The Commonwealth of Massachusetts

JOURNAL OF THE HOUSE.

THURSDAY, MAY 2, 2024.

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JOURNAL OF THE HOUSE.

Thursday, May 2, 2024.

Met according to adjournment at eleven o'clock A.M., in an Informal Session, with Mr. Garballey of Arlington in the Chair (having been appointed by the Speaker, under authority conferred by Rule 5, to perform the duties of the Chair).

Pledge of allegiance.

At the request of the Chair (Mr. Garballey), the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

Message from the Governor – Bill Returned with Recommendation of Amendments.

Lunenburg,— senior property tax.

A message from Her Excellency the Governor returning with recommendation of amendments of the engrossed Bill authorizing the town of Lunenburg to establish a means tested senior citizen property tax exemption [see House, No. 3911] (for message, see House, No. 4615), was filed in the office of the Clerk on Wednesday, May 1.

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was thereupon "before the General Court and subject to amendment and re-enactment". Pending the question on adoption of the amendment recommended by Her Excellency, the bill was referred, on motion of Mr. Walsh of Peabody, to the committee on Bills in the Third Reading.

Orders.

The following orders were referred, under Joint Rule 30, to the committees on Rules of the two branches, acting concurrently:

Extension of time for committees to make reports.

Order (filed by Mr. McMurtry of Dedham) relative to extending until Wednesday, May 22, 2024 the time within which the committee on Community Development and Small Businesses is authorized to report on current Senate and House documents (House, No. 4594).

Order (filed by Mr. Parisella of Beverly) relative to extending until Friday, May 31, 2024 the time within which the committee on Economic Development and Emerging Technologies is authorized to report on current Senate and House documents (House, No. 4595).

Order (filed by Mr. Day of Stoneham) relative to extending until Sunday, June 30, 2024 the time within which the committee on the Judiciary is authorized to report on current House documents (House, No. 4613).

Order (filed by Mr. Cusack of Braintree) relative to extending until Wednesday, July 31, 2024 the time within which the committee on Revenue is authorized to report on current Senate and House documents (House, No. 4614).

Mr. Galvin of Canton, for the committees on Rules, reported that the orders ought to be adopted. Under suspension of the rules, on motion of Mr. Donato of Medford,

the orders were considered forthwith; and they were adopted. Severally sent to the Senate for concurrence.

Papers from the Senate.

The following order, having been approved by the committees on Rules of the two branches, acting concurrently, came from the Senate with the endorsement that it had been adopted by said branch, as follows:

Public Service committee,—extension of time for reporting.

Ordered, That, notwithstanding the provisions of Joint Rule 10, the committee on Public Service be granted until June 30, 2024, within which time to make its final report on current Senate documents numbered 1609, 1610, 1616, 1618, 1620, 1621, 1629, 1638, 1646, 1650, 1654, 1658, 1659, 1660, 1664, 1665, 1669, 1680, 1683, 1686, 1692, 1695, 1702, 1706, 1707, 1712, 1713, 1721, 1722, 1729, 1732, 1738, 1739, 1742, 1746, 1747, 1754, 2396, and 2453, relative to public service matters.

Under suspension of the rules, on motion of Mr. Wong of Saugus, the order (Senate, No. 2606) was considered forthwith; and it was adopted, in concurrence.

Petitions were referred, in concurrence, under suspension of Joint Rule 12, as follows:

Woodlands Partnership.

Petition (accompanied by bill, Senate, No. 2766) of Paul W. Mark for legislation to rename the Woodlands Partnership of Northwest Massachusetts. To the committee on Environment and Natural Resources.

Eddie Simpkins,—sick leave.

Petition (accompanied by bill, Senate, No. 2767) of Michael D. Brady for legislation to establish a sick leave bank for Eddie Simpkins, an employee of the Suffolk County Sheriff's Department. To the committee on Public Service.

Reports of the Special Joint Committee on Initiative Petitions on the Bills Introduced into the General Court by Initiative Petition.

By Ms. Peisch of Wellesley, for the Special Joint Committee on Initiative Petitions [reports having been filed in the office of the Clerk subsequent to adjournment of the preceding sitting, on Tuesday, April 30, 2024], that the following initiative petitions ought NOT to pass:

Legislature,—audit.

An Act expressly authorizing the Auditor to audit the Legislature (House, No. 4251) (introduced into the General Court by the initiative petition of Dianna DiZoglio and others).

The majority report of the committee (House, No. 4603) is as follows:

MAJORITY REPORT.

A majority of the Special Joint Committee on Initiative Petitions ("The Committee") recommends that the Initiative Petition 23-34, House 4251, "An Act expressly authorizing the Auditor to audit the Legislature," ("the Initiative Petition") as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME.

The purpose of this report is to provide a recommendation to the full legislature on whether to accept the Initiative Petition as written for consideration and enactment.

The proposed Initiative Petitions would give the Auditor authority to audit the finances and workings of the state legislature.

Testimony

The Committee heard from experienced professionals, proponents and opponents of the Initiative Petition, as well as members of the general public.

The Committee first heard testimony from experienced professionals. Christopher Rogers, CPA and Managing Principal, State and Local Government at the accounting firm CliftonLarsonAllen LLC, testified that his firm conducted audits of the Massachusetts House and Senate. He was followed by the Comptroller of the Commonwealth, William McNamara, who explained the responsibilities of his office including the administration of the Commonwealth's Financial Records Transparency Program. The Committee then heard from two academics. David C. King, Senior Lecturer in Public Policy at the Harvard Kennedy School of Government, and Jeremy Paul, Professor of Law at Northeastern University, provided testimony relating to the constitutional issues raised by the Initiative Petition

The Auditor, Diana DiZoglio, testified in support of the Initiative Petition as did a panel consisting of former Representative Daniel Winslow, Mary Connaughton of the Pioneer Institute, and Paul Craney of Massachusetts Fiscal Alliance.

Former Auditor Suzanne Bump and Jerold J. Duquette, Professor of Political Science at Central Connecticut State University, testified in opposition to the amendment.

Conclusion

The statutory change would undermine the well-contemplated balance of constitutional powers between the branches of government as established by the framers of the Constitution of the Commonwealth. As David C. King, Senior Lecturer in Public Policy at the Harvard Kennedy School and Faculty Chair of Harvard's Bi-Partisan Program for Newly Elected Members of the U.S. Congress, testified during The Committee's public hearing ". . . I want to warn voters and this Legislature that House 4251 is exceptionally unwise . . . the Massachusetts separation of powers became foundational for our national constitution. The Auditor's proposal chips away at this foundation. I do believe it is that dire. The Auditor is proposing an unprecedented transfer of power from the people's representatives into the Executive Branch."

The Office of the State Auditor is a member of the Executive Branch of the government of the Commonwealth. Both the United States Constitution and the Massachusetts Constitution enshrine the separation of powers among the three branches of government, while creating various checks and balances on those powers. What this Initiative Petition seeks to do, however, is to transfer, by statute, authority explicitly vested by the constitution in the legislative branch, not to the electorate, but to the executive branch thereby violating the foundational constitutional principle of separation of powers. As Jeremy R. Paul, Professor of Law at Northeastern University, stated in testimony submitted to The Committee "I believe there are strong reasons to conclude that it would be such an overreach and thus there is a significant likelihood

that Massachusetts courts would be forced to invalidate a statute adopted by the Initiative Petition that tracks the current language."

Notably, a recent action taken by the Trial Court supports the conclusion that the Auditor's proposed audit of the General Court would violate the separation of powers established in the Massachusetts Constitution. In a letter sent to the Office of the State Auditor on August 24, 2023, the Trial Court wrote that it was declining to continue responding to requests related to an audit of the Trial Court's Office of Jury Commissioner. Although the Trial Court, like the General Court, is a part of a separate branch of government from the Auditor and therefore not subject to the Auditor's authority, it nevertheless consented to the Auditor's request for an audit. It was only after the Auditor unilaterally expanded the scope of her audit that the Trial Court rescinded its consent, making clear that the Auditor had exceeded her authority and violated the separation of powers principle.

In a representative democracy, power rests with the constituents who elect their Representatives and Senators and hold them accountable. Rather than achieve its stated goals, the proposed the Initiative Petition would limit the power of the voters who elect Members of the Legislature by expanding the powers of the Executive Branch; essentially, the Auditor would supplant the people for herself in holding the Legislature accountable. In fact, a member of the panel that testified in support of the Initiative Petition, former Representative Dan Winslow, indicated that if the Initiative Petition was approved by voters, it would most likely be challenged on constitutional grounds, as the language is overly broad. He went on to suggest that the Legislature should change the Initiative Petition, so it did not "intrude on core legislative functions."

It is for these reasons that the Commonwealth's chief law enforcement officer, Attorney General Andrea Campbell, in evaluating the Auditor's assertion of authority to audit all functions of the legislative branch, declared that the proposal "raise[d] separation of powers issues" and "constitutional concerns" about impermissible interference with or encroachment on "powers uniquely granted to the Legislature."

The House and Senate, under their individual governing rules, require a yearly financial audit conducted by an independent auditing firm. These audit reports are available to the public.

The Legislature's financial records and accounts are available on the Commonwealth's Financial Records Transparency Platform ("CTHRU"), administered by William McNamara, Comptroller of the Commonwealth, who testified at The Committee's public hearing. CTHRU includes detailed and comprehensive information regarding payroll, expenditures, and other financial information, including the amounts paid to state vendors. Additionally, all legislative sessions and committee hearings are live-streamed and recorded and can be found on the General Court's website. Access to information about all bills and amendments, including roll call votes and journals and calendars from the House and Senate are also available online.

As part of her testimony in support of the Initiative Petition, Auditor DiZoglio shared a visual representation of documents she described as past audits to claim precedent exists for auditing the Legislature. However, further research established

that 74 of those 113 audits (many of which date back to the 19th century) were mere financial accounting reports similar to what is now publicly available on the Comptroller's CTHRU website. The remainder are the financial statements of specific divisions within the Legislature. As Attorney General Campell has stated, despite the existence of numerous Auditor's reports on certain discrete activities or entities within the legislative branch, there is "no historical precedent at all for the type of audit the [Auditor] seeks to conduct now: a sweeping audit of the Legislature over its objection, which would include review of many of its core legislative functions."

The majority of The Committee notes that the Auditor, during her campaign and in public statements, has frequently cited perceived political mistreatment in the Legislature. Suzanne Bump, former Auditor of the Commonwealth, testified that the proper subject of government audits are government programs authorized by the Legislature to serve public purposes, not the functions of the legislative branch of government. As Bump stated, because the Massachusetts Constitution enables the Legislature to govern itself through its own rules and procedures, there are no objective criteria by which the Auditor can assess it; such an audit would be inherently subjective and thus inconsistent with well-established auditing standards. In addition, Auditor DiZoglio lacks the objectivity required to audit the Legislature in accordance with the Generally Accepted Government Auditing Standards (GAGAS), also known as the Yellow Book, due to the Auditor's recent service in the Legislature, as well as the clear prejudice that the Auditor has publicly expressed against the Legislature.

For these reasons, we, the majority of the Special Joint Committee on Initiative Petitions, recommend that "An Act expressly authorizing the Auditor to audit the Legislature" (see House No. 4251) as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME.

Senators.	Representatives.
Cindy F. Friedman	Alice Hanlon Peisch
Paul R. Feeney	Michael S. Day
Jason M. Lewis	Kenneth I. Gordon

MCAS graduation requirements.

An Act requiring that districts certify that students have mastered the skills, competencies and knowledge of the state standards as a replacement for the MCAS graduation requirement (House, No. 4252)) (introduced into the General Court by the initiative petition of Deborah Therese McCarthy and others).

The majority report of the committee (House, No. 4604) is as follows:

MAJORITY REPORT.

A majority of the Special Joint Committee on Initiative Petitions ("The Committee") recommends that the Initiative Petition 23-36, House 4252, "An Act requiring that districts certify that students have mastered the skills, competencies and knowledge of the state standards as a replacement for the MCAS graduation requirement," ("the Initiative Petition") as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME.

The purpose of this report is to provide a recommendation to the full legislature on whether to accept the Initiative Petition as written for consideration and enactment.

The proposed Initiative Petition would amend Section 1D of Chapter 69 of the General Laws by eliminating the uniform statewide competency determination set by the Board of Elementary and Secondary Education and replacing it with a competency determination established by each of the over 300 school districts in the Commonwealth.

Testimony

The Committee heard from experienced professionals, proponents, and opponents of the Initiative Petition, as well as members of the general public.

Subject matter expert Robert Curtin, Chief Officer for Data, Assessment, and Accountability at the Massachusetts Department of Elementary and Secondary Education ("DESE"), testified that the overwhelming majority of high school students are able to graduate regardless of their socio-economic status, ethnic/racial background, or disability status. All of these subgroups graduate at rates far in excess of 90 per cent, with the exception of those with profound cognitive impairments. Mr. Curtin further testified that 99 per cent of students are able to graduate by passing the 10th grade Massachusetts Comprehensive Assessment System ("MCAS") or pursuing one of the alternative paths available to them. According to data from the Class of 2019, the last graduating class not impacted by COVID-19, of 70,000 high school seniors statewide, 700 failed to graduate because they had not met the requirement and in Boston, the largest district in the state with a high percentage of low-income students and students of color, only 7 in that class failed to graduate only for this reason. Over 88 per cent of twelfth grade students in the Class of 2019 achieved a "passing" score on the 10th grade MCAS tests. Mr. Curtin elaborated on previous comments, explaining that those who do not achieve that score on the first try can pursue a variety of options to demonstrate that they have acquired the requisite knowledge and skills. Students can retake the test until they achieve a passing grade, they can pursue a "Performance/Cohort Appeal" by demonstrating to DESE that their classwork is equivalent to that of students in their classes who did pass the test, or they can complete a district developed Educational Proficiency Plan if their MCAS score is slightly below passing. As a result of these multiple pathways, Mr. Curtin testified that, on average, less than 1 per cent of high school seniors fail to graduate solely because they did not meet the graduation requirement.

