

se No. S2796

**IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

HECTOR CASTELLANOS, JOSEPH DELGADO, SAORI
OKAWA, MICHAEL ROBINSON, SERVICE EMPLOYEES
INTERNATIONAL UNION CALIFORNIA STATE COUNCIL,
and SERVICE EMPLOYEES INTERNATIONAL UNION,
Plaintiffs and Respondents,

v.

STATE OF CALIFORNIA, and KATIE HAGEN, in her official
capacity as Director of the California Department of Industrial
Relations,
Defendants and Appellants,

PROTECT APP-BASED DRIVERS AND SERVICES, DAVIS
WHITE, and KEITH YANDELL,
Intervenors and Appellants.

First Appellate District, No. A163655
Alameda County Superior Court, No. RG21088725
Hon. Frank Roesch, Judge

**AMICUS BRIEF FOR FORMER STATE SENATORS
ROBERT TIMOTHY LESLIE AND STEPHEN JAMES
PEACE, IN SUPPORT OF APPELLANTS**

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APPLICATION FOR PERMISSION TO FILE BRIEF
AMICUS CURIAE

Pursuant to California Rules of Court, rule 8.520(f), former California State Senators Robert Timothy Leslie and James Stephen Peace respectfully request permission to file the attached *amicus curiae* brief in support of Appellant the State of California's argument that Proposition 22 does not violate Art. XIV, §4 of the California Constitution. Former Senator Leslie served in the California State Assembly from 1986 to 1991, and from 2000 to 2006. Mr. Leslie served in the California Senate from 1991 to 2000 and served on the State Advisory Board on Drug Programs from 1985 to 1988. He additionally served on the Tahoe Regional Planning Agency Governing Board from 2008 to 2009. Former Senator Peace served in the California State Assembly from 1982 to 1992, and served in the California Senate from 1993 to 2002. As State Senator, Mr. Peace was the Chairman of the Senate Committee on Energy from 1995 to 1997, and the Chairman of the Senate Budget and Fiscal Review Committee. He also co-founded the Independent Voter Project, a nonprofit organization that seeks to re-engage nonpartisan voters and promote nonpartisan election reform through initiatives, litigation, and voter education.

Senators Leslie and Peace both have personal experience with amending initiative statutes and believe that their perspectives will assist this Court. Mr. Leslie was the author and a proponent of California Proposition 117 (1996), the 'Amendment of the California Wildlife Protection Act of 1990,' which was passed by the legislature

and rejected by the voters.¹ Mr. Peace was the author and a proponent of California Proposition 195 (1996), relating to ‘Punishment. Special Circumstances. Carjacking. Murder of Juror,’ which was passed by the legislature and approved by the voters.²

In submitting this amicus brief, Mr. Leslie and Mr. Peace aim to explain the importance of the people’s ability to enact legislation through the initiative process, and to provide this Court with insight into the legislative amendment process of initiative statutes.

Senators Leslie and Peace therefore respectfully request permission to file the attached *amicus curiae* brief presenting additional authorities and discussion in support of Appellant’s argument. The undersigned represent Senators Peace and Leslie on a pro bono basis. The undersigned assisted in the preparation and drafting of the brief. No party or counsel, aside from the undersigned, made a monetary contribution intended to fund the preparation or submission of the brief.

Respectfully submitted,
Holland & Knight LLP
/s/ Stacey Wang

¹ *Amendment of the California Wildlife Protection Act of 1990 (Proposition 117). Mountain Lions. California Proposition 197 (1996)*, https://repository.uclawsf.edu/ca_ballot_props/1118 (last visited Mar. 26, 2024).

² *Punishment. Special Circumstances. Carjacking. Murder of Juror. California Proposition 195 (1996)*, http://repository.uclawsf.edu/ca_ballot_props/1116 (last visited Mar. 26, 2024).

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Respondents contend that Business and Professions Code § 7451, as amended by Proposition 22, a voters' initiative statute, conflicts with California Constitution Art. XIV, § 4, because, among other things, it renders the state legislature "powerless" to change the statute and intrudes on the legislature's "plenary" power to establish a workers' compensation system. Respondents further suggest that the Court's determination that Proposition 22 is invalid will not have broader effects on the initiative power.

That is incorrect. Respondents' attempt to artificially constrain the subject matter of the voters' initiative process threatens to undermine core features of the direct democracy right that California voters have enjoyed for decades. In addition, Respondents' approach would prohibit the initiative process from addressing issues related to a workers' compensation system, a notably large domain. The people should be allowed to retain the powers reserved to them by the state Constitution.

Contrary to Respondents' assertion, Proposition 22 does not render the legislature powerless to amend Business and Professions Code §7451. The legislature has the constitutional power to amend an initiative statute, and it has historically exercised this power with great success. Furthermore, Proposition 22 provides the legislature with the *additional* power to amend the initiative without further input from voters. The two routes that the legislature may take to amend Proposition 22 hardly leaves it powerless to change the state law at issue. Accordingly, Respondents' argument is incorrect as a matter of law—and does not reflect the reality of the amendment process.

