Commonwealth of Massachusetts
Supreme Court

Suffolk County

No. SJC-13559

MARTIN EL KOUSSA, YESSENIA ALFARO, FRANCIS X. CALLAHAN, JR., MELODY CUNNINGHAM, ADAM KASZYNSKI, KATIE MURPHY, JULIET SCHOR and ALCIBIADES VEGA, JR.,

Plaintiffs/Appellants,

– against –

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,

– and –

CHARLES ELLISON, ABIGAIL KENNEDY HORRIGAN, BRIAN GITSCHEIR, DANIEL SVIRSKY, SEAN ROGERS, CAITLIN DONOVAN, BRENDAN JOYCE, TROY MCHENRY, KIM AHERN and CHRISTINA M. ELLIS-HIBBETT,

Intervenors/Appellees.

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

BRIEF OF *AMICUS CURIAE* FREE SPEECH FOR PEOPLE IN SUPPORT OF PLAINTIFFS/APPELLANTS

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Introduction

The drafters of art. 48 knew two things to be true: that people of a democratic society should benefit from the opportunity to make laws via popular vote, and deep-pocket special interests will try to exploit art. 48 by placing misleading petitions before Massachusetts voters. To prevent these "selfish interests" from swamping the people's process (2 Debates in the Massachusetts Constitution Convention 1917-1918, 11), the drafters incorporated the relatedness clause into art. 48, which requires a petition to be coherent, uniform, and contain only related provisions. *See El Koussa v. Attorney General*, 489 Mass. 823, 828 (2022); *Carney v. Attorney General*, 447 Mass. 218, 220, 226 (2006).

The Petitions at issue in the above-captioned case violate the relatedness clause and demonstrate precisely why this rule is critical to art. 48's functionality. Transportation and delivery businesses are contributing unprecedented amounts of money to advance complex, misleading Petitions replete with unrelated provisions designed to obfuscate the Petitions' purposes: to strip app-based workers of labor protections and to maximize the financial return for their investors, including foreign entities and governments, at the expense of Massachusetts citizens and workers.

It is starkly apparent why art. 48 drafters insisted that Massachusetts citizens vote only on petitions that satisfy the relatedness clause. These Petitions do not.

Interest of Proposed *Amicus Curiae*

Free Speech For People ("FSFP") files this brief in support of Plaintiffs/Appellants' Brief. FSFP is a national, non-partisan nonprofit public interest organization dedicated to ensuring equal and meaningful participation in democracy by challenging big money in politics, confronting corruption in government, fighting for free and fair elections, and advancing a new jurisprudence grounded in the promises of political equality and democratic self-government. FSFP has approximately 4,700 supporters in Massachusetts.[1]

BACKGROUND

The Proponents are paid employees and agents of transportation and delivery companies ("Network Companies") who, by the August 2023 deadline, filed nine Initiative Petitions ("Petitions") with the Attorney General, seeking the Attorney General's certification, a first step toward bringing these Petitions in front of voters in November 2024. *See* Brief of Plaintiffs/Appellants at 8, *El Koussa v. Campbell*, No. SJC-13559. The Attorney General erroneously certified all nine Petitions, and the Proponents then gathered signatures on five of them and insisted that all five be reviewed by the Secretary of the Commonwealth and submitted to the Legislature, despite the obvious burden that this approach placed on the Secretary's office. *See*

[1] No party or party's counsel authored or contributed money to fund this brief in whole or part, and no person or entity other than amicus or its counsel contributed monetarily to preparation or submission of this brief.

Complaint at ¶ 44. The decision was strategic, akin to throwing spaghetti at the wall and hoping some of it sticks.

The five remaining Petitions individually and collectively obscure the nature and breadth of the changes that these Petitions would individually or collectively introduce into Massachusetts law.[2] All five Petitions would exempt app-based drivers from employment and social safety net laws and exempt Network Companies from a host of obligations to the Commonwealth. RA 123-162.[3] Most egregiously and contrary to the requirements of art. 48, buried within the long Petitions' texts are unrelated provisions that would exempt the Network Companies from standard labor, employment, social safety net, and civil rights responsibilities across several chapters of Massachusetts laws. Although some Petitions purport to establish a package of benefits to app-based drivers, many drivers currently employed by the Network Companies likely would not qualify for such benefits.[4] Misleadingly for

[2] Although Proponents informed the Secretary that they would select one Petition to put before Massachusetts voters, *see* Brief of Intervenor-Defendants at 31, they have not yet done so. As Opponents correctly explained in their Complaint, the Proponents could—if not enjoined—seek to place all five Petitions on the ballot in November 2024. *See* Complaint at ¶ 46.

