Case No. S279622

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

APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF AND PROPOSED AMICUS CURIAE BRIEF OF CALIFORNIA APPLICANTS' ATTORNEYS ASSOCIATION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Treatises

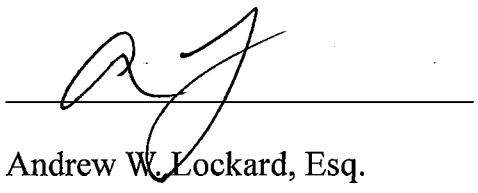
Regulations

Constitutional Provisions

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to California Rules of Court, Rule 8.208, I hereby certify that no entity or person has an ownership interest of 10 percent or more in proposed amicus curiae. I further certify that I am aware of no person or entity, not already made known to the Justices by the parties or other amici curiae, having a financial or other interest in the outcome of the proceedings that the Justices should consider in determining whether to disqualify themselves, as defined in Rule 8.208(e)(2).

Executed on April 2, 2024, in San Diego, California.



Andrew W. Lockard, Esq.
Attorney for Amicus Curiae
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APPLICATION TO FILE AMICUS CURIAE BRIEF

To the Honorable Chief Justice and the Honorable Associate Justices of the Supreme Court of the State of California:

On behalf of the California Applicants' Attorneys Association and pursuant to California Rules of Court 8.500(g), we write an amicus curiae brief in support of Plaintiffs and Respondents *Castellanos et al.*, appealing the decision from the First Appellate District, Division Four, dated March 13, 2023.

Statement of Participant Interest

California Applicants' Attorneys Association ("CAAA") is an association and organization comprised of members of the California State Bar who regularly engage in the representation of individuals in the state who sustain industrial injuries. As a regular part of its activities, CAAA, after leave is granted, files amicus curiae briefs before the Workers' Compensation Appeals Board, Courts of Appeal, and the Supreme Court in cases of far-reaching significance.

CAAA is familiar with the issues before this Court and believes this briefing will assist the Court by providing context and information regarding workers' compensation, in particular the history and implementation of California Constitution article XIV, section 4, conflicts between Proposition 22 and the Legislature's plenary power, and discussion

of how benefits under the Legislature's statutory scheme compare to those under Proposition 22.

CAAA respectfully requests that the Court grant the application and accept the attached brief for filing and consideration.

Respectfully submitted,

Date: April 2, 2024

Andrew W. Lockard, Esq.
Attorney for Amicus Curiae
California Applicants' Attorneys
Association

I. Introduction

More than 100 years ago, the People and the Legislature granted a rare plenary power to address a growing crisis of industrial injuries. Common law remedies simply provided no feasible recourse for injured workers. Society, and its safety nets, instead bore the cost of industrial injuries. To redress this, the Legislature experimented with gradual, and ultimately ineffectual changes. In 1917, the Legislature implemented a radical change: a complete and exclusive, highly regulated, carve out from existing common law remedies. This system, through trial and error, progress and reform, exists to present.

Proposition 22, for the first time, seeks to subvert this system by reclassifying a wide swath of employees as independent contractors, thus barring eligibility for workers' compensation. But more than a simple reclassification of 1.37 million workers from employees to independent contractors, it supplants prescribed statutory benefits with lesser, contractual benefits that either omit or provide less extensive coverage. (Osman et al., An Analysis of App-Based Drivers in California, University of California, Riverside (February 2022) <https://protectdriversandservices.com/new-uc-riverside-study-california-app-based-drivers-earned-over-34-per-hour-on-average/> (for the approximate number of app-based drivers).) These lesser benefits shift the

liability for industrial injuries back on to society, the injustice the Legislature sought to vitiate in the early 20th century.

Codified as Business and Professions Code sections 7448-7467, Proposition 22 presents novel questions for the Court between the interplay of a plenary power and a statutory initiative. The lynchpin of Proposition 22, Section 7451,[1] reclassifies app-based drivers as independent contractors if specified criteria is met. The Legislature is virtually prohibited from modifying Proposition 22, due to a seven-eighths majority requirement under section 7465. The proposition also carried a "poison pill" under section 7467(b), that if section 7451 is stricken, then the entirety of the proposition also fails. This Court granted review on the issue of whether section 7451 conflicts with Legislature's plenary power to create a complete system of workers' compensation under article XIV, section 4, thus invalidating the entirety of Proposition 22.