I.
**RESPONDENTS’ APPROACH THREATENS TO UNRAVEL
INITIATIVE POWER AND RESTRICT THE POWER OF THE
PEOPLE RESERVED TO THEM BY THE STATE CONSTITUTION.**

The California Constitution recognizes that “all political power is inherent in the people.” Cal. CONST. art. II §1. One key part of that power is the initiative process—i.e., “the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them.” *Id.* Art. II § 8(a). Explicit restraints on the subject matter of voters’ initiatives are contained in Art. II § 12.³ But to prohibit the people from exercising their legislative power without clear language indicating that is to be the case, as Respondents suggest this Court do regarding Art. XIV § 4, would work to undermine the Constitution’s reservation of co-extensive legislative ability of the people and the initiative power.

Importantly, this Court has emphasized that “[w]hen interpreting a provision of our state Constitution, our aim is ‘to determine and effectuate the intent of those who enacted the constitutional provision at issue.’” *Bighorn-Desert View Water Agency v. Verjil*, 138 P.3d 220, 223-24 (Cal. 2006) (internal quotations omitted). The voters’ intent in enacting the initiative power contained in Article II § 8(a) was to “give the people power to control legislation of the state and make it represent what the law should always reflect, the will and wish of the people”; and to allow the people to enact laws “which the legislature may have refused or neglected to enact,” as expressed by the 1911 statement circulated to voters in support of Senate

³ “No amendment to the Constitution, and no statute proposed to the electors by the Legislature or by initiative, that names any individual to hold any office, or names or identifies any private corporation to perform any function or to have any power or duty, may be submitted to the electors or have any effect.” Cal. Const. Art. II § 12.

Constitutional Amendment No. 22, which added the voters' initiative to the California Constitution.⁴ When Californians voted in favor of the initiative and referendum powers, the initiative was explained as a way to ensure that voters could have a say on specific issues of the day—and also as a way to provide a much needed check on the power of special interest groups.⁵

As a result of Senate Constitutional Amendment No. 22, the California Constitution came to recognize that the initiative and referendum powers are legislative powers reserved to the people and that these powers co-existed with the California legislature's own legislative power. Cal. CONST. Art II § 1. The legislative power of the state is thus shared between the legislature and the electorate, as this Court has previously recognized. *E.g., Hotel Employees & Rest. Employees Intern. Union v. Davis*, 21 Cal. 4th 585, 602, 981 P.2d 990, 1002 (1999) (“The ‘power’ referred to [in this amendment] is, of course, the legislative power, which is the subject of article IV of the California Constitution as a whole. The legislative power may be exercised by either of two legislative bodies, inasmuch as article IV, section 1 declares that it is ‘vested’ in the Legislature and also ‘reserve[d]’ to the people acting through initiative, specifically, initiative statute.”) (internal citations omitted).⁶

⁴ *Initiative and Referendum. California Proposition 7, Voters Guide* at 7 (1911), https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1006&context=ca_ballot_props (last visited Mar. 26, 2024) (Proponents Senator Lee C. Gates and Assembly member WM. C. Clark, explaining the initiative to voters).

⁵ *Initiative and Referendum. California Proposition 7 (1911)*, https://repository.uclawsf.edu/ca_ballot_props/7 (last visited Mar. 26, 2024).

⁶ *See also* David A. Carrillo & Stephen M. Duvernay, Brandon V. Stracener, *California Constitutional Law: Popular Sovereignty*, 68 HASTINGS L.J. 731, 750 (2017) (“The electorate is properly viewed as a legislative power

Since 1911, Californians have relied on this shared legislative power to propose initiatives on variety of subjects, including regulating the practice of medicine,⁷ changes to penalties for murder,⁸ funds for before- and after-school programs,⁹ conservation acts,¹⁰ state occupational safety and health

in state government for core powers purposes, but not generally so.”); *Legislature v. Deukmejian*, 669 P.2d 17 (Cal. 1983) (electorate's legislative power through the statutory initiative is coextensive with, not greater than, the legislature's power); *DeVita v. County of Napa* 889 P.2d 1019, 1026 (Cal. 1995) (“[W]e will presume, absent a clear showing of the Legislature's intent to the contrary, that legislative decisions of a city council or board of supervisors ... are subject to initiative and referendum.” This presumption rests on the fact that the 1911 amendment to the California Constitution conferring the right of initiative and referendum was “[d]rafted in light of the theory that all power of government ultimately resides in the people” and that “the amendment 776 speaks of initiative and referendum, not as a right granted the people, but as a power reserved by them.” (*Associated Home Builders, supra*, 18 Cal.3d 582, 591, 135 Cal.Rptr. 41, 557 P.2d 473, fn. omitted.) It is “ ‘the duty of the courts to jealously guard this right of the people [citation]... ‘[I]t has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right [to local initiative or referendum] be not improperly annulled.’ ”)

⁷ *OSTEOPATHIC ACT California Proposition 20 (1922)*, https://repository.uclawsf.edu/ca_ballot_props/170/ (last visited Mar. 30, 2024).

