

## Warrant Article 31

### Resolution Opposing State Ballot Question on Defining and Regulating App-Based Drivers

**Recommendation:** The Human Services Subcommittee recommends FAVORABLE ACTION on Warrant Article 31, as amended, by a vote of 4-0-0.

<b>Executive Summary</b>	Warrant Article 31 is a resolution asking that Town Meeting express its opposition to a likely November 2022 state ballot question that would legally classify app-based drivers for companies such as Uber, Lyft, and DoorDash as “independent contractors” rather than as “employees” entitled to worker protections under federal and state law (such as an hourly minimum wage, overtime, the right to unionize, and many others).
<b>Voting yes will . . .</b>	Encourage the opposition to the November 2022 state ballot initiative that seeks to define app-based ride share drivers as independent contractors rather than as employees.
<b>Voting no will . . .</b>	Offer support to ride share companies' efforts to continue to classify drivers as independent contractors rather than as employees.
<b>Financial impact</b>	None to the Town's budget.
<b>Legal implications</b>	None to the Town.

#### **Introduction**

WA 31 is a resolution that calls for Town Meeting to express its opposition to a likely November 2022 state ballot question that would legally classify app-based drivers for companies such as Uber, Lyft, and DoorDash as “independent contractors” rather than as “employees” entitled to worker protections under federal and state law.

#### *Background Information*

Ride share transportation companies such as Uber and Lyft provide transportation services to their customers, who utilize the companies' dispatch apps to receive pre-arranged rides with drivers who have contracted with these companies and who provide their own cars. The companies have always classified their drivers as independent contractors and require drivers to enter into standardized service contracts that expressly state that the drivers are independent contractors, set non-negotiated terms and conditions, and contain arbitration provisions that prevent drivers from bringing litigation to enforce their rights.

In July 2020 Attorney General Maura Healey filed a complaint for declaratory judgment against Uber and Lyft seeking (1) a court determination that Uber and Lyft drivers are employees and not independent contractors and (2) a court order requiring Uber and Lyft to reclassify their drivers as employees, thereby making available to the drivers the protections of Massachusetts Wage and Hour Laws, such as the Wage Act, the Minimum Wage Law, Overtime Law, Earned Sick Time Law, and Anti-Retaliation Statutes. On March 25, 2021, the Suffolk Superior Court denied the companies' motion to dismiss this lawsuit, finding that the Attorney General had plausibly suggested that Uber and Lyft misclassify their drivers and are in violation of the Independent Contractor Misclassification Statute, G.L. c. 149, sec. 148B.

The complaint alleges that Uber and Lyft are unable to meet the three-part test required under this state law that would allow them to classify drivers as independent contractors.

- First, the drivers are not “free from control and direction in connection with the performance of the service.” Uber and Lyft unilaterally determine their drivers' pay structure according to the companies' formulas and closely monitor drivers' activities through their apps, and, although drivers can set their hours, they are penalized if they do not accept enough rides, cancel too many rides, or do not meet standards set by the companies.
- Second, rather than providing a service that is “outside the usual course of the business of the employer,” the drivers provide a service that is essential to the companies' core business as transportation service providers and without which, these companies would go out of business.
- Third, most drivers are not customarily engaged in ride share driving as “an independently established trade, occupation, profession or business” that they seek to promote and grow in the marketplace.

### *The Ballot Initiative*

In response to this lawsuit and in an effort to do an end run around it, the ride share companies have begun a heavily funded lobbying campaign to place a voter initiative on the November 2022 ballot that would enact a state law that declares app-based drivers to be independent contractors or, alternatively, would have the Massachusetts State Legislature enact such legislation..

There are two versions of the ballot initiative, but they are identical except for the absence of a section on safety training in Version B. Both seek to enact a law that declares that app-based drivers and couriers are to be deemed independent contractors and not employees with respect to their relationship with the companies “[n]otwithstanding any other law to the contrary.”

In addition, the initiative would require the companies to provide a number of watered down, minimalist versions of some of the legal rights and benefits that the drivers would be entitled to if they were deemed to be employees:

- A net earnings floor of 120% of the minimum wage during each pay period – but only for a driver's “engaged time” (the time between accepting a service request and completing that request) – plus 26 cents per engaged mile, adjusted every 5 years for inflation. This does not include payment for any wait time between rides or for time spent getting gas or maintaining their car or doing any other job-related work. Further, there is explicit language [Sec. 5(D)] that companies would not be required to provide compensation above the driver's net earnings floor during an earnings period.
- Modest healthcare stipends provided by each company for any driver who averages in one quarter at least 15 hours per week of engaged time with that company and more for those with 25 or more hours per week of engaged time, subject to the driver showing proof of enrollment in a qualifying health plan.

- One hour of earned paid sick leave for every 30 hours of engaged time.
- Coverage under Massachusetts Paid Family and Medical Leave, unless declined by the driver.
- Occupational accident insurance for up to 156 weeks following an injury if the injury occurs while the driver is online with the app of that particular company.
- Disability payment of 66 percent of a driver's average weekly earnings for up to 156 weeks following an injury occurring while the driver is online with the app, as well as accidental death insurance equal to 66 percent of a driver's average weekly earnings for the benefit of driver's spouse, children, or other dependents

Note that the earnings on which these above benefits are based include only the driver's engaged time and not the other hours that they worked.