Plaintiffs, Respondents well-address the constitutional considerations. CAAA submits this amicus brief to provide insight into four primary points: why the history of article XIV, section 4, necessitated an expansive, robust power; how the Legislature implements its plenary power to maintain a workers' compensation 'ecosystem'; that section 7451 conflicts with the Legislature's plenary power; and how the substitute

[1] All references are to the California Business and Professions Code, unless otherwise noted.

benefits under Proposition 22 pale in comparison to the Legislature's workers' compensation system, undermining the existing system and shifting liability from industry to society.

II. The Legislature's Plenary Power to Create and Enforce a Complete System of Workers' Compensation

a. The History and Necessity of Article XIV, Section 4

This Court articulated the motives for California's workers' compensation system:

> "At the turn of the [20th] century, a public clamor arose for reform of the laws relating to recovery for injuries received at work. By that time increasing industrialization in the United States had combined with an unfortunate development of common law tort doctrines to create a large number of industrial injuries for which workmen were denied all recovery[.]" (*Mathews v. Workers' Comp. Appeals Bd.* (1972) 6 Cal.3d 719, 728-29.)

California's Legislature responded with several incremental—and ineffective—changes, beginning with eliminating common law defenses for certain types of industrial accidents. (*Id*. at 729.) A more comprehensive system of workers' compensation, known as the "Roseberry Act," followed in 1911. (*Ibid*.) The Roseberry Act created a voluntary system of workers' compensation, but few employers elected coverage, causing a "spiraling of insurance premiums." (1 Herlick, California Workers' Compensation Handbook § 1.01[1] (2024); *State Compensation Ins. Fund v. McConnell* (1956) 46 Cal.2d 330, 345, fn. 2.) In part to bolster participation, the

Legislature created the "Boynton Act," a compulsory workers' compensation scheme. (*Mathews, supra* at 730.) The Boynton Act also removed jurisdiction for work injuries from civil courts to the Industrial Accident Commission, an administrative forum. (*Ibid*.)

These gradual changes failed to address ongoing problems of participation, cost, and expedient administration. A broad, comprehensive, and complete system was necessary to address these problems, passed as the "Workmen's Compensation, Insurance and Safety Act of 1917." (*Id*. at 731.) The new system represented a "radical change[.]" (*Facundo-Guerrero v. Workers' Comp. Appeals Bd.* (2008) 163 Cal.App.4th 640, 649.) A no-fault, benefit delivery system providing for medical care, temporary disability benefits, permanent disability benefits, money for retraining, and benefits in the event of death, replaced common law damages. (*Department of Rehabilitation/State of California v. Workers' Comp. Appeals Bd. (Lauher)* (2003) 68 CCC 831, 844.) The complete system contemplates extension of benefits to "[…] any and all workers[,]" extending "full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury[.]" (Cal. Const., art. XIV, § 4.) The Legislature, and a constitutional ballot measure, granted the Legislature unique constitutional powers to implement the new system. (*Mathews, supra*, at 733, fn. 11.) The 1917 reforms relied on the enabling provision in Article XX, Section 21, expanded to bolster the

Legislature's constitutional powers. (*Id*. at 730, 733.) The amendment "expressly vested in the Legislature 'plenary power, unlimited by any provision of this Constitution,' to create and enforce a 'complete system of [workers'] compensation[.]'" (*Facundo-Guerro, supra,* at 649.) Other than a change from Article XX, Section 21, to the "virtually identical" Article XIV, Section 4, in 1976, few changes to the constitutional enabling provision were made since 1976. (*Ibid*.)

Article XIV, Section 4, is unique amongst provision of the California Constitution. The Legislature is "expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation[.]"[2] Courts construe this power expansively—the Legislature acts with the "exclusive and 'plenary' authority to determine the contours and content of our state workers' compensation system." (*Id.* at 650; see also *Stevens v. Workers' Comp. Appeals Bd.* (2015) 241 Cal.App.4th 1074.) Article XIV, section 4 is "intended to safeguard the full, unfettered authority of the Legislature to legislate in this area, as it saw fit." (*Facundo-Guerro, supra*, at 650.) Over the last century, "uniform case law on this point" developed, upholding the Legislature's plenary power to create and enforce a complete system of

[2] Although a "plenary power" is granted in five other instances, the broad scope of Article XIV, Section 4, is not found elsewhere in the California Constitution.

workers' compensation. (Sullivan on Compensation at §1.9.)