⁸ *Murder. Penalty. California Proposition 7 (1978)*, https://repository.uclawsf.edu/ca_ballot_props/840/ (last visited Mar. 30, 2024).

⁹ *BEFORE AND AFTER SCHOOL PROGRAMS. STATE GRANTS. INITIATIVE STATUTE. California Proposition 49 (2002)*, https://repository.uclawsf.edu/ca_ballot_props/1207/ (last visited Mar. 30, 2024).

¹⁰ *COASTAL ZONE CONSERVATION ACT California Proposition 20 (1972)*, https://repository.uclawsf.edu/ca_ballot_props/771/ (last visited Mar. 26, 2024).

plans,¹¹ gift and inheritance taxes,¹² stem cell research,¹³ natural resource protection and park improvements,¹⁴ and lobbying and government ethics.¹⁵ The citizenry's use of the voters' initiative process to create legislation has increased in recent decades.¹⁶ The growing use of the initiative process has been attributed to a number of potential factors, including distrust of state government and the general sentiment that voters should be involved in issues of public concern, such as state taxes and spending.¹⁷ At any rate, the

¹¹ *State Occupational Safety And Health Plan. California Proposition 97 (1988)*, https://repository.uclawsf.edu/ca_ballot_props/978 (last visited Mar. 26, 2024).

¹² *GIFT AND INHERITANCE TAXES (Proponent Roger). California Proposition 6 (1982)*, https://repository.uclawsf.edu/ca_ballot_props/901/ (last visited Mar. 30, 2024).

¹³ *AUTHORIZES BONDS TO CONTINUE FUNDING STEM CELL AND OTHER MEDICAL RESEARCH. INITIATIVE STATUTE California Proposition 14 (2020)*, https://repository.uclawsf.edu/ca_ballot_props/1381/ (last visited Mar. 30, 2024).

¹⁴ *WATER QUALITY, SAFETY AND SUPPLY. FLOOD CONTROL. NATURAL RESOURCE PROTECTION. PARK IMPROVEMENTS. BONDS. California Proposition 84 (2006)*, https://repository.uclawsf.edu/ca_ballot_props/1252 (last visited Mar. 26, 2024).

¹⁵ *POLITICAL REFORM INITIATIVE California Proposition 9 (1974)*, https://repository.uclawsf.edu/ca_ballot_props/795/ (last visited Mar. 30, 2024).

¹⁶ See Public Policy Institute of California, *The Initiative Process in California* (October 2013), <https://www.ppic.org/publication/the-initiative-process-in-california/> (citing California Secretary of State, History of California Initiatives, Initiatives by year).

¹⁷ See e.g., Mark Baldassare et. al., *Reforming California's Initiative Process* (October 2013), https://www.ppic.org/wp-content/uploads/content/pubs/atissue/AI_1013MBAI.pdf; MARK BALDASSARE AND CHERYL KATZ, *THE COMING AGE OF DIRECT DEMOCRACY: CALIFORNIA'S RECALL AND BEYOND* (Rowman and Littlefield, 2007); MARK BALDASSARE, *A CALIFORNIA STATE OF MIND: THE CONFLICTED VOTER IN A CHANGING WORLD* (University of California

initiative power enshrines important principles of direct democracy in the state Constitution, reserving legislative power to the people to ensure that the governing laws align with the people’s will.¹⁸

The initiative power is not boundless. For example, an initiative cannot be used as a way to invoke the referendum process,¹⁹ it cannot revise the state Constitution,²⁰ and per the state Constitution, it cannot name an individual to hold office, or identify a private corporation to perform a function or have any power or duty.²¹ However, there is little to no suggestion that the people somehow have waived their ability to propose legislation on *any* subject, including those impacting a “complete system of workers’ compensation” as expressed in Art. XIV § 10 of the California Constitution.²²

Press, 2002); TERRY NICHOLS CLARK AND VINCENT HOFFMAN-MARTINOT, EDS., *THE NEW POLITICAL CULTURE* (Westview Press, 1998); Mark Baldassare, Dean Bonner, Sonja Petek, and Jui Shrestha, *PPIC Statewide Survey: Californians and Their Government* at 4 (May 2013), https://www.ppic.org/wp-content/uploads/content/pubs/survey/S_513MBS.pdf (last visited Mar. 26, 2024) (surveying 1,704 adults); Mark Baldassare, Dean Bonner, Sonja Petek, and Jui Shrestha, *PPIC Statewide Survey: Californians and Their Government* at 8 (January 2013) https://www.ppic.org/wp-content/uploads/content/pubs/survey/S_113MBS.pdf (last visited Mar. 26, 2024)(surveying 1,704 adults).

¹⁸ Stephen M. Griffin, *California Constitutionalism: Trust In Government and Direct Democracy*, 11 J. CON. L. 3, 562-568 (2009).

¹⁹ *Rossi v. Brown*, 889 P.2d 557, 572 (Cal. 1995)

²⁰ *Strauss v. Horton*, 207 P.3d 48, 60 (Cal. 2009), as modified (June 17, 2009) abrogated on other grounds by *Obergefell v. Hodges* 576 U.S. 644 (2015).

