

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

NO. SJC-13237

MARTIN EL KOUSSA et al.,

Plaintiffs/Appellants

v.

Attorney General and Secretary of the Commonwealth,

Defendants/Appellees

CHRISTINA M. ELLIS-HIBBERT et al.,

Intervenors

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

**BRIEF OF NATIONAL WOMEN’S LAW CENTER, NATIONAL
PARTNERSHIP FOR WOMEN AND FAMILIES, AND 25 ADDITIONAL
ORGANIZATIONS AS *AMICI CURIAE*
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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3. Clearinghouse on Women's Issues
4. Coalition of Labor Union Women, AFL-CIO
5. Feminist Majority Foundation
6. In The Public Interest
7. Jane Doe Inc. (MA Coalition Against Sexual and Domestic Violence)
8. Lawyers' Committee for Civil Rights Under Law
9. Legal Aid at Work
10. Legal Momentum, The Women's Legal Defense and Education Fund
11. Muslims for Progressive Values
12. National Association of Commissions for Women
13. National Association of Social Workers (NASW)
14. National Center for Transgender Equality
15. National Legal Advocacy Network
16. National Organization for Women Foundation
17. Religious Coalition for Reproductive Choice
18. Reproaction
19. Shriver Center on Poverty Law
20. The Women's Law Center of Maryland
21. Women Employed
22. Women's Bar Association of the District of Columbia
23. Women's Bar Association of the State of New York
24. Women's Institute for Freedom of the Press
25. Women's Law Project

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Mass. R. App. P. 17(c)(1), each amicus curiae certifies that it has no parent corporation and no publicly held corporation owns 10 percent or more of its stock.

Dated: April 12, 2022

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INTEREST OF AMICI CURIAE

Amici, the National Women’s Law Center, National Partnership for Women and Families, and 25 additional organizations submit this brief to respectfully urge the Court to rule that the Secretary of State should be barred from placing the Petitions discussed herein on the November 2022 ballot.¹ The Petitions and related summaries fail to adhere to the required legal standards, are misleading to voters, and are particularly harmful to women, including women of color, workers.

The National Women’s Law Center (NWLC) fights for gender justice—in the courts, in public policy, and in our society—working across the issues that are central to the lives of women and girls. Since 1972, NWLC has used the law in all its forms to change culture and drive solutions to the gender inequity that shapes our society and to break down the barriers to women’s equality in the workplace, like misclassification, that harm all of us—especially women of color. NWLC has participated as counsel or amicus curiae in a range of cases before state and federal courts.

¹ Pursuant to Mass. R. App. P. 17(c)(5), amici certify that no party’s counsel authored this brief in whole or in part, no party or party’s counsel contributed money intended to fund preparation or submission of this brief, and no other person contributed money intended to fund preparation or submission of this brief. Neither amici nor their counsel represents or has represented one of the parties in 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 case.

The National Partnership for Women & Families (NPWF) works to improve the lives of women and families with a core belief that women’s economic security and health are essential to their full participation as equal members of society. NPWF is a 501(c)(3) advocacy and education organization with a commitment to gender, race and economic equity and extensive expertise in health and workplace policies that strengthen the economic security of women, families and all people. Founded in 1971 as the Women’s Legal Defense Fund, NPWF has played a critical role in establishing landmark policies to benefit working women and their families—from outlawing sexual harassment to prohibiting pregnancy discrimination to promoting quality, affordable health care for all. NPWF works to defeat efforts to undermine the workplace supports and civil rights that are essential to achieving a just society where all women can adequately care for themselves and their families.

NWLC, NPWF and the 25 additional organizations file this amicus brief in support of workers in Massachusetts and to help ensure that the Court is informed about how women workers in particular would be harmed if the Petitions discussed herein go forward. While the COVID-19 pandemic has led to devastating job loss for women, the number of women driving for the Network Companies² at issue in

² Amici use the term “Network Companies” herein as defined in Plaintiffs’/Appellants’ Brief. “‘Network Companies’ consist of companies, such as Uber and Lyft, which typically transport ‘people,’ and those such as DoorDash..., which typically transport ‘goods.’” Pls.’ Br. at 14.

this matter has increased because of the pandemic. Given this context, it is all the more crucial that drivers are not cut off from the critical employment protections and rights afforded to employees in Massachusetts—precisely what is at stake in this case.

BACKGROUND AND SUMMARY OF ARGUMENT

Plaintiffs/Appellants filed two initiative Petitions,³ collectively entitled “A Law Defining and Regulating the Contract-Based Relationship Between Network Companies and App-Based Drivers” (the “Petitions”), for inclusion on the State election ballot in November 2022, pursuant to Article 48 of the Massachusetts Constitution.⁴ The Petitions propose a scheme under which app-based drivers⁵

³ Initiative Petition No. 21-11, *available at* <https://www.mass.gov/doc/21-11-a-law-defining-and-regulating-the-contract-based-relationship-between-network-companies-and-app-based-drivers-version-a/download>; Initiative Petition No. 21-12, *available at* <https://www.mass.gov/doc/21-12-a-law-defining-and-regulating-the-contract-based-relationship-between-network-companies-and-app-based-drivers-version-b/download>.

⁴ Article 48 provides the legal requirements for ballot initiatives like the one at issue here. *See* Office of Attorney General Maura Healey, *Constitutional Requirements for Initiative Petitions*, Mass.gov, <https://www.mass.gov/service-details/constitutional-requirements-for-initiative-petitions#:~:text=Amendment%20Article%2048%20of%20the,for%20submission%20to%20the%20voters> (last visited Mar. 30, 2022).

⁵ “‘App-based drivers’ are individuals who log into the Network Company’s online-enabled application or platform and use motor vehicles to transport customers and/or deliver goods (‘Drivers’).” Pls.’ Br. 14.