Other subject matter experts testified from the perspective of education leadership positions. Paul Reville, the Francis Keppel Professor of Practice of Educational Policy and Administration at the Harvard Graduate School of Education and former Massachusetts Secretary of Education during the Patrick Administration, commented that passage of the Initiative Petitions "would usher in a new era of scattershot standards and undermine decades of education reform." Stephen Zrike, current superintendent of the Salem Public Schools and former receiver of Holyoke Public Schools, testified that requiring students to meet the Board of Elementary and Secondary Education ("BESE") competency determination is good preparation for the world beyond high school where graduates will be expected to perform in order to progress in their chosen fields.

Panels of proponents, including the President and Vice President of the Massachusetts Teachers Association ("MTA"), Max Page and Deb McCarthy respectively, current educators, and a college student, testified that the graduation requirement "create[es] classroom environments filled with anxiety and stress," to the detriment of "excitement about learning." The panelists further testified that the graduation requirement "has actively harmed our most marginalized students, especially our students of color, English learners, low-income students, and students with disabilities." Rebecca Pringle, the President of the National Education Association, testified that MCAS scores are not an accurate, complete, or fair measure of student achievement and measures of achievement should focus on holistic approaches to identify students' strengths and areas for growth. Ms. Pringle emphasized that since students are not standardized in their learning styles, standardized tests do not provide a full picture of students' problem-solving abilities and ability to think critically.

Opponents to the Initiative Petition countered the proponents' testimony by noting that as students' progress through high school and beyond, they will be expected to demonstrate their knowledge and skills through a variety of assessments that have consequences. They also maintained that elimination of the graduation requirement would lead to more, not less, inequity. Jeff Howard, a former member of the state BESE and the founder and president of the Efficacy Institute, testified that "proficiency standards are a means for promoting social and economic equality. … 'Demonstrate these proficiencies and you will be prepared to meet the challenges of the world'". He also stated that "the MCAS graduation requirement is an introduction to [the] world of certification and accountability all our students will enter after high school." Jill Norton, parent of a special needs student and education consultant, spoke in favor of retaining the current graduation requirement so that schools would not regress to a time when special needs students graduated who could not meet basic standards.

Conclusion

The Education Reform Act of 1993 established the current system of K-12 education in the Commonwealth including the uniform graduation requirement. Prior to the implementation of that legislation, Massachusetts had no statewide curriculum standards, each of the local districts set their own graduation requirements and the quality of K-12 education varied dramatically from district to district across the state.

The Act required a significant increase in state funding to local districts to support the implementation of the standards as well as the uniform assessment system, the MCAS, designed to measure progress toward the goal of improved outcomes for all students. The legislature recently substantially increased funding with a more targeted focus on equity through the Student Opportunity Act.

The Initiative Petition eliminates the uniform graduation requirement without creating a uniform alternative. Based on the testimony presented, there are significant concerns with the lack of a standard, statewide assessment. Both the education leaders and the opponents of the Initiative Petition acknowledged the need to make improvements to the current system so that students who fail to achieve the minimum level of knowledge and skills required to graduate receive the support they need to meet those basic requirements. However, simply eliminating the uniform graduation

requirement, which will allow students to graduate who do not meet basic standards, with no standardized and consistent benchmark in place to ensure those standards are met, will not improve student outcomes and runs the risk of exacerbating inconsistencies and inequities in instruction and learning across districts.

For these reasons, we, the majority of the Special Joint Committee on Initiative Petition, recommend that "An Act requiring that districts certify that students have mastered the skills, competencies and knowledge of the state standards as a replacement for the MCAS graduation requirement" (see House No. 4252), as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME.

Senators.	Representatives.
Cindy F. Friedman	Alice Hanlon Peisch
Paul R. Feeney	Michael S. Day
Ryan C. Fattman	Kenneth I. Gordon
	David T. Vieira

Network drivers,— collective bargaining.

An Act giving transportation network drivers the option to form a union and bargain collectively (House, No. 4253) (introduced into the General Court by the initiative petition of Roxana Lorena Rivera and others).

The majority report of the committee (House, No. 4605) is as follows:

MAJORITY REPORT.

A majority of the Special Joint Committee on Initiative Petitions ("The Committee") recommends that the Initiative Petition 23-35, House 4253, "An Act giving transportation network drivers the option to form a union and bargain collectively," ("the Initiative Petition") as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME.

The purpose of this report is to provide a recommendation to the full legislature on whether to accept the Initiative Petition as written for consideration and enactment.

The proposed Initiative Petition would provide Transportation Network Drivers ("Drivers") with the right to form unions to collectively bargain with Transportation Network Companies ("TNCs") to create negotiated recommendations concerning wages, benefits, and terms and conditions of work.

Testimony

The Committee heard from experienced professionals, proponents of the Initiative Petition as well as members of the general public. There was no testimony in opposition of the Initiative Petition, and representatives from the TNCs clearly stated that they do not hold a position on this Initiative Petition.

Patrick Moore, First Assistant Attorney General of the Commonwealth of Massachusetts, testified that the language of this Initiative Petition would only apply to Drivers using the platforms of TNCs, most commonly Uber and Lyft, and not

Delivery Network Companies ("DNCs,") such as DoorDash or Instacart. This Initiative Petition establishes a framework to allow Drivers to collectively bargain if they choose to do so in a process overseen by the Commonwealth Employment Relations Board ("CERB") which defines unfair work practices in this area. If 5 per cent of active Drivers, determined by the TNCs as Drivers having completed more than the median number of rides in the previous six months, authorize the organization, the organization receives a list from the TNCs of all active Drivers. If the organization receives support from 25 per cent of all active Drivers, the Driver organization may be recognized by the CERB as the exclusive representative of the Drivers. If the Drivers ratify the bargaining agreement, it goes to the Secretary of Labor and Workforce Development for the Commonwealth to certify the agreement. The TNCs may also form associations to represent them in bargaining with a Driver organization.

First Assistant Attorney General Moore noted that TNCs are currently involved in a lawsuit brought by the Attorney General to determine if Drivers should be classified as employees, given the Massachusetts Wage Act and the state's strong "ABC Test" of employee-employer relationships. This case, which could be decided in the next few months, would either keep Drivers recognized as independent contractors in Massachusetts or classify Drivers as employees, applying both from that point forward and retrospectively to the operation of TNCs in Massachusetts. Initiative Petitions House 4256, House 4257, House 4258, House 4259, and House 4260, which also concern TNCs and Drivers and are contemplated in a separate report, would classify Drivers as independent contractors for the purposes of Massachusetts law. If any of those initiatives were to pass, Drivers would not be considered employees from that point forward (if the Supreme Judicial Court rules that Drivers are and have been employees). When asked about potential conflict between this Initiative Petition and Initiative Petitions House 4256, House 4257, House 4258, House 4259, and House 4260, First Assistant Attorney General Moore testified that there may be minor inconsistencies, but these Initiative Petitions were written so as to not conflict and that this Initiative Petition could be in effect regardless of the outcome of those five other Initiative Petitions.

The first panel of proponents of this Initiative Petition included members of the 32BJ local of the Service Employees International Union ("SEIU"), and a driver for the Uber and Lyft TNCs. The panel reasoned that the right to unionize would be the best way to ensure Drivers' rights, regardless of the impacts of the Attorney General's lawsuit or the Initiative Petitions outlined in the paragraph above. This panel stated that the provisions of this Initiative Petition would ensure that whether Drivers are classified as independent contractors or employees under Massachusetts law, the right to collectively bargain would give Drivers the opportunity to ensure the long-term sustainability of their profession by working collaboratively with TNCs on workers' rights and protections, including the share of the fare Drivers receive, the deactivation process for Drivers, and minimum wage and benefits. This panel also pointed to past precedent, citing the Commonwealth's previous efforts to allow home care and child-care workers who do not consistently work at a fixed company location to unionize as independent contractors when they previously did not have that right.

The second panel of proponents consisted of representatives from SEIU California, the Center for American Progress American Worker Project, and the International Association of Machinists District 15. While this panel was supportive of the Initiative Petition to allow Drivers to unionize as independent contractors, their

posture was that Drivers are currently misclassified as independent contractors and that any proposals allowing a union should not definitively declare the Drivers as independent contractors under Massachusetts law.

Conclusion

Though the undersigned majority feels that there is merit to the subject of this Initiative Petition regarding the rights of Drivers to form a union and bargain collectively, significant questions remain as to the interplay between this Initiative Petition and the five Initiative Petitions that deal with the relationship between Transportation Network Companies and their workforce should they both be presented to the voters.

It is also evident by the testimony received at the public hearing that though inherently supportive of the right of workers to form a union, concerns were raised by some labor organizations regarding the process, and jurisdictional exclusivity of such an arrangement as petitioned. The Committee also notes that the Initiative Petition as drafted is focused on TNCs and is free of any language that would develop this right by statute for similarly situated DNC workers.

The Committee is also cognizant of a legal challenge regarding this Initiative Petition that is to be argued before the Supreme Judicial Court in the month of May 2024, after the constitutional deadline that the legislature can enact this Initiative Petition.

For these reasons, we, the undersigned members of the Special Joint Committee on Initiative Petitions, recommend that "An Act giving transportation network drivers the option to form a union and bargain collectively" (see House No. 4253), as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME.

Senators.	Representatives.
Cindy F. Friedman	Alice Hanlon Peisch
Paul R. Feeney	Michael S. Day
Ryan C. Fattman	Kenneth I. Gordon
	David T. Vieira

Tipped workers,— minimum wage.

An Act to require the full minimum wage for tipped workers with tips on top (House, No. 4254) (introduced into the General Court by the initiative petition of Irene S. Li and others).

The majority report of the committee (House, No. 4606) is as follows:

MAJORITY REPORT.

A majority of the Special Joint Committee on Initiative Petitions ("The Committee") recommends that the Initiative Petition 23-12, House 4254, "An Act to require the full minimum wage for tipped workers with tips on top," ("the Initiative Petition") as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME.

The purpose of this report is to provide a recommendation to the full legislature on whether to accept the Initiative Petition as written for consideration and enactment.

The proposed Initiative Petition would remove a provision in state law allowing employers to compensate their tipped workers at a lower minimum rate if the "tipped minimum wage" together with the value of the worker's tips plus equals at least the state non-tipped hourly minimum wage over the course of each shift worked. Additionally, the Initiative Petition would allow restaurant owners to require their tipped employees to share their tips with non-tipped employees working at the restaurant.

Testimony

The Committee heard from experienced professionals, proponents and opponents of the Initiative Petition, as well as members of the general public.

Lauren Moran, the Chief of the Fair Labor Division of the Office of the Attorney General, testified as a subject matter expert and spoke about the 2018 "Grand Bargain" legislation. The Grand Bargain changed the tipped worker minimum wage from $3.75 per hour plus average hourly tips for the week up to the state minimum wage, with the employer paying the difference to $6.75 per hour plus average hourly tips for the shift, with the employer paying the difference, and the rate increasing incrementally over a five-year period beginning in 2019. The Fair Labor Division currently has broad enforcement authority over wage rights for workers and collects data on claims of tip violations. The data presented showed that from March 2021 to the present hearing date, 15 per cent of claims came from the restaurant and salon industries, industries typically employing a high number of tipped workers, with 30 per cent of active open claims coming from these industries. Nearly 700 complainants claimed tip violations from workers, and these industries have accounted for 35 per cent of total civil enforcement, with nearly $2,000,000 in restitution and $3,400,000 in penalties assessed.

In addition to the Attorney General's office, university-based economists also shared their perspectives and findings. Dr. Jeannette Wicks-Lim, Associate Research Professor at the Political Economy Research Institute at the University of Massachusetts Amherst, cited two peer reviewed papers that surveyed all of the contemporary research on minimum wage data, and suggested that there is little to no evidence suggesting negative employment outcomes from raising the minimum wage. Dr. Wicks-Lim stated that there is limited data available regarding the labor and economic impacts of a similar measure passed in Washington, D.C., which since 2023 has been incrementally phasing out the tipped minimum wage until it is completely removed by 2027. Dr. Wicks-Lim stated that restaurants would not necessarily see their total costs go up by the same proportion as the increase in wages paid to employees, and that restaurants have flexible ways to adjust to cost increases, such as modified price increases. Additionally, Dr. Wicks-Lim observed that the increase in wages will lead to lower administrative and training costs due to reduced worker turnover. Dr. Wicks-Lim also cited that the poverty rate is higher for tipped workers than non-tipped workers — a statistic especially noticeable in states with a lower tipped minimum wage — and that the industry is made up of mostly women a quarter of whom are raising children. Dr. Sean Jung, Assistant Professor at Boston University's School of Hospitality Administration contrasted Dr. Wick-Lim's

testimony by pointing to evidence showing that the removal of the tipped minimum wage will likely lead to full-service restaurants converting to limited or counter service, due to labor costs. Dr. Jung also highlighted that removing the tip credit could lead to increased menu prices and service charges and more restaurants going out of business due to low profit margins. Dr. Jung predicted this would be especially acute in rural areas where profit margins and customer demand are lower, but labor costs would increase at the same rate as suburban or urban areas. Dr. Jung also testified that historically when labor costs increase, restaurants pivot to methods that allow for a reduction in service staff, such as tablets for ordering

A panel of proponents of the Initiative Petition from the national One Fair Wage campaign consisted of an academic professional, a restaurant owner, and tipped restaurant workers. The panel described the current tipped minimum wage practice as a "subminimum wage" that is an economic, gender and racial equity, gender justice, and gender pay equity issue. The panel argued that a power imbalance exists where tipped workers, especially women and women of color, are forced to ignore gender violence, sexual harassment, and wage theft because they rely on tips as part of their full compensation. The proponents pointed to seven states that currently do not have a lower minimum wage for tipped workers: Alaska, California, Minnesota, Montana, Nevada, Oregon, and Washington. The proponents cited evidence that the growth in the net number of restaurants in California outpaced the average growth in states subject to a tipped minimum wage, including Massachusetts. They also highlighted data that shows the average tipped worker in those seven states takes home between 10-18 per cent more than the average tipped worker in the rest of the country. The proponents also maintain that there are higher levels of poverty, unenforceable wage violations and the highest rates of sexual harassment of any industry as studied by Professor Catharine A. MacKinnon.