²¹ “No amendment to the Constitution, and no statute proposed to the electors by the Legislature or by initiative, that names any individual to hold any office, or names or identifies any private corporation to perform any function or to have any power or duty, may be submitted to the electors or have any effect.” Cal. CONST. Art. II § 12.

²² 61 Ops. Cal. Atty. Gen. 51 (1978), *2: “As to a statewide initiative, article II, section 8 contains no restriction as to subject matter, other than that the measure may not embrace more than one subject.”

The limitation that Respondents seek should therefore not be read in, as it would severely undermine the initiative power.

Specifically, Respondents contend that the state legislature has the “plenary” and exclusive authority “unlimited by any provision of [the state] Constitution” to enact legislation related to the “complete system of workers’ compensation,” and that the ruling they seek will not undermine the peoples’ initiative power as a whole.²³ This is inconsistent with the actual effects Respondents’ argument has. This complete system of worker’s compensation expressed in the state Constitution includes a vast range of areas, including “adequate provisions for the comfort, health and safety and general welfare” of workers where there is injury or death to the worker, the “full provision for securing safety in the places of employment,” and providing medical, surgical, hospital, and other treatment for workers injuries, and insurance coverage “in all its aspects.” Cal. CONST. Art. XIV § 4. Barring the initiative power from addressing any and all areas that could touch upon these subjects would vastly limit the initiative power, which this court has historically “jealously guarded” and not limited where ambiguity has arisen.²⁴ Respondents’ approach would restrict voters from ever attempting to require additional safety laws in places of employment and would certainly diminish the voters’ initiative power.

History also demonstrates that there is no indication that California voters intended to waive the power to legislate issues related to workers

²³ Cal. CONST. Art. XIV § 4.

²⁴ *Independent Energy Producers Assn. v. McPherson*, 136 P.3d 178, 187 (Cal. 2006) (“[T]he courts have described the initiative and referendum as articulating ‘one of the most precious rights of our democratic process.’ ‘[I]t has long been our judicial policy to apply a liberal construction to this power whenever it is challenged in order that the right be not improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it.’”) (internal quotations omitted).

compensation in adopting Senate Constitutional Amendment 30, which provided for Art. XIV § 10 of the California Constitution. The circulated voters' pamphlet describing the Workers' Compensation Act in Senate Constitutional Amendment 30 (1917) (Proposition 23, 1918) informed voters that its primary purposes were to establish a "complete and workable" system by providing a constitutional basis for making legislation regarding a workers' compensation system, to provide a more robust system than that adopted in 1911, and to ensure that the State would develop a way to administer a workers' compensation system.²⁵ Nothing within that circulated statement indicated that the people would not be able to also enact legislation alongside the state legislature.

For example, one dimension that the voters' pamphlet for Senate Constitutional Amendment 30 expressed it would develop in its "complete system" was "thoroughgoing safety provisions" for workers. *Id.* In light of this, the state Constitution expressly states that "full provision for securing safety in places of employment" is a part of a "complete system of workers' compensation" that Respondent claims only the state legislature may address. Cal. CONST. Art. XIV § 4. However, California voters have already proposed and accepted initiatives relating to workplace safety. *See* Cal. Lab. Code, § 50.7 ("Amended November 8, 1988, by initiative Proposition 97. Note: Prop. 97 is titled the California Occupational Safety and Health Restoration Act." Cal. Lab. Code § 50.7). Further, Californians have already adopted initiatives that alter benefits or change the legislature's administration of a "complete system of workers' compensation." *See*

²⁵ *WORKMEN'S COMPENSATION California Proposition 23 (1918)*, https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1124&context=ca_ballot_props (last visited Mar. 26, 2024) (Voters' Guide at 3).

*Minimum Wage Increase, California Proposition 210 (1996)*²⁶ (adjusting minimum wage, affecting the amount of temporary disability available under workers' compensation system) (passed by voters).²⁷

As can be seen, California voters have the ability to propose legislation related to a “complete system of workers compensation” through the initiative process and have previously exercised that ability. Respondents’ approach would bar Californians from ever proposing any initiatives related to a “complete system of workers compensation,” including items related to minimum wage, health care policy, treatment centers, workplace safety, insurance, and anything else that could possibly impact the multifaceted workers’ compensation system as described in Art. XIV § 4. Voters should not be excluded from proposing legislation in an area that undoubtedly affects their private lives, and such exclusion would run contrary to the voters’ understanding and intent in establishing the initiative power in 1911. Respondents’ approach is therefore not supported by text, history, or original understanding and intent of Senate Constitutional Amendment 30, and instead attempts to diminish the electorate’s power. California voters have continued to use the initiative process to ensure that the law reflects the will of the people. The initiative process is a hallmark of direct democracy, and the people’s valid exercise of their legislative power should be protected.

²⁶ Available at https://repository.uclawsf.edu/ca_ballot_props/1130 (last visited Mar. 26, 2024).