Although changes have, and regularly are, made to statute and regulation, the basic constitutional framework has remained unchanged for more than 100 years.

b. The Contemporary Workers' Compensation System

The purpose of California's workers' compensation system is manifold: that the cost of industrial injuries are born by industry, rather than society; to guarantee prompt, defined compensation, regardless of fault; to increase industrial safety; and to insulate an employer from tort liability. (See *S.G. Borello & Sons, Inc. v. Dep't of Ind. Relations* (1989) 48 Cal.3d 341, 354.) To effectuate these objectives, California's Legislature created, and continues to hone, a comprehensive administrative, adjudicatory, and regulatory 'ecosystem,' separate and distinct from other insurance.

The Labor Code, Divisions 4 and 4.5, sections 3200-6002 and 6100-6149, codifies the statutory system. The Division of Workers' Compensation ("DWC") administers workers' compensation, charged with protecting the interests of injured workers. (Cal. Lab. Code § 124.) The DWC has the "power and jurisdiction to do all things necessary or convenient" within its jurisdiction. (Cal. Lab. Code § 133.) The DWC oversees both the Workers' Compensation Appeals Board and the Administrative Director. (*Ibid.*)

The Legislature vests the Workers' Compensation Appeals Board

("WCAB"), under the DWC, with all judicial powers. (*Crawford v. Workers' Comp. Appeals Bd.* (1989) 213 Cal.App.3d 156, 164.) The WCAB hears compensation cases at 24 district offices throughout the state before approximately 190 workers' compensation administrative law judges ("WCJ"). (Cal. Code Regs., tit. 8, § 10348; *Scheuing v. Lawrence Livermore National Laboratory* (March 27, 2024, ADJ8655364, ADJ14830172) 89 Cal.Comp.Cases ___ (significant panel decision) at 7, for contemporary statistics as to the number of district offices and WCJs.) Parties disputing a WCJ's decision may appeal to the WCAB itself, with power to review all decisions, awards, and orders issued. (Lab. Code §§ 5309, 5310.) Petitions for Writ of Review may be filed to the Court of Appeal or Supreme Court to review a decision by the WCAB. (Lab. Code § 5950.)

The Administrative Director oversees the regulatory and administrative arms of workers' compensation. The Administrative Director promulgates regulations, subject to the Administrative Procedures Act, to implement, interpret, and make specific statutes the DWC enforces and administers. (Gov. Code § 11340 *et seq.*) These regulations are found in Title 8, Division 1, Chapter 1 of the California Code of Regulations, sections 1-159, and Chapter 4.5, sections 9700 – 10999. The Administrative Director also appointments Qualified Medical Evaluators, physicians utilized by parties to write medical-legal reports. (Lab. Code §

139.2.)

Article XIV, section 4, extends to "full provision for regulating such insurance coverage in all aspects[.]" (Cal. Const., art. XIV, § 4.) Early proponents of a constitutional amendment recognized the State needed an active role in the regulation of workers' compensation, or the stability of the system would be "at the mercy of a combination of insurance companies[.]" (*State Compensation Ins. Fund, supra*, at 346, fn. 2.) The Legislature extensively regulates workers' compensation insurance. (See e.g., Ins. Code §§ 11630 – 11761.) This included creation of a state agency, the State Compensation Insurance Fund, to ensure availability and supervise rates. (*State Compensation Ins. Fund, supra*, at 349, fn. 2; see also Herlick at §§ 1.01[1], 1.07[1].) Insurance claims adjusters must meet minimum standards of training, experience and skills. (Ins. Code § 11751.8(i).) Dissimilar to other insurance regulations in California, the Legislature "completely separate[es] the control and operation of Work[ers'] Compensation insurance from that of all other types of insurance." (*State Compensation Ins. Fund, supra,* at 347.)