[3] The Proponents initially set forth nine (9) Petitions but only collected signatures on five (5).

[4] The maximum enjoyment of benefits available are for app-based drivers who have worked over "25 hours of engaged time." Most drivers do not meet that criteria. See Lyft, *Understanding Driver Earnings & Benefits* (Feb. 6, 2024), https://www.lyft.com/blog/posts/driver-net-earnings (94% of drivers drive fewer than 20 hours per week).

voters, the Petitions leave app-based drivers with significantly fewer benefits than what existing state law currently affords them.[5]

Elements of the Petitions are duplicative, but the similarities obscure for voters the different ways in which each Petition amends Massachusetts law. While the Network Companies have previously utilized the multiple-petition strategy, their 2023-24 Petition campaign marks an expansion in the number of confusing, partially overlapping Petitions submitted by Proponents. And the Petitions individually are riddled with unrelated and misleading components.

The Network Companies have attempted to pass similar petitions in Massachusetts. In 2022, this Court ruled that the Attorney General erred in certifying two similar petitions by representatives of the Network Companies. *See El Koussa v. Attorney General*, 489 Mass. 823, 838 (2022) ("[I]t would be unfaithful to art. 48's design to allow the petition to be presented to the voters, with all the attendant risks that voters will be confused and misled."). But before the Court's ruling in that case, the Network Companies contributed millions of dollars to super PACs committed to

[5] For example, all of the long form versions (Petitions 23-25, 23-30, and 23-31 (Versions B, G, and H)) purport to offer app-based drivers disability insurance for injuries occurred at work "up to at least $1,000,000 and for up to 156 weeks following the injury. . ." RA 133, 147, 158. But Massachusetts workers' compensation medical benefits are not capped and are available "for considerably longer." Brief of Plaintiffs/Appellants at 24 n.10 (citing *Dep't of Indus. Accidents, Learn About Workers' Compensation Benefits*, https://www.mass.gov/info-details/learn-about-workerscompensation-benefits).

the success of the petitions, a spending strategy they will certainly adopt for the instant Petitions. These Petitions and the accompanying campaigns disadvantage voters, Network Company employees, and the common good for the sake of maximizing shareholder profits and investor returns. Those investors include powerful foreign entities, which, aside from their own financial return, have no interest in or allegiance to the Commonwealth. Further, this foreign spending, coupled with the improper and confusing combination of unrelated matters in each Petition, serve to improperly influence voters in Massachusetts to adopt confusing and misleading Petitions containing unpopular provisions that the voters would not support but for the misleading presentation and combination.

Summary of Argument

The drafters of art. 48 recognized that an initiative petition process that "in its purity means that the people of this Commonwealth may have such laws . . . . as they see fit themselves to adopt," 2 Debates in the Massachusetts Constitutional Convention 1917–1918 (hereinafter "Debates"), 16 (Sen. Joseph Walker), is likely to be subverted by "selfish interests" with deep pockets in the absence of safeguards. *See* Debates, 11. The relatedness clause is one such safeguard, authorizing certification of petitions only if they "contain only subjects which are . . . related or which are mutually dependent." art. 48, The Initiative, II, § 3, of the Amendments to

the Massachusetts Constitution, as amended by art. 74 of the Amendments (hereinafter "art. 48, II, § 3").

The drafters predicted the types of entities that would abuse the process and how they would do so: 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," leading the drafters to devise "gatekeeping measures that would cull out misleading or confusing initiative measures." *Carney v. Attorney General*, 447 Mass. 218, 228, 230 (2006). The prediction proved accurate. As exemplified by the Network Companies that support the challenged Petitions at issue in this case, the rapid growth of foreign investment in U.S. corporations has made corporations reliant on foreign capital, committed to their investors' interests however much those interests might diverge from the interests of the voters, and equipped with the financial power to push through petitions regardless of unrelated clauses that would mislead and confuse voters.

And that is precisely what the Network Companies here propose to do. They place on the ballot Petitions that purport to define the "working relationship" with their workers and grant benefits to some of their workers, but contain provisions that would strip their drivers of the expansive benefits they are entitled to under existing state law—including, but not limited to, the designation of "employee" and the protections such designation affords them across several areas of Massachusetts

law—and obscure the extent to which other unrelated areas of law will be changed by a "yes" vote.

As this Court has recognized, the relatedness clause is a necessary restriction on the people's process, incorporated into art. 48 to protect voters, and should be strictly construed. *Koussa*, 489 Mass. at 839. Applying that construction, the Court should declare that the Attorney General erroneously certified the challenged Petitions and should bar the Secretary of the Commonwealth from placing any of the challenged Petitions on the ballot.

