

Testimony Against an Initiative Petition for an Act Giving Transportation Network Drivers the Option to Form a Union and Bargain Collectively

The Fiscal Alliance Foundation is offering written testimony on behalf of three Massachusetts citizen voters—including Foundation board member Kristen Arute, spokesperson Paul Craney, and Michael Hruby —outlining their concerns over allowing the question titled an Initiative Petition for an Act Giving Transportation Network Drivers the Option to Form a Union and Bargain Collectively, from making it to the 2024 ballot (Petition 23-35).

On March 14, the three citizens submitted a written brief with the state Supreme Judicial Court (SJC) focusing on the many ways that the complex ballot question, which is over 32 pages long, violates the relatedness clause of Article 48 of the state constitution. A copy of their written brief may be found attached and at www.FiscalAllianceFoundation.org. It is submitted as part of their written testimony before the Special Joint Committee on Initiative Petitions. The objectors are being represented by Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., with Kevin McGinty serving as the lead attorney.

The relatedness clause requires that all parts of any ballot question put before the voters be related to, and mutually dependent on, each other. Petition 23-35 includes provisions that seek to allow Transportation Network Drivers (TND) to organize as a union, would give the Commonwealth of Massachusetts the authority to set wages and benefits, would create an entirely new classification of workers for labor law purposes that are allowed to partake in collective bargaining while being independent contractors, and would reduce the threshold of interest to call a vote to unionize from 30% to 2.5%

At 32 pages long, the text of this question is long, complex, and blatantly combines four distinct policies into one ballot question. A reasonable person could have a differing opinion on any four of these various aspects of the question, which is what Article 48 is there to prevent. Voters should not feel like they have to vote for a ballot question to get policy “A”, even though they oppose policy “B.”

The brief itself notes that, “The Petition bundles contradictory provisions that are neither mutually dependent nor operationally related, denying voters a meaningful choice to express a uniform public policy. And it presents these issues in a confusing manner that obscures the grant of government authority, with the attendant risk that voters will unintentionally adopt that policy in the mistaken belief that the Petition’s only purpose was to establish collective bargaining for TNDs.”

The brief also notes that at least two portions of the question, the provision allowing independent contractors to engage in collective bargaining and the provision that would lower the threshold to call a vote to unionize from 30% to 2.5%, are in direct contradiction with federal and state labor law.

The Fiscal Alliance Foundation promotes individual liberty and greater fiscal responsibility and transparency in government for a better New England, through education and legal assistance.

Separately, the Attorney General has approved petitions to be presented to voters this fall that would confirm the independent contractor status of TNDs. Petition 23-35 does not oppose or seek to undo any of those petitions. A vote for Petition 23-35 would not be a vote against those other petitions. Rather, it is drafted so that if one of those petitions is adopted, adopting Petition 23-35 as well would provide a mechanism to circumvent federal law and create a new class of independent contractors who are uniquely authorized to engage in collective bargaining.

The Commonwealth has passed ballot questions that contradict federal law in the past and we're still adjudicating those as we speak. If this question were allowed to move forward as written, Massachusetts would be entering into a legal quagmire that could take decades to resolve.

The Attorney General and the petition proponents, who have intervened in the suit, can respond by April 12th, and a reply to the Attorney General's response is due on April 19th. Oral argument is scheduled to be heard on May 6. We hope the SJC will disqualify this potential ballot question from going before the voters for the reasons we state here.