III. Section 7451 Conflicts with The Legislature's Plenary Power Under Article XIV, Section 4

Section 7451 conflicts with the Legislature's exercise of plenary power, as the Legislature already designated app-based drivers as

employees under Assembly Bill 5, codified in part as Labor Code section 2775. (See also Plaintiff-Respondent's Reply Brief, at p. 27.) Eligibility for workers' compensation turns on employment status. (Lab. Code §§ 3600, 3300, 3351.) The Legislature acted deliberately to include app-based drivers as employees eligible for workers' compensation—Section 7451 seeks to reverse that. This is the very issue forecast by the Court in *Independent Energy Producers Association v. McPherson* (2006) 38 Cal.4th 1020, 1044, fn. 9, of whether a statutory initiative may constrain the plenary power of the Legislature, or as Justice Streeter identified in his dissenting opinion of the First Appellate District, whether a statutory initiative may "countermand a prior determination by the Legislature[.]" (Dis. opn., at p. 2.) Because the Legislature makes employment the keystone question of entitlement to workers' compensation, any abrogation of this definition must be scrutinized as disruptive to the complete system defined by the Legislature.

IV. Proposition 22 Benefits are an Inadequate Substitute for Workers' Compensation Benefits

The contemporary workers' compensation system provides four key benefits for injured workers: a wage loss benefit, "temporary disability," for temporarily incapacitated workers; medical treatment to cure or relieve the industrial injury; permanent disability benefits to monetarily compensate for lasting impairment; and supplemental job retraining benefits for injured

workers displaced from employment.

In lieu of established workers' compensation benefits, section 7455(a) vaguely requires an employer to carry, provide, or "otherwise make available" occupational accident insurance. Proposition 22 diminishes or omits the benefits app-based drivers would be entitled to in the workers' compensation system, only providing coverage for "medical expenses and lost income." App-based drivers will instead seek benefits through public systems (e.g., State Disability Insurance, Medi-Cal).

Proposition 22 is also rife with other problems and ambiguities. No recourse is prescribed for a network company's failure to carry workers' compensation insurance, no clear process for dispute resolution, no clear regulation, and a narrower definition of injury is provided under Proposition 22. Because of prohibitions under section 7465, the Legislature cannot act to amend these issues, creating bifurcated workers' compensation benefits in California.

a. Temporary Disability

Temporary disability is a wage loss benefit payable for temporary incapacity to maintain income for injuries "reasonably expected to be cured or materially improved with proper medical treatment." (*Chavira v. Workers' Comp. Appeals Bd.* (1991) 235 Cal.App.3d 463, 473.) Labor Code section 4654 provides that if an injury causes temporary disability, then the injured worker shall receive, "two-thirds of the weekly loss in

wages during the period of such disability." Section 7455 pays 66%, less than two-thirds that other injured workers receive. (See Bus. & Prof. Code § 7455(a)(2).)

The rate of temporary disability also includes reference to *all* sources of income under the Labor Code. (Lab. Code § 4453(c)(2).) By contrast, Proposition 22 only references prior earnings from "network companies" during the prior 28 days. This can result in drastically lower temporary disability benefits to app-based drivers. For example, a full-time employee seeks to supplement their earnings with part-time gig work. If, shortly after beginning gig work, the worker becomes temporarily disabled from both gig work and full-time employment by injury incurred during gig work, there would be no reference to their full-time earnings. The temporary disability rate for such a worker could be the minimum, despite their significant full-time employment earnings.

Proposition 22 further diminishes temporary disability benefits by limiting eligibility to only the *first* 104 weeks. (Bus. & Prof. Code § 7455(a)(2)(A).) Temporary benefits under Labor Code section 4656(c)(2) allows "104 compensable weeks within a period of *five years* from the date of injury." [Emphasis added.] Allowing temporary disability to be paid within five years of the date of injury permits necessary flexibility. For example, an injury may not progress to the point of temporary disability for more than six months after the date of injury. If the injured worker has

need for extended temporary disability after that, they would then only be entitled to 80 weeks, 1 ½ years, of temporary disability, rather than 104 weeks. Also take for example if an injured worker is able to work, but entitlement to surgery is disputed. The injured worker would not be disabled until the surgery is performed, and the surgery carries a six-month recovery period of temporary total disability. If, under the uncertain dispute resolution processes of Proposition 22, surgery is not performed until 100 weeks after the injury, the injured worker would only have access to four weeks of wage loss during the six-month recovery period. (See *infra,* Section IV, part (e) at 26 regarding dispute resolution ambiguities.)

