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Supreme Court of California
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Case No. S279622

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

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HECTOR CASTELLANOS, et al.,

*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*.

# APPLICATION OF CITIZENS IN CHARGE AND THE INITIATIVE AND REFERENDUM INSTITUTE AT THE UNIVERSITY OF SOUTHERN CALIFORNIA TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANTS

After a Decision by the Court of Appeal
First Appellate District, Division Four, Case No. A163655
Alameda County Superior Court No. RG21088725
The Honorable Frank Roesch, Presiding

*MARSHALL C. WALLACE (BAR NO. 127103)
ALEXANDER J. DOHERTY (BAR NO. 261552)
KIMBERLY F. MACEY (BAR NO. 342019)
ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP
mwallace@allenmatkins.com
Three Embarcadero Center, 12th Floor
San Francisco, California 94111-4074
Phone: (415) 837-1515; Fax: (415) 837-1516

*Attorneys for Amicus Curiae*
*Citizens in Charge and The Initiative and Referendum Institute at the University of Southern California*

## Application to File Amicus Curiae Brief

Amicus curiae Citizens in Charge and The Initiative and Referendum Institute at the University of Southern California (together, "Amici") apply pursuant to California Rule of Court 8.520(f) and this Court's inherent powers for leave of Court to file the attached amicus curiae brief supporting affirmance of the decision of the Court of Appeal. "Amicus curiae presentations assist the court by broadening its perspective on the issues raised by the parties." (*Bily v. Arthur Young* & Co. (1992) 3 Cal.4th 370, 405, fn. 14.)

As explained below, Amici have a significant interest in the outcome of this case and believe that the Court would benefit from additional briefing on the issues addressed in the attached brief.[1]

## Interest of Amicus Curiae

Amicus curiae Citizens in Charge is a 50l(c)(4) social welfare organization devoted to protecting and expanding initiative and referendum processes throughout the United States. It works with activists, voters, thought leaders, legislatures, and the press to educate the public about the importance to democracy of initiative and referendum

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[1] No party or counsel for a party in the pending case authored the proposed amicus curiae brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the proposed brief. No person or entity other than the Amici or their counsel made a monetary contribution intended to fund the preparation or submission of the proposed brief.

processes, and to ensure they are as widely available as possible so that voters can make necessary reforms in their states. Citizens in Charge recognizes that state legislatures often fail to act in the best interests of the public, sometimes because they are subject to influence of powerful interest groups, and therefore initiatives and referenda are crucial for the public to be able to act democratically in defense of the common good.

The Initiative and Referendum Institute at the University of Southern California is a non-partisan educational and research organization dedicated to the study of the initiative and referendum, the two most important processes of direct democracy. The Initiative and Referendum Institute collects and distributes information on the initiative and referendum process and sponsors studies of various aspects of direct democracy, including its effect on public policy, citizen participation, and its reflection of trends in American thought and culture.

Amici have a significant interest in the constitutionality of California's Proposition 22, which was passed overwhelmingly by democratic initiative in 2020. Proposition 22 constituted an important democratic effort by the citizens of California to correct actions taken by the California Legislature that were contrary to the preferences of the State's citizens. California's citizens undertook this effort pursuant to the California Constitution, which expressly permits citizens to enact legislation via the initiative process. In declaring Proposition 22 unconstitutional, the trial

court improperly subordinated the status of the citizens' legislative power relative to that of the Legislature. The Court of Appeal corrected that error. Amici submit this brief to illuminate how Plaintiffs' appeal seeks improperly and unconstitutionally to elevate the Legislature above the People.

California is the largest state in the Union, and its citizens have used the democratic initiative process more than the citizens of any other state. The position of Plaintiffs threatens to eviscerate the initiative process by imposing restrictions on popularly enacted legislation nowhere found in the California Constitution. Given the significant damage that reversing the appellate court decision may have on democratic initiative and referendum processes, Amici seek to provide their views as to why this Court should uphold the decision of the appellate court and declare Proposition 22 constitutional.

Citizens in Charge filed an Application for Extension of Time to File Amicus Curiae Briefs on February 7, 2024. The Court granted the extension, permitting to and including April 3, 2024.