Argument

I. This Court has strictly construed the related-subjects requirement to prevent "selfish interests" from manipulating the art. 48 process.

A. The drafters of art. 48 predicted that "selfish interests" would manipulate the petition process.

Article 48 of the Amendments to the Massachusetts Constitution grants to the people the right to enact laws directly. Voters in Massachusetts may propose initiatives and petitions for popular vote, to "have such a Constitution as they see fit themselves to adopt," and to "move forward on measures which they deem[] necessary and desirable, regardless of legislative opposition." Debates, 4–6. "There can be no doubt [art. 48] created a people's process." *Buckley v. Secretary of Commonwealth*, 371 Mass. 195, 199 (1976).

But the drafters recognized that such petition-based lawmaking invited misuse by well-financed groups driven by "selfish interests." Debates, 11 ("On the contrary,

[the initiative and petition amendment] opens up the whole field of legislation to the initiative action of groups and factions, of visionaries and of selfish interests, without the slightest requirement of real interest on the part of the public. . . .”). Backed by enormous resources unmatched by the average person, these groups had the means to manipulate the process and overshadow the right of voters to make a meaningful choice on election day. *See* Debates, 234 (Sen. William Kinney) (“I should oppose the initiative and referendum because of the fact that its whole tendency applied in actual practice would be. . . to seek an advantage for their own selfish interests, as contrasted with the interests of the whole people.”). Thus, by creating a direct lawmaking vehicle for the people, “you put it within the power of every special interest in the State with unlimited means at its command, to seduce, to harass, to cajole, to betray, to perplex the people in granting privileges that could not be secured from a legislative body.” Debates, 567 (Sen. Robert Luce).

The drafters correctly anticipated that well-resourced groups motivated by “selfish interests” would devise dense, complex petitions to confuse voters and deprive them of the right to make a meaningful choice on election day. “[I]t ought to be clear to us that the more details, the more complications we have in the proposition submitted to the voters, the more difficult it is for them to act upon it.” Debates, 701 (Sen. George Churchill). The drafters very well knew that “[i]f you go to [the voters] asking them a technical question, or a petty question, you will not get

the voice of the people. You will get a small percentage . . . a section picked out because it has a selfish interest." Debates, 535 (Sen. Francis Balch). To succeed, the petition process demands straightforward and cohesive petitions, not petitions "full of tricks and jokers," with proposed provisions that are an "alluring . . . combination of what is popular with what is desired by selfish interests, as the proposers of the measures may choose." Debates, 12.

B. The drafters of art. 48 identified well-financed corporate actors as those "selfish interests" most likely to manipulate the petition process.

The delegates were clear about *who* they believed would push for measures based on selfish gains without regard for the public good: powerful, wealthy actors and corporations. Senator David Walsh cautioned:

> You and I know, time and time again, in the great contests in the halls of legislation between the people and private organized combination of men and capital, the people have been defeated . . . . [T]here are influences at work detrimental to efficient and honest representative government, why have great corporations thought it worthwhile to pay fabulous retainers to professional lobbyists to exert their local influence. . . .

Debates, 578, 582.

And Senator Churchill feared that a corporation would pitch a petition that "looks like a popular proposition and which, nevertheless, is a proposition really for the benefit of a particular association or corporation." Debates, 815; *see also Id*. at 947 (Sen. Walsh, again reiterating his concerns) ("[W]here is the official who alone

can stand up always against the demands of great organized selfish forces, financial social and political . . . ").

Senator Robert Luce explained that the petition process might be particularly vulnerable to improper influence and corruption:

> [T]oday no man desiring special favors is able to buy them from Legislature or Governor . . . [the amendment] opens a way to those who would advance self-interest at the expense of general interest, by permitting those men to turn to the people, cajoling, persuading, deceiving them into the passage of acts granting special favors, we shall have added to our burden of trouble.

Debates, 813.

The concern that corporations and well-financed groups could transform the "people's process" into an election driven instead by money and powerful interests was a recurring theme among delegates, leading the convention to focus on sheltering art. 48 from such maneuvering.

C. The drafters created the related-subjects rule to prevent "selfish interests" from manipulating the petition process, which this Court strictly construes.

To prevent powerful groups from abusing the petition process, the drafters of art. 48 created the following rule: only petitions that are "related or which are mutually dependent" may be placed before voters. art. 48, II, § 3.