The Labor Code requires prompt, regular payment of temporary disability to injured workers. Not so under Proposition 22. Under Labor Code section 4650(a), temporary disability payments are due "not later than 14 days after knowledge of the injury and disability, on which date all indemnity then due shall be paid[.]" After, payment of temporary disability to the injured worker, "shall be made as due every two weeks on the day designated with the first payment." (Lab. Code § 4650(c).) Penalties automatically attach for untimely payment. (E.g., Lab. Code § 4650(d).) Section 7455 makes no mention of when disability payments are to be made, how frequently, and without penalties for non-payment.

The Labor Code also extends additional temporary disability payments for certain severe injuries. Under Labor Code §4656(c)(3), there

are nine enumerated injuries, such as amputations and severe burns, that allow an injured worker to collect up to 240 weeks of disability benefits within a five-year period from the date of injury. (Lab. Code § 4656(c)(3)(A)-(I).) Proposition 22 contains no additional protections for severe injuries.

Because Proposition 22 wage loss benefits provide lesser protections than through workers' compensation, the likely result is more injured app-based drivers will seek benefits through public systems, like State Disability Insurance ("SDI") or federal Social Security Disability benefits, contravening the workers' compensation fundamental precept of shifting liability for industrial injuries from the public to industry. (*S.G. Borello & Sons, Inc.*, *supra,* at 354.)

b. Medical Benefits

In workers' compensation, injured workers are entitled to all medical treatment necessary to "cure or relieve the injured worker from the effects of the worker's injury." (Lab. Code § 4600.) This provision of the Labor Code has consistently been interpreted expansively, even if need for the treatment can be apportioned to non-industrial causes (*Hikida v. Workers' Comp. Appeals Bd.* (2017) 12 Cal. App. 5th 1249, 1261), or for treatment of non-industrial conditions necessary to treat industrial conditions (*Granado v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 399, 406.). Injured workers are also entitled to reimbursement of ancillary expenses, including

"transportation, meals, and lodging[.]" (Lab. Code § 4600(e)(1).) Proposition 22 does not specify the scope of medical treatment, other than for medical expenses for "injuries suffered while the app-based driver is online." (Bus. & Prof. Code § 7455(a).)

Medical benefits under section 7455(a) are capped at one million dollars ($1,000,000.00). There is no cap for medical benefits under the California workers' compensation system, and the benefit can last for the injured worker's life. Catastrophic claims can accrue millions of dollars in medical treatment. (See, e.g, a $13.2 million workers' compensation settlement: Rosanes, *What Is the Highest Workers Comp Settlement in the US?* (June 9, 2023) Insurance Business Mag <https://www.insurancebusinessmag.com/us/guides/what-is-the-highest-workers-comp-settlement-in-the-us 448424.aspx#:~:text=1.,industrial%20project%20in%20Long%20Beach.> (as of March 26, 2024).) App-based drivers, especially those with catastrophic injuries, are likely to turn to government programs to treat their injuries, whether through Covered California, Medicare, or other subsidized programs.

The Legislature also implements special provisions designed to 'streamline' resolution of disputes regarding medical treatment by the Administrative Director, rather than the WCAB. (See Lab. Code § 4610; see also *Stevens, supra*.) The means for disputes regarding medical

treatment—inevitable when phrased vaguely by Proposition 22—are not addressed in the legislation. While disputes are being resolved, industrially injured app-based drivers are likely to seek treatment outside of Proposition 22. (See *infra,* Section IV, part (e) at 26 regarding dispute resolution ambiguities.)

c. Permanent Disability Benefits

Permanent disability is a monetary benefit to compensate an injured worker for the "irreversible residual of an injury" (*Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal. 4th 1313, 1320) after maximum recovery from an injury (*County of Los Angeles v. Workers' Comp. Appeals Bd.* (1980) 104 Cal. App. 3d 933, 939). The benefit also indemnifies for the loss of the injured worker's future earning capacity, and competitive handicap in the open labor market. (*Brodie*, *supra,* at 1320.)

If an injured worker is partially permanently disabled, it is expressed as a percentage from 1-99%. (See Lab. Code § 4660.1.) Permanent disability is payable at a weekly rate based on the injured worker's earnings, and for a number of weeks based on the percentage of permanent disability. (Lab. Code § 4658.) For injuries that cause permanent disability of 70% but less than 100%, the injured worker is entitled to a life pension. (Lab. Code § 4659.) This pension is payable for life and increases yearly based on the State Average Weekly Wage. (Lab. Code § 4659.)