Dated: April 3, 2024

ALLEN MATKINS LECK
GAMBLE MALLORY &
NATSIS LLP
MARSHALL C. WALLACE
ALEXANDER J. DOHERTY
KIMBERLY F. MACEY

By: 

MARSHALL C. WALLACE
Attorney for Amicus Curiae
Citizens in Charge and The
Initiative And Referendum
Institute At The University
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ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP
mwallace@allenmatkins.com
Three Embarcadero Center, 12th Floor
San Francisco, California 94111-4074
Phone: (415) 837-1515
Fax: (415) 837-1516

*Attorneys for Amicus Curiae*
*Citizens in Charge and The Initiative and Referendum Institute at the University of Southern California*

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## INTRODUCTION

In November 2020, nearly 10 million California voters enacted Proposition 22, confirming "the individual right of every app-based rideshare and delivery driver to have the flexibility to set their own hours for when, where, and how they work." (Bus. & Prof. Code, § 7450(b).) After highly publicized campaigns on both sides of Proposition 22, amplified by intensive media attention, the electorate left no doubt: More than 58 percent of those casting ballots on the initiative voted "yes," eclipsing "no" votes by more than 17 percent. The People had spoken: In California, app-based drivers could "choose to work as independent contractors" so long as the rideshare and delivery network companies with which they contracted granted them unlimited flexibility and certain compensation and insurance protections. (*Id.*, § 7450(a).)[2]

Plaintiffs Service Employees International Union and others (collectively, "SEIU") ask this Court to nullify the will of the People. SEIU does not allege that there was corruption or fraud in the initiative process or that the People did not validly enact Proposition 22. Rather, SEIU invokes a technical argument, asserting that article XIV, section 4 of the California Constitution – which affirms the Legislature's power to enact a workers' compensation system – *negates* the constitutional reservation of "[a]ll political power" to the People via "the powers of initiative and referendum." (Cal. Const., art. II, § 1 & art. IV,

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[2] Capitalized references in this brief to statutory sections are to the Business & Professions Code.

§ 1.) SEIU asks the Court to so conclude even though (a) there is zero evidence that article XIV, section 4 was intended to strip the People of their initiative power; (b) the purportedly-conflicting constitutional and statutory provisions are readily harmonized; and (c) SEIU's argument would require this Court to ignore or jettison its key jurisprudence supporting the People's ultimate voice in our democratic form of government. The Court of Appeal correctly rejected SEIU's argument for these and other reasons.

A ruling reversing the Court of Appeal's decision would roll back more than a century of progress in expanding direct democracy through the ballot initiative. Today's conditions require that the Court do just the opposite. Special interest groups in our post-*Citizens United* world, armed with campaign contributions and effective lobbying operations targeting legislators, have a strong incentive to diminish the initiative power. The People do not have to raise campaign funds, cannot be individually lobbied, and can be influenced only through the marketplace of ideas. Now more than ever, the People are the last bastion of democracy, and the initiative power is their ultimate tool to counter special interest groups.

In approving Proposition 22, the People exercised their collective voice to correct just such a disconnect between the People's will and the special interest-fueled legislative agenda. In 2019, the Legislature – under the sway of SEIU and other labor interests – passed AB5, which targeted workers in the gig economy while exempting more than 100 other occupations. In response, the People expressed their disagreement. In November

2020, 9,957,858 voters not subject to lobbying or campaign contributions overruled the legislators who were, and passed Proposition 22 overwhelmingly.

This was the initiative process at its best. The California Constitution enshrines the initiative as a "legislative battering ram" to break through the sort of special-interest influence that produced AB5 and sought to eliminate the flexibility that app-based drivers and other independent workers enjoyed. (*Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1035.) The People used that battering ram here, exercising the legislative powers they "reserve[d] to themselves." (Cal. Const., art. IV, § 1.)

Any result other than an unqualified affirmance would unconstitutionally erode the People's initiative power. To reverse, this Court would have to abandon, or at least severely dilute, several basic doctrines long enshrined in its jurisprudence:

- This Court's "solemn duty to jealously guard the precious initiative power, and to resolve any reasonable doubts in favor of its exercise." (*Legislature v. Eu* (1991) 54 Cal.3d 492, 501 (hereafter *Eu*).)
- Where one constitutional provision does not expressly restrict the initiative process, courts refuse to construe that provision as a limitation on the voters' final word on the subject, absent an "unambiguous indication" that the provision's purpose "was to constrain the initiative power." (*Cal. Cannabis Coalition v. City of Upland*

(2017) 3 Cal.5th 924, 945; *Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 250.)