Opponents of the Initiative Petition consisted of restaurant industry representatives, restaurant owners, and tipped restaurant workers. The first panel of opponents pointed to the costs associated with eliminating the tipped minimum wage, which would raise what a restaurant pays an employee from a wage of between $6.75 to $15 an hour to a flat $15 an hour. They described new restaurant Point of Sale technologies that provide enhanced data tracking designed to reduce discrepancies relating to wages and tips earned per shift. Opponents to the Initiative Petition also attributed instances of sexual harassment and assault to the bad actions of patrons and poor management of employers rather than being endemic to a tipped wage system of compensation. Opponents further argued that removing the tip credit would hurt affordable restaurants, which operate at a much lower margin than high-end restaurants and are currently in competition with grocery stores, takeout and quick service establishments, and fast food. The opponents fear that the increased costs associated with implementing this practice will wipe out the affordable restaurant industry and take with it a tipped workforce that on average earns $35-40 an hour, with atypical wages up to as high as $70 an hour, ending the testimony by highlighting that the practice of tipping as an incentive for good service is an affect, not a defect, of the restaurant industry.

The second panel of opponents, which consisted of restaurant workers, provided anecdotal evidence and their personal beliefs that removing the tipped minimum wage would lead to a decrease in tip percentage and eventually overall compensation compared to the current model, with one opponent member panel arguing that the fact

that only seven states have no tipped minimum wage is evidence that the current system works well.

The Committee was not presented with data showing the impacts to the Massachusetts restaurant industry based on the tipped minimum wage and minimum wage increases of the “Grand Bargain” legislation enacted in 2018. According to the U.S. Department of Labor in 2024, because of these increases Massachusetts is tied for the sixth highest effective minimum wage for tipped workers out of all fifty states and the District of Columbia, even when accounting for the highest possible minimum wage in states that have different rates for employers in cities, counties, or by employer size and status. Massachusetts also has a higher effective minimum wage for tipped workers than all but two states that do not have a tipped minimum wage: California and Washington. There was also a question on the impact of a similar recent phase-out policy in Maine, which had to rollback a similar provision to the Initiative Petition before the committee due to a spike in restaurant loan defaults, but there was no evidence available from a subject matter expert on the situation in Maine.

Another element of the public hearing focused on the provision of the Initiative Petition concerning tip pooling. The practice of requiring the pooling of tips from “front-of-house” staff with “back-of-house” staff is currently outlawed in the Commonwealth of Massachusetts under M.G.L. c 149, s 152A(c). In addition to removing the tipped minimum wage in the Commonwealth, the Initiative Petition would also change this separate law to allow a restaurant to require the pooling of all tips with non-service staff, provided that waitstaff are being paid the full minimum wage.

Subject matter experts testified that there are strict rules regarding tip pools, specifically that any employer, manager, or supervisor cannot receive tips on days that they have managerial or supervisorial responsibilities, even if they serve customers that day. There is currently a low variance between the wages of “front-of-house” and “back-of-house staff”, but this provision would reduce the disparity that may arise from the removal of the tipped minimum wage.

Proponents argued that the tip pool would still be governed by federal law preventing supervisors or employers from receiving tips from the pool and would encourage more teamwork between “front-of-house” and “back-of-house staff”, since they would all benefit in a shared manner from tips received. Proponents also cited instances where “back-of-house” staff use tipping as leverage, sexually harassing wait staff to ensure food comes out promptly or correctly.

Opponents viewed the tip pooling provision as harmful to “front-of-house” staff who receive tips for their good service in customer-facing roles. Currently, “front-of-house” employees can “tip out” to “back-of-house” staff at their discretion, with an example given that a tip was shared with “back-of-house staff” for helping the employee out, but the “front-of-house” staff does not want to lose this important component of their work. Several opponents who are restaurant employees stated that their opposition to the Initiative Petition was more in part due to the tip pool provision, but they would likely still oppose the Initiative Petition if it was just to remove the tipped minimum wage.

Conclusion

At this time, there is insufficient evidence provided on the overall impact that this Initiative Petition would have on the restaurant industry and restaurant workforce in the Commonwealth. Questions remain on the viability of restaurants and other tipped wage industries to absorb the costs of the more than 100 per cent increase from the current minimum tipped wage an employer is responsible for paying, and comparisons to other jurisdictions are challenging given that the seven states employing this law have followed this policy for many years. The Committee does not believe it received enough evidence on the experiences in Washington, D.C. (currently phasing out the tipped minimum wage) or Maine (rolling back the raise of the tipped minimum wage), or the impact that the Grand Bargain tipped minimum wage increase that was finalized in 2023 to draw conclusions on what the likely impact this Initiative Petition would have on restaurants in Massachusetts. Based on testimony received, the Committee believes the legislature would be well-served to work with the Attorney General to support enhanced prevention of wage theft, sexual harassment, and assault in tipped wage industries. It should be noted that this Initiative Petition is also the subject of a legal challenge that sits before the Supreme Judicial Court in the month of May 2024, after the deadline that the legislature would need to enact this Initiative Petition.

For these reasons, we, the majority of the Special Joint Committee on Initiative Petitions, recommend that "An Act to require the full minimum wage for tipped workers with tips on top" (see House No. 4254) as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME.

Senators.	Representatives.
Cindy F. Friedman	Alice Hanlon Peisch
Paul R. Feeney	Michael S. Day
Jason M. Lewis	Kenneth I. Gordon
Ryan C. Fattman	David T. Vieira

Natural psychedelic substance.

An Act relative to the regulation and taxation of natural psychedelic substance (House No. 4255) (introduced into the General Court by the initiative petition of Sarko Gergerian and others).

The majority report of the committee (House, No. 4607) is as follows:

MAJORITY REPORT.

A majority of the Special Joint Committee on Initiative Petitions ("The Committee") recommends that the Initiative Petition 23-13, House 4255, "An Initiative Petition for a Law Relative to the Regulation and Taxation of Natural Psychedelic Substance," ("the Initiative Petition") as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME.

The purpose of this report is to provide a recommendation to the full legislature on whether to accept the Initiative Petition as written for consideration and enactment.

The proposed Initiative Petition would permit persons aged 21 or over to grow, possess and use specified natural psychedelic substances in the Commonwealth in

certain circumstances. It would also permit the sale of these substances at approved locations for use under the supervision of a licensed facilitator and subject to regulations to be promulgated by a newly created Natural Psychedelic Substances Commission in consultation with a newly created Natural Psychedelic Substances Advisory Board. "Permitted psychedelic substances" include two substances found in mushrooms (psilocybin and psilocyn) and three found in plants (dimethyltryptamine, mescaline, and ibogaine). The Initiative Petition would also establish a tax rate for the sale of these substances by licensed facilitators. The manufacture, distribution, dispensation, and possession of these substances remain – and would remain – illegal federally.

Testimony

The Committee heard from experienced professionals, proponents and opponents of the Initiative Petition, as well as members of the general public.

Subject matter experts included doctors currently studying the effects of psychedelic treatments on patients, including Dr. Jerrold Rosenbaum, Psychiatrist-in-Chief Emeritus, Director of the Center for the Neuroscience of Psychedelics at Massachusetts General Hospital, Dr. Franklin King of Harvard University and Director of Training and Education at the Center for the Neuroscience of Psychedelics at Massachusetts General Hospital, and Dr. Yvan Gersaint of Dana Farber Cancer Institute. Each doctor cited potential benefits to the use of psychedelic agents as evidenced in their clinical studies, showing psychological benefits that are as effective, or even more so, than available therapeutics, with toxicity and risk seeming modest compared to available pharmaceutical drugs. While addiction to psychedelics is unlikely, the doctors testified that there are regulatory and logistical challenges to improving clinical studies around psychedelics. The doctors also pointed to issues of psychedelic use exacerbating psychosis in individuals with conditions that cause psychosis.

Angie Allbee, Manager of the Oregon Psilocybin Services Section of the Oregon Health Authority, testified on the legal and regulatory framework of psilocybin in the state of Oregon following its passage in the November 2020 election and stated that she takes no position on House 4255. In Oregon, there is no residency requirement, and anyone over the age of 21 may access psilocybin after completing a preparation session. There are four types of licenses: manufacturer, laboratory, service center (where sessions take place), and facilitator (those who support clients through a nondirective approach to psilocybin). As of the date of the hearing, Oregon had awarded 9 manufacturer, 2 laboratory, 23 service center, and 276 facilitator licenses, with 5,697 products sold to clients from January 2023 to March 2024. When asked to compare Oregon's framework and the proposed Massachusetts framework as laid out in this Initiative Petition, Ms. Allbee stated that Oregon's decriminalization has been scaled back and there is no personal cultivation allowed in Oregon.

Matthew Johnson, Ph.D., the Susan Hill Ward Professor in Psychedelics and Consciousness at Johns Hopkins University, also presented testimony as a subject matter expert. He testified that he has published highly cited research on the risks of psychedelics and safety guidelines. Dr. Johnson has found that people using psychedelics can have intense, severe reactions, but can generally be reassured by people they trust. Dr. Johnson highlighted statistics around the impact of psychedelics,

showing lower magnitude in harm, emergency room visits, poison control calls, and addiction compared to opioid, alcohol, and cocaine use, but noted that most of the harm comes around cardiovascular challenges. Dr. Johnson further testified that while psychedelic use should not be encouraged, the criminal penalties are incongruent with the danger of these substances and proposed that regulated use should come with clear public health warnings about what separates riskier use from less risky use: dosage, supervision, medical and mental health contraindications, dangers of public intoxication, and the dangers of unethical practitioners. Dr. Johnson also added that the potential therapeutic benefits are likely less if not provided in the presence of mental health professionals and that it is important to collect data of psychedelic use if it is legalized.

A panel of proponents of the Initiative Petition described how psilocybin has allowed them to personally process trauma from their experiences in the military and police force, citing many personal stories of veterans and police officers.

Members of the public testifying on behalf of Bay Staters for Natural Medicine indicated their support for the legalization of psychedelics, but requested the Legislature propose a substitute to the Initiative Petition for the November 2024 ballot. The proposed substitute, which contains several stark differences in scope from the Initiative Petition would likely conflict with the precedent set by the Supreme Judicial Court in the 1976 case, Buckley v. Secretary of the Commonwealth, which noted that the intent of the framers of Article XLVIII of the Amendments to the Constitution was for the Legislature to provide minor technical changes to an Initiative Petition.

Opponents to the Initiative Petition included Dr. John A. Fromson, Psychiatrist at Brigham and Women's Hospital, and Dr. Nassir Ghaemi, Professor of Psychiatry at Tufts University School of Medicine, who serve as President and President-elect, respectively, of the Massachusetts Psychiatric Society. The doctors described the clinical, logistical, and safety concerns of this Initiative Petition, including that the Federal Drug Administration (FDA) has not approved any drug containing psilocybin, there is not a strong enough framework to guarantee safety for patients or providers. The doctors further testified that this Initiative Petition contemplates combining three issues – overall wellness of the general public, treatment of psychiatric disorders, and use of psilocybin for spiritual use –into one initiative, which, in their opinion, is reckless, irresponsible and dangerous to the public. While the doctors recognized that there is currently promising research relating to the use of psilocybin by veterans being treated by the Veterans Administration, that research is still in study phases. They also noted that the Massachusetts Psychiatric Society has many outstanding questions regarding the impacts this Initiative Petition would have on providers, including insurance coverage, and the impact to specific population subsets such as maternal or perinatal health. The doctors further explained their opposition by noting the broad nature of this Initiative Petition, the lack of concrete research or results from states that have legalized psilocybin, and the interplay of psilocybin (a hallucinogen) with psychosis for those suffering from schizophrenia, bipolar disorder, and unipolar disorder.

Conclusion

While psychedelic plants have been used around the world and through time in spiritual and religious practices, their scientific study in the United States began

primarily in the 20th century and the federal government largely proscribed the use of psychedelic substances in 1968. However, the use of these substances continued in the decades following, and law enforcement agencies around the country have reported a nearly four-fold increase in the overall weight of hallucinogenic mushrooms seized between 2017- 2022. This growth in use has led to a new, heightened period of medical and scientific research which is still developing.

Published studies have indicated that, as users take measured doses under therapeutic supervision, the use of psychedelic substances may be highly effective in addressing a variety of adverse mental health conditions. The Committee specifically recognizes the importance of the potential for positive treatment results in populations seeking help for post-traumatic stress disorder, depression, anxiety, and other mental health problems and credits the testimony it received from individuals from our veteran and first responder population. These promising findings, however, have not provided evidence that the widescale recreational legalization of these substances would be beneficial, let alone safe.

The Committee finds that the petition's major goals — licensure and decriminalization — likely undercut each other by creating two separate systems for the use of psychedelic substances. The petition would both create a system of state-licensed and taxed therapeutic facilities on the one hand and, on the other, decriminalize the cultivation, possession, and distribution of a variety of hallucinogenic and psychoactive substances. Voters are, therefore, being asked to simultaneously establish a potentially costly licensure system that imposes regulations on the cultivation methods, quality of product and allowable means of engaging certain users, while at the same time making the same substances widely available for individual cultivation and use across the Commonwealth in a non-licensed manner.

The petition would allow Massachusetts residents to carry many doses of psychoactive mushrooms on their person or in their home at one time. It therefore presumably allows an unlicensed cultivator to "gift" individuals certain doses and is silent on the ability of cultivators to charge for overseeing that use or guiding the user through the psychedelic experience. The Committee finds that this loophole would likely subvert the safety regulations imposed on licensed facilitators by permitting the growth of an unregulated, unlicensed marketplace.

Similar to the model the Commonwealth uses to regulate the sale of marijuana, the petition would require licensed providers to rely on a cash-based system due to its illegality at the federal level. The petition also would require municipalities to zone for and to permit these licensed facilities while capping their ability to levy a tax rate it determines appropriate to manage traffic, local ordinances, inspections, and any increased calls requesting the assistance of law enforcement or medical professionals.

For these reasons, we, the majority of the Special Joint Committee on Initiative Petitions, recommend that "An Initiative Petition for a Law Relative to the Regulation and Taxation of Natural Psychedelic Substance" (see House No. 4255) as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME.