This rule—known as the related-subjects or the relatedness rule—provides critical protections to voters. "The language, structure, and history of art. 48 all suggest that any initiative presenting multiple subjects may not operate to deprive

the people of a 'meaningful way' to express their will." *Carney*, 447 Mass. at 230 (quoting *Opinion of the Justices*, 422 Mass. 1212, 1221 (1996)). As this Court has explained, "[p]etitions that bury separate policy decisions in obscure language heighten concerns that voters will be confused, misled, and deprived of a meaningful choice—the very concerns that underlie art. 48's related subjects requirement." *Koussa*, 489 Mass. at 839.

As a result, the provisions of a proposed petition must share a common purpose that "cannot rightly be said to be unrelated." *Carney*, 447 Mass. at 226 (citing *Massachusetts Teachers Ass'n v. Secretary of Commonwealth*, 384 Mass. 209, 221 (1981)). General headings or abstract conceptions do not suffice. *Id*. at 218 (rejecting "smokescreen" petition that combined controversial propositions abolishing parimutuel dog racing with non-controversial provisions tightening laws against animal abuse); *Opinion of the Justice*, 422 Mass. 1212, 1213 (1996) (rejecting petition reducing legislators' compensation for the purpose of "mak[ing] Massachusetts government more accountable to the people.").

This Court recognizes that the related-subjects rule exists as a safeguard. "In the context of the entire debate surrounding adoption of an initiative and referendum amendment, the relatedness limitation emerges as one of a number of compromise measures intended to place limits on the initiative as a means to forestall 'abuse of the process.'" *Carney*, 447 Mass. at 226-227 (recounting the historical record of how

the related-subjects requirement was debated and ultimately adopted); *see also Koussa*, 489 Mass. at 829 (quoting *Carney*, 447 Mass. at 228) ("Article 48 was designed to guard against various abuses of the initiative process, including the packaging of proposed laws 'in a way that would confuse the voter.'").

This Court has interpreted the relatedness requirement to preserve the expressed intent of drafters. It should maintain its strong tradition of "giv[ing] effect to the purpose for which [art.48's] words were chosen." *Carney,* 447 Mass. at 225.

II. The Petitions violate the art. 48 relatedness requirement.

A. The Petitions contain unrelated, confusing, and misleading provisions.

The provisions within the five Petitions are neither related, consistent, or "sufficiently coherent to be voted on yes or no by the voters." *Carney*, 447 Mass. at 226. This is demonstrated most starkly by considering the mandatory contractual "benefits" in the three long-form Petitions, together with each versions' broad exemption of Network Companies from coverage under multiple, distinct Massachusetts laws. If not enjoined, the average voter will assume the Petitions grant app-based drivers a wealth of privileges. By voting "yes," the voter is seemingly agreeing that app-based drivers will have access to a health stipend, paid sick time, a "guaranteed earnings floor" and other enticing benefits. What voters likely will not understand is the "technical question," full of "details" and "complications," of what these Petitions take from the Network Companies' employees and grant to the

Network Companies.[6] A "yes" vote will strip app-based drivers of protections otherwise afforded under Massachusetts laws, give them benefits more limited than those that they will lose, and offer those limited benefits to only a small fraction of transportation and delivery drivers.

The Petitions are, in other words, precisely the "alluring . . . combination of what is popular with what is desired by selfish interests" that delegates warned against. Debates, 12. For example, Petitions 23-25, 23-30, and 23-31 (Versions B, G, and H) calculate benefits, such as paid time off and a health stipend, depending on a driver's "engaged time" working. RA 124, 138, 149. The more "engaged time" a driver spends working, the more benefits they qualify for. Section 6 of Versions B, G, and H offers a health stipend commensurate with the driver's average "engaged time" working in a quarter. *Id*. But the Petitions' definition of "engaged time" includes only a fraction of the time a driver spends working for the benefit of the Network Company. It does not include critical duties such as searching for new requests, returning from requests, or vehicle maintenance. *Id*. at Section 4(b) of Versions B, G, and H (engaged time exceptions). And most drivers would not qualify

[6] All five versions of the Petitions would exempt Network Companies from their obligations to make social safety net contributions to the state that provide revenue for unemployment insurance, workers' compensation, paid family medical leave, and MassHealth and Commonwealth Care—straining the Commonwealth's social insurance programs and burdening taxpayers. *See* Brief of Plaintiffs/Appellants at 16.

for benefits under the thresholds proposed by the Petitions.[7] If the Petitions become law, drivers will receive fewer benefits than what Massachusetts Law already guarantees them but that Petitions strip away, and fewer than what the Petitions assure voters that drivers will receive in recompense for the loss of state-granted benefits.