- "[R]eferences in the California Constitution to the authority of the Legislature to enact specified legislation generally are interpreted to include the people's reserved right to legislate through the initiative power . . . ." (*Independent Energy Producers Ass'n. v. McPherson* (2006) 38 Cal.4th 1020, 1043 (hereafter *McPherson*).)
- And, most fundamentally, "[a]ll political power is inherent in the people." (Cal. Const., art II, § 1.)

Any departure from these bedrock rules here would embolden special interests with influence over the Legislature to assert similarly baseless challenges to citizen-enacted initiatives. A decision in SEIU's favor would open new pathways for attacks on "one of the most precious rights of our democratic process." (*Associated Home Builders of the Greater Eastbay, Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591 (hereafter *Associated Home Builders*).) Nothing about workers' compensation or article XIV, section 4 warrants such a result.

## LEGAL ANALYSIS

### I. The People Reserved The Initiative Power For Themselves As The Ultimate Tool To Preserve Democracy

Democracy is the most fundamental principle of our system of government. Article II, section 1 of the California Constitution expressly implements that principle: "All political power is inherent in *the people*. Government is instituted for *their*

protection, security, and benefit, and *they have the right to alter or reform it when the public good may require*." (Cal. Const., art. II, § 1, emphasis added.)

Recognizing that even a popularly-elected Legislature may fail to promote the general welfare, the People amended the Constitution more than a century ago to reserve for themselves the power of initiative and referendum. (Cal. Const., art. IV, § 1.) "Drafted in light of the theory that all power of government ultimately resides in the people, the amendment speaks of the initiative and referendum, not as a right granted the people, but as a power reserved by them." (*Associated Home Builders, supra*, 18 Cal.3d at p. 591.)

Ballot initiatives, which first emerged in the late 19th Century, are a critical safeguard against political insiders and entrenched public officials who prevent the passage of policies with broad popular support. (See John Dinan, *State Constitutional Initiative Processes and Governance in the Twenty-First Century* (2016) 19 Chap. L. Rev. 61, 79-80.) In 1898, South Dakota became the first state to allow popular referendums in response to calls for social reforms to curb the influence of special interests. (Owen Tipps, *Separation of Powers and the California Initiative* (2006) 36 Golden Gate U. L. Rev. 185, 193-195 (hereafter *Separation of Powers*).) Twenty-five other states, including California, soon followed South Dakota's lead and adopted similar initiative and referendum processes. (*Ibid.*)

"The most notorious special interest [in California] and the chief impetus to reform was the Southern Pacific Railroad

Company, nicknamed 'the Octopus' because of its allegedly ubiquitous corrupting influence on state government." (*S.F. Cnty. Democratic Cent. Comm. v. Eu* (9th Cir. 1987) 826 F.2d 814, 819, fn. 7.) Southern Pacific's control over the State Capitol was so dominant that, for a thirty-year period beginning in 1879, not a single bill opposed by the railroad company was passed by the Legislature. (See *ibid.* [observing that "Southern Pacific 'literally ran the state's politics.' [Citation.]"]; *Separation of Powers*, *supra*, 36 Golden Gate U. L. Rev. at p. 194.) Even with the spotlight of federal investigations, "state political leaders proved to be ineffectual in dealing with the 'Octopus.'" (*Geary v. Renne* (9th Cir. 1989) 880 F.2d 1062, 1074 [quoting J. Owens, E. Constantini, and L. Weschler, *California Politics and Parties* 31-32 (1969)].) "It made little difference which party was in power, the railroad still ruled." (*Ibid.*)

In 1911, Californians responded to their perceived loss of sovereignty by adopting the initiative process to wrest control of government from special interests. (*Perry v. Brown* (2011) 52 Cal.4th 1116, 1140 ["the initiative power ... grew out of dissatisfaction with the then governing public officials and a widespread belief that the people had lost control of the political process"].) The adoption of the initiative process represented a quintessentially democratic augmentation of the Constitution and has been hailed by this Court as "one of the outstanding achievements of the progressive movement of the early 1900's." (*Associated Home Builders, supra,* 18 Cal.3d at p. 591.)