Senators. Representatives.

Cindy F. Friedman	Alice Hanlon Peisch
Paul R. Feeney	Michael S. Day
Jason M. Lewis	Kenneth I. Gordon
Ryan C. Fattman	David T. Vieira

Network companies and app-based drivers.

An Act defining and regulating the relationship between network companies and app-based drivers for purposes of the general and special laws (House, No. 4256) (introduced into the General Court by the initiative petition of Charles Dewey Ellison, III and others).

The majority report of the committee (House, No. 4608) is as follows:

MAJORITY REPORT.

A majority of the Special Joint Committee on Initiative Petitions ("The Committee"), recommends that Initiative Petition No. 23-25, House 4256; Initiative Petition No. 23-29, House 4257; Initiative Petition No. 23-30, House 4258; Initiative Petition No. 23-31, House 4259; and Initiative Petition No. 23-32, House 4260, ("the Initiative Petitions") as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME

The purpose of this report is to provide a recommendation to the full legislature on whether to accept the Initiative Petitions as written for consideration and enactment.

The five Initiative Petitions would all similarly declare Transportation Network Drivers and Delivery Network Drivers ("Drivers") as independent contractors when engaging with Transportation Network Companies and Delivery Network Companies ("Companies"). The five Initiative Petitions differ in legal mechanisms to achieve this and the scale and scope of the type of benefits Drivers would receive, from no additional work benefits to Drivers to creating a new class of benefits for these Drivers.

Testimony

The Committee heard from experienced professionals, proponents and opponents, as well as members of the general public.

Patrick Moore, First Assistant Attorney General of the Commonwealth of Massachusetts, testified as a subject matter expert on the five Initiative Petitions. First Assistant Attorney General Moore gave a brief overview of each Initiative Petition as follows:

House 4257 and House 4260 were referred to as "bare bones" Initiative Petitions that similarly define Drivers as not employees, and Companies as not employers.

House 4257 specifies that Drivers who accept requests through an online enabled application are not employees for purposes of certain Massachusetts labor and employment laws, specifically those governing wage and hours, workplace conditions, workers' compensation, and unemployment insurance. The Initiative Petition would also specify that Companies are not employers for the purposes of those laws.

House 4260 also specifies that Drivers are not employees for purposes of certain Massachusetts employment laws, and that Companies are not employers. It would

accomplish this in a slightly different manner than House 4257 by amending applicable statutes to specifically exempt Drivers, including Massachusetts General Laws ("G.L.") Chapter 149 Section 148B, which governs wage and hour laws and workplace conditions, Chapter 151A which governs unemployment insurance, and Chapter 152 which governs workers' compensation.

The three remaining Initiative Petitions achieve the same objective of clarifying that Drivers are not employees and Companies are not employers, but also require Companies to provide minimum compensation and benefit terms to the Drivers.

House 4258 is similar to House 4257 with compensation and benefit terms added to it. This Initiative Petition establishes baseline contract terms between Drivers and Companies and sets forth certain defined minimum and benefit terms. Beginning with the compensation, Drivers would be assured a base compensation equal to 120 per cent of the Massachusetts minimum wage for time spent getting to or completing ride or delivery requests. Drivers would also be entitled to per mile compensation for that time beginning at 28¢ per mile. The law would require that increases in compensation be tied to any future annual increases of the state minimum wage and for the Executive Office of Labor and Workforce Development to increase the per mile compensation by the percentage increase in the state minimum wage, if any. If the earnings for a Driver fall below the minimum compensation amount, the Company must pay the Driver the difference between what the Driver earned and the minimum compensation amount. The baseline contract terms provide for certain defined benefits for Drivers, including a limited healthcare stipend, paid sick time related to hours driven, and certain private occupational accident insurance benefits. The Initiative Petition would prohibit covered companies from discriminatory practices and grant Drivers the opportunity to appeal a termination.

House 4259 amends G.L. Chapter 149 and Chapter 151A like House 4260 but creates contract terms between Drivers and Companies similar to those in House 4258.

House 4256 has the broadest classification provision. The initiative would specify that Drivers are not employees for any purpose whatsoever under Massachusetts law and that Companies are not employers for any purpose whatsoever under Massachusetts law. Like the two prior Initiative Petitions, it would then create baseline contract terms between Drivers and Companies and set forth certain defined minimum compensation and benefits. The wages and benefits are similar to those set forth in the prior two Initiative Petitions. Like those Initiative Petitions, Companies would be prohibited from discriminatory practices and must grant Drivers the opportunity to appeal a termination.

First Assistant Attorney General Moore also noted that there are currently legal challenges to all five of these Initiative Petitions with plaintiffs asserting that the Attorney General incorrectly certified the Initiative Petitions on the basis that the Initiative Petitions violate the "single subject" provision of Article XLVIII of the Amendments to the Constitution. Additionally, the relationship between Drivers and Companies is the subject of a lawsuit from the Attorney General's Office, beginning under then-Attorney General Healey. This lawsuit contemplates whether under the current Massachusetts Wage Act and the "ABC Test" definition of an employer-employee relationship, Drivers should be considered employees and Companies considered employers. First Assistant Attorney General Moore testified that if the

Supreme Judicial Court rules that Drivers are employees under current statute, the Attorney General's Office would be able to pursue lost wages and benefits for these Drivers from the Companies they worked for. The five Initiative Petitions, if any pass, would end any prospective application of the decision should the Supreme Judicial Court declare that Drivers are to be classified as employees.

Subject matter experts from academia and policy institutions provided testimony on the history of employment law, including the increase in the use of independent contractors in the 1970s, approaches to employment law in other jurisdictions such as California and the European Union, and relevant industry statistics concerning Drivers and Companies.

Dr. Hilary Robinson, Associate Professor of Law and Sociology at Northeastern University, testified that through these proposals, the Companies are claiming to be a "protected class" that should be exempt from several statutes that govern relationships between employers and employees and provide worker protections and benefits. Dr. Robinson further testified that in her analysis of California's laws pertaining to this issue, classifying Drivers as employees did not impact flexibility or patterns of work, and that the Companies, as they do now, retained control over what work Drivers have access to perform, contradicting the claim that this model needs Drivers to be independent contractors for successful operation and flexibility for Drivers. She also testified that in her opinion, none of these five Initiative Petitions should be presented on the ballot, as voters will not have the necessary information or background to make a truly informed decision.

Further testimony from Dr. Veena Dubal, Professor of Law at the University of California, Irvine, stated that evidence has shown that the passage of Proposition 22, which classifies Drivers as independent contractors in California and which contains similar provisions as the five Initiative Petitions before us, has shown to have a negative impact on Drivers, with 40-60 per cent of Drivers' work uncompensated and Drivers netting an average of $6.20 per hour, compared to the state minimum wage of $16 an hour. Dr. Dubal presented the results of a study showing that two-thirds of Drivers, many of whom have made a significant capital investment in their work as Drivers, have been terminated or had their account deactivated at some point, with 18 per cent losing their vehicle and 12 per cent losing their housing as a result. Dr. Dubal went on to show the occupational danger Drivers face, citing research showing gig workers are found to suffer the highest rate of on-the-job fatalities and 67 per cent of Drivers have reported instances of violence, harassment, or abuse while driving.

A third subject matter expert, Liya Palagashvili, Senior Research Fellow at the Mercatus Center at George Mason University, highlighted the benefits for workers who enjoy the flexibility of the current model. In Ms. Palagashvili's opinion, attempts to classify or regulate gig workers as employees are counterproductive because 90 per cent of jobs in 2020 were traditional, W-2 jobs, while the gig economy is designed for people who are hoping to earn supplemental income in a flexible manner. Ms. Palagashvili stated that a study in the aftermath of Assembly Bill 5, a California policy declaring Drivers as employees, showed no consistent evidence that W-2 employment increased and a significant decline not only in self-employment but overall employment as well for affected occupations in California, matching studies of anecdotal findings from the New York Times and the Los Angeles Times. Ms. Palagashvili further testified that, in her opinion, the best policy to pursue would be to

enhance access to benefits while maintaining the ability for gig work to persist as supplemental and flexible work. When asked by the Committee, Ms. Palagashvili indicated that while the majority of Uber Drivers have health insurance, she was unsure if the insurance was private or state-funded, since Companies cannot provide health insurance benefits to Drivers due to their status as independent contractors.

Two panels spoke as proponents in favor of the Initiative Petitions. The first panel consisted of two Drivers, one who drives for Uber and Lyft, and another who drives for Instacart, as well as two local industry representatives. The panelists emphasized the flexibility and control over the schedule that the independent contractor model affords Drivers, and how reliant communities are on the services that Drivers provide, highlighting those in Gateway Communities, rural areas, and the elderly. The Drivers on this panel stated that these jobs provided the income and the flexible scheduling necessary to have control over their lives, and shared that like any industry, the rideshare business is not for every prospective worker. The panel cited data from an industry-poll that found that 75 per cent of Drivers year after year prefer being independent contractors, and that more than 80 per cent of Drivers drive 15 hours or less a week. When asked, the two Drivers on the panel stated that one received Social Security benefits and the other received health insurance through MassHealth, but neither has a W-2 job.

The second panel of proponents consisted of representatives from the Companies of Uber, Lyft, DoorDash, and Instacart testifying in support of the five Initiative Petitions. This panel discussed the benefits their platforms provide for customers, Drivers, and small businesses, "who all use their platforms to grow and thrive". This panel specifically mentioned achieving the policy goal of flexibility and benefits for Drivers. The panelists testified that the employee-employer laws do not prohibit flexible, on-demand scheduling, but that the framework of such a model would not be feasible for the Companies. Pointing to data, the panel shared that 80 per cent of Drivers on the Instacart platform wish to remain independent contractors, and on average Instacart Drivers work less than 10 hours a week, with many Drivers using it for supplemental income. Uber pointed to statistics that Drivers on the platform earn on average $28.96 per utilized hour, and that the overwhelming majority of de-platforming occurs because drivers come out of compliance with the stricter laws in Massachusetts that currently regulate Companies. During questioning from the Committee, this panel noted that the proposed regulatory framework would align deactivation standards, and that the taxicab industry also operates in an independent contractor framework. Additionally, the panelists testified that Companies could decide to pull operations out of the Commonwealth if Drivers were to be classified as employees whether through court decisions or the Initiative Petitions failing, similar to the decision to end operations in Minneapolis and St. Paul, Minnesota due to a mandated increase in minimum fares for Drivers in those Cities.

The panel shared that the Companies will plan to move forward to the ballot with just one of the five proposed Initiative Petitions, but their preference is for a legislative compromise and to avoid the ballot box altogether, as was accomplished in Washington state.

There were three panels of opponents who testified against all five Initiative Petitions. The first panel consisted of two representatives from the International Brotherhood of Teamsters, including the President of Teamsters Local 25 and the

States Legislative Director. This panel testified that the eyes of the labor movement across the country are on Massachusetts, specifically to see if the Companies will succeed in watering down the employment laws that are already on the books in statute. This panel's concern was that if the Companies are able to accomplish this in Massachusetts, they will be able to exploit laws across the country. The Teamsters shared the position that the traditional employee-employer model should be respected and properly enforced, and they oppose any proposal that offers a third model to classify workers and ultimately weakens employment standards. The panel not only noted their belief that Companies are currently misclassifying Drivers as independent contractors, enabling wage theft and essentially taxpayer subsidization of these companies, but that these Initiative Petitions have implications beyond the app-based work of Uber and Lyft.

A second panel of opponents consisted of representatives from the Massachusetts AFL-CIO, the Massachusetts Building Trades Council, and the California Labor Federation. This panel stated that the strong employment laws of the Commonwealth are built on the base assumption that workers are employees entitled to numerous benefits. In their opinion, Big Tech companies cannot be trusted, as they have actively skirted the law, "lining their own pockets," and are now offering benefits that are far below the minimum standard that employees are entitled to. The panel noted that Massachusetts has no carveout currently to the ABC test and Massachusetts law goes even further by offsetting federal carveouts to the ABC test. Additionally, the panel shared that misclassification of workers has been rampant in the trades, where Companies are incorrectly classifying employees as independent contractors to avoid providing benefits. The panel remarked that there is no need to sacrifice hard-won rights that workers have fought for to simply line the pockets of tech companies and additionally shared that California found gig workers to be employees under every state employee-employer test. The panel highlighted the irony of the campaign for Proposition 22 to remove the employee designation of Drivers in California, which was run at the onset of the COVID-19 pandemic, when Drivers did not have access to masks, vaccines, air shields, sick time, or death benefits.

The last panel of opponents consisted of a representative from the Massachusetts Coalition for Occupational Safety and Health, a rider who was permanently injured while in a rideshare vehicle, and a Driver. This panel echoed the sentiments of previous opposition panels by saying that Companies are misclassifying workers and added that this is to the detriment of worker earnings, benefits, and even safety, as Companies are not forced to comply with OSHA regulations. Through this misclassification, Companies have avoided responsibility for their workers, including workers' compensation and death benefits for Drivers. The rider who was injured in an Uber ride in 2021, testified that Uber has refused to face him in court, and that its insurance policy only covered seven months of his continuing care, where his prescriptions cost $9,000 a month. The rider noted that the Companies' "shotgun pellet approach," — starting with nine Initiative Petitions, then whittling down to five Initiative Petitions — hoping just one Initiative Petition can beat the legal challenges so they can shirk responsibility for actions taken by their Drivers. The Driver on the panel, who has driven for Lyft since 2013 just a few days after the platform was live in Massachusetts, questioned the data and statistics that the Companies shared. In the Driver's experience, Drivers do not have control over their work, which is unlike independent contractor work. The Driver also stated that she was deactivated from the platform after speaking out against the Company.

Conclusion

These Initiative Petitions elicit multifaceted public policy questions regarding the fundamental nature of the employer-employee relationship and the individual terms governing that relationship. The Committee is also cognizant of legal challenges regarding these initiative petitions that are to be argued before the Supreme Judicial Court in the month of May 2024, after the constitutional deadline that the legislature can enact these initiative petitions. This timeline adds further complexity to the question of enactment.