When an injured worker has a permanent total disability that is 100%, they are entitled to permanent total disability payments. Payments are at the temporary disability rate. (Lab. Code § 4453(a).) The injured worker receives these payments weekly, for life, and the amount increases yearly based on the State Average Weekly Wage. (Lab. Code § 4659(b)-(c).) In addition to 100% disability occurring in individuals with aggregate injuries, there are injuries that are so disabling that the injured worker is statutorily presumed to be permanent total disability. (Lab. Code § 4664(c)(1).) Those injuries are loss of both eyes or the sight thereof, loss of both hands or the use thereof, an injury resulting in practically total paralysis, and an injury to the brain resulting in permanent mental incapacity. (*Ibid.*)

There is no provision in section 7455 for permanent disability benefits. Simply put, app-based drivers receive no benefit for the permanent residuals from their industrial injuries. Instead, injured workers, and society's safety net, incur the cost of diminished earning capacities and disabilities.

d. Supplemental Job Displacement Benefits

If a work injury causes permanent disability, the injured worker unable to return to their job, and the employer does not offer modified or alternative work, then the injured worker receives a Supplemental Job Displacement Nontransferable Voucher ("Voucher"). (Lab. Code § 4658.7).

This re-training Voucher is redeemable for up to an aggregate of $6,000 in job retraining expenses. (*Ibid*.) The Voucher can be used for myriad expenses such as, education related training or skill enhancement, occupational licensing or certification fees, job placement agencies, return to work counseling, purchase of tools, computers and other job-related services. (Lab. Code § 4658.7(e)(1)-(6).) Because there is no provision for this benefit in section 7455, injured app-based drivers will not have the same access to resources to obtain a new job as other injured workers in California, putting them at a disadvantage in the open labor market and shifting costs away from industry for rehabilitation.

e. Other Significant Distinctions

Workers' compensation insurance is mandatory in California, with limited exception for self-insured employers and the State. (Lab. Code § 3700.) Other than a mandate that a network company must carry occupational accident coverage after 90 days, there is no recourse if a network company does not carry the requisite insurance. (See Bus. & Prof. Code § 7455.) In contrast, if an employer in California fails to carry workers' compensation insurance, it faces presumed liability in tort (See Lab. Code §§ 3706-3709) in addition to civil, criminal penalties (Lab. Code §§ 3722, 3700.5 *et seq.*). Occupationally injured app-based drivers whose employers do not carry occupational accident insurance are without any

recourse under Proposition 22, again shifting liability to app-based drivers and society.

Section 7455 omits any language of how to resolve disputes for the administration of the benefits, which guarantees that even minor irregularities in compensation delivery will be handled in civil courts rather than the specifically established and dedicated court of the Workers' Compensation Appeals Board, the object of which is to administer benefits "expeditiously, inexpensively, and without incumbrance of any character." (Cal. Const., art. XIV, § 4.) This eliminates one of the cornerstones of workers' compensation since the Boynton Act: that resolution of industrial injury claims in civil courts results in injustices for injured workers. (*Mathews, supra,* at 728-29.)

California created distinct rules and regulations of workers' compensation insurance, outside of its normal regulatory framework. Insurance in California is otherwise delineated into different classes, each with separate obligations and requirements. Section 7455 requires hybridized policies with disparate species of benefits under Life, Disability, Liability, and Common carrier liability, creating at best, a patchwork of regulations, rules, and enforcement, without any clear oversight or regulation. Normally, ambiguities are resolved over time with "judicial, legislative and administrative construction." (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245.)

But here, the Legislature is largely precluded from acting to amend any issues with Proposition 22 due to section 7465. The burden will be on the courts to address these ambiguities, stretching the appropriate role of the judiciary. It is unclear how, or whether, Proposition 22 benefits will be regulated.

Proposition 22's terms also likely preclude a common subset of injury: cumulative traumas. California recognizes cumulative trauma injuries, injuries not from a specific incident, but a series of events over time that, in the aggregate, result in an injury. (Lab. Code § 3208.1.) Section 7455 only carries reference to "occupational accident insurance," implying a specific accident, and without explicit recognition of cumulative trauma. Cumulative traumas, such as orthopedic injuries from prolonged, repetitive sitting or exposure to toxic vehicle emissions, are excluded.