Unlike employees, the drivers under this law would not be entitled to overtime pay, personal and vacation days, or holidays. Unlike employees, they would be responsible for paying the 6.2 percent Social Security payroll tax that employers are required to pay, in addition to the 6.2 percent payroll tax that employees have to pay – a total of 12.4 percent of their income. And they would not be reimbursed for any job-related expenses, including the cost of gas and the upkeep of their car.

Additionally, as an independent contractor, drivers would be barred by the National Labor Relations Act from forming a union.

### **Evaluation Methodology/Research**

Ballot Initiative (Version A): <https://www.mass.gov/doc/21-11-a-law-defining-and-regulating-the-contract-based-relationship-between-network-companies-and-app-based-drivers-version-a/download>

(Version B is identical to A except that it does not contain a paid occupational safety training requirement.)

News release and Attorney General's Complaint (July 14, 2020)

<https://www.mass.gov/news/ag-healey-uber-and-lyft-drivers-are-employees-under-massachusetts-wage-and-hour-laws>

Healey v. Uber Technologies, Inc., and Lyft, Inc.

<https://www.mass.gov/doc/ride-sharing-complaint>

### **Discussion**

The Human Services Subcommittee held a public hearing on April 20, 2022 at 5:00 pm via Zoom. Attending was the petitioner, Ryan Black (TMM P6) and all four subcommittee members: Katherine Florio, David-Marc Goldstein, Donelle O'Neal, and Susan Granoff (chair).

The petitioner briefly explained that he had brought this article because he is concerned about the precedent that passage of the state ballot question would have both in Massachusetts and nationally in encouraging ride share companies to continue to avoid their full legal responsibilities as employers by designating app-based drivers as independent contractors with fewer rights and benefits and lower compensation than employees. He believes that a vote in opposition to the ballot question by Brookline's Town Meeting would influence the views of voters in Brookline and throughout the state and would be helpful to opponents of the initiative. He also is concerned about the millions of dollars the ride share companies are spending in lobbying for this ballot question.

The Subcommittee considered that the ride share drivers in question are a very diverse group. A majority only work a very limited number of hours per week and do not see driving as a full-time job. On the other hand, there is a significant minority of drivers who depend almost entirely on their earnings from driving to support their family. This can lead to a divergence in goals. People working only 10-15 hours a week may not think they need health insurance and other worker protections as much as someone working 35 or more hours. For many drivers, having flexible hours make having very minimal employee benefits seem to be an acceptable tradeoff.

Additionally, some of the provisions of the initiative might be appealing to current ride share drivers since, having been designated by their companies as independent contractors, they currently have no traditional employee benefits, and may be grateful for any improvement of their situation. However, when you look closely at the fine print of these proposed new benefits, it would seem that some of the benefits would be hard for many of the current drivers to actually qualify for because the drivers will not be working a sufficient number of “engaged time” hours.

Nonetheless, Subcommittee members were supportive of the petitioner's goals for this article and shared his concern about the detrimental effect on American workers if more and more companies are allowed to get away with designating their employees as independent contractors even when they don't meet the legal definition of “independent contractor.” Additionally, if more and more workers are classified as independent contractors, with no right to unionize, this will have an increasingly detrimental effect on the nation's workers and labor movement.

The Subcommittee offered a number of suggested minor wording changes to clarify the resolution, which the petitioner accepted, and which were found to be within scope by the Moderator.

### **Recommendation**

The Human Services Subcommittee recommends FAVORABLE ACTION on Warrant Article 31, as amended below, by a vote of 4-0-0.

Role call: Yes: Goldstein, Florio, O'Neal, Granoff

To see if the Town will adopt the following resolution:

**Resolution opposing state ballot question on defining and regulating app-based drivers**

---

WHEREAS, on the November 2022 ballot, there will be a state ballot question which if approved would define ride share company drivers as independent contractors; and

WHEREAS, independent contractors are entitled to far fewer benefits and workplace protections than employees; and

WHEREAS, corporations like Uber, Lyft, and DoorDash are pushing for Massachusetts voters to make this change; and

WHEREAS, such a change in employment status and labor law would prevent ride-share drivers from legally being able to unionize in the future; and

WHEREAS, everyone should be entitled to a living wage, decent working conditions, and bargaining power in the workplace;

---

NOW THEREFORE BE IT RESOLVED THAT Brookline Town Meeting expresses its strong disapproval of defining ride share company drivers as independent contractors; and

BE IT FURTHER RESOLVED that Brookline Town Meeting asserts that corporate interest shouldn't be allowed to dictate public policy by bankrolling campaigns that diminish workers' rights; and

BE IT FURTHER RESOLVED that Town Meeting encourages the people of Brookline (and the larger Commonwealth) to vote no on the November 2022 ballot question seeking to make this change.

**Meeting Recording:**

[https://brooklinema.zoomgov.com/rec/share/H6gP\\_veRiScYFDf-F9E9hHcCb5h8\\_hUBzBrPkMCGsGI3N5wFLrgElpPyjEZRJEyd.FN1uCTj6chIJxNad](https://brooklinema.zoomgov.com/rec/share/H6gP_veRiScYFDf-F9E9hHcCb5h8_hUBzBrPkMCGsGI3N5wFLrgElpPyjEZRJEyd.FN1uCTj6chIJxNad)

Access Passcode: i31!nw.e