The testimony heard by the Committee showed an overall lack of consensus on the merits or issues raised by the initiative petitions. The Committee feels that any action on this subject must strike a balance between existing employee rights and protection, and the need to ensure that TNCs can continue to operate, which they maintain would not be possible if Drivers were not classified as independent contractors.

Particularly salient is the petitioners' assertion that the drivers will lose flexibility if the Companies are not able to lawfully classify them as independent contractors. Drivers who testified before the Committee focused on the importance of flexibility and the benefit of being able to work whenever they choose. However, proponents did not provide an answer as to why work-hours flexibility would be impossible to provide regardless of employment status. Massachusetts law currently does not limit the flexibility that employers can offer to their employees.

For these reasons, given the legal and other uncertainties surrounding these initiatives, we, the undersigned members of the Special Joint Committee on Initiative Petitions, recommend that House No. 4257, House No. 4260, House No. 4258, House No. 4259, and House No. 4256, as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME.

Senators.	Representatives.
Cindy F. Friedman	Alice Hanlon Peisch
Paul R. Feeney	Michael S. Day
Jason M. Lewis	Kenneth I. Gordon
Ryan C. Fattman	David T. Vieira

An Act establishing that app-based drivers are not employees, and network companies are not employers, for certain purposes of the General Laws (House, No. 4257) (introduced into the General Court by the initiative petition of Charles Dewey Ellison, III and others).

Id.

The majority report of the committee (House, No. 4609) is as follows:

MAJORITY REPORT.

A majority of the Special Joint Committee on Initiative Petitions ("The Committee"), recommends that Initiative Petition No. 23-25, House 4256; Initiative Petition No. 23-29, House 4257; Initiative Petition No. 23-30, House 4258; Initiative Petition No. 23-31, House 4259; and Initiative Petition No. 23-32, House 4260, ("the

Initiative Petitions") as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME

The purpose of this report is to provide a recommendation to the full legislature on whether to accept the Initiative Petitions as written for consideration and enactment.

The five Initiative Petitions would all similarly declare Transportation Network Drivers and Delivery Network Drivers ("Drivers") as independent contractors when engaging with Transportation Network Companies and Delivery Network Companies ("Companies"). The five Initiative Petitions differ in legal mechanisms to achieve this and the scale and scope of the type of benefits Drivers would receive, from no additional work benefits to Drivers to creating a new class of benefits for these Drivers.

Testimony

The Committee heard from experienced professionals, proponents and opponents, as well as members of the general public.

Patrick Moore, First Assistant Attorney General of the Commonwealth of Massachusetts, testified as a subject matter expert on the five Initiative Petitions. First Assistant Attorney General Moore gave a brief overview of each Initiative Petition as follows:

House 4257 and House 4260 were referred to as "bare bones" Initiative Petitions that similarly define Drivers as not employees, and Companies as not employers.

House 4257 specifies that Drivers who accept requests through an online enabled application are not employees for purposes of certain Massachusetts labor and employment laws, specifically those governing wage and hours, workplace conditions, workers' compensation, and unemployment insurance. The Initiative Petition would also specify that Companies are not employers for the purposes of those laws.

House 4260 also specifies that Drivers are not employees for purposes of certain Massachusetts employment laws, and that Companies are not employers. It would accomplish this in a slightly different manner than House 4257 by amending applicable statutes to specifically exempt Drivers, including Massachusetts General Laws ("G.L.") Chapter 149 Section 148B, which governs wage and hour laws and workplace conditions, Chapter 151A which governs unemployment insurance, and Chapter 152 which governs workers' compensation.

The three remaining Initiative Petitions achieve the same objective of clarifying that Drivers are not employees and Companies are not employers, but also require Companies to provide minimum compensation and benefit terms to the Drivers.

House 4258 is similar to House 4257 with compensation and benefit terms added to it. This Initiative Petition establishes baseline contract terms between Drivers and Companies and sets forth certain defined minimum and benefit terms. Beginning with the compensation, Drivers would be assured a base compensation equal to 120 per cent of the Massachusetts minimum wage for time spent getting to or completing ride or delivery requests. Drivers would also be entitled to per mile compensation for that time beginning at 28¢ per mile. The law would require that increases in compensation

be tied to any future annual increases of the state minimum wage and for the Executive Office of Labor and Workforce Development to increase the per mile compensation by the percentage increase in the state minimum wage, if any. If the earnings for a Driver fall below the minimum compensation amount, the Company must pay the Driver the difference between what the Driver earned and the minimum compensation amount. The baseline contract terms provide for certain defined benefits for Drivers, including a limited healthcare stipend, paid sick time related to hours driven, and certain private occupational accident insurance benefits. The Initiative Petition would prohibit covered companies from discriminatory practices and grant Drivers the opportunity to appeal a termination.

House 4259 amends G.L. Chapter 149 and Chapter 151A like House 4260 but creates contract terms between Drivers and Companies similar to those in House 4258.

House 4256 has the broadest classification provision. The initiative would specify that Drivers are not employees for any purpose whatsoever under Massachusetts law and that Companies are not employers for any purpose whatsoever under Massachusetts law. Like the two prior Initiative Petitions, it would then create baseline contract terms between Drivers and Companies and set forth certain defined minimum compensation and benefits. The wages and benefits are similar to those set forth in the prior two Initiative Petitions. Like those Initiative Petitions, Companies would be prohibited from discriminatory practices and must grant Drivers the opportunity to appeal a termination.

First Assistant Attorney General Moore also noted that there are currently legal challenges to all five of these Initiative Petitions with plaintiffs asserting that the Attorney General incorrectly certified the Initiative Petitions on the basis that the Initiative Petitions violate the "single subject" provision of Article XLVIII of the Amendments to the Constitution. Additionally, the relationship between Drivers and Companies is the subject of a lawsuit from the Attorney General's Office, beginning under then-Attorney General Healey. This lawsuit contemplates whether under the current Massachusetts Wage Act and the "ABC Test" definition of an employer-employee relationship, Drivers should be considered employees and Companies considered employers. First Assistant Attorney General Moore testified that if the Supreme Judicial Court rules that Drivers are employees under current statute, the Attorney General's Office would be able to pursue lost wages and benefits for these Drivers from the Companies they worked for. The five Initiative Petitions, if any pass, would end any prospective application of the decision should the Supreme Judicial Court declare that Drivers are to be classified as employees.

Subject matter experts from academia and policy institutions provided testimony on the history of employment law, including the increase in the use of independent contractors in the 1970s, approaches to employment law in other jurisdictions such as California and the European Union, and relevant industry statistics concerning Drivers and Companies.

Dr. Hilary Robinson, Associate Professor of Law and Sociology at Northeastern University, testified that through these proposals, the Companies are claiming to be a "protected class" that should be exempt from several statutes that govern relationships between employers and employees and provide worker protections and benefits. Dr. Robinson further testified that in her analysis of California's laws pertaining to this

issue, classifying Drivers as employees did not impact flexibility or patterns of work, and that the Companies, as they do now, retained control over what work Drivers have access to perform, contradicting the claim that this model needs Drivers to be independent contractors for successful operation and flexibility for Drivers. She also testified that in her opinion, none of these five Initiative Petitions should be presented on the ballot, as voters will not have the necessary information or background to make a truly informed decision.

Further testimony from Dr. Veena Dubal, Professor of Law at the University of California, Irvine, stated that evidence has shown that the passage of Proposition 22, which classifies Drivers as independent contractors in California and which contains similar provisions as the five Initiative Petitions before us, has shown to have a negative impact on Drivers, with 40-60 per cent of Drivers' work uncompensated and Drivers netting an average of $6.20 per hour, compared to the state minimum wage of $16 an hour. Dr. Dubal presented the results of a study showing that two-thirds of Drivers, many of whom have made a significant capital investment in their work as Drivers, have been terminated or had their account deactivated at some point, with 18 per cent losing their vehicle and 12 per cent losing their housing as a result. Dr. Dubal went on to show the occupational danger Drivers face, citing research showing gig workers are found to suffer the highest rate of on-the-job fatalities and 67 per cent of Drivers have reported instances of violence, harassment, or abuse while driving.

A third subject matter expert, Liya Palagashvili, Senior Research Fellow at the Mercatus Center at George Mason University, highlighted the benefits for workers who enjoy the flexibility of the current model. In Ms. Palagashvili's opinion, attempts to classify or regulate gig workers as employees are counterproductive because 90 per cent of jobs in 2020 were traditional, W-2 jobs, while the gig economy is designed for people who are hoping to earn supplemental income in a flexible manner. Ms. Palagashvili stated that a study in the aftermath of Assembly Bill 5, a California policy declaring Drivers as employees, showed no consistent evidence that W-2 employment increased and a significant decline not only in self-employment but overall employment as well for affected occupations in California, matching studies of anecdotal findings from the New York Times and the Los Angeles Times. Ms. Palagashvili further testified that, in her opinion, the best policy to pursue would be to enhance access to benefits while maintaining the ability for gig work to persist as supplemental and flexible work. When asked by the Committee, Ms. Palagashvili indicated that while the majority of Uber Drivers have health insurance, she was unsure if the insurance was private or state-funded, since Companies cannot provide health insurance benefits to Drivers due to their status as independent contractors.

Two panels spoke as proponents in favor of the Initiative Petitions. The first panel consisted of two Drivers, one who drives for Uber and Lyft, and another who drives for Instacart, as well as two local industry representatives. The panelists emphasized the flexibility and control over the schedule that the independent contractor model affords Drivers, and how reliant communities are on the services that Drivers provide, highlighting those in Gateway Communities, rural areas, and the elderly. The Drivers on this panel stated that these jobs provided the income and the flexible scheduling necessary to have control over their lives, and shared that like any industry, the rideshare business is not for every prospective worker. The panel cited data from an industry-poll that found that 75 per cent of Drivers year after year prefer being independent contractors, and that more than 80 per cent of Drivers drive 15 hours or

less a week. When asked, the two Drivers on the panel stated that one received Social Security benefits and the other received health insurance through MassHealth, but neither has a W-2 job.

The second panel of proponents consisted of representatives from the Companies of Uber, Lyft, DoorDash, and Instacart testifying in support of the five Initiative Petitions. This panel discussed the benefits their platforms provide for customers, Drivers, and small businesses, “who all use their platforms to grow and thrive”. This panel specifically mentioned achieving the policy goal of flexibility and benefits for Drivers. The panelists testified that the employee-employer laws do not prohibit flexible, on-demand scheduling, but that the framework of such a model would not be feasible for the Companies. Pointing to data, the panel shared that 80 per cent of Drivers on the Instacart platform wish to remain independent contractors, and on average Instacart Drivers work less than 10 hours a week, with many Drivers using it for supplemental income. Uber pointed to statistics that Drivers on the platform earn on average $28.96 per utilized hour, and that the overwhelming majority of de-platforming occurs because drivers come out of compliance with the stricter laws in Massachusetts that currently regulate Companies. During questioning from the Committee, this panel noted that the proposed regulatory framework would align deactivation standards, and that the taxicab industry also operates in an independent contractor framework. Additionally, the panelists testified that Companies could decide to pull operations out of the Commonwealth if Drivers were to be classified as employees whether through court decisions or the Initiative Petitions failing, similar to the decision to end operations in Minneapolis and St. Paul, Minnesota due to a mandated increase in minimum fares for Drivers in those Cities.

The panel shared that the Companies will plan to move forward to the ballot with just one of the five proposed Initiative Petitions, but their preference is for a legislative compromise and to avoid the ballot box altogether, as was accomplished in Washington state.

There were three panels of opponents who testified against all five Initiative Petitions. The first panel consisted of two representatives from the International Brotherhood of Teamsters, including the President of Teamsters Local 25 and the States Legislative Director. This panel testified that the eyes of the labor movement across the country are on Massachusetts, specifically to see if the Companies will succeed in watering down the employment laws that are already on the books in statute. This panel’s concern was that if the Companies are able to accomplish this in Massachusetts, they will be able to exploit laws across the country. The Teamsters shared the position that the traditional employee-employer model should be respected and properly enforced, and they oppose any proposal that offers a third model to classify workers and ultimately weakens employment standards. The panel not only noted their belief that Companies are currently misclassifying Drivers as independent contractors, enabling wage theft and essentially taxpayer subsidization of these companies, but that these Initiative Petitions have implications beyond the app-based work of Uber and Lyft.

A second panel of opponents consisted of representatives from the Massachusetts AFL-CIO, the Massachusetts Building Trades Council, and the California Labor Federation. This panel stated that the strong employment laws of the Commonwealth are built on the base assumption that workers are employees entitled to numerous

benefits. In their opinion, Big Tech companies cannot be trusted, as they have actively skirted the law, "lining their own pockets," and are now offering benefits that are far below the minimum standard that employees are entitled to. The panel noted that Massachusetts has no carveout currently to the ABC test and Massachusetts law goes even further by offsetting federal carveouts to the ABC test. Additionally, the panel shared that misclassification of workers has been rampant in the trades, where Companies are incorrectly classifying employees as independent contractors to avoid providing benefits. The panel remarked that there is no need to sacrifice hard-won rights that workers have fought for to simply line the pockets of tech companies and additionally shared that California found gig workers to be employees under every state employee-employer test. The panel highlighted the irony of the campaign for Proposition 22 to remove the employee designation of Drivers in California, which was run at the onset of the COVID-19 pandemic, when Drivers did not have access to masks, vaccines, air shields, sick time, or death benefits.

The last panel of opponents consisted of a representative from the Massachusetts Coalition for Occupational Safety and Health, a rider who was permanently injured while in a rideshare vehicle, and a Driver. This panel echoed the sentiments of previous opposition panels by saying that Companies are misclassifying workers and added that this is to the detriment of worker earnings, benefits, and even safety, as Companies are not forced to comply with OSHA regulations. Through this misclassification, Companies have avoided responsibility for their workers, including workers' compensation and death benefits for Drivers. The rider who was injured in an Uber ride in 2021, testified that Uber has refused to face him in court, and that its insurance policy only covered seven months of his continuing care, where his prescriptions cost $9,000 a month. The rider noted that the Companies' "shotgun pellet approach," — starting with nine Initiative Petitions, then whittling down to five Initiative Petitions — hoping just one Initiative Petition can beat the legal challenges so they can shirk responsibility for actions taken by their Drivers. The Driver on the panel, who has driven for Lyft since 2013 just a few days after the platform was live in Massachusetts, questioned the data and statistics that the Companies shared. In the Driver's experience, Drivers do not have control over their work, which is unlike independent contractor work. The Driver also stated that she was deactivated from the platform after speaking out against the Company.