Over the past century, the People have frequently used their initiative power when special interests were thwarting the popular will. Those special interests have often been large corporations or powerful industry groups. For example, in 1986, California voters passed Proposition 65, known as the Safe Drinking Water and Toxic Enforcement Act of 1986, in response to concerns that certain large companies were polluting California's water supplies and blocking corrective legislation.[3]

Large corporations are not the only type of special interest that can forestall the will of the People. During the heyday of the so-called "War on Drugs," for example, law enforcement groups such as the State Sheriffs Association worked to block legislation legalizing the use of medical marijuana, which prompted the People to enact Proposition 215 to circumvent their influence.[4] These powerful interest groups subsequently blocked efforts to fully legalize recreational marijuana, forcing the People to again

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[3] (See Paul Jacobs, *California Elections: Prop 65: Toxics Calamity or Legal Catalyst?,* L.A. Times (Oct. 13, 1986) <https://www.latimes.com/archives/la-xpm-1986-10-13-mn-3020-story.html> [as of April 2, 2024] [opposition to Proposition 65 was "bank-rolled by big oil and chemical companies, by agricultural interests, by the defense industry and by high-tech companies-all of which depend heavily on potentially hazardous chemicals"].)

[4] (See Proposition 215, Compassionate Use Act (1996); Medical Use of Marijuana, Initiative Statute, Argument Against Proposition 215 [signed by Law Enforcement and Drug Prevention Leaders] <https://tinyurl.com/95m8yw4z> [as of April 2, 2024].)

use the initiative process in 2016 to achieve their desired aims.[5] Special interests have much less influence over ballot initiatives than they have over legislators. (See John Matsusaka, *"Is Direct Democracy Good or Bad for Corporations and Unions?"* The Journal of Law and Economics [2023].) They can only *indirectly* influence the initiative process by collecting signatures and funding advertising campaigns. By contrast, special interests have much more direct sway over legislators, chiefly through campaign contributions candidates seek to get elected, and incumbents solicit to ensure they are re-elected. Nor can special interests lobby or entertain individual voters as they can members of the Senate and Assembly. In this way, the initiative process has a basic structural advantage in our democracy in that it is much less susceptible to capture or influence by special interests than the legislative process.

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[5] (See Proposition 64, Control, Regulate and Tax Adult Use of Marijuana Act (2016); see also Lee Fang, *Police and Prison Guard Groups Fight Marijuana Legalization in California,* The Intercept (May 18, 2016) <https://tinyurl.com/ys8nd4r3> [as of April 2, 2024] [discussing opposition to Proposition 64]; Brooke Staggs, *Many in law enforcement oppose Prop. 64-that would legalize recreational marijuana-but lack funds to fight,* Orange County Register (Aug. 5, 2016) <https://tinyurl.com/35eseuvc> [as of April 2, 2024] ["Law enforcement remains one of the most influential voices when it comes to debating issues such as marijuana legalization"].)

## II. The Passage Of Proposition 22 Reflects The People's Decision To Override The Union-Influenced AB 5 As Applied To "Gig" Workers

Under our Constitution, initiatives passed by the People are protected from legislative interference, and this case exemplifies why that is, and should be, so. Today, labor unions such as SEIU wield substantial influence in both the Legislature and executive agencies.[6] The California Legislature is presently lopsided, with the majority party controlling 80% of the seats (32 of 40) in the Senate and 78% of the seats in the Assembly (62 of 80.) In this environment, organized labor interests, such as SEIU, exercise influence approaching that of the railroad industry at the turn of the 20th century.[7] This political clout was

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[6] See California Labor Federation, *What We Do*, <https://calaborfed.org/about-us/what-we-do/> (as of April 2, 2024).