On election day, voters may believe they are securing benefits for app-based workers: "guaranteed earnings floor," "paid sick time," a "health stipend," and "accident insurance," without understanding the consequences of the proposed classification change, that most workers will not qualify for meaningful paid sick time, full healthcare coverage, or an income boost needed to surpass chronic minimum wages,[8] or that disability payments will be capped below Commonwealth standards.[9]

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[7] Mentioned *supra*, the maximum enjoyment of benefits available are for app-based drivers who have worked over "25 hours of engaged time." Most drivers do not meet that criteria. See Lyft, *Understanding Driver Earnings & Benefits* (Feb. 6, 2024), *https://www.lyft.com/blog/posts/driver-net-earnings* (94% of drivers drive fewer than 20 hours per week).

[8] Kohli, *The median Uber and Lyft driver in Mass. makes $12.82 an hour, report finds*, Boston Globe (Oct. 17, 2023), https://www.bostonglobe.com/2023/10/17/business/uber-lyft-drivers-massachusetts-minimum-wage/.

[9] Versions B, G, and H cap disability insurance at 156 weeks and up to $1 million. But Massachusetts workers' compensation medical laws are not capped and are available "for considerably longer." *See* Brief of Plaintiffs/Appellants at 24 n.10 (citing *Dep't of Indus. Accidents, Learn About Workers' Compensation Benefits*, https://www.mass.gov/info-details/learn-about-workerscompensation-benefits).

It is equally concerning that the short form Petitions would require voters to determine whether to exempt the Network Companies from numerous, diverse statutes establishing rights and benefits for Massachusetts employees and employer obligations, *vis-à-vis* their workers, the Commonwealth, and the public at large. *See e.g.,* G.L. c. 149 s. 3, 5 (authorizing Attorney General to conduct regular and systematic health and safety inspections on Massachusetts employers, including those in the transportation industry); s. 21-22 (establishing fair advertising and disclosure requirements for employers); s. 47, 49, 51, 51A, 52 (regulating Sunday work and guaranteeing at least one day of rest in every seven days worked); s. 106 (ensuring access to fresh drinking water); *cf.* G.L. c. 149 s. 148 (mandating the timely and complete payment of all wages due to employees); c. 151 s. 1a (mandating overtime after 40 hours worked in a workweek).

"[Y]oking together disparate policy decisions into a single package that voters are only able to approve or disapprove as a whole, is to engage in 'the specific misuse of the initiative process that the related subjects requirement was intended to avoid.'" *Koussa*, 489 Mass. at 829 (quoting *Gray v. Attorney General*, 474 Mass. 638 (2016)). But this is exactly what the challenged Petitions do. For example, versions B, G, and H are omnibus proposals of multiple policies under the abstract concept of "the relationship" between app-based driver and Network Company. RA 124, 138, 149. Furthermore, each Petition—even if a voter fully understood its

complex, technical language—would require voters to weigh potentially competing goals. For example, a voter may agree that app-based drivers are entitled to "freedom and flexibility" to choose their working hours, which Versions B, G, and H each purport is part of the Petition's purpose, *see* RA 124, 138, 149, but may hold different policy positions with regard to drivers' access to healthcare, *see, e.g.*, RA 129, 143, 154, or whether minimum wage, accident insurance, and paid sick time should depend on the Network Companies' narrow definition of "engaged time" rather than the definition of working time otherwise calculated under existing Massachusetts law. RA 127-33, 141-47, 152-58.

The Petitions here attempt to fuse together multiple distinct policy fields into a single determination that forces voters to "vote yes or no" and apply a uniform opinion to distinct, unassociated subjects. *Carney*, 447 Mass. at 226. As Proponents correctly assert, "[t]he choice is impossible."[10]

Of course, "a petition does not fail the relatedness requirement just because it affects more than one statute." *Albano v. Attorney General*, 437 Mass. 156, 161 (2002). But the provisions still must be "related by a common purpose," and this "common purpose may not be 'so broad as to render the 'related subjects' limitation meaningless.'" *Id*. (quoting *Massachusetts Teachers Ass'n v. Secretary of the Commonwealth*, 384 Mass. 209 (1981)). A general concept is insufficient to satisfy

[10] Brief of Plaintiffs/Appellants at 25.

the relatedness clause. *Carney*, 447 Mass. at 226. The present Petitions are distinguishable from the petition at issue in *Albano*. The Proponents seek to change a vast breadth of Massachusetts laws: from how an app-based driver will pay for doctor's visit to how a Network Company will handle passenger injuries, *see, e.g.,* RA 138-148, Petition 23-30 "Version G" (amending G. L. cc. 149 (labor and industries), 151 (minimum fair wages), 151A (unemployment insurance), 152 (workers' compensation)), that Proponents now rope together under an abstract banner of "the relationship" between the Network Companies and their workers.

