



QUESTION 3: A UNION FOR RIDESHARE DRIVERS

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EXECUTIVE SUMMARY

Under current law, Uber and Lyft drivers in Massachusetts cannot readily form unions. Question 3 on the November ballot would change that, creating a novel path to unionization for rideshare drivers.

The approach envisioned by Question 3 — called sector-based bargaining — would allow drivers across multiple companies to negotiate together for better pay, expanded benefits, and other protections that would then apply across the entire rideshare industry.

But sector-based bargaining is largely untested in the United States and likely to face serious legal challenges.

As part of our commitment to help voters understand state ballot questions, we have evaluated the framework of Question 3 and spoken with experts and advocates on both sides of the issue.

We found that:

- This ballot question covers workers who transport passengers using platforms like Uber and Lyft, not gig workers who provide food delivery or other services.
- The explicit goal of Question 3 is to improve the welfare of drivers. “These persons often suffer poor pay, inadequate health coverage, and irregular or inadequate working hours,” the ballot measure says, and the point of unionization is to “raise standards for the terms and conditions of work in this industry.”
- Question 3 would likely increase the cost of rides and curtail usage. This would limit some of the known benefits of the apps, including reduced drunk driving and expanded mobility options.
- Drivers may not be able to start forming unions right away. When the city of Seattle pursued a similar proposal in 2015, it was challenged in court and ultimately gutted.
- Sector-based bargaining requires a complex and detailed regulatory framework. And some of the minute regulatory choices could prove pivotal. As an example, the number of drivers needed to create a union is very low — roughly 12.5 percent — which simplifies organization but risks the emergence of an unpopular union with limited driver support.

In the sections that follow, we discuss these and other issues in detail, including a summary of the ballot question, the potential impact of a yes vote, and the strongest arguments for and against.

WHAT QUESTION 3 WOULD DO

American workers looking to form a union can generally follow the rules laid out by the National Labor Relations Board. But this won't work for drivers with Uber, Lyft, and other rideshare companies. They're considered independent contractors rather than employees, so they don't get these standard rights and protections.

Even if this legal barrier were removed, rideshare workers would still face pretty daunting practical challenges to unionization, like figuring out who their fellow-drivers are, sharing information, and dealing with the unusual fact that drivers are free to work for multiple, competing companies.

Question 3 aims to solve both the legal and practical impediments to unionization with an approach called sector-based bargaining that is common around the world but unprecedented here in the United States.

At a high level, it works like this:

- 1) Massachusetts asserts that it wants to create a regulated system for managing relations between drivers and rideshare companies.
- 2) As part of this new system, the industry is given an exemption from core antitrust laws. This allows drivers — who are officially independent contractors — to work together without triggering concerns about collusion. And it allows Uber, Lyft, and other rideshare businesses to negotiate as a bloc on the other side of the table.
- 3) Clear bargaining rules are established by the state, covering topics like how to create a union, acceptable behavior during negotiation, and a process to avoid impasses.
- 4) The Massachusetts secretary of labor is empowered to accept or reject proposed agreements between drivers and companies. In addition, the secretary can suggest amendments or even alter terms as the economic situation

demand. Having the secretary play this key role cements the state's authority over the regulatory framework and stops some legal objections.

DETAILS MATTER

Making this schema work requires a swarm of regulatory detail. And while the full scope is too broad to cover here, there are a few key features voters may want to consider.

Which drivers count. Flexibility is central to the rideshare model, with many drivers picking up shifts as needed and a small number working a full-time schedule.

Question 3 would give a lot of authority to “active drivers,” which it defines as those who have completed more than the median number of trips in the most recent quarter. For simplicity, you can think of active drivers as the most active half of the workforce.

These active drivers would decide whether to set up a union, who should run that union, and if it needs to be dissolved.

There is one major exception to the authority of active drivers: voting on an actual contract. In that case, all drivers with at least 100 trips in the most recent quarter could participate.

Thresholds for unionization. Question 3 envisions a kind of ladder-climbing process for union formation and bargaining.

With support from 5 percent of active drivers, organizers would get access to the contact information of all active drivers.

With support from 25 percent of active drivers, they would become the official bargaining representative of all rideshare drivers.

Then, to complete a bargaining agreement, organizers would need a majority of votes from all drivers with at least 100 trips in the previous quarter.

Mediation and arbitration. If negotiations broke down, the state could appoint a mediator. And if that failed, they could move to binding arbitration.

Question 3 includes clear principles for arbitration, with substantial weight given to worker-based concerns like livable wages, portable perks, and a desire to keep drivers from relying on public benefits.

Arbitrators are not instructed to consider how a bargaining agreement might impact consumers or the rideshare ecosystem more broadly, but they are asked to look at the financial and operational viability for companies.

Potential drafting issues. Any complex legal framework is liable to have some oversights and ambiguities. At this early stage, it's hard to know the full scope of potential issues, but there do seem to be some elements worth reviewing.

For instance, there may be a problem with the process to decertify an unpopular union. Decertification requires support from 25 percent of active drivers but there doesn't seem to be a way for dissatisfied drivers hoping to meet this threshold to get access to the contact information of other active drivers.