[7] See Dan Walters, *Unions win in politics, lose members,* Cal Matters [Sept. 2, 2019] <https://tinyurl.com/5n8rh624> [as of April 2, 2024] ["Union money and other resources fueled massive Democratic Party wins at all levels, including a seven-seat pickup of congressional seats, even stronger supermajorities in the Legislature and all statewide offices, including the election of Gavin Newsom as governor."]; see also Adam Beam and Sophie Austin, *Big wins for organized labor and progressive causes as California lawmakers wrap for the year*, Associated Press [Sep. 15, 2023] <https://apnews.com/article/california-legislature-pay-raises-gavin-newsom-democrats-63216814654a984dfd4a50adf4f9ab43> [as of April 2, 2024] [organized labor forced through the Legislature bills increasing minimum wages for healthcare and fast food

clearly visible in the enactment of AB5, which the Legislature passed in 2019 at the urging of SEIU and other unions.[8]

SEIU's central role in these court proceedings should come as no surprise. Unions want as many workers as possible classified as employees because that increases their opportunities to organize workers, collect fees from them, and increase their political power. The gig economy evolved because app-based technology offers workers flexibility and independence that traditional employment status cannot provide. But that flexibility and independence decreased unions' ability to organize through the traditional workplace and reduced their political power. SEIU therefore spurred passage of AB5 through campaign contributions to and lobbying of legislators.[9]

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workers to $25 and $20 per hour, provided unemployment benefits for striking workers, and increased the number of worker sick days in "a legislative session in California that once again showed the strength of organized labor in the nation's most populous state."].)

8 It was widely reported in 2019 that SEIU was hoping to represent drivers for Uber Technologies, Inc. and Lyft, Inc., which would have provided them with even more political and financial muscle. (See Alexia Fernández Campbell, *Secret meetings between Uber and labor unions are causing an uproar*, Vox (Jul. 1, 2019) <https://www.vox.com/2019/7/1/20677095/uber-lyft-labor-unions-ab5-california> [as of April 2, 2024].)

9 (See *California Uber and Lyft Drivers Complete Historic Three-Day, 500-Mile Caravan for Workers Rights and a Union*, SEIU 72 [Aug. 29, 2019] <https://www.seiu721.org/press-release/press-release-for-thurs-aug-29-2019-california-uber-and-lyft-drivers-complete-historic-three-day-500-mile-caravan-

The People responded by enacting Proposition 22. Declaring that "recent legislation has threatened to take away the flexible work opportunities of hundreds of thousands of Californians, potentially forcing them into set shifts and mandatory hours, taking away their ability to make their own decisions about the jobs they take and the hours they work," the voters overwhelmingly passed the initiative. (See Bus. & Prof. Code, § 7449(d).)

SEIU and other labor groups refuse to accept the mandate of California's citizens and now ask the seven individuals on this Court to override the decision voters made in enacting Proposition 22 by a margin of millions of votes. The Court should decline that invitation.

## III. The Court's Jurisprudence Requires It To Uphold The People's Initiative Power, And It May Readily Construe Article XIV, Section 4 To Do So

### A. The Constitution And This Court's Precedents Grant Priority To Citizen Initiatives Over Enactments Of The Legislature

This Court has recognized that initiatives embody the bedrock of democracy. "[T]he courts have described the initiative … as articulating 'one of the most precious rights of our democratic process.' [Citation.]" (*Associated Home Builders, supra,* 18 Cal.3d at p. 591.) During the century that has elapsed since the People voted their initiative power into the Constitution, this Court has established and applied key

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for-workers-rights-and-a-union.php> [as of April 2, 2024].)

principles designed to preserve that power against all legislative attacks. Those principles include the following:

- "[T]he initiative power must be *liberally construed* to promote the democratic process. [Citation.] Indeed, it is our solemn duty to jealously guard the precious initiative power, and to resolve any reasonable doubts in favor of its exercise. [Citation.]" (*Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 253, as modified on denial of reh'g (Dec. 14, 1995) (hereafter *Guardino*).)
- "[A]ll presumptions favor the validity of initiative measures and mere doubts as to validity are insufficient; such measures must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears." (*Eu*, *supra*, 54 Cal.3d at p. 501.)
- The People have the power to make law on any subject on which the Legislature can legislate. The constitutional power of the electors "to propose statutes ... and to adopt or reject them" (Cal. Const., art. II, § 8, subd. (a)), is "generally coextensive with the power of the Legislature to enact statutes." (*Guardino*, *supra*, 11 Cal.4th at p. 253; *McPherson*, *supra*, 38 Cal.4th at p. 1032.)