²⁷ See also *Basic Health Care Coverage, California Proposition 166 (1992)*, http://repository.uchastings.edu/ca_ballot_props/1081 (last visited Mar. 26, 2024) (requiring employers to provide health care coverage for employees, permitting employers to purchase one insurance policy to cover employee health insurance and the health care portion of workers’ compensation—thereby separating worker’s compensation insurance policies between the healthcare component and the wage replacement component, and interfering with the compensation methods of Cal. Lab. C. § 3700) (rejected by voters).

II.
**THE LEGISLATURE IS NOT POWERLESS TO AMEND AN
INITIATIVE STATUTE, NOR IS IT POWERLESS TO AMEND
PROPOSITION 22.**

The California legislature has always retained the power to amend an initiative statute. Indeed, it has had notable historical success in exercising that power: More often than not, California voters overwhelmingly pass legislative amendments to initiative statutes that the legislature has proposed to them. Further, the alternative amendment process in Proposition 22 does not substantially impede the legislature's ability to amend Business and Professions Code § 7451, given that Proposition 22 provides the legislature with alternate means of amending the initiative statute without having to go through the general initiative amendment process. In this vein, the legislature has historically approved its own proposed initiative amendments with little to no dissent from either the Assembly or the Senate.

Respondents assert that Proposition 22 leaves the California legislature "powerless" to amend Business and Professions Code § 7451. But the legislature has and retains the constitutional power to amend an initiative statute. Cal. CONST. Art. II § 10 (c) ("The Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without the electors' approval."). To do so, a majority of the legislature must agree upon an amendment to an initiative statute, pass the amendment to the electorate to vote upon, and receive agreement by a majority of the electorate. *Id.* However, as specified in the state Constitution, the electorate may provide an alternative way for the state legislature to amend an initiative statute without having to garner the electors' approval. *Id.* Proposition 22 specifies that such alternate means for

its amendment is for the legislature to gain 7/8ths (or 87.5%) approval in both the Assembly and the Senate, and that the legislature “may” only use this alternate path when the amendment is in furtherance of Proposition 22’s stated purposes. However, it remains true that the state legislature may still amend Proposition 22, like any other initiative statute, in the manner prescribed by the state Constitution.

Amending an initiative statute in the manner contemplated by the state Constitution does not leave the legislature “powerless.” As this Court has previously recognized, amending an initiative is designed to be a difficult task because it “protect[s] the people’s initiative power by precluding the Legislature from undoing what the people have done, without the electorate’s consent.” *People v. Kelly*, 222 P.3d 186, 196–97 (2010) (internal quotations omitted). When the initiative power was first proposed to the people, Senator Gates and Assembly Member Clark, who wrote the supporting explanation for the initiative power, anticipated that opponents of the initiative might decry it as “depriv[ing] the legislature of its functions.”²⁸

Respondents’ argument was not only anticipated (and rejected) at the inception of the initiative process; it has also been refuted by the actual working of the amendment process and the historical success that the legislature has had in amending initiative statutes. To begin, both former Senator Leslie and former Senator Peace have undertaken the process to amend initiative statutes. Senator Peace was successful in amending a voters’ initiative statute through securing the people’s approval of

²⁸ *Initiative and Referendum. California Proposition 7, Statement to Voters at 7* (1911), https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1006&context=c_a_ballot_props (last visited Mar. 26, 2024) (Voter’s Guide for Senate Constitutional Amendment No. 22).

Proposition 195 (1996), relating to ‘Punishment. Special Circumstances. Carjacking. Murder of Juror.’²⁹ And Senator Leslie sought to garner the people’s support for California Proposition 117 (1996), the ‘Amendment of the California Wildlife Protection Act of 1990,’ which was ultimately rejected.³⁰ While the voters approved the former amendment and rejected the latter, both experiences show that the state legislature does indeed have the power to amend an initiative statute, and such amendment is by no means an insurmountable task.

In addition, the state legislature has had historical success in amending initiative statutes. Voters typically and overwhelmingly agree with the state legislature’s amendments to initiative statutes: voters have approved the legislature’s proposed initiative amendments twenty-five out of the thirty-one instances that the legislature has passed a proposed amendment to them.³¹ This approval rate of about 80.66% is comparable to

²⁹ *Punishment. Special Circumstances. Carjacking. Murder of Juror. California Proposition 195 (1996)*, https://repository.uclawsf.edu/ca_ballot_props/1116 (last visited Mar. 26, 2024).

³⁰ *Amendment of the California Wildlife Protection Act of 1990 (Proposition 117). Mountain Lions. California Proposition 197 (1996)*, https://repository.uclawsf.edu/ca_ballot_props/1118 (last visited Mar. 26, 2024).