Separately, while Question 3 is clearly targeted at major companies like Uber and Lyft, it may sweep in other entities that provide rideshare services, including micro-transit efforts in rural parts of the state.

IMPACT OF A YES VOTE

If voters endorse Question 3, there is likely to be an immediate and aggressive court challenge.

The stakes are simply too high for opponents to accept defeat, as the creation of a sector-based bargaining system here in Massachusetts would likely become a model for other states — and other industries — across the country.

In 2015, when the city of Seattle endorsed a version of sector-based bargaining for rideshare drivers, their effort was met with multiple lawsuits, including from the U.S. Chamber of Commerce, which stalled implementation for years and [ultimately scuttled the effort](#).

Drafters of the Massachusetts proposal have learned from the Seattle experience, shoring up holes that made the earlier attempt vulnerable.

For instance, Question 3 is far clearer about the intent to exempt workers from state and federal antitrust laws — and also more deliberate about Massachusetts' role in overseeing any agreement.

But opponents of Question 3 will still have the opportunity to raise objections. And as their challenges move through the court system, implementation could be put on hold, meaning drivers will not be able to start forming unions or bargaining for benefits.

ARGUMENTS FOR A YES VOTE

Question 3 would give rideshare drivers new leverage to improve their working conditions. And that's really the point — not just to create a mechanism for unionization but to ensure that drivers can “obtain sustainable wages, benefits and working conditions.”

Already, there is a floor for pay and benefits, set by a [recent settlement](#) that Massachusetts reached with Uber and Lyft. Among other things, it establishes minimum pay for shuttling passengers and access to select benefits, including sick time and a health insurance stipend.

At the very least, having a union could help ensure that companies fully honor this agreement.

More than that, a union could allow workers to push for further gains. Once you account for car maintenance and the time between rides, for example, the new wage guarantee only amounts to

[roughly \\$15-\\$25 per hour](#). Workers might also benefit from access to unemployment insurance or reimbursement for costs like vehicle depreciation.

Perhaps most dramatic, Question 3 could potentially transform the gig economy, making sector-based bargaining the new standard for states looking to support gig workers and bring stability to a flexible but sometimes precarious industry.

ARGUMENTS FOR A NO VOTE

In the near term, a vote for Question 3 is a vote for high-profile legal wrangling. And by the time courts reach a resolution, the whole industry could look different, including from the [growing penetration of self-driving cars](#).

Separately, there are big questions about how rideshare unionization might affect prices, consumers, and the health of this sector, which has [reduced incidents of drunk driving](#), improved mobility options in cities, and been a [substantial boon to passengers](#).

Better pay and benefits for drivers likely means some combination of reduced profits for businesses and more expensive fares for riders.

Any hit to consumers may be especially sharp in poorer and more rural areas of the state. That's because wage and benefit agreements are likely to be weighted to the needs of workers in the most active areas, like Boston, and out of sync with labor costs and fare expectations in other regions.

Finally, there's a risk that some details of Question 3 could undermine union legitimacy.

Take the low threshold for choosing a bargaining representative, which is just 25 percent of active drivers, or roughly 12.5 percent of all drivers.

Or consider that some rideshare drivers may not have any say in the collective bargaining process that governs their working conditions. If you're not

an active driver, you don't get to choose your representatives; and if you drove less than 100 trips in the previous quarter, you won't get to vote on contract terms.

OPTIONS FOR THE LEGISLATURE

Most ballot questions in Massachusetts are just like regular laws, subject to alteration or amendment by the Legislature — without having to go back to voters. This gives lawmakers a vital role, allowing them to tweak ballot proposals in order to maximize impact and minimize risks.

If Question 3 passes, there are some changes the Legislature might consider to smooth implementation and limit risks. Voters should not assume that these adjustments will necessarily be made.

- Clarify the mechanism for decertifying an unpopular union to ensure that drivers opposed to their current representatives can access necessary contact information and reach out to potential allies.
- Ensure that regional micro-transit entities are not subject to these collective bargaining agreements, particularly nonprofit entities.
- Establish a clear mechanism for withholding union dues, consistent with the fact that drivers work across multiple companies. Options like a flat per-ride fee or a percentage of earnings are easiest to implement, but they make dues proportional to activity, which is unusual for union membership.

By contrast, if Question 3 fails, lawmakers might consider a more tested alternative for supporting rideshare and other gig workers:

- Several states have established sectoral standards boards to improve wages and set rules for difficult-to-organize industries. These boards typically include worker, business, and government representatives.

CONCLUSION

A yes vote on Question 3 would create a new system to help unionize drivers at companies like Uber and Lyft. The approach will likely face significant legal challenge, but it could give workers new power to bargain for better wages and benefits.

A no vote would maintain the status quo, where rideshare drivers are considered independent contractors with a limited set of wage and benefit guarantees.

We at the Center for State Policy Analysis do not take a position on Question 3 — or any ballot initiative — but we hope this brief gives voters the information they need to make a sound decision on this important issue.



Contributors

In assembling this report, the Center for State Policy Analysis consulted a number of parties on both sides of Question 3. The final contents reflect our best judgment.

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