April, 2024, that I have served a copy of this Brief of the Chamber of Commerce of the United States of America and Associated Industries of Massachusetts as *Amici Curiae* Supporting Defendants-Appellees and Intervenors for the Commonwealth of Massachusetts Supreme Judicial Court, Case Number SJC-13559, by causing it to be delivered by eFileMA.com to counsel of record who are registered users of eFileMA.com. All counsel who are not registered users of eFileMA.com have been served via Email pursuant to Mass. Rules of Civil Procedure 5(b)(1):

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