³¹ See *CHIROPRACTORS California Proposition 7 (1950)*, https://repository.uclawsf.edu/ca_ballot_props/513 (last visited Mar. 26, 2024) (approved by voters); *LAND TITLES. TORRENS ACT California Proposition 11 (1950)*, https://repository.uclawsf.edu/ca_ballot_props/517 (last visited Mar. 26, 2024) (approved by voters); *CHIROPRACTORS California Proposition 17 (1952)*, https://repository.uclawsf.edu/ca_ballot_props/536 (last visited Mar. 26, 2024) (rejected by voters); *LAND TITLES. TORRENS ACT California Proposition 7 (1954)*, https://repository.uclawsf.edu/ca_ballot_props/552 (last visited Mar. 26, 2024) (approved by voters); *REPEALING ALIEN LAND LAW California Proposition 13 (1956)*, https://repository.uclawsf.edu/ca_ballot_props/579 (last visited Mar. 26, 2024) (approved by voters); *BOXING MATCHES California Proposition 15*

(1958), https://repository.uclawsf.edu/ca_ballot_props/601 (last visited Mar. 26, 2024) (rejected by voters); *CHIROPRACTORS California Proposition 7 (1960)*. https://repository.uclawsf.edu/ca_ballot_props/615 (last visited Mar. 26, 2024) (approved by voters); *DAYLIGHT SAVING TIME California Proposition 6 (1962)*, https://repository.uclawsf.edu/ca_ballot_props/637 (last visited Mar. 26, 2024) (approved by voters); *OSTEOPATHS. Amendment of Osteopathic Initiative Act California Proposition 22 (1962)*, https://repository.uclawsf.edu/ca_ballot_props/653 (last visited Mar. 26, 2024) (approved by voters); *BOXING AND WRESTLING CONTESTS California Proposition 11 (1966)*, https://repository.uclawsf.edu/ca_ballot_props/688 (last visited Mar. 26, 2024) (approved by voters); *CHIROPRACTORS: RULES California Proposition 11 (1970)*, https://repository.uclawsf.edu/ca_ballot_props/729 (last visited Mar. 26, 2024) (approved by voters); *USURY California Proposition 19 (1970)*, https://repository.uclawsf.edu/ca_ballot_props/737 (last visited Mar. 26, 2024) (approved by voters); *Chiropractors, Board of Examiners. Licensing Requirements California Proposition 15 (1976)*, https://repository.uclawsf.edu/ca_ballot_props/836 (last visited Mar. 26, 2024) (approved by voters); *Chiropractors. School Accreditation and License Revocation California Proposition 4 (1978)*, https://repository.uclawsf.edu/ca_ballot_props/857 (last visited Mar. 26, 2024) (approved by voters); *Second Degree Murder Of Peace Officer. Minimum Term. California Proposition 67 (1988)*, https://repository.uclawsf.edu/ca_ballot_props/1010 (last visited Mar. 26, 2024) (approved by voters); *Practice Of Chiropractic. Legislative Initiative Amendment California Proposition 113 (1990)*. https://repository.uclawsf.edu/ca_ballot_props/1018 (approved by voters); *Murder Of A Peace Officer. Criminal Penalties. Special Circumstance. Peace Officer Definition. California Proposition 114 (1990)*, https://repository.uclawsf.edu/ca_ballot_props/1019 (last visited Mar. 26, 2024) (approved by voters); *TOXIC CHEMICAL DISCHARGE. PUBLIC AGENCIES. LEGISLATIVE STATUTE. California Proposition 141 (1990)*, https://repository.uclawsf.edu/ca_ballot_props/1046 (last visited Mar. 26, 2024) (rejected by voters); *Murder: Punishment. California Proposition 179 (1994)*, https://repository.uclawsf.edu/ca_ballot_props/1097 (last visited Mar. 26, 2024) (approved by voters); *Prisoners. Joint Venture Program. Unemployment Benefits. Parole. California Proposition 194 (1996)*, https://repository.uclawsf.edu/ca_ballot_props/1115 (last visited Mar. 26, 2024) (approved by voters); *Punishment. Special Circumstances. Carjacking. Murder of Juror. California Proposition 195 (1996)*, https://repository.uclawsf.edu/ca_ballot_props/1116 (last visited Mar. 26, 2024) (approved by voters)(Authored by Steve Peace, SB 32); *Punishment*

the rate that California governors have approved of the legislature's proposed bills. It is higher than the rate that former Governor Schwarzenegger approved the legislature's proposed bills, and slightly lower than the rate that former Governors Deukmejian, Wilson, Davis, and