(“drivers”) for Network Companies, including, for example, Uber, Lyft, DoorDash and Instacart, are designated under Massachusetts law as independent contractors. This would foreclose drivers’ ability to claim rights as employees in Massachusetts, even though pursuant to Massachusetts law, drivers are presumed to be employees, as found by the Massachusetts Attorney General.⁶

For the Petitions to be proper under the Massachusetts Constitution they must comply with Article 48, which was drafted to include “carefully construct[ed] safeguards” to ensure voters are not confused or misled. *Carney v. Att’y Gen.*, 447 Mass. 218, 230 (2006). Those safeguards include a requirement that all subjects of a proposed law be “related to or mutually dependent on each other.” *Weiner v. Att’y Gen.*, 484 Mass. 687, 693 (2020). In addition, the Attorney General is obliged “to insure . . . that the voters understand the law upon which they are voting”⁷ through descriptive summaries. These requirements are intended to ensure that petitions do not “invalidate acts by the people's elected representatives in the Legislature.” *Hurst*

⁶ See *Healey v. Uber Techs., Inc.*, No. 2084-CV-1519-BLS1, 2021 WL 1222199, at *1 (Mass. Super. Ct. Mar. 25, 2021). The Massachusetts Attorney General, as the chief government enforcer of these laws, is entitled to deference from the Courts. See *Camara v. Att’y Gen.*, 458 Mass. 756, 759 (2011). However, as discussed herein, the Attorney General’s summaries of the Petitions fail to detail how the Petitions would impact existing law, falling short of constitutional requirements for Massachusetts ballot initiatives.

⁷ *Op. of the Justices to the House of Representatives*, 357 Mass. 787, 800 (1970) (quoting *Barnes v. Sec’y of the Commonwealth*, 348 Mass. 671, 674 (1965)).

v. State Ballot Law Comm'n, 427 Mass. 825, 828 (1998). These requirements have not been met. While the Petitions benignly state that their purpose is to “regulate the contract-based relationship between network companies and drivers,”⁸ the harms that flow from the Petitions are far from captured by this statement. The Petitions seek to *permanently misclassify* drivers in Massachusetts, while providing drivers and their families with only minimal protections. *See* Pls.’ Br. 31-42.

Additionally, the Attorney General’s summaries of the Petitions are vague and misleading.⁹ *See* Pls.’ Br. 45-55. The summaries fail to inform voters of the existing laws that would no longer protect drivers if the ballot initiatives passed, or how drivers’ rights would be diminished. Amici write to detail several of the Massachusetts benefits and protections that, if denied to drivers, would be particularly detrimental to women, including women of color, drivers. These protections include leave and benefit entitlements (paid family and medical leave, paid sick time, leave protections for victims of abusive behavior, and unemployment insurance) and civil rights protections (pregnancy accommodations, equal pay, and rights against sexual, racial, and other harassment).

⁸ Initiative Petition No. 21-11, *supra* note 3, at 1; Initiative Petition No. 21-12, *supra* note 3, at 1.

⁹ The Attorney General is obliged “to insure . . . that the voters understand the law upon which they are voting.” *Op. of the Justices to the House of Representatives*, 357 Mass. 787, 800 (1970) (quoting *Barnes v. Sec’y of the Commonwealth*, 348 Mass. 671, 674 (1965)).

The misleading summaries deprive the people of Massachusetts of the information required to meaningfully express their will on the ballot question, as it is not clear from the summaries that the Petitions would foreclose drivers from many critical workplace protections. This is precisely the type of situation that Article 48 prohibits; during the 1917-1918 Massachusetts Constitutional Convention discussion of Article 48, “[a] recurring topic of concern was the possibility that well-financed ‘special interests’ would exploit the initiative process to their own ends by packaging proposed laws in a way that would confuse the voter.” *Carney*, 447 Mass. at 228.¹⁰

Accordingly, Amici urge this Court to rule that the Secretary of State should be barred from placing the petitions on the November 2022 ballot.

¹⁰ See also Matt Stout & John Hilliard, *Lyft Makes Largest One-Time Political Donation in Massachusetts History, Fueling Gig Worker Ballot Fight*, Boston Globe (Jan. 18, 2022), https://www.bostonglobe.com/2022/01/18/metro/lyft-makes-largest-one-time-political-donation-massachusetts-history-fueling-gig-worker-ballot-fight/?camp=bg:brief:rss:feedly&rss_id=feedly_rss_brief&utm_source=feedly&utm_medium=webfeeds.

ARGUMENT

I. **WOMEN, INCLUDING WOMEN OF COLOR, MAKE UP A SIGNIFICANT SHARE OF DRIVERS WHO WOULD BE HURT BY THE PETITIONS.**

While historically, driver services have been staffed predominantly by men, Network Companies have significant female driver workforces. For example, at Instacart, 73 percent of delivery workers are women.¹¹ As of 2021, 58 percent of DoorDash’s delivery workers were women.¹² An estimated 29 percent of Lyft drivers are women.¹³ Uber data from 2015-2017 shows women made up 27.3 percent of drivers for Uber’s “peer-to-peer services,”¹⁴ and nearly half of all UberEats

¹¹ Instacart, *Introducing New Shopper Perks for a More Holistic Shopper Experience*, Medium (Aug. 21, 2019), <https://medium.com/shopper-news/shopper-perks-52e480f2788a>. Instacart currently operates in thirty Massachusetts cities. Shopper Jobs in Massachusetts, Instacart, <https://shoppers.instacart.com/state-jobs/jobs-in-massachusetts> (last visited Mar. 25, 2022).

¹² DoorDash, *A Majority of Dashers Are Women. Here’s Why They Choose DoorDash*, (Aug. 25, 2021), <https://doordash.news/dasher/a-majority-of-dashers-are-women-heres-why-they-choose-doordash/>.

¹³ Dave Lee, *‘Thrown to the Wolves’ – the Women Who Drive for Uber and Lyft*, BBC News (Jan. 29, 2019), <https://www.bbc.com/news/technology-46990533>.

¹⁴ Cody Cook et al., *Gender Earnings Gap in the Gig Economy: Evidence from over a Million Rideshare Drivers* 10 (May 2020), <https://web.stanford.edu/~diamondr/UberPayGap.pdf>.

drivers.¹⁵ People of color also make up significant numbers of drivers and are generally overrepresented among gig workers.¹⁶ Pew Research Center found that in 2021, compared to 12 percent of white adults, 30 percent of Hispanic adults, 20 percent of Black adults, and 19 percent of Asian adults reported earning money from an online gig platform.¹⁷ A 2014 survey of Uber drivers revealed that Black, Asian, and Hispanic workers comprised more than 53 percent of drivers, while these workers made up only 42 percent of the total workforce.¹⁸ Thus, women, including women of color drivers, would be negatively impacted by the Petitions.

¹⁵ Musadiq Bidar, *Women Who Lost Jobs Due to COVID Turn to Food Delivery Platforms*, CBS News (Feb. 25, 2021), <https://www.cbsnews.com/news/women-unemployment-covid-food-delivery-doordash-instacart-ubereats-jobs/>.