In 2022, this Court ruled that the Attorney General erred in certifying two similar petitions by the Network Companies, explaining that "it would be unfaithful to art. 48's design to allow the petition to be presented to the voters, with all the attendant risks that voters will be confused and misled." *Koussa*, 489 Mass. at 838. This Court warned then that "concealing controversial provisions in murky language is another way of burying them." *Id*. at 829. Undeterred, Proponents returned just two years later with these Petitions. But they double down on the confusing drafting that led its predecessors' certifications to be revoked.

B. The Petitions are motivated by the "selfish interests" of Network Companies, each of which is owned in substantial part by powerful foreign entities or foreign governments.

The delegates understood that absent the relatedness rule, moneyed corporate actors would have both the motivation of "selfish interests" and the deep-pockets

financial power to push unrelated, misleading Petitions onto the ballot. The financial power of corporate actors—including each of the Network Companies—has only grown since the drafting of art. 48, aided by the rapid increase of foreign investment in U.S. companies which, in turn, become reliant on multi-million-dollar investments and share purchases from global sources.[11]

As the then-chief executive officer of Exxon Mobil proclaimed in describing the role of a CEO in the modern global corporation, "I'm not a U.S. company and I don't make decisions based on what's good for the U.S."[12] Here, the Network Companies are not making decisions based on what is good for Massachusetts, but for the global corporations and their corporate shareholders, including foreign investors.

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[11] 1n 1982, only five percent of all corporate equity in the United States came from foreign investments. It took just over thirty years for that figure to quadruple to twenty percent by 2015. Just four years later, it doubled again; by 2019, the figure hovered around forty percent of all corporate equity in the country. Coates IV et al., *Quantifying Foreign Institutional Block Ownership At Publicly Traded U.S. Corporations,* Harvard L. Sch. John M. Olin Ctr. Discussion Paper No. 888 (Dec. 20, 2016), Free Speech For People Issue Report 2016-01, p. 14, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2857957; Rosenthal & Burke, *Who's Left to Tax? US Taxation of Corporations and Their Shareholders*, URBAN-BROOKINGS TAX POLICY CTR., paper presented at NYU School of Law (Oct. 27, 2020), https://bit.ly/3uLjVqE.

[12] Vaughan, *Global Power of ExxonMobil Spotlighted in New Coll Book*, Reuters (Apr. 27, 2012), https://www.reuters.com/article/books-exxonmobil-idUSL2E8FQP6B20120427.

For example, Maplebear Inc. (doing business as "Instacart") is substantially owned by investors outside the United States. Its substantial investors include its founder, Apoorva Mehta, a Canadian who owns 12% of the company's stock (worth $23.4 million).[13] Likewise, Lyft's owners include Rakuten, a company based in Japan, and UBS Asset Management, a company based in Switzerland, which respectively hold 9% and 3% of the company's stock and are amongst the largest of the $7.3 billion company's portfolio of owners.[14]

DoorDash, Inc. and Uber Technologies, Inc. are each owned in part by foreign governments. GIC Private Limited owns 6% of DoorDash and is Singapore's sovereign wealth fund that manages the country's foreign reserves.[15] The Public Investment Fund ("PIF"), which owns 4% of Uber, is the sovereign wealth fund of

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[13] Instacart, CNBC, https://www.cnbc.com/quotes/CART?tab=ownership (last visited Apr. 25, 2024).
[14] Lyft, CNBC, https://www.cnbc.com/quotes/LYFT?tab=ownership (last visited Apr. 25, 2024).
[15] DoorDash, CNBC, https://www.cnbc.com/quotes/DASH?qsearchterm= (last visited Apr. 25, 2024); GIC PRIVATE LIMITED, https://www.gic.com.sg/ (last visited Apr. 25, 2024) ("We are driven by a common purpose—securing Singapore's financial future."); 2023 Year-end Report (8/1/2023-12/31/2023) Flexibility and Benefits for Massachusetts Drivers, Office of Campaign and Political Finance, https://ocpf.us/Reports/DisplayReport?menuHidden=true&id=914163; 2023 Year-end Report (8/1/2023-12/31/2023) Flexibility and Benefits for Massachusetts Drivers, Office of Campaign and Political Finance, https://ocpf.us/Reports/DisplayReport?menuHidden=true&id=914163.