IV. Conclusion

Proposition 22 poses a fundamental disruption to the Legislature's plenary power to create a complete system of workers' compensation. History demonstrated the necessity that the Legislature hold unique and robust constitutional authority to ensure its legislative goals of a providing benefits to injured workers "expeditiously, inexpensively, and without incumbrance of any character." (Cal. Const., art. XIV, § 4.) The Legislature implements these powers by creating an attuned workers' compensation 'ecosystem' of administration, adjudication, and regulation. Proposition 22

is more than a simple re-classification of a group of workers from employees to independent contractors. The proposition retracts a previous determination of the Legislature and imposes through section 7465 a near-impossible standard to rectify. But Proposition 22 also seeks to supplant workers' compensation benefits with inferior, contractual benefits. This piecemeal withdrawal of workers' compensation benefits and substitution of contract remedies, outside of the Legislature's control, portends an unsustainable constraint that contravenes the fundamental purpose of California's workers' compensation system by shifting the burden for industrial injuries back to injured workers and society's safety nets. CAAA urges the Court to consider the ramifications of Proposition 22 and the disruption it poses to the workers' compensation system.

Respectfully submitted,

Date: April 2, 2024

Andrew W. Lockard, Esq.
Attorney for Amicus Curiae
California Applicants' Attorneys Association

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

I, the undersigned, say that I am the attorney of record for the California Applicants' Attorneys Association, in the matter of CASTELLANOS v. STATE OF CALIFORNIA, Case No.: S279622. I have read the foregoing **Application for Permission to File Amicus Curiae Brief and Proposed Amicus Curiae Brief of California Applicants' Attorneys Association** and know of the contents thereof, and that the same is true of my own knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters that I believe it to be true.

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

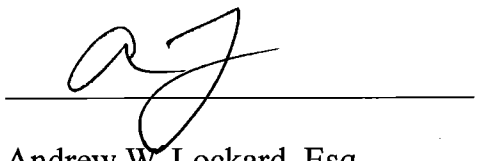
Executed on April 02, 2024, at San Diego, California.

Andrew W. Lockard, Esq.
Attorney for Amicus Curiae
California Applicants' Attorneys Association

VERIFICATION OF WORD COUNT

I, Andrew W. Lockard, swear that I have read the amicus curiae brief and know the contents thereof. According to the word count in Microsoft Word, this brief contains 5,260 words, up to and including the signature lines that follow the brief's conclusion.

I declare under the penalty of perjury that this Verification is true and accurate and that this declaration was executed on April 2, 2024.



Andrew W. Lockard, Esq.
Attorney for Amicus Curiae
California Applicants' Attorneys
Association

Case No. S279622

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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Hon. Frank Roesch, Judge

ORDER GRANTING APPLICATION FOR CALIFORNIA APPLICANTS' ATTORNEYS ASSOCIATION TO FILE AMICUS CURIAE BRIEF

The Application filed by the California Applicants' Attorneys Association herein on April 2, 2024, requesting permission to file an Amicus Curiae brief in support of Respondent, Hector Castellanos *et al.*, is hereby **GRANTED**.

Date: _____ _____

Presiding Justice

PROOF OF SERVICE

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

I, the undersigned, say: I am and always was at all times herein mentioned, a citizen of the United States and employed in the County of San Diego over the age of eighteen years and not a party to the within action or proceedings; that my business address is: 1620 5th Ave, Suite 325, San Diego, CA 92101, and that I served the within document:

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Re: CASTELLANOS v. STATE OF CALIFORNIA, Case No.: S279622
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By mail: by depositing the original and true copies thereof enclosed in a sealed envelope with postage thereon fully prepaid, in a mailbox regularly maintained by the Government of the United States in San Diego,

The Hon. Frank Roesch
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1221 Oak Street
Oakland, CA 94612

I certify and declare under penalty of perjury that the foregoing is true and correct.

Executed on this 2nd day of April, 2024.

Stephanie Baltazar

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **CASTELLANOS v. STATE OF CALIFORNIA (PROTECT APP-BASED DRIVERS AND SERVICES)**
Case Number: **S279622**
Lower Court Case Number: **A163655**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

4/2/2024

Date

/s/Andrew Lockard

Signature

Lockard, Andrew (303900)

Last Name, First Name (PNum)

HEWGILL COBB & LOCKARD, APC

Law Firm