¹⁶ *See generally* Br. of Civil Rights Organizations as *Amicus Curiae* in Support of Pls.-Appellants sec. I (filed by Public Rights Project) (explaining that BIPOC drivers make up the majority of workers for Network Companies).

¹⁷ Monica Anderson et al., *The State of Gig Work in 2021*, Pew Research Ctr. (Dec. 8, 2021), <https://www.pewresearch.org/internet/2021/12/08/the-state-of-gig-work-in-2021/>. According to the Bureau of Labor Statistics, Black and African American workers accounted for 17 percent of “electronically mediated workers” or “gig workers,” while only making up 12 percent of their share of overall employment. U.S. Bureau of Labor Statistics, *Electronically Mediated Work: New Questions in the Contingent Worker Supplement* (Sept. 2018), <https://www.bls.gov/opub/mlr/2018/article/electronically-mediated-work-new-questions-in-the-contingent-worker-supplement.htm>.

¹⁸ *See* Jonathan V. Hall & Alan B. Krueger, *An Analysis of the Labor Market for Uber’s Driver-Partners in the United States* 7 (Nat’l Bureau of Econ. Research., Working Paper No. 22843, 2016), available at <https://www.nber.org/papers/w22843>.

The COVID-19 pandemic has also had devastating effects on women’s workforce participation and has been particularly harmful for women of color. Since February 2020, the economy has experienced a net loss of over 2.1 million jobs, with women accounting for 68.5 percent of those losses.¹⁹ Women were forced out of their jobs in disproportionate numbers in part because the hardest hit industries—leisure and hospitality, for instance—are largely staffed by women.²⁰

Even before the pandemic, women experienced poverty at higher rates than men, were overrepresented in low-paid jobs, and suffered from race- and sex-based wage gaps.²¹ During the pandemic, many women turned to driver jobs to care for themselves and their families. For instance, Instacart (whose workers are, again, approximately 73 percent women) has hired 400,000 new drivers since the beginning

¹⁹ Jasmine Tucker & Brooke LePage, *The Jobs Report Shows a Strong Month, but Black Women’s Labor Force Participation Drops and Unemployment Rate Rises*, Nat’l Women’s Law Ctr. 1 (Mar. 2022), <https://nwlc.org/wp-content/uploads/2022/03/February-Jobs-Day.pdf>.

²⁰ Alisha Haridasani Gupta, *Why Some Women Call This Recession a ‘Shecession,’* N.Y. Times (June 18, 2021), <https://www.nytimes.com/2020/05/09/us/unemployment-coronavirus-women.html>.

²¹ Nat’l Women’s Law Ctr., *A Year of Strength & Loss: The Pandemic, the Economy, & the Value of Women’s Work 2* (Mar. 2021), https://nwlc.org/wp-content/uploads/2021/03/Final_NWLC_Press_CovidStats.pdf.

of the pandemic, bringing its total to 600,000 drivers nationwide.²² Since 2021, the number of women earning on Uber has increased by 80 percent.²³ At UberEats, women delivery drivers more than doubled between April 2020 and January 2021.²⁴ Women driving for Network Companies because of the pandemic are more likely to be doing so because of other lost income, rather than because of an affirmative desire to work as drivers. For instance, in February 2021 Lyft reported that women are more likely than men to drive on Lyft as a result of income loss.²⁵ Similarly, Uber surveyed its drivers in July 2020 and found that more than a quarter of female UberEats drivers were working for UberEats because they lost their jobs or had hours cut, compared to only 15 percent of male respondents.²⁶ The economic precarity that resulted in women turning to driving during the pandemic will be further exacerbated

²² See Tyler Philbrook, *Instacart Revenue and Usage [2022 Statistics]*, Ride Share Guy (Feb. 5, 2022), <https://therideshareguy.com/instacart-statistics/#:~:text=In%20March%202022%2C%20Instacart%20announced,and%20ofamiliarity%20with%20the%20stores.>

²³ Uber, *Uber & Dress for Success Announce Partnership to Provide Career Resources to Help Support Women Driving & Delivering on the App*, Cision PR Newswire (Sept. 21, 2021), <https://www.prnewswire.com/news-releases/uber--dress-for-success-announce-partnership-to-provide-career-resources-to-help-support-women-driving--delivering-on-the-app-301380926.html>.

²⁴ Bidar, *supra* note 15.

²⁵ *Id.*

²⁶ *Id.*

if Network Companies are allowed to cut their drivers off from the protections that Massachusetts law provides for its employees.

II. THE PETITIONS UNDERMINE MASSACHUSETTS LAWS ENACTED TO BENEFIT WOMEN WORKERS, INCLUDING WOMEN OF COLOR WORKERS, AND THEIR FAMILIES.

The Commonwealth is a leader in adopting strong legal protections for women and has a longstanding public policy interest in advancing women’s workplace rights. For example, Massachusetts has enacted laws to ensure workers can take leave to care for themselves and their families and have resources to survive a job loss. These protections include, among other things, paid family and medical leave, paid sick leave, leave protections for victims of abuse, and unemployment insurance. Massachusetts also provides civil rights protections that are among the most robust and comprehensive in the nation. For example, nearly two decades prior to the passage of the federal Equal Pay Act, the Commonwealth in 1945 became the first state in the country to pass an equal pay law: the Massachusetts Equal Pay Act, M.G.L. c. 149 § 105A (MEPA).²⁷ In 2016, the Massachusetts Legislature strengthened MEPA, which is now considered one of the most powerful equal pay

²⁷ Office of Attorney General Maura Healey, *Learn More Details About the Massachusetts Equal Pay Act*, Mass.gov, <https://www.mass.gov/service-details/learn-more-details-about-the-massachusetts-equal-pay-act> (last visited Apr. 11, 2022).

laws in the nation.²⁸ Chapter 151B of the Massachusetts General Laws, addressing employment discrimination, was also enacted almost two decades before the federal Congress passed analogous federal protections. M.G.L. c. 151B. As this Court has stated: “Chapter 151B was enacted in 1946 to provide remedies for employment discrimination, a practice viewed as harmful to ‘our democratic institutions’ and a ‘hideous evil’ that needs to be ‘extirpated.’ The Legislature determined that workplace discrimination harmed not only the targeted individuals, but the entire social fabric.” *Flagg v. AliMed, Inc.*, 466 Mass. 23, 28-29 (2013) (footnotes omitted).