Article II, section 10(c) underscores the primacy of the People's initiative power, making plain that the Legislature may not thwart the will of the People by legislating inconsistently with an initiative, unless the People have expressly conferred

that power upon the Legislature. California is the *only* state in which the Constitution expressly protects initiatives from legislative undermining in this way, reinforcing that in our State, the will of the People governs over the politics of the Legislature.[10] In short, this Court's jurisprudence and article II, section 10(c) affirm that in California the citizens are, under the Constitution and in fact, in charge.

Because the voice of the People, expressed through the initiative power, is primary, the Court of Appeal correctly concluded that article XIV, section 4 "must be construed to grant lawmaking authority to both the Legislature and the electorate," so "the people may exercise their initiative power in a way that limits the Legislature's authority under article XIV, section 4." (Opn. at p. 15; see *McPherson, supra,* 38 Cal.4th at p. 1033 ["the authority of 'the Legislature' to legislate in a particular area must reasonably be interpreted to include, rather than to preclude, the right of the people through the initiative process to exercise similar legislative authority"]; *Rossi v. Brown* (1995) 9 Cal.4th 688, 715 ["[t]he people's reserved power of initiative *is* greater than the power of the legislative body"].) Intervenors and the Attorney General ably support the Court of Appeal's conclusion. (Intervenors' Answer Brief at pp. 29-37; State of California ["State"] Answer Brief on the Merits at pp. 24-30.)

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[10] (See *Comparison of Statewide Direct Democracy* <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://static1.squarespace.com/static/64fb2a824bc4a564c732b324/t/6548200595a47b3762cda899/1699225606214/A_Comparison_of_Statewide_IandR_Processes.pdf> [as of April 2, 2024].)

Amici join in their exposition of this issue, which disposes of this appeal.

### B. Article XIV, Section 4 Was Not Intended To Surreptitiously Abrogate The People's Initiative Power Over Workers' Compensation

SEIU disagrees, focusing myopically on a single clause in article XIV, section 4 providing "the Legislature" with "plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation." Since "the Legislature's power is 'unlimited by any provision of th[e] constitution,'" SEIU argues, "the Legislature's exercise of its article XIV power cannot be limited by a statutory initiative adopted pursuant to article II, section 8." (SEIU Reply at p. 10.)

Even if this Court were to reject the Court of Appeal's holding that one must read "the Legislature" in article XIV, section 4 to include the electorate acting through its initiative power, the Court should still affirm. This Court must harmonize the initiative power, as expressed in articles II and IV and manifested in Proposition 22, with article XIV, section 4, to the fullest extent possible, and this Court may readily do so, leaving Proposition 22 fully intact. Any other result would depart from the Court's "solemn duty to jealously guard the precious initiative power." (*Guardino, supra*, 11 Cal.4th at p. 253.)

Far from reallocating power from the People to the Legislature – or giving the Legislature immunity from initiative-based limitations – article XIV, section 4 merely gave the Legislature authority over workers' compensation previously

withheld by the judicial branch by substantive due process doctrines prevalent at the time. Article XX, section 21 and article XIV, section 4 were enacted in the heyday of the *Lochner* era to repeal *pro tanto* those provisions of the Constitution on which courts had relied to strike down such legislation. (*Western Indem. Co. v. Pillsbury* (1915) 170 Cal. 686, 694 [explaining that the question had arisen whether workers' compensation statutes "deprive[d] the employer of liberty or property without due process of law . . . ."].) "[T]he history behind section 21, article XX indicates that the section was added to the Constitution and then amended for the sole purpose of removing all doubts as to the constitutionality of the then existing workmen's compensation statutes." (*Mathews v. Workmen's Comp. Appeals Bd.* (1972) 6 Cal.3d 719, 734-735; see also *Costa v. Workers' Comp. Appeals Bd.* (1998) 65 Cal.App.4th 1177, 1185 ["The purpose of article XIV, section 4 was to remove any doubt about the constitutionality of the workers' compensation legislation . . . ."].)

Because article XIV, section 4 was enacted only to protect workers' compensation legislation from *court* challenge, its language does not mention the *initiative* power that the People enacted seven years before. In the 1918 ballot pamphlet supporting article XIV, section 4, the proponents did not even mention the initiative power and instead merely expressed an intention to put workers' compensation on a "firm constitutional basis." (Ballot Pamp., Gen. Elec. [November 5, 1918], argument in favor of Senate Constitutional Amendment No. 30, p. 56.)