Conclusion

These Initiative Petitions elicit multifaceted public policy questions regarding the fundamental nature of the employer-employee relationship and the individual terms governing that relationship. The Committee is also cognizant of legal challenges regarding these initiative petitions that are to be argued before the Supreme Judicial Court in the month of May 2024, after the constitutional deadline that the legislature can enact these initiative petitions. This timeline adds further complexity to the question of enactment.

The testimony heard by the Committee showed an overall lack of consensus on the merits or issues raised by the initiative petitions. The Committee feels that any action on this subject must strike a balance between existing employee rights and protection, and the need to ensure that TNCs can continue to operate, which they maintain would not be possible if Drivers were not classified as independent contractors.

Particularly salient is the petitioners' assertion that the drivers will lose flexibility if the Companies are not able to lawfully classify them as independent contractors. Drivers who testified before the Committee focused on the importance of flexibility and the benefit of being able to work whenever they choose. However, proponents did not provide an answer as to why work-hours flexibility would be impossible to provide regardless of employment status. Massachusetts law currently does not limit the flexibility that employers can offer to their employees.

For these reasons, given the legal and other uncertainties surrounding these initiatives, we, the undersigned members of the Special Joint Committee on Initiative Petitions, recommend that House No. 4257, House No. 4260, House No. 4258, House No. 4259, and House No. 4256, as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME.

Senators.	Representatives.
Cindy F. Friedman	Alice Hanlon Peisch
Paul R. Feeney	Michael S. Day
Jason M. Lewis	Kenneth I. Gordon
Ryan C. Fattman	David T. Vieira

Id.

An Act defining and regulating the relationship between network companies and app-based drivers for certain purposes of the General Laws (House, No. 4258) (introduced into the General Court by the initiative petition of Charles Dewey Ellison, III and others).

The majority report of the committee (House, No. 4610) is as follows:

MAJORITY REPORT.

A majority of the Special Joint Committee on Initiative Petitions ("The Committee"), recommends that Initiative Petition No. 23-25, House 4256; Initiative Petition No. 23-29, House 4257; Initiative Petition No. 23-30, House 4258; Initiative Petition No. 23-31, House 4259; and Initiative Petition No. 23-32, House 4260, ("the Initiative Petitions") as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME

The purpose of this report is to provide a recommendation to the full legislature on whether to accept the Initiative Petitions as written for consideration and enactment.

The five Initiative Petitions would all similarly declare Transportation Network Drivers and Delivery Network Drivers ("Drivers") as independent contractors when engaging with Transportation Network Companies and Delivery Network Companies ("Companies"). The five Initiative Petitions differ in legal mechanisms to achieve this and the scale and scope of the type of benefits Drivers would receive, from no additional work benefits to Drivers to creating a new class of benefits for these Drivers.

Testimony

The Committee heard from experienced professionals, proponents and opponents, as well as members of the general public.

Patrick Moore, First Assistant Attorney General of the Commonwealth of Massachusetts, testified as a subject matter expert on the five Initiative Petitions. First Assistant Attorney General Moore gave a brief overview of each Initiative Petition as follows:

House 4257 and House 4260 were referred to as "bare bones" Initiative Petitions that similarly define Drivers as not employees, and Companies as not employers.

House 4257 specifies that Drivers who accept requests through an online enabled application are not employees for purposes of certain Massachusetts labor and employment laws, specifically those governing wage and hours, workplace conditions, workers' compensation, and unemployment insurance. The Initiative Petition would also specify that Companies are not employers for the purposes of those laws.

House 4260 also specifies that Drivers are not employees for purposes of certain Massachusetts employment laws, and that Companies are not employers. It would accomplish this in a slightly different manner than House 4257 by amending applicable statutes to specifically exempt Drivers, including Massachusetts General Laws ("G.L.") Chapter 149 Section 148B, which governs wage and hour laws and workplace conditions, Chapter 151A which governs unemployment insurance, and Chapter 152 which governs workers' compensation.

The three remaining Initiative Petitions achieve the same objective of clarifying that Drivers are not employees and Companies are not employers, but also require Companies to provide minimum compensation and benefit terms to the Drivers.

House 4258 is similar to House 4257 with compensation and benefit terms added to it. This Initiative Petition establishes baseline contract terms between Drivers and Companies and sets forth certain defined minimum and benefit terms. Beginning with the compensation, Drivers would be assured a base compensation equal to 120 per cent of the Massachusetts minimum wage for time spent getting to or completing ride or delivery requests. Drivers would also be entitled to per mile compensation for that time beginning at 28¢ per mile. The law would require that increases in compensation be tied to any future annual increases of the state minimum wage and for the Executive Office of Labor and Workforce Development to increase the per mile compensation by the percentage increase in the state minimum wage, if any. If the earnings for a Driver fall below the minimum compensation amount, the Company must pay the Driver the difference between what the Driver earned and the minimum compensation amount. The baseline contract terms provide for certain defined benefits for Drivers, including a limited healthcare stipend, paid sick time related to hours driven, and certain private occupational accident insurance benefits. The Initiative Petition would prohibit covered companies from discriminatory practices and grant Drivers the opportunity to appeal a termination.

House 4259 amends G.L. Chapter 149 and Chapter 151A like House 4260 but creates contract terms between Drivers and Companies similar to those in House 4258.

House 4256 has the broadest classification provision. The initiative would specify that Drivers are not employees for any purpose whatsoever under Massachusetts law and that Companies are not employers for any purpose whatsoever under

Massachusetts law. Like the two prior Initiative Petitions, it would then create baseline contract terms between Drivers and Companies and set forth certain defined minimum compensation and benefits. The wages and benefits are similar to those set forth in the prior two Initiative Petitions. Like those Initiative Petitions, Companies would be prohibited from discriminatory practices and must grant Drivers the opportunity to appeal a termination.

First Assistant Attorney General Moore also noted that there are currently legal challenges to all five of these Initiative Petitions with plaintiffs asserting that the Attorney General incorrectly certified the Initiative Petitions on the basis that the Initiative Petitions violate the "single subject" provision of Article XLVIII of the Amendments to the Constitution. Additionally, the relationship between Drivers and Companies is the subject of a lawsuit from the Attorney General's Office, beginning under then-Attorney General Healey. This lawsuit contemplates whether under the current Massachusetts Wage Act and the "ABC Test" definition of an employer-employee relationship, Drivers should be considered employees and Companies considered employers. First Assistant Attorney General Moore testified that if the Supreme Judicial Court rules that Drivers are employees under current statute, the Attorney General's Office would be able to pursue lost wages and benefits for these Drivers from the Companies they worked for. The five Initiative Petitions, if any pass, would end any prospective application of the decision should the Supreme Judicial Court declare that Drivers are to be classified as employees.

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Further testimony from Dr. Veena Dubal, Professor of Law at the University of California, Irvine, stated that evidence has shown that the passage of Proposition 22, which classifies Drivers as independent contractors in California and which contains similar provisions as the five Initiative Petitions before us, has shown to have a negative impact on Drivers, with 40-60 per cent of Drivers' work uncompensated and Drivers netting an average of $6.20 per hour, compared to the state minimum wage of $16 an hour. Dr. Dubal presented the results of a study showing that two-thirds of Drivers, many of whom have made a significant capital investment in their work as Drivers, have been terminated or had their account deactivated at some point, with 18

per cent losing their vehicle and 12 per cent losing their housing as a result. Dr. Dubal went on to show the occupational danger Drivers face, citing research showing gig workers are found to suffer the highest rate of on-the-job fatalities and 67 per cent of Drivers have reported instances of violence, harassment, or abuse while driving.

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The second panel of proponents consisted of representatives from the Companies of Uber, Lyft, DoorDash, and Instacart testifying in support of the five Initiative Petitions. This panel discussed the benefits their platforms provide for customers, Drivers, and small businesses, "who all use their platforms to grow and thrive". This panel specifically mentioned achieving the policy goal of flexibility and benefits for Drivers. The panelists testified that the employee-employer laws do not prohibit flexible, on-demand scheduling, but that the framework of such a model would not be feasible for the Companies. Pointing to data, the panel shared that 80 per cent of Drivers on the Instacart platform wish to remain independent contractors, and on average Instacart Drivers work less than 10 hours a week, with many Drivers using it for supplemental income. Uber pointed to statistics that Drivers on the platform earn on average $28.96 per utilized hour, and that the overwhelming majority of de-platforming occurs because drivers come out of compliance with the stricter laws in

Massachusetts that currently regulate Companies. During questioning from the Committee, this panel noted that the proposed regulatory framework would align deactivation standards, and that the taxicab industry also operates in an independent contractor framework. Additionally, the panelists testified that Companies could decide to pull operations out of the Commonwealth if Drivers were to be classified as employees whether through court decisions or the Initiative Petitions failing, similar to the decision to end operations in Minneapolis and St. Paul, Minnesota due to a mandated increase in minimum fares for Drivers in those Cities.

The panel shared that the Companies will plan to move forward to the ballot with just one of the five proposed Initiative Petitions, but their preference is for a legislative compromise and to avoid the ballot box altogether, as was accomplished in Washington state.

There were three panels of opponents who testified against all five Initiative Petitions. The first panel consisted of two representatives from the International Brotherhood of Teamsters, including the President of Teamsters Local 25 and the States Legislative Director. This panel testified that the eyes of the labor movement across the country are on Massachusetts, specifically to see if the Companies will succeed in watering down the employment laws that are already on the books in statute. This panel's concern was that if the Companies are able to accomplish this in Massachusetts, they will be able to exploit laws across the country. The Teamsters shared the position that the traditional employee-employer model should be respected and properly enforced, and they oppose any proposal that offers a third model to classify workers and ultimately weakens employment standards. The panel not only noted their belief that Companies are currently misclassifying Drivers as independent contractors, enabling wage theft and essentially taxpayer subsidization of these companies, but that these Initiative Petitions have implications beyond the app-based work of Uber and Lyft.

A second panel of opponents consisted of representatives from the Massachusetts AFL-CIO, the Massachusetts Building Trades Council, and the California Labor Federation. This panel stated that the strong employment laws of the Commonwealth are built on the base assumption that workers are employees entitled to numerous benefits. In their opinion, Big Tech companies cannot be trusted, as they have actively skirted the law, "lining their own pockets," and are now offering benefits that are far below the minimum standard that employees are entitled to. The panel noted that Massachusetts has no carveout currently to the ABC test and Massachusetts law goes even further by offsetting federal carveouts to the ABC test. Additionally, the panel shared that misclassification of workers has been rampant in the trades, where Companies are incorrectly classifying employees as independent contractors to avoid providing benefits. The panel remarked that there is no need to sacrifice hard-won rights that workers have fought for to simply line the pockets of tech companies and additionally shared that California found gig workers to be employees under every state employee-employer test. The panel highlighted the irony of the campaign for Proposition 22 to remove the employee designation of Drivers in California, which was run at the onset of the COVID-19 pandemic, when Drivers did not have access to masks, vaccines, air shields, sick time, or death benefits.

The last panel of opponents consisted of a representative from the Massachusetts Coalition for Occupational Safety and Health, a rider who was permanently injured

while in a rideshare vehicle, and a Driver. This panel echoed the sentiments of previous opposition panels by saying that Companies are misclassifying workers and added that this is to the detriment of worker earnings, benefits, and even safety, as Companies are not forced to comply with OSHA regulations. Through this misclassification, Companies have avoided responsibility for their workers, including workers' compensation and death benefits for Drivers. The rider who was injured in an Uber ride in 2021, testified that Uber has refused to face him in court, and that its insurance policy only covered seven months of his continuing care, where his prescriptions cost $9,000 a month. The rider noted that the Companies' "shotgun pellet approach," — starting with nine Initiative Petitions, then whittling down to five Initiative Petitions — hoping just one Initiative Petition can beat the legal challenges so they can shirk responsibility for actions taken by their Drivers. The Driver on the panel, who has driven for Lyft since 2013 just a few days after the platform was live in Massachusetts, questioned the data and statistics that the Companies shared. In the Driver's experience, Drivers do not have control over their work, which is unlike independent contractor work. The Driver also stated that she was deactivated from the platform after speaking out against the Company.

Conclusion

These Initiative Petitions elicit multifaceted public policy questions regarding the fundamental nature of the employer-employee relationship and the individual terms governing that relationship. The Committee is also cognizant of legal challenges regarding these initiative petitions that are to be argued before the Supreme Judicial Court in the month of May 2024, after the constitutional deadline that the legislature can enact these initiative petitions. This timeline adds further complexity to the question of enactment.

The testimony heard by the Committee showed an overall lack of consensus on the merits or issues raised by the initiative petitions. The Committee feels that any action on this subject must strike a balance between existing employee rights and protection, and the need to ensure that TNCs can continue to operate, which they maintain would not be possible if Drivers were not classified as independent contractors.

Particularly salient is the petitioners' assertion that the drivers will lose flexibility if the Companies are not able to lawfully classify them as independent contractors. Drivers who testified before the Committee focused on the importance of flexibility and the benefit of being able to work whenever they choose. However, proponents did not provide an answer as to why work-hours flexibility would be impossible to provide regardless of employment status. Massachusetts law currently does not limit the flexibility that employers can offer to their employees.

For these reasons, given the legal and other uncertainties surrounding these initiatives, we, the undersigned members of the Special Joint Committee on Initiative Petitions, recommend that House No. 4257, House No. 4260, House No. 4258, House No. 4259, and House No. 4256, as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME.

Senators. Representatives.

Cindy F. Friedman	Alice Hanlon Peisch
Paul R. Feeney	Michael S. Day
Jason M. Lewis	Kenneth I. Gordon
Ryan C. Fattman	David T. Vieira

An Act establishing that app-based drivers are not employees, and network companies are not employers, for certain purposes of the General Laws (House, No. 4259) (introduced into the General Court by the initiative petition of Charles Dewey Ellison, III and others).