While the Petitions provide limited anti-discrimination protections for drivers,²⁹ these meager protections are a far cry from those provided by Chapter 151B.³⁰ As detailed below, current state law provides a range of protections for the

²⁸ Press Release, Office of Attorney General Maura Healey, *AG Healey Issues Guidance for Employers on Equal Pay Law*, Mass.gov (Mar. 1, 2018), <https://www.mass.gov/news/ag-healey-issues-guidance-for-employers-on-equal-pay-law>; Becca Andrews, *Massachusetts Just Took a Big Step Toward Closing the Wage Gap*, Mother Jones (Aug. 1, 2016), <https://www.motherjones.com/politics/2016/08/massachusetts-passed-strongest-equal-pay-law/>.

²⁹ Initiative Petition No. 21-11, *supra* note 3, at 12; Initiative Petition No. 21-12, *supra* note 3, at 11.

³⁰ See Br. of Civil Rights Organizations as *Amicus Curiae* in Support of Pls.-Appellants sec. III.B (filed by Public Rights Project) (discussing significant impact of Petitions on state anti-discrimination laws).

workers of Massachusetts. In addition, the Petitions are silent as to drivers' ability to access future benefits and protections enacted by ever-improving state laws, putting them at risk of falling further and further outside the scope of the critical protections otherwise provided to Massachusetts workers. For these reasons, the Petitions and related summaries are misleading and do not meet the requirements of Article 48.

A. The Petitions Would Greatly Undermine the Ability of Drivers to Access the Protections of the Massachusetts Paid Family and Medical Leave Law.

The Massachusetts Paid Family Medical Leave Act, M.G.L. c. 175M (PFML) was enacted to keep workers from being fired for needing leave or from being forced into poverty by unpaid leave. While the Petitions provide some PFML benefit, what is afforded to drivers via the Petitions falls far short of the Legislature's intent.

The Attorney General's summaries state that drivers would be "eligible to take" leave under PFML leave entitlements.³¹ However, the summaries fail to mention that the Petitions would make it harder for drivers to qualify for these benefits, as explained below. If passed, drivers would not have equivalent eligibility for benefits as employees do under PFML. The Petitions would especially put

³¹ Summary of Initiative Petition No. 21-11, *available at* <https://www.mass.gov/doc/21-11-final-summary/download>; Summary of Initiative Petition No. 21-12, *available at* <https://www.mass.gov/doc/21-12-final-summary/download>.

women of color drivers in the economically precarious situation that the Commonwealth passed PFML to avoid.

The PFML, which went into effect in 2021, provides covered individuals twenty weeks of paid, job-protected time to care for their own health and twelve weeks of paid, job-protected time to care for the health of a family member. M.G.L. c. 175M § 2. To qualify for PFML, Massachusetts workers are generally required to have earned thirty times the weekly unemployment benefit rate during the previous four quarters before making a claim. M.G.L. c. 151A § 24.³² The benefits are a portion of the covered individual's compensation, up to a cap that increases annually. M.G.L. c. 151A § 3(b). The PFML law applies to all workers, but women are more likely to benefit from this law because women bear the brunt of caregiving responsibilities, historically and today.³³ PFML is especially important for Black women, and other women of color. Because of the effects of structural

³² For example, thirty times the current maximum weekly unemployment benefit rate of \$974 is \$29,220.00. See Dep't of Unemployment Assistance, *How Your Unemployment Benefits Are Calculated*, Mass.gov, <https://www.mass.gov/info-details/how-your-unemployment-benefits-are-determined> (last visited Apr. 12, 2022).

³³ See Jasmine Tucker et al., *By the Numbers: Data on Key Programs for the Well-Being of Women & Their Families*, Nat'l Women's Law Ctr. (June 2021), <https://nwlc.org/wp-content/uploads/2019/12/Bythenumbers2021-1.pdf>; Julie Vogtman, *Undervalued: A Brief History of Women's Care Work and Child Care Policy in the United States*, Nat'l Women's Law Ctr. (2017), https://nwlc.org/wp-content/uploads/2017/12/final_nwlc_Undervalued2017.pdf.

discrimination, women of color are more likely to need family or medical leave and yet have the least access to it. Black women, who are more likely to be primary breadwinners,³⁴ also tend to have more caregiving responsibilities than white people, and at younger ages.³⁵ In addition, Black women may need more leave for medical reasons as a result of racial health disparities that lead to worse health outcomes than white people.³⁶ Black women and other women of color are over-represented in low-

³⁴ More than two-thirds of Black mothers are the sole or primary breadwinner for their household, and 82 percent are the sole or primary breadwinner or co-breadwinner. Jocelyn Frye, *On the Frontlines at Work and at Home: The Disproportionate Economic Effects of the Coronavirus Pandemic on Women of Color*, Ctr. for Am. Progress (Apr. 23, 2020), <https://www.americanprogress.org/article/frontlines-work-home/>.

³⁵ Mousumi Bose et al., *Caregiving in a Diverse America: Beginning to Understand the Systemic Challenges Facing Family Caregivers*, Nat'l Alliance for Caregiving 12 (Nov. 2021), https://www.caregiving.org/wp-content/uploads/2022/02/NAC_AmgenDiverseCaregiversReport_FinalDigital-020622-1.pdf; Nat'l Alliance for Caregiving & AARP, *2020 Report: Caregiving in the U.S.* 11 (May 2020). <https://www.caregiving.org/wp-content/uploads/2021/01/full-report-caregiving-in-the-united-states-01-21.pdf>.

³⁶ See, e.g., Jessica Mason, *Called to Care: A Racially Just Recovery Demands Paid Family and Medical Leave*, Nat'l P'ship for Women & Families 13-14 (Mar. 2021), <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/called-to-care-a-racially-just-recovery-demands-paid-family-and-medical-leave.pdf>; Gov't Accountability Office, *Health Care Capsule: Racial and Ethnic Health Disparities* (Sept. 2021), <https://www.gao.gov/assets/gao-21-105354.pdf>. Elise Gould & Valerie Wilson, *Black Workers Face Two of the Most Lethal Preexisting Conditions for Coronavirus—Racism and Economic Inequality*, Econ. Policy Inst. (June 1, 2020). <https://www.epi.org/publication/black-workers-covid/#:~:text=The%20pandemic%20and%20related%20job,rates%20than%20thei,r%20white%20counterparts.>

paid jobs that do not offer paid leave³⁷ and are therefore less able to afford to take leave. Excluding drivers from PFML will only increase these racial and gender disparities.