Saudi Arabia,[16] which invests funds on behalf of the Saudi Arabian government.[17] PIF's stake in Uber amounts to $72.8 million worth of shares. And Uber in 2023 alone spent close to $2.5 million on its Petitions campaign to influence Massachusetts voters.[18]

Each of the aforementioned investors own enough shares of the companies to wield direct and indirect influence over corporate decisionmaking, including corporate decisions about political spending. Indeed, the U.S. Securities and Exchange Commission (SEC) has identified owners holding less than 1% ownership of a publicly-traded company as being both significant and deserving of influential power. [19] Each of the Network companies boast single foreign owners whose stake

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[16] Uber, CNBC, https://www.cnbc.com/quotes/UBER?tab=ownership (last visited Apr. 25, 2024); *see also* Newcomer, *The Inside Story of How Uber Got Into Business with the Saudi Arabian Government*, Bloomberg (Nov. 3, 2018), https://bloom.bg/2SWWDgv.

[17] Private Investment Fund, https://www.pif.gov.sa/en/who-we-are/ (last visited Apr. 25, 2024) ("PIF's ambitious strategy is propelling the national economy with the impact felt well beyond Saudi borders.").

[18] 2023 Contributions, Office of Campaign and Political Finance, https://ocpf.us/Reports/SearchItems?pageSize=50&currentIndex=1&sortField=amount&sortDirection=DESC&searchTypeCategory=A&startDate=1/1/2023&endDate=12/31/2023&filerCpfId=0.

[19] Tellingly, even the U.S. Securities Exchange Commission has concluded that shareholders holding even less than 1% shares in the largest publicly traded companies can wield significant influence in the corporation. The SEC has recently amended a longstanding rule limiting shareholder proposals to investors who own 1% of stock, concluding that the threshold was *too high* and significantly lowered the threshold of ownership that triggers the power to submit shareholder proposals. *See* 17 C.F.R. 240.14a-8(b) (2019), *available at* https://www.govinfo.gov/app/collection/cfr/2019/. *See also* SEC, *Procedural*

far exceed 1%.[20]

C. The Network Companies have the financial capacity to spend record-level amounts of money to pass the Petitions.

The Network Companies' selfish interests are coupled with financial power that, as art. 48's drafters understood, often go hand-in-hand to undermine the people's process. In the past several years, both in Massachusetts and across the country, the Network Companies have poured millions of dollars into petition and ballot measure campaigns.

The Network Companies cumulatively spent $44 million to influence voters in Massachusetts in the past 3 years, breaking political spending records for the state.[21] In 2021, the Network Companies spent a total of $17.2 million on petitions similar to the ones at issue in this case, via contributions to a super PAC.[22] Lyft

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Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, 84 Fed. Reg. 66,458 (Dec. 4, 2019), codified in 2020 at 17 C.F.R. § 240.14a-8; *Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8*, 85 Fed. Reg. 70,240, 70,241 (Nov. 4, 2020); *see also id.* at 66,646 & n.58 (noting that "[t]he vast majority of investors that submit shareholder proposals do not meet a 1 percent ownership threshold," including major institutional investors such as California and New York public employee pension funds).

[20] *See, e.g.,* Instacart, CNBC, https://www.cnbc.com/quotes/CART?tab=ownership (last visited Apr. 25, 2024).

[21] *See* Stout, *Uber and allies pump $7 million into potential ride-share ballot questions this fall,* BOSTON GLOBE (Jan. 22, 2024), https://www.bostonglobe.com/2024/01/22/metro/uber-lyft-instacart-ballot-questions-donations/.

[22] 2021 Year-end Report (8/3/2021-12/31/2021) Flexibility and Benefits for Massachusetts Drivers, https://ocpf.us/Reports/DisplayReport?menuHidden=true&id=838598.

created Massachusetts history with a $13 million political contribution, the largest one-time political contribution ever made in the state.[23] The contribution—which does not consider other contributions by Lyft—quintupled the highest contribution by a non-Network Company that year, [24] and was 2.5 times higher than the previous highest corporate contribution, a $5.1 million contribution by General Motors in 2020.[25]

In 2022, the Network Companies together spent $21 million on similar petitions to exempt transportation and delivery companies from having to adhere to state labor and civil rights laws.[26] Instacart's one-time $13.3 million contribution that year—without taking into account the millions more it contributed later in the

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[23] Stout & Hilliard, *Lyft makes the 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/.

[24] 2021 Year-end Report (8/3/2021-12/31/2021) Flexibility and Benefits for Massachusetts Drivers, https://ocpf.us/Reports/DisplayReport?menuHidden=true&id=838598; *see also* 2021 Contributions and Expenditures, Office of Campaign and Political Finance, https://ocpf.us/Reports/SearchItems?pageSize=50&currentIndex=1&sortField=amount&sortDirection=DESC&searchTypeCategory=A&startDate=1/1/2021&endDate=12/31/2021&filerCpfId=0

[25] *See* Office of Campaign and Political Finance, https://ocpf.us/Reports/SearchItems?pageSize=50&currentIndex=1&sortField=amount&sortDirection=DESC&searchTypeCategory=A&startDate=1/1/2012&endDate=1/1/2024&filerCpfId=0 (generated report of political contributions between 2012-2024).