for Murder. Special Circumstances. Drive-By Shootings. California Proposition 196 (1996), https://repository.uclawsf.edu/ca_ballot_props/1117 (last visited Mar. 26, 2024) (approved by voters); *Amendment of the California Wildlife Protection Act of 1990 (Proposition 117). Mountain Lions. California Proposition 197 (1996),* https://repository.uclawsf.edu/ca_ballot_props/1118 (last visited Mar. 26, 2024) (rejected by voters) (Authored by Tim Leslie); *Murder. Peace Officer Victim. Sentence Credits. California Proposition 222 (1998),* https://repository.uclawsf.edu/ca_ballot_props/1146 (last visited Mar. 26, 2024) (approved by voters); *Murder: Special Circumstances. California Proposition 18 (2000),* https://repository.uclawsf.edu/ca_ballot_props/1187 (last visited Mar. 26, 2024) (approved by voters); *Murder. BART and CSU Peace Officers. California Proposition 19 (2000)* https://repository.uclawsf.edu/ca_ballot_props/1190 (last visited Mar. 26, 2024) (approved by voters); *Chiropractors. Unprofessional Conduct. California Proposition 44 (2002),* https://repository.uclawsf.edu/ca_ballot_props/1202 (last visited Mar. 26, 2024) (approved by voters); *Chiropractors. Unprofessional Conduct. California Proposition 44 (2002),* https://repository.uclawsf.edu/ca_ballot_props/1202 (last visited Mar. 26, 2024) (approved by voters); *PROTECTS CHILDREN'S SERVICES FUNDING. HELPS BALANCE STATE BUDGET California Proposition 1d (2009),* https://repository.uclawsf.edu/ca_ballot_props/1297 (last visited Mar. 26, 2024) (rejected by voters); *MENTAL HEALTH SERVICES FUNDING. TEMPORARY REALLOCATION. HELPS BALANCE STATE BUDGET California Proposition 1e (2009),* https://repository.uclawsf.edu/ca_ballot_props/1298 (last visited Mar. 26, 2024) (rejected by voters); *Conforms California Daylight Saving Time to Federal Law. Allows Legislature to Change Daylight Saving Time Period. Legislative Statute. California Proposition 7 (2018),* https://repository.uclawsf.edu/ca_ballot_props/1373 (last visited Mar. 26, 2024) (approved by voters).

Brown approved the legislature’s proposed bills.³² In light of the actual history demonstrating the legislature’s historical success at amending initiative statutes, this Court should not be swayed by Respondents’ attempt to characterize the legislature as “powerless” to amend an initiative statute like Proposition 22. Indeed, Respondents’ argument, if accepted, would undermine the initiative power by transferring to the state legislature the power that the people explicitly reserved to themselves. Cal. CONST. Art. IV § 1.

Notably, Proposition 22 contains a special provision allowing the legislature to amend Proposition 22 without the involvement of the electorate, provided that the amendment is in furtherance of Proposition 22’s stated goals, and that 7/8ths of each chamber votes in favor of the amendment. To be clear, the state Constitution does *not* give the state legislature a default power to amend an initiative statute *without* the voters’ involvement. *See* Cal. CONST. Art. II § 10 (c) (“The Legislature may amend or repeal an initiative statute by another statute that becomes effective *only* when approved by the electors *unless the initiative statute permits amendment or repeal without the electors’ approval*”) (emphasis added). Similarly, the state Constitution does not place any restraints on how voters may craft alternate means for the legislature to amend or repeal an initiative

³² *See* CALIFORNIA SENATE OFFICE OF RESEARCH, *How Often Do Governors Say No? A history of Actions From 1987-2020* (October 2020), <https://sor.senate.ca.gov/sites/sor.senate.ca.gov/files/3258%20SOR%20governors%20veto%20report%202022.pdf>; (Governor Deukmejian (1983-1990) approved proposed bills approximately 84.8% on average; Governor Wilson (1991-1998) approved proposed bills approximately 83.69% on average; Governor Davis (1999-2003) approved proposed bills approximately 83.254% on average; Governor Schwarzenegger (2004-2010) approved proposed bills approximately 73.6857% times on average; Governor Brown (2011-2018) approved proposed bills approximately 86.4775% of the time on average; from 2019 – 2020 Governor Newsom approved proposed bills 85.205% on average.)

statute without the voters' subsequent approval. *Id.* Thus, Proposition 22 did not have to provide the legislature with an alternate path to amend it without the electorate's explicit consent. *Id.* Yet, the state legislature was granted alternative means to do so. The state legislature cannot be considered powerless when Proposition 22 has given it an additional power to amend an initiative statute without the involvement of voters.

This alternative amendment path is similarly not an insurmountable burden rendering the legislature helpless to invoke it. Of the thirty-one previously mentioned amendments to initiatives that the state legislature passed to voters for approval, the legislature often approved its own proposed amendments by an overwhelming majority in both chambers—a majority that exceeded the 87.5% agreement rate that Proposition 22 requires.³³

³³ *Chiropractors, Board of Examiners. Licensing Requirements California Proposition 15 (1976)*, https://repository.uclawsf.edu/ca_ballot_props/836 (unanimously approved by assembly, approved by 95.625% of senate); *Chiropractors. School Accreditation and License Revocation California Proposition 4 (1978)*, https://repository.uclawsf.edu/ca_ballot_props/857 (unanimously approved by assembly and senate); *Second Degree Murder Of Peace Officer. Minimum Term. California Proposition 67 (1988)*, https://repository.uclawsf.edu/ca_ballot_props/1010 (approved by 98.507% of assembly, unanimously approved by senate); *Practice Of Chiropractic. Legislative Initiative Amendment California Proposition 113 (1990)*, https://repository.uclawsf.edu/ca_ballot_props/1018 (unanimously approved by assembly and senate); *Murder Of A Peace Officer. Criminal Penalties. Special Circumstance. Peace Officer Definition. California Proposition 114 (1990)*, https://repository.uclawsf.edu/ca_ballot_props/1019 (unanimously approved by assembly and senate); *TOXIC CHEMICAL DISCHARGE. PUBLIC AGENCIES. LEGISLATIVE STATUTE. California Proposition 141 (1990)*, https://repository.uclawsf.edu/ca_ballot_props/1046 (approved by 80% of assembly, approved by 91.891% of senate) (rejected by voters); *Murder: Punishment. California Proposition 179 (1994)*, https://repository.uclawsf.edu/ca_ballot_props/1097 (unanimously approved by assembly and senate); *Prisoners. Joint Venture Program.*