The eligibility, accrual, and benefit provisions of the leave offered by the Petitions substantially depart from the Commonwealth's PFML entitlement. First, the Petitions do not offer equivalent wage replacement for drivers.³⁸ Employees in Massachusetts are entitled to PFML benefits based on all time worked, whether that time directly produces revenue or can otherwise be commodified. For example, under Massachusetts law, employees must be paid for time "on call," i.e., waiting to be assigned a task.³⁹ In contrast, the Petitions,⁴⁰ define a driver's compensable

³⁷ See Jasmine Tucker & Julie Vogtman, *When Hard Work Is Not Enough: Women in Low-Paid Jobs*, Nat'l Women's Law Ctr. 3 (2020), https://nwlc.org/wp-content/uploads/2020/04/Women-in-Low-Paid-Jobs-report_pp04-FINAL-4.2.pdf.

³⁸ See Br. of Civil Rights Organizations as *Amicus Curiae* in Support of Pls.-Appellants sec. II.B.1 (filed by Public Rights Project).

³⁹ 454 C.M.R. § 27.04(4)(c) ("If an employer requires an employee to report to a location other than the work site or to report to a specified location to take transportation, compensable work time begins at the reporting time and includes subsequent travel to and from the work site."); *Freehart v. Charlton Welding and Repair, Inc.*, No. WOCCV201300633, 2016 WL 6902951, at *3-4, n. 3 (Mass. Super. Ct. Oct. 31, 2016) (applying the predecessor of 454 C.M.R. § 27.04(4) to require payment of wages for work at construction headquarters and travel time to and from headquarters).

⁴⁰ The Petitions designate the drivers "covered contract workers" under the PFML. Covered contract workers are workers for whom at least one employer or covered

working time as “engaged time” (as opposed to all working time), and in turn, define PFML contribution requirements more narrowly, requiring contributions for “engaged time” only. This directly impacts drivers’ eligibility (and ultimately, benefits due) under PFML.⁴¹ The way PFML benefits are calculated interacts with the “engaged time” method of payment used by Network Companies to make PFML benefits harder to access. Because drivers are only paid based on “engaged time,” hitting the Massachusetts PFML claim threshold (thirty times the weekly unemployment benefit rate during the previous four quarters) before making a claim will necessarily mean drivers have to work more hours than other covered workers to become eligible.

business entity is required to remit contributions to the Family and Employment Security Trust Fund; and “whose payments from such employer or covered business entity satisfy certain financial eligibility requirements.” M.G.L. c. 175M § 1; 458 C.M.R. § 2.02.

⁴¹ As defined by the Petitions, “engaged time” includes only the period during which “the driver is en route to fulfill [a] scheduled request, regardless of when the driver accepted the request.” Initiative Petition No. 21-11, *supra* note 3, at 3; Initiative Petition No. 21-12, *supra* note 3, at 3. “Uber’s own data indicate that engaged time amounts to only 67 percent of the drivers’ actual working time. The companies would not pay for the approximately 33 percent of the time that drivers are waiting between passengers or returning from trips to outlying areas.” Ken Jacobs & Michael Reich, *Massachusetts Uber/Lyft Ballot Proposition Would Create Subminimum Wage: Drivers Could Earn as Little as \$4.82 an Hour*, UC Berkeley Labor Ctr 2 (Sept. 29, 2021), <https://laborcenter.berkeley.edu/wp-content/uploads/2021/09/Massachusetts-Uber-Lyft-Ballot-Proposition-Would-Create-Subminimum-Wage-1.pdf>.

Furthermore, PFML benefits, which do not replace the covered individual's entire wage, are calculated as a portion of the covered individual's average weekly wage.⁴² Since drivers are paid only for "engaged time," the average weekly wage a driver receives per hours worked is lower than it would be for an employee. Lower-level benefits make it less tenable to take leave and undermine the purpose for which PFML was enacted.

Second, the Petitions establish an additional PFML six-month waiting period for drivers, rendering benefits further out of reach. This eligibility requirement does not exist for other Massachusetts employees. Under the Petitions, even if a driver had worked in another capacity at another employer, that driver would not be eligible for PFML benefits until they had worked for two consecutive quarters for Network Companies. Drivers who have health emergencies arise during that six-month period would not have benefits to provide care without losing their income.⁴³

PFML was designed to make eligibility depend on the individual's work history, not the history of work with any particular employer. PFML was also

⁴² Dep't of Family & Med. Leave, *How PFML Weekly Benefit Amounts Are Calculated*, Mass.gov (Jan. 13, 2022), <https://www.mass.gov/info-details/how-pfml-weekly-benefit-amounts-are-calculated>.

⁴³ See Initiative Petition No. 21-11, *supra* note 3, at 9; Initiative Petition No. 21-12, *supra* note 3, at 8.

designed to be portable. The Petitions offer a ruse instead of real access to PFML for drivers. *See* Pls.’ Br. at 42-45, 51-54.

B. The Petitions Would Reduce the Value of Earned Sick Time for Drivers.

Massachusetts requires employers with at least eleven employees to provide a minimum of one hour of paid sick time for every thirty hours worked by an employee, with the accrual beginning on the employee’s date of hire, and forty hours of paid sick leave during a twelve-month period. M.G.L. c. 149 § 148C. Mandatory employer-paid sick time is critical so working people can care for themselves and their families. It is a public policy choice made in recognition that taking time off to recover from sickness reduces the cost borne by the public when workers go to work sick, threatening not just the worker’s health, but that of everyone else with whom they come into contact, including medically at-risk individuals who may be more dependent on drivers for deliveries and rides during the COVID-19 pandemic.

The Petitions purport to provide paid sick time to drivers based on the same framework as Massachusetts law, but, like PFML, benefits accrue on “engaged time” only. As explained in Section II.A., “engaged time” is not all time worked, meaning the Petitions calculation of hours worked would result in a longer timeline for drivers to accrue paid sick time, and therefore substantially delay any meaningful use of this benefit. Rather than provide a safety net for when drivers are sick, the Petitions put drivers in a position where taking sick time might not be viable at all.