Id.

The majority report of the committee (House, No. 4611) is as follows:

MAJORITY REPORT.

A majority of the Special Joint Committee on Initiative Petitions ("The Committee"), recommends that Initiative Petition No. 23-25, House 4256; Initiative Petition No. 23-29, House 4257; Initiative Petition No. 23-30, House 4258; Initiative Petition No. 23-31, House 4259; and Initiative Petition No. 23-32, House 4260, ("the Initiative Petitions") as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME

The purpose of this report is to provide a recommendation to the full legislature on whether to accept the Initiative Petitions as written for consideration and enactment.

The five Initiative Petitions would all similarly declare Transportation Network Drivers and Delivery Network Drivers ("Drivers") as independent contractors when engaging with Transportation Network Companies and Delivery Network Companies ("Companies"). The five Initiative Petitions differ in legal mechanisms to achieve this and the scale and scope of the type of benefits Drivers would receive, from no additional work benefits to Drivers to creating a new class of benefits for these Drivers.

Testimony

The Committee heard from experienced professionals, proponents and opponents, as well as members of the general public.

Patrick Moore, First Assistant Attorney General of the Commonwealth of Massachusetts, testified as a subject matter expert on the five Initiative Petitions. First Assistant Attorney General Moore gave a brief overview of each Initiative Petition as follows:

House 4257 and House 4260 were referred to as "bare bones" Initiative Petitions that similarly define Drivers as not employees, and Companies as not employers.

House 4257 specifies that Drivers who accept requests through an online enabled application are not employees for purposes of certain Massachusetts labor and employment laws, specifically those governing wage and hours, workplace conditions, workers' compensation, and unemployment insurance. The Initiative Petition would also specify that Companies are not employers for the purposes of those laws.

House 4260 also specifies that Drivers are not employees for purposes of certain Massachusetts employment laws, and that Companies are not employers. It would

accomplish this in a slightly different manner than House 4257 by amending applicable statutes to specifically exempt Drivers, including Massachusetts General Laws ("G.L.") Chapter 149 Section 148B, which governs wage and hour laws and workplace conditions, Chapter 151A which governs unemployment insurance, and Chapter 152 which governs workers' compensation.

The three remaining Initiative Petitions achieve the same objective of clarifying that Drivers are not employees and Companies are not employers, but also require Companies to provide minimum compensation and benefit terms to the Drivers.

House 4258 is similar to House 4257 with compensation and benefit terms added to it. This Initiative Petition establishes baseline contract terms between Drivers and Companies and sets forth certain defined minimum and benefit terms. Beginning with the compensation, Drivers would be assured a base compensation equal to 120 per cent of the Massachusetts minimum wage for time spent getting to or completing ride or delivery requests. Drivers would also be entitled to per mile compensation for that time beginning at 28¢ per mile. The law would require that increases in compensation be tied to any future annual increases of the state minimum wage and for the Executive Office of Labor and Workforce Development to increase the per mile compensation by the percentage increase in the state minimum wage, if any. If the earnings for a Driver fall below the minimum compensation amount, the Company must pay the Driver the difference between what the Driver earned and the minimum compensation amount. The baseline contract terms provide for certain defined benefits for Drivers, including a limited healthcare stipend, paid sick time related to hours driven, and certain private occupational accident insurance benefits. The Initiative Petition would prohibit covered companies from discriminatory practices and grant Drivers the opportunity to appeal a termination.

House 4259 amends G.L. Chapter 149 and Chapter 151A like House 4260 but creates contract terms between Drivers and Companies similar to those in House 4258.

House 4256 has the broadest classification provision. The initiative would specify that Drivers are not employees for any purpose whatsoever under Massachusetts law and that Companies are not employers for any purpose whatsoever under Massachusetts law. Like the two prior Initiative Petitions, it would then create baseline contract terms between Drivers and Companies and set forth certain defined minimum compensation and benefits. The wages and benefits are similar to those set forth in the prior two Initiative Petitions. Like those Initiative Petitions, Companies would be prohibited from discriminatory practices and must grant Drivers the opportunity to appeal a termination.

First Assistant Attorney General Moore also noted that there are currently legal challenges to all five of these Initiative Petitions with plaintiffs asserting that the Attorney General incorrectly certified the Initiative Petitions on the basis that the Initiative Petitions violate the "single subject" provision of Article XLVIII of the Amendments to the Constitution. Additionally, the relationship between Drivers and Companies is the subject of a lawsuit from the Attorney General's Office, beginning under then-Attorney General Healey. This lawsuit contemplates whether under the current Massachusetts Wage Act and the "ABC Test" definition of an employer-employee relationship, Drivers should be considered employees and Companies considered employers. First Assistant Attorney General Moore testified that if the

Supreme Judicial Court rules that Drivers are employees under current statute, the Attorney General's Office would be able to pursue lost wages and benefits for these Drivers from the Companies they worked for. The five Initiative Petitions, if any pass, would end any prospective application of the decision should the Supreme Judicial Court declare that Drivers are to be classified as employees.

Subject matter experts from academia and policy institutions provided testimony on the history of employment law, including the increase in the use of independent contractors in the 1970s, approaches to employment law in other jurisdictions such as California and the European Union, and relevant industry statistics concerning Drivers and Companies.

Dr. Hilary Robinson, Associate Professor of Law and Sociology at Northeastern University, testified that through these proposals, the Companies are claiming to be a "protected class" that should be exempt from several statutes that govern relationships between employers and employees and provide worker protections and benefits. Dr. Robinson further testified that in her analysis of California's laws pertaining to this issue, classifying Drivers as employees did not impact flexibility or patterns of work, and that the Companies, as they do now, retained control over what work Drivers have access to perform, contradicting the claim that this model needs Drivers to be independent contractors for successful operation and flexibility for Drivers. She also testified that in her opinion, none of these five Initiative Petitions should be presented on the ballot, as voters will not have the necessary information or background to make a truly informed decision.

Further testimony from Dr. Veena Dubal, Professor of Law at the University of California, Irvine, stated that evidence has shown that the passage of Proposition 22, which classifies Drivers as independent contractors in California and which contains similar provisions as the five Initiative Petitions before us, has shown to have a negative impact on Drivers, with 40-60 per cent of Drivers' work uncompensated and Drivers netting an average of $6.20 per hour, compared to the state minimum wage of $16 an hour. Dr. Dubal presented the results of a study showing that two-thirds of Drivers, many of whom have made a significant capital investment in their work as Drivers, have been terminated or had their account deactivated at some point, with 18 per cent losing their vehicle and 12 per cent losing their housing as a result. Dr. Dubal went on to show the occupational danger Drivers face, citing research showing gig workers are found to suffer the highest rate of on-the-job fatalities and 67 per cent of Drivers have reported instances of violence, harassment, or abuse while driving.

A third subject matter expert, Liya Palagashvili, Senior Research Fellow at the Mercatus Center at George Mason University, highlighted the benefits for workers who enjoy the flexibility of the current model. In Ms. Palagashvili's opinion, attempts to classify or regulate gig workers as employees are counterproductive because 90 per cent of jobs in 2020 were traditional, W-2 jobs, while the gig economy is designed for people who are hoping to earn supplemental income in a flexible manner. Ms. Palagashvili stated that a study in the aftermath of Assembly Bill 5, a California policy declaring Drivers as employees, showed no consistent evidence that W-2 employment increased and a significant decline not only in self-employment but overall employment as well for affected occupations in California, matching studies of anecdotal findings from the New York Times and the Los Angeles Times. Ms. Palagashvili further testified that, in her opinion, the best policy to pursue would be to

enhance access to benefits while maintaining the ability for gig work to persist as supplemental and flexible work. When asked by the Committee, Ms. Palagashvili indicated that while the majority of Uber Drivers have health insurance, she was unsure if the insurance was private or state-funded, since Companies cannot provide health insurance benefits to Drivers due to their status as independent contractors.

Two panels spoke as proponents in favor of the Initiative Petitions. The first panel consisted of two Drivers, one who drives for Uber and Lyft, and another who drives for Instacart, as well as two local industry representatives. The panelists emphasized the flexibility and control over the schedule that the independent contractor model affords Drivers, and how reliant communities are on the services that Drivers provide, highlighting those in Gateway Communities, rural areas, and the elderly. The Drivers on this panel stated that these jobs provided the income and the flexible scheduling necessary to have control over their lives, and shared that like any industry, the rideshare business is not for every prospective worker. The panel cited data from an industry-poll that found that 75 per cent of Drivers year after year prefer being independent contractors, and that more than 80 per cent of Drivers drive 15 hours or less a week. When asked, the two Drivers on the panel stated that one received Social Security benefits and the other received health insurance through MassHealth, but neither has a W-2 job.

The second panel of proponents consisted of representatives from the Companies of Uber, Lyft, DoorDash, and Instacart testifying in support of the five Initiative Petitions. This panel discussed the benefits their platforms provide for customers, Drivers, and small businesses, “who all use their platforms to grow and thrive”. This panel specifically mentioned achieving the policy goal of flexibility and benefits for Drivers. The panelists testified that the employee-employer laws do not prohibit flexible, on-demand scheduling, but that the framework of such a model would not be feasible for the Companies. Pointing to data, the panel shared that 80 per cent of Drivers on the Instacart platform wish to remain independent contractors, and on average Instacart Drivers work less than 10 hours a week, with many Drivers using it for supplemental income. Uber pointed to statistics that Drivers on the platform earn on average $28.96 per utilized hour, and that the overwhelming majority of de-platforming occurs because drivers come out of compliance with the stricter laws in Massachusetts that currently regulate Companies. During questioning from the Committee, this panel noted that the proposed regulatory framework would align deactivation standards, and that the taxicab industry also operates in an independent contractor framework. Additionally, the panelists testified that Companies could decide to pull operations out of the Commonwealth if Drivers were to be classified as employees whether through court decisions or the Initiative Petitions failing, similar to the decision to end operations in Minneapolis and St. Paul, Minnesota due to a mandated increase in minimum fares for Drivers in those Cities.

The panel shared that the Companies will plan to move forward to the ballot with just one of the five proposed Initiative Petitions, but their preference is for a legislative compromise and to avoid the ballot box altogether, as was accomplished in Washington state.

There were three panels of opponents who testified against all five Initiative Petitions. The first panel consisted of two representatives from the International Brotherhood of Teamsters, including the President of Teamsters Local 25 and the

States Legislative Director. This panel testified that the eyes of the labor movement across the country are on Massachusetts, specifically to see if the Companies will succeed in watering down the employment laws that are already on the books in statute. This panel's concern was that if the Companies are able to accomplish this in Massachusetts, they will be able to exploit laws across the country. The Teamsters shared the position that the traditional employee-employer model should be respected and properly enforced, and they oppose any proposal that offers a third model to classify workers and ultimately weakens employment standards. The panel not only noted their belief that Companies are currently misclassifying Drivers as independent contractors, enabling wage theft and essentially taxpayer subsidization of these companies, but that these Initiative Petitions have implications beyond the app-based work of Uber and Lyft.

A second panel of opponents consisted of representatives from the Massachusetts AFL-CIO, the Massachusetts Building Trades Council, and the California Labor Federation. This panel stated that the strong employment laws of the Commonwealth are built on the base assumption that workers are employees entitled to numerous benefits. In their opinion, Big Tech companies cannot be trusted, as they have actively skirted the law, "lining their own pockets," and are now offering benefits that are far below the minimum standard that employees are entitled to. The panel noted that Massachusetts has no carveout currently to the ABC test and Massachusetts law goes even further by offsetting federal carveouts to the ABC test. Additionally, the panel shared that misclassification of workers has been rampant in the trades, where Companies are incorrectly classifying employees as independent contractors to avoid providing benefits. The panel remarked that there is no need to sacrifice hard-won rights that workers have fought for to simply line the pockets of tech companies and additionally shared that California found gig workers to be employees under every state employee-employer test. The panel highlighted the irony of the campaign for Proposition 22 to remove the employee designation of Drivers in California, which was run at the onset of the COVID-19 pandemic, when Drivers did not have access to masks, vaccines, air shields, sick time, or death benefits.

The last panel of opponents consisted of a representative from the Massachusetts Coalition for Occupational Safety and Health, a rider who was permanently injured while in a rideshare vehicle, and a Driver. This panel echoed the sentiments of previous opposition panels by saying that Companies are misclassifying workers and added that this is to the detriment of worker earnings, benefits, and even safety, as Companies are not forced to comply with OSHA regulations. Through this misclassification, Companies have avoided responsibility for their workers, including workers' compensation and death benefits for Drivers. The rider who was injured in an Uber ride in 2021, testified that Uber has refused to face him in court, and that its insurance policy only covered seven months of his continuing care, where his prescriptions cost $9,000 a month. The rider noted that the Companies' "shotgun pellet approach," — starting with nine Initiative Petitions, then whittling down to five Initiative Petitions — hoping just one Initiative Petition can beat the legal challenges so they can shirk responsibility for actions taken by their Drivers. The Driver on the panel, who has driven for Lyft since 2013 just a few days after the platform was live in Massachusetts, questioned the data and statistics that the Companies shared. In the Driver's experience, Drivers do not have control over their work, which is unlike independent contractor work. The Driver also stated that she was deactivated from the platform after speaking out against the Company.

Conclusion

These Initiative Petitions elicit multifaceted public policy questions regarding the fundamental nature of the employer-employee relationship and the individual terms governing that relationship. The Committee is also cognizant of legal challenges regarding these initiative petitions that are to be argued before the Supreme Judicial Court in the month of May 2024, after the constitutional deadline that the legislature can enact these initiative petitions. This timeline adds further complexity to the question of enactment.

The testimony heard by the Committee showed an overall lack of consensus on the merits or issues raised by the initiative petitions. The Committee feels that any action on this subject must strike a balance between existing employee rights and protection, and the need to ensure that TNCs can continue to operate, which they maintain would not be possible if Drivers were not classified as independent contractors.

Particularly salient is the petitioners' assertion that the drivers will lose flexibility if the Companies are not able to lawfully classify them as independent contractors. Drivers who testified before the Committee focused on the importance of flexibility and the benefit of being able to work whenever they choose. However, proponents did not provide an answer as to why work-hours flexibility would be impossible to provide regardless of employment status. Massachusetts law currently does not limit the flexibility that employers can offer to their employees.