[26] 2022 Dissolution Report (1/1/2022 -9/9/2022) Flexibility and Benefits for Massachusetts Drivers, Office of Campaign and Political Finance, https://ocpf.us/Reports/DisplayReport?menuHidden=true&id=848805.

year—nearly quadrupled the year's highest contribution made by a non-Network Company.[27]

Cumulatively, the Network Companies spent nearly $7 million in 2023 on their renewed petitions campaign.[28] This was enough to land all four Network Companies, each of which is foreign-influenced, in top spots on the list of highest political contributors in the state.[29] It is not yet known how much they have and will continue to spend on the petition campaign in 2024, but there is every reason to believe they will replicate their longstanding strategy of spending tens of millions of corporate dollars to influence the result.

This pattern was on display in California as well. In 2020, Uber spent $52 million, Lyft spent $49 million, DoorDash spent $48 million, and Instacart spent $28 million to pass Proposition 22, an initiative that, like the Petitions at issue in this

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[27] Besides the Network Companies, the next highest contributions made in 2022 was for $3 million by the American Dental Association and Massachusetts Teacher Association. 2022 Contributions and Expenditures, Office of Campaign and Political Finance, https://ocpf.us/Reports/SearchItems?pageSize=50&currentIndex=1&sortField=amount&sortDirection=DESC&searchTypeCategory=A&startDate=1/1/2022&endDate=12/31/2022&filerCpfId=0.

[28] 2023 Year-end Report (8/1/2023-12/31/2023) Flexibility and Benefits for Massachusetts Drivers, Office of Campaign and Political Finance, https://ocpf.us/Reports/DisplayReport?menuHidden=true&id=914163.

[29] 2023 Contributions, Office of Campaign and Political Finance, https://ocpf.us/Reports/SearchItems?pageSize=50&currentIndex=1&sortField=amount&sortDirection=DESC&searchTypeCategory=A&startDate=1/1/2023&endDate=12/31/2023&filerCpfId=0.

case, sought to alter the legal relationship between the companies and their drivers.[30] The Network Companies' combined $177 million in political spending dwarfed $16 million in contributions to oppose Proposition 22, from people and entities who lack the Network Companies' resources.[31] Proposition 22 ultimately passed, overturning worker protections for app-based drivers throughout California.

If the Proponents are allowed to proceed, they will have the opportunity to put before Massachusetts voters up to five different misleading Petitions, each of which would erode the rights of their employees via Petitions that purport to protect them. This is what art. 48 drafters warned of: selfish interests manipulating the process and utilizing their financial means to do so. The relatedness rule has served as a bulwark against such risk to the "people's process," *Buckley*, 371 Mass. at 199, and should again be construed strictly to protect Massachusetts voters from the unrelated Petitions at issue in the present case.

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[30] Skelton, *It's no wonder hundreds of millions have been spent on Prop. 22. A lot is at stake,* Los Angeles Times (Oct. 16, 2020), https://www.latimes.com/california/story/2020-10-16/skelton-proposition-22-uber-lyft-independent-contractors.

[31] Manthey, *Pop. 22: Rideshare-driver measure is most expensive in California history*, ABC7 News (Nov. 30, 2020), https://abc7.com/22-california-prop-2020-ca-what-is/7585005/.

Conclusion

Foreign-influenced corporations that spend massive amounts of money to confuse voters with Petitions that violate the relatedness clause illustrate the danger of "selfish interests" that may corrupt the "people's process." These are the exact dangers that the related-subjects rule was enacted to prevent. This Court should once again construe the related-subjects requirement closely in line with the drafters' intent, and enjoin certification of the Petitions for the ballot.

Dated: April 26, 2024

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CERTIFICATE OF COMPLIANCE

I, Courtney Hostetler, 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. App. P. 17 (amicus curiae briefs); Mass. R. App. P. 16(e) (references to the record); Mass. R. App. P. 20 (form and length of briefs, appendices, and other documents); and Mass. R. App. P. 21 (redaction).

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. App. P. 20 because it is produced in the proportional font Times New Roman at size 14 point and contains 5719 total non-excluded words as counted using the word count feature of Microsoft Word.

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CERTIFICATE OF SERVICE

I, Courtney Hostetler, counsel for Free Speech For People, hereby certify that I have served a copy of this brief by causing it to be delivered to all parties through the E-File system.

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