Unemployment Benefits. Parole. California Proposition 194 (1996), https://repository.uclawsf.edu/ca_ballot_props/1115 (approved by 74.576% of assembly, unanimously approved by senate); *Punishment. Special Circumstances. Carjacking. Murder of Juror. California Proposition 195 (1996)*, https://repository.uclawsf.edu/ca_ballot_props/1116 (approved by 89.3939% of the assembly; approved by 93.333% of the senate) (authored by Steve Peace, SB 32); *Punishment for Murder. Special Circumstances. Drive-By Shootings. California Proposition 196 (1996)*, https://repository.uclawsf.edu/ca_ballot_props/1117 (approved by 82.089% of assembly, approved by 90.625% of senate); *Amendment of the California Wildlife Protection Act of 1990 (Proposition 117). Mountain Lions. California Proposition 197 (1996)*, https://repository.uclawsf.edu/ca_ballot_props/1118 (approved by 59.459% of assembly, approved by 76.470% of senate) (rejected by voters) (Authored by Tim Leslie); *Murder. Peace Officer Victim. Sentence Credits. California Proposition 222 (1998)*, https://repository.uclawsf.edu/ca_ballot_props/1146 (approved by 98.666% of assembly, unanimously approved by Senate); *Murder: Special Circumstances. California Proposition 18 (2000)*, https://repository.uclawsf.edu/ca_ballot_props/1187 (approved by 97.0588% of assembly, approved by 82.352% of senate); *Murder. BART and CSU Peace Officers. California Proposition 19 (2000)*, https://repository.uclawsf.edu/ca_ballot_props/1190 (approved by 95.890% of assembly, approved unanimously by senate); *Chiropractors. Unprofessional Conduct. California Proposition 44 (2002)*, https://repository.uclawsf.edu/ca_ballot_props/1202 (approved by 82.894% of assembly, approved unanimously by senate); *PROTECTS CHILDREN'S SERVICES FUNDING. HELPS BALANCE STATE BUDGET California Proposition 1d (2009)*, https://repository.uclawsf.edu/ca_ballot_props/1297 (approved by 96.153% of assembly, unanimously approved by senate); *MENTAL HEALTH SERVICES FUNDING. TEMPORARY REALLOCATION. HELPS BALANCE STATE BUDGET California Proposition 1e (2009)*, https://repository.uclawsf.edu/ca_ballot_props/1298 (approved by 95% of assembly, approved by 94.736% of senate) (rejected by voters); *Conforms California Daylight Saving Time to Federal Law. Allows Legislature to Change Daylight Saving Time Period. Legislative Statute. California Proposition 7 (2018)*, https://repository.uclawsf.edu/ca_ballot_props/1373 (approved by 91.891% of assembly, approved by 74.285% of senate) (rejected by voters). Data for Votes by the Assembly and Senate were available from 1976 onward from the UC Law San Francisco Scholarship Repository.

Given the historical success that the state legislature has had in procuring the voters' approval of its amendments to initiative statutes, the historical near-unanimous agreement that the legislature comes to when proposing its own amendments to initiative statutes, and former State Senator Peace and former State Senator Leslie's actual experiences with the initiative amendment process when they were a part of the state legislature, it is clear that the state legislature is far from powerless when it comes to amending an initiative. In sum, the state legislature has ample power to amend Proposition 22.

CONCLUSION

The judgment of the court of appeal in *Castellanos v. State of California*, Case A163655, should be affirmed.

Dated: April 1, 2024

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE WITH WORD LIMIT

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that this Amicus Curiae Brief of James Stephen Peace and Robert Timothy Leslie is proportionately spaced, has a typeface of 13-point, proportionally-spaced century font, and contains **4,970** words according to the word count feature of Microsoft Word for Office 365, including the footnotes. That count does not include the application. If the application is included, the word count is **5,412** words.

Dated: April 1, 2024

Respectfully submitted,

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/s/ Stacey Wang

*Counsel for Robert Timothy Leslie and
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CERTIFICATE OF SERVICE

I, Matt Leahy, declare that I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 400 South Hope Street, 8th Floor, Los Angeles, CA 90071. On April 1, 2024 I served the following document(s):

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 1, 2024, in Los Angeles, California.

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Case Number: **S279622**

Lower Court Case Number: **A163655**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

4/1/2024

Date

/s/Stacey Wang

Signature

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