For these reasons, given the legal and other uncertainties surrounding these initiatives, we, the undersigned members of the Special Joint Committee on Initiative Petitions, recommend that House No. 4257, House No. 4260, House No. 4258, House No. 4259, and House No. 4256, as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME.

Senators.	Representatives.
Cindy F. Friedman	Alice Hanlon Peisch
Paul R. Feeney	Michael S. Day
Jason M. Lewis	Kenneth I. Gordon
Ryan C. Fattman	David T. Vieira

An Act Establishing that App-Based Drivers Are Not Employees, and Network Companies Are Not Employers, for Certain Purposes of the General Laws (House, No. 4260) (introduced into the General Court by the initiative petition of Charles Dewey Ellison, III and others).

Id.

The majority report of the committee (House, No. 4612) is as follows:

MAJORITY REPORT.

A majority of the Special Joint Committee on Initiative Petitions ("The Committee"), recommends that Initiative Petition No. 23-25, House 4256; Initiative Petition No. 23-29, House 4257; Initiative Petition No. 23-30, House 4258; Initiative Petition No. 23-31, House 4259; and Initiative Petition No. 23-32, House 4260, ("the

Initiative Petitions") as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME

The purpose of this report is to provide a recommendation to the full legislature on whether to accept the Initiative Petitions as written for consideration and enactment.

The five Initiative Petitions would all similarly declare Transportation Network Drivers and Delivery Network Drivers ("Drivers") as independent contractors when engaging with Transportation Network Companies and Delivery Network Companies ("Companies"). The five Initiative Petitions differ in legal mechanisms to achieve this and the scale and scope of the type of benefits Drivers would receive, from no additional work benefits to Drivers to creating a new class of benefits for these Drivers.

Testimony

The Committee heard from experienced professionals, proponents and opponents, as well as members of the general public.

Patrick Moore, First Assistant Attorney General of the Commonwealth of Massachusetts, testified as a subject matter expert on the five Initiative Petitions. First Assistant Attorney General Moore gave a brief overview of each Initiative Petition as follows:

House 4257 and House 4260 were referred to as "bare bones" Initiative Petitions that similarly define Drivers as not employees, and Companies as not employers.

House 4257 specifies that Drivers who accept requests through an online enabled application are not employees for purposes of certain Massachusetts labor and employment laws, specifically those governing wage and hours, workplace conditions, workers' compensation, and unemployment insurance. The Initiative Petition would also specify that Companies are not employers for the purposes of those laws.

House 4260 also specifies that Drivers are not employees for purposes of certain Massachusetts employment laws, and that Companies are not employers. It would accomplish this in a slightly different manner than House 4257 by amending applicable statutes to specifically exempt Drivers, including Massachusetts General Laws ("G.L.") Chapter 149 Section 148B, which governs wage and hour laws and workplace conditions, Chapter 151A which governs unemployment insurance, and Chapter 152 which governs workers' compensation.

The three remaining Initiative Petitions achieve the same objective of clarifying that Drivers are not employees and Companies are not employers, but also require Companies to provide minimum compensation and benefit terms to the Drivers.

House 4258 is similar to House 4257 with compensation and benefit terms added to it. This Initiative Petition establishes baseline contract terms between Drivers and Companies and sets forth certain defined minimum and benefit terms. Beginning with the compensation, Drivers would be assured a base compensation equal to 120 per cent of the Massachusetts minimum wage for time spent getting to or completing ride or delivery requests. Drivers would also be entitled to per mile compensation for that time beginning at 28¢ per mile. The law would require that increases in compensation

be tied to any future annual increases of the state minimum wage and for the Executive Office of Labor and Workforce Development to increase the per mile compensation by the percentage increase in the state minimum wage, if any. If the earnings for a Driver fall below the minimum compensation amount, the Company must pay the Driver the difference between what the Driver earned and the minimum compensation amount. The baseline contract terms provide for certain defined benefits for Drivers, including a limited healthcare stipend, paid sick time related to hours driven, and certain private occupational accident insurance benefits. The Initiative Petition would prohibit covered companies from discriminatory practices and grant Drivers the opportunity to appeal a termination.

House 4259 amends G.L. Chapter 149 and Chapter 151A like House 4260 but creates contract terms between Drivers and Companies similar to those in House 4258.

House 4256 has the broadest classification provision. The initiative would specify that Drivers are not employees for any purpose whatsoever under Massachusetts law and that Companies are not employers for any purpose whatsoever under Massachusetts law. Like the two prior Initiative Petitions, it would then create baseline contract terms between Drivers and Companies and set forth certain defined minimum compensation and benefits. The wages and benefits are similar to those set forth in the prior two Initiative Petitions. Like those Initiative Petitions, Companies would be prohibited from discriminatory practices and must grant Drivers the opportunity to appeal a termination.

First Assistant Attorney General Moore also noted that there are currently legal challenges to all five of these Initiative Petitions with plaintiffs asserting that the Attorney General incorrectly certified the Initiative Petitions on the basis that the Initiative Petitions violate the “single subject” provision of Article XLVIII of the Amendments to the Constitution. Additionally, the relationship between Drivers and Companies is the subject of a lawsuit from the Attorney General’s Office, beginning under then-Attorney General Healey. This lawsuit contemplates whether under the current Massachusetts Wage Act and the “ABC Test” definition of an employer-employee relationship, Drivers should be considered employees and Companies considered employers. First Assistant Attorney General Moore testified that if the Supreme Judicial Court rules that Drivers are employees under current statute, the Attorney General’s Office would be able to pursue lost wages and benefits for these Drivers from the Companies they worked for. The five Initiative Petitions, if any pass, would end any prospective application of the decision should the Supreme Judicial Court declare that Drivers are to be classified as employees.

Subject matter experts from academia and policy institutions provided testimony on the history of employment law, including the increase in the use of independent contractors in the 1970s, approaches to employment law in other jurisdictions such as California and the European Union, and relevant industry statistics concerning Drivers and Companies.

Dr. Hilary Robinson, Associate Professor of Law and Sociology at Northeastern University, testified that through these proposals, the Companies are claiming to be a “protected class” that should be exempt from several statutes that govern relationships between employers and employees and provide worker protections and benefits. Dr. Robinson further testified that in her analysis of California’s laws pertaining to this

issue, classifying Drivers as employees did not impact flexibility or patterns of work, and that the Companies, as they do now, retained control over what work Drivers have access to perform, contradicting the claim that this model needs Drivers to be independent contractors for successful operation and flexibility for Drivers. She also testified that in her opinion, none of these five Initiative Petitions should be presented on the ballot, as voters will not have the necessary information or background to make a truly informed decision.

Further testimony from Dr. Veena Dubal, Professor of Law at the University of California, Irvine, stated that evidence has shown that the passage of Proposition 22, which classifies Drivers as independent contractors in California and which contains similar provisions as the five Initiative Petitions before us, has shown to have a negative impact on Drivers, with 40-60 per cent of Drivers' work uncompensated and Drivers netting an average of $6.20 per hour, compared to the state minimum wage of $16 an hour. Dr. Dubal presented the results of a study showing that two-thirds of Drivers, many of whom have made a significant capital investment in their work as Drivers, have been terminated or had their account deactivated at some point, with 18 per cent losing their vehicle and 12 per cent losing their housing as a result. Dr. Dubal went on to show the occupational danger Drivers face, citing research showing gig workers are found to suffer the highest rate of on-the-job fatalities and 67 per cent of Drivers have reported instances of violence, harassment, or abuse while driving.

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The panel shared that the Companies will plan to move forward to the ballot with just one of the five proposed Initiative Petitions, but their preference is for a legislative compromise and to avoid the ballot box altogether, as was accomplished in Washington state.

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benefits. In their opinion, Big Tech companies cannot be trusted, as they have actively skirted the law, "lining their own pockets," and are now offering benefits that are far below the minimum standard that employees are entitled to. The panel noted that Massachusetts has no carveout currently to the ABC test and Massachusetts law goes even further by offsetting federal carveouts to the ABC test. Additionally, the panel shared that misclassification of workers has been rampant in the trades, where Companies are incorrectly classifying employees as independent contractors to avoid providing benefits. The panel remarked that there is no need to sacrifice hard-won rights that workers have fought for to simply line the pockets of tech companies and additionally shared that California found gig workers to be employees under every state employee-employer test. The panel highlighted the irony of the campaign for Proposition 22 to remove the employee designation of Drivers in California, which was run at the onset of the COVID-19 pandemic, when Drivers did not have access to masks, vaccines, air shields, sick time, or death benefits.

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Conclusion

These Initiative Petitions elicit multifaceted public policy questions regarding the fundamental nature of the employer-employee relationship and the individual terms governing that relationship. The Committee is also cognizant of legal challenges regarding these initiative petitions that are to be argued before the Supreme Judicial Court in the month of May 2024, after the constitutional deadline that the legislature can enact these initiative petitions. This timeline adds further complexity to the question of enactment.

The testimony heard by the Committee showed an overall lack of consensus on the merits or issues raised by the initiative petitions. The Committee feels that any action on this subject must strike a balance between existing employee rights and protection, and the need to ensure that TNCs can continue to operate, which they maintain would not be possible if Drivers were not classified as independent contractors.

Particularly salient is the petitioners' assertion that the drivers will lose flexibility if the Companies are not able to lawfully classify them as independent contractors. Drivers who testified before the Committee focused on the importance of flexibility and the benefit of being able to work whenever they choose. However, proponents did not provide an answer as to why work-hours flexibility would be impossible to provide regardless of employment status. Massachusetts law currently does not limit the flexibility that employers can offer to their employees.

For these reasons, given the legal and other uncertainties surrounding these initiatives, we, the undersigned members of the Special Joint Committee on Initiative Petitions, recommend that House No. 4257, House No. 4260, House No. 4258, House No. 4259, and House No. 4256, as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME.

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Jason M. Lewis	Kenneth I. Gordon
Ryan C. Fattman	David T. Vieira

Since Article XLVIII as amended by Section 2 of Article LXXXI of the Amendments to the Constitution requires that a vote shall be taken by yeas and nays in both houses before the first Wednesday of May upon the enactment of such law in the form in which it stands in such petition, no action was taken beyond the receipt of the reports of the committee.

Reports of Committees.

Brockton,— police cadets.

By Mr. Galvin of Canton, for the committee on Rules and the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the petition of Michelle M. DuBois and Rita A. Mendes (with the approval of the mayor and city council) relative to the police cadet program in the city of Brockton. Under suspension of the rules, on motion of Mr. Donato of Medford, the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Public Service. Sent to the Senate for concurrence.

By Mr. Honan of Boston, for the committee on Steering, Policy and Scheduling, that the following bills be scheduled for consideration by the House:

Senate bills

Sutton,— property tax.

Authorizing the town of Sutton to grant real property tax abatements for certain active duty military personnel (Senate, No. 2493) [Local Approval Received]; and

Andover,— town manager.

Eliminating the residency requirement for the town manager of the town of Andover (Senate, No. 2580) [Local Approval Received]; and

House bills

Motor vehicle insurance.

[sic] Eliminate penalty charges when canceling auto insurance (House, No. 1102);

Heating oil.

Relative to the remediation of home heating oil releases (House, No. 1129);

Relative to tow lien reform (House, No. 3698);

Tow liens.

Increasing the town of Northfield Board of Sewer Commissioners from three to five members (House, No. 4404) [Local Approval Received];

Northfield,—commissioners.

Directing the town of Burlington Fire Department to waive the maximum age requirement for firefighter for Ryan DeCoste (House, No. 4405) [Local Approval Received];

Burlington,—Ryan DeCoste.

Establishing the appointed office of town clerk in the town known as Huntington (House, No. 4454) [Local Approval Received];

Huntington,—clerk.

Authorizing the city of Watertown to place municipal charge liens on certain properties in the city of Watertown for nonpayment of any local charge, fee or fine (House, No. 4508) [Local Approval Received]; and

Watertown,—municipal charge liens.

Relative to the maximum storage charges on motor vehicles involuntarily towed (House, No. 4544);

Towed vehicles.

Under suspension of Rule 7A, in each instance, on motion of Mr. Donato of Medford, the bills severally were read a second time forthwith; and they were ordered to a third reading.

By Mr. Lawn of Watertown, for the committee on Health Care Financing, on Senate, Nos. 725, 728, 734, 736, 746, 761, 777, 785, 788, 789, 790, 801, 802, and 810 and House, Nos. 1165, 1174, 1175, 1179, 1181, 1185, 1189, 1203, 1209, 1212, 1219 and 1228, a Bill enhancing the market review process (House, No. 4620) [Cost: Greater than $100,000.00]. Read; and referred, under Rule 33, to the committee on Ways and Means.

Health care market review process,—procedures.

Engrossed Bills.

Engrossed bills

Amending the membership of the housing commission in the town of Lincoln (see House, No. 3827);

Bills enacted.

Providing for the appointment of a treasurer-collector in the town of Kingston (see House, No. 4011);

Authorizing the town of Williamstown to grant an additional license for the sale of all alcoholic beverages not to be drunk on the premises (see House, No. 4192);

(Which severally originated in the House);

Severally having been certified by the Clerk to be rightly and truly prepared for final passage, were passed to be enacted; and they were signed by the acting Speaker and sent to the Senate.

Orders of the Day.

The House Bill establishing a sick leave bank for Michael Lewis, an employee of the Department of Correction (House, No. 4539) (its title having been changed by the committee on Bills in the Third Reading), reported by said committee to be correctly drawn, was read a third time; and passed to be engrossed. Sent to the Senate for concurrence.

Third reading bill.

Order.

On motion of Mr. Mariano of Quincy,—

Ordered, That when the House adjourns today, it adjourn to meet on Monday next at eleven o'clock A.M.

Next sitting.

At fourteen minutes after eleven o'clock A.M., on motion of Mr. Wong of Saugus (Mr. Garballey of Arlington being in the Chair), the House adjourned, to meet the following Monday at eleven o'clock A.M., in an Informal Session.