C. The Petitions Would Cut Off Drivers from Leave Protections for Victims of Abusive Behavior.

In 2014, the Commonwealth amended M.G.L. c. 149 to require employers who employ fifty or more employees to provide two weeks of protected leave for victims of abusive behavior and their family members, and to prohibit discrimination or retaliation against workers who used the leave. M.G.L. c. 149 § 52E. This leave allows workers to keep their jobs and access employment benefits while trying to keep themselves and their families safe. Under the Petitions, drivers would have no such benefit. The impact of domestic violence and intimate partner violence on workers is undeniable. A 2018 national survey of domestic violence survivors found that 83% of respondents reported that their abusive partners disrupted their ability to work.⁴⁴ Without the protections of Massachusetts law, women of color may also suffer particularly dire adverse financial consequences as a result of job loss due to domestic or intimate partner violence. This is because women of color face both racial and gender wage disparities, less financial security, and longer periods of unemployment than white workers—all of which may also be amplified during the COVID-19 pandemic.⁴⁵

⁴⁴ Workplaces Respond to Domestic & Sexual Violence, *The Facts on Gender-Based Workplace Violence* 3 (Aug. 2020), https://www.workplacesrespond.org/wp-content/uploads/2017/01/The-Facts-on-GBV_August-2020-2.pdf.

⁴⁵ See, e.g., *infra* notes 48 and 49.

D. The Petitions Would Cut Off Drivers from Unemployment Insurance.

Under the Petitions, Network Companies would not contribute to unemployment insurance for their drivers and, because drivers would be designated as independent contractors, they would not be eligible for unemployment benefits.⁴⁶ For women and people of color in Massachusetts, unemployment support is particularly vital. In Massachusetts, women made up 54.1% of unemployment claimants as of September 2020.⁴⁷ In Massachusetts and nationally, Black workers experience unemployment rates twice as high as white workers on average.⁴⁸

⁴⁶ While the CARES Act passed by Congress in response to the COVID-19 pandemic did allow self-employed individuals to qualify for benefits, that benefit program has since ended, and there is no sign that Congress will restore it. See Dep't of Unemployment Ins., *CARES Act and American Rescue Plan Act*, Mass.gov, <https://www.mass.gov/info-details/cares-act-and-american-rescue-plan-act> (last visited Mar. 28, 2022).

⁴⁷ Ariane Hegewisch, *Women's Share of Unemployment Insurance Claimants Varies Strongly Across States*, Inst. for Women's Policy Research 2, tbl. 1 (Dec. 2020), <https://iwpr.org/wp-content/uploads/2020/12/UI-QF-2020-12-2.pdf>.

⁴⁸ In the third quarter of 2021, Black workers were 65 percent more likely than white workers to be unemployed Kyle K. Moore, *Racial Disparities in Unemployment Rates Persist, Despite Claims of a 'Labor Shortage'*, Econ. Policy Inst. <https://www.epi.org/indicators/state-unemployment-race-ethnicity/> (last updated Nov. 2021). According to data collected from 2015-2019, the unemployment rates in Massachusetts were 8.5% for those who identified as Black or African American, compared to 4.3% for white respondents. Impact Metrowest, *Economy and Workforce: Unemployment Rate by Race/Ethnicity 2015-2019*, <https://www.impactmw.org/economy-and-workforce/unemployment-rate-by-race-ethnicity> (last visited Apr. 11, 2022).

The COVID-19 pandemic underscores the importance of unemployment insurance for women, and especially women of color. For instance, Black women and Latinas experienced double digit unemployment rates for six consecutive months in 2020 (April through September) while white men’s unemployment rate only remained in the double digits for two months.⁴⁹ In February 2022, Black women’s unemployment was still more than double the rate for white men.⁵⁰ Excluding drivers from unemployment insurance will only serve to deepen existing racial and gender disparities that worsened during the COVID-19 pandemic.⁵¹

E. The Petitions Would Cut Off Drivers from the Protections of the Massachusetts Equal Pay Act.

Both the federal and Massachusetts Equal Pay Act have required equal pay for “equal work” for decades. In response to the narrow application of the “equal work” standard by some courts, the Massachusetts Equal Pay Act (“MEPA”) was amended in 2016 to require equal pay for “comparable,” and not merely equal,

⁴⁹ Jasmine Tucker & Julie Vogtman, *Resilient But Not Recovered*, Nat’l Women’s Law Ctr. (Mar. 2022), <https://nwlc.org/wp-content/uploads/2022/03/FINAL-NWLC-Resilient-But-Not-Recovered-3.29.22.pdf>.

⁵⁰ *Id.*

⁵¹ In 2017, for example, unemployment insurance helped keep the incomes of more than 127,000 women across the country above the federal poverty line. Nat’l Women’s Law Ctr. et al., *Unemployment Insurance and Protections Are Vital for Women and Families* 1 (Dec. 2019), <https://nwlc.org/wp-content/uploads/2019/12/UI-Factsheet-2019.pdf>.

work.⁵² Other important amendments to the Massachusetts equal pay protections include barring salary history as a defense to claims of unequal pay and making clear that the statute does not contain an intent requirement to show a violation. Employers are also prohibited from requiring the disclosure of previous salary in hiring and are encouraged to self-audit for compliance with the law. M.G.L. c. 149 § 105A. Additionally, under the 2016 amendments, MEPA is a strict liability statute.⁵³ Accordingly, the Massachusetts equal pay law is widely regarded as one of the strongest equal pay laws in the nation.⁵⁴ However, under the Petitions, drivers as independent contractors would not have the benefits of MEPA’s protections.

Ensuring equal pay is an issue of particular importance for women drivers. Although the gender wage gap has narrowed over time, it persists in Massachusetts and nationally, and is especially large for women of color.⁵⁵ Gender wage gaps also exist for drivers. For instance, one study of 1.87 million Uber drivers found that

⁵² “Comparable work” is a broader category than “equal work.” Office of the Attorney General, *An Act to Establish Pay Equity: Overview and Frequently Asked Questions* 5 (Mar. 1, 2018), <https://www.mass.gov/doc/ago-equal-pay-act-guidance-5-2-18/download>.

⁵³ *Id.* at 12.

⁵⁴ *See supra* note 27.

⁵⁵ Nat’l P’ship for Women & Families, *The Wage Gap in Massachusetts*, <https://www.nationalpartnership.org/our-work/economic-justice/wage-gap/the-wage-gap-in-massachusetts.html> (last visited Mar. 28, 2022).

women earn on average seven percent less than men per hour.⁵⁶ The Petitions exclude drivers from protection under MEPA and leave them unable to challenge Network Companies for violations of equal pay. Such a result contradicts the policy of the Commonwealth to close the gender wage gaps and hurts women drivers who may be experiencing unequal pay.

F. The Petitions Would Cut Off Drivers from the Ability to Access Pregnancy Accommodations.

In response to gaps in the federal Pregnancy Discrimination Act and confusing and narrow precedents leaving too many pregnant workers without clear access to critical accommodations,⁵⁷ Massachusetts passed the Pregnant Workers' Fairness Act (PWFA) amendment to c. 151B in 2017. PWFA provides pregnant employees access to accommodations allowing them to continue working while pregnant and to address conditions related to pregnancy, like lactation, while working.

PWFA's accommodations can improve health outcomes for pregnant employees and help address the serious racial disparities in maternal health

⁵⁶ Cook et al., *supra* note 14, at 2.

⁵⁷ See Jasmine Tucker et al., *Pregnant Workers Need Accommodations for Safe and Healthy Workplaces*, Nat'l Women's Law Ctr. (Oct. 2021), <https://nwlc.org/wp-content/uploads/2021/11/Pregnant-Workers-by-the-Numbers-2021-v4.pdf>.

complications.⁵⁸ Because Black women are more likely to experience complications throughout the course of their pregnancies than white women,⁵⁹ they are more likely to need accommodations in order to retain their jobs and protect their health.⁶⁰ PWFA particularly helps workers in low-paid jobs where they may not have sufficient bargaining power to be able to assert their needs for fear of retaliation.⁶¹ For a driver, pregnancy accommodations could include, for instance, the installation of a safety barrier between the driver and customer to prevent COVID-19 transmission, which is of particular concern for pregnant workers.⁶²

⁵⁸ Letter from Black Mamas Matter Alliance to the 116th Congress Supporting the Pregnant Workers Fairness Act (Sept. 18, 2020), <https://www.abetterbalance.org/resources/black-mamas-matter-alliance-letter-supporting-the-pregnant-workers-fairness-act/> (highlighting the importance of protections for Black pregnant workers provided by the federal PWFA, which are substantially similar to the Massachusetts PWFA).

⁵⁹ Ctrs. for Disease Control & Prevention, *Working Together to Reduce Black Maternal Mortality* (Apr. 6, 2022), <https://www.cdc.gov/healthequity/features/maternal-mortality/index.html>; Emily E. Petersen et al., *Racial/Ethnic Disparities in Pregnancy-Related Deaths — United States, 2007–2016*, 68 *Morbidity & Mortality Wkly. Rep.* 762, 763 (2019), <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6835a3-H.pdf>.

⁶⁰ Jasmine Tucker et al., *Pregnant Workers Need Accommodations for Safe and Healthy Workplaces*, Nat'l Women's Law Ctr. (Oct. 2021), <https://nwlc.org/wp-content/uploads/2021/11/Pregnant-Workers-by-the-Numbers-2021-v4.pdf>

⁶¹ *Id.*

⁶² See Adeel Hassan, *Recent Studies Underscore the Dangers of Pregnancy Complications for Unvaccinated Women with Covid*, N.Y. Times (Feb. 11, 2022),

While pregnant drivers could adjust their work to account for pregnancy, their income would then suffer if these accommodations reduced their total work time. Additionally, under the PWFA, employers must provide employees who need lactation breaks a private room with a lock and would have to accommodate their needs to keep them working in the same job at the same rate of pay. Without these legal protections, a driver would have to find a place to express milk on her own. Denying accommodations to pregnant drivers undermines the dignity and respect for workers that the Commonwealth has purposely enshrined in law.

G. The Petitions Would Substantially Cut Off Drivers from the Robust Protections of the Commonwealth’s Laws Prohibiting Workplace Harassment, Including, Sexual and Racial Harassment and Assault.

Robust anti-discrimination laws, including laws protecting workers from sexual harassment and other forms of harassment including based on race, are essential for creating a safe and respectful workplace. Sexual harassment, including assault, is a serious concern for both riders and drivers: in 2019, Uber released its safety report, finding that between 2017 and 2018, it received 5,981 reports of sexual assault, split between drivers and riders.⁶³ In 2021, Lyft released its own safety

<https://www.nytimes.com/2022/02/12/health/new-studies-underscore-the-dangers-of-pregnancy-complications-for-unvaccinated-women-with-covid.html>.

⁶³ Uber, *2017-2018 US Safety Report* 58-59 (Dec. 2019), https://www.uber-assets.com/image/upload/v1575580686/Documents/Safety/UberUSSafetyReport_201718_FullReport.pdf?uclick_id=c4370c4a-f470-477e-b9f1-74d9f9099e05.

report, finding that between 2017 and 2019, the company received 4,158 reports of sexual assault.⁶⁴ Among non-white gig workers (including workers identifying as Black, Hispanic, Asian, some other race, or multiple races), 24 percent reported experiencing an unwanted sexual advance “often” or “sometimes,” compared to only 13 percent of white workers, underscoring the harms that would particularly flow to drivers of color without these crucial protections.⁶⁵ Four years after the #metoo movement went viral, Network Companies should be bolstering protections against discrimination, including harassment, for employees and the public, not weakening them.

By permanently misclassifying the status of drivers as independent contractors, the Petitions would exclude drivers from the robust protections against

⁶⁴ Lyft, *Community Safety Report* 5-7 (Oct. 2021), https://assets.ctfassets.net/q8mvene1wzq4/4jxkFTH5YCQK8T96STULMd/4269e14dbcb8578ff64da45df08b8147/Community_Safety_Report.pdf; see also Faiz Siddiqui, *Lyft Says It Recorded More Than 4,000 Cases of Sexual Assault Over 3 Years*, Wash. Post (Oct. 22, 2021), <https://www.washingtonpost.com/technology/2021/10/22/lyft-safety-report/>.

⁶⁵ See Br. of Civil Rights Organizations as *Amicus Curiae* in Support of Pls.-Appellants sec. I (filed by Public Rights Project); Monica Anderson et al., *The State of Gig Work in 2021*, Pew Research Ctr. (Dec. 8, 2021), <https://www.pewresearch.org/internet/2021/12/08/the-state-of-gig-work-in-2021/>; see also Kellen Browning & Kate Conger, *Cleaners Demand Harassment Safeguards from the Booking Service Handy*, N.Y. Times (Sept. 10, 2020), <https://www.nytimes.com/2020/09/10/business/handy-service-cleaners-harassment.html>.

discrimination under M.G.L c. 151B, *et seq.*,⁶⁶ and would instead provide only limited protection by prohibiting Network Companies from “refus[ing] to contract with or terminate the contract of” a driver on the basis of several protected categories.⁶⁷ Additionally, the Petitions do not guarantee those who have been discriminated against access to the Massachusetts Commission Against Discrimination (MCAD) or the Massachusetts courts.⁶⁸

Massachusetts law also seeks to prevent harassment by requiring employers with six or more employees to adopt a written policy against sexual harassment and to “promote a workplace free of sexual harassment.” M.G.L. c. 151B § 3A. Chapter 151B also encourages employers to conduct training and education programs on sexual harassment for all employees on a regular basis. M.G.L. c. 151B § 3A.

Chapter 151B protects employees from retaliation, from both the employer and any individuals, for reporting sexual harassment and other forms of

⁶⁶ To address the fact that federal workplace civil rights only apply to employers that have fifteen or more employees, the Commonwealth specifically prohibits sexual harassment of workers at employers of all sizes through two different statutes. M.G.L. c. 151B § 4 (16) (employers with six or more workers); M.G.L. c. 214 § 1C (employers with fewer than six workers).

⁶⁷ Initiative Petition No. 21-11, *supra* note 3, at 11; Initiative Petition No. 21-12, *supra* note 3, at 12. With respect to the riders, the Petitions provide no protection at all for those who experience discrimination.

⁶⁸ *See* Br. for *Amicus Curiae* Matahari: Women’s Worker Center in Favor of the Pls./Appellants sec. II.A (concerning the ways in which the Petitions would cut workers off from MCAD’s robust enforcement powers).

discrimination.⁶⁹ Retaliation is a serious problem for all workers,⁷⁰ including for workers who report sex harassment. In an analysis done by the National Women’s Law Center of sexual harassment charges filed with the U.S. Equal Employment Opportunity Commission (EEOC) by women in the private sector between 2012 and 2016, more than 1 in 3 women who filed charges alleging sexual harassment also alleged retaliation.⁷¹

Despite this reality, the Petitions would only protect drivers from retaliation in the case of termination, but no other form of retaliation. Termination is only one form of retaliation drivers may face. For instance, Uber or Lyft could retaliate against a driver by temporarily suspending their access to the app, but suspended drivers would have no claim under the Petitions. Additionally, the Petitions are silent as to

⁶⁹ In enacting Chapter 151B, the Legislature established at least four categories of protected conduct: (1) opposing any practices forbidden under Chapter 151B; (2) filing a complaint; (3) testifying in a proceeding under section five; and (4) assisting in any proceeding under section five. M.G.L. c. 151B § 4(4); *see also* M.G.L. c. 151B § 4(4A) (making it unlawful for “any person to coerce, intimidate, threaten, or interfere with another person in the exercise or enjoyment of any right granted or protected by this chapter” or assisting another person in doing so).

⁷⁰ Press Release, EEOC, *U.S. Department of Labor, National Labor Relations Board, U.S. Equal Employment Opportunity Commission Align to End Retaliation, Promote Workers’ Rights* (Nov. 10, 2021), <https://www.eeoc.gov/newsroom/us-department-labor-national-labor-relations-board-us-equal-employment-opportunity>.

⁷¹ Amanda Rossie et al., *Out of the Shadows: An Analysis of Sexual Harassment Charges Filed by Working Women*, Nat’l Women’s Law Ctr. 9, fig. 2 (2018), <https://nwlc.org/wp-content/uploads/2018/08/SexualHarassmentReport.pdf>.

whether a claim for retaliation would exist if a driver were removed from the app for filing an internal complaint of discrimination. Similarly, the Petitions are unclear as to whether drivers would be protected from retaliation if they testified about discrimination or gave a statement in a legal proceeding.

The Petitions are also notably silent regarding MCAD's jurisdiction to enforce even the claims permitted by the Petitions. The MCAD currently enforces Chapter 151B, but the Petitions make clear that drivers would not be employees under Massachusetts law. Moreover, the Petitions put any "enforcement" squarely in the hands of the Network Company, suggesting that drivers could not vindicate themselves either through the MCAD's administrative process or through the courts.⁷² This is in stark contrast to the comprehensive enforcement mechanisms set forth in Chapter 151B, which include private rights of action, ensuring that employees may enforce their rights and helping to deter employers from future bad acts. Excluding drivers from the protections of the law, and from the strong enforcement of MCAD, would reduce the deterrent effect of Chapter 151B.

⁷² "A contract between a network company and a driver shall provide drivers whose contracts are terminated by the network company the opportunity to appeal such termination with the network company." Initiative Petition No. 21-11, *supra* note 3; at 11; Initiative Petition No. 21-12, *supra* note 3, at 10.

CONCLUSION

Amici urge this Court to grant the Petitioner’s request that the Petitions not be put on the ballot given that voters would be understandably unaware of the magnitude of harms to workers that are at issue here. The Petitions are vague and misleading and the Attorney General’s summaries fail to detail any of the above ways in which drivers would be denied existing workplace protections, in violation of Article 48. Thus, the summaries do not provide voters with even a minimal understanding of the rights that drivers would be denied if the Petitions are placed on the ballot. The Petitions would operate to create a permanent underclass of misclassified independent contractor drivers with lesser rights than employees. The meager protections the Petitions would provide cannot replace the substantial protections drivers are entitled to as employees under the current legal standards of the Commonwealth. For women driving for these platforms—especially women of color, for whom these benefits and protections are particularly vital—these rights are crucial to have safe, healthy, and dignified work. For the reasons detailed herein, we urge the Court to rule that the Secretary of State should be barred from placing the Petitions on the November 2022 ballot.

Dated: April 12, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the rules of the Court that pertain to the filing of amicus briefs, including, but not limited to, the requirements imposed by Mass R. App. P. 16, Mass. R. App. P. 17, and Mass. R. App. P. 20. I further certify that the foregoing brief complies with the applicable length limit in Mass. R. App. P. 20 because it uses 14-point Times New Roman font and is 7,092 words long, not including the portions of the brief excluded under Mass. R. App. P. 20, counted with the word-count function on Microsoft Word for Office 365.

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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 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.

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