If the proposed text of article XIV, section 4 or ballot materials had expressly stated that enactment would strip the People of their initiative power on any matter affecting workers' compensation – and they did anything but – that surely would have set off alarms in the minds of 1918 voters. Why, the People would have asked, would the Legislature seek to exclude workers' compensation – alone among all subjects – from the power of direct democracy the People had reserved for themselves only seven years earlier? The only logical answer would have been troubling: Legislators wanted for themselves the power, the patronage, and the favors that labor and business would pour into the issue. Had article XIV, section 4 in fact been written the way SEIU says it should be interpreted, one must presume the populist-driven voters would have rejected it as opening the door to corruption and at odds with the ultimate political control they had just reserved for themselves through the initiative power. The Court should decline to construe article XIV, section 4 as though it contains language exempting workers' compensation from the initiative power, when the People did not authorize such an exemption, and an informed electorate in 1918 never would have authorized such an exemption.

### C. The Court May Readily Construe Article XIV, Section 4 To Preserve The Initiative Power Over Workers' Compensation

The language of article XIV, section 4 permits a fair construction that upholds, rather than nullifies, the People's initiative power.

SEIU's primary argument is that article II, section 10(c), which requires the electorate to approve legislation amending or repealing an initiative statute, interferes with the Legislature's "plenary" power over workers' compensation, "unlimited" by other Constitutional provisions. (SEIU Opening Brief at pp. 23-24.) To make this argument, SEIU must take the position that Article XIV, section 4 overrides procedural provisions of the Constitution if they affect workers' compensation legislation. But SEIU's procedural-nullification theory would lead to absurd results, allowing the Legislature to enact a workers' compensation statute without complying with Constitutional provisions requiring (a) printing the bill 72 hours before the vote (as required by article IV, section 8(b)(2)); (b) a roll call vote in the journal (as prescribed by article IV, section 8(b)(3)); or (c) presentation of the bill to the Governor for signature or veto (as mandated by article IV, section 8).

SEIU acknowledges this difficulty, conceding article XIV, section 4 must be interpreted to preserve constitutional procedures affecting workers' compensation legislation. SEIU thus admits that article XIV, section 4 allows the Legislature to act only "by appropriate legislation," which, for example, "requires bicameralism and presentment" to the Governor. (SEIU Opening Brief at p. 30; SEIU Reply at p. 20.) Amici agree: The reference in article XIV, section 4 to "appropriate legislation" may and should be construed to include procedural provisions for legislation found elsewhere in the Constitution, including the presentment obligation and veto power found in article II,

section 8, *and* the voter approval requirement of Article II, section 10(c). One cannot conceive of legislation less "appropriate" than a statute nullifying a law the People overwhelmingly enacted.

Here, any future legislative attempt to reclassify app-based workers as employees would directly sabotage the will of the People expressed in Proposition 22; for that reason it would be plainly *inappropriate* legislation and thus not allowed under article XIV, section 4, *unless* approved by the electorate. The Court of Appeal agreed, rejecting SEIU's attempt to draw an artificial distinction between article II, section 10(c) and the Governor's veto power. (Opn. at p. 21 ["plaintiffs cite nothing to support this distinction; both such limitations derive from the Constitution and have equal force."].)

In short, just as article XIV, section 4 must be interpreted to preserve the bicameralism requirement and the Governor's veto power, so too must article XIV, section 4 preserve the requirement that any legislation restricting or repealing Section 7451 be "appropriate," and therefore subject to approval by the electorate. This construction of the competing constitutional provisions – which SEIU itself endorses for the parallel requirements of bicameralism and presentment – resolves the issue posed by this Court and requires affirmance of the decision of the Court of Appeal.

Moreover, even if the words "plenary" and "unlimited" somehow elevate the Legislature over the People (which they do not), article XIV, section 4 merely gives the Legislature authority

to "create" and "enforce" a workers' compensation system for employees. It does not give the Legislature exclusive authority to determine *which workers* are eligible to participate in the workers' compensation system. Instead, article XIV, section 4 merely provides the Legislature with authority to create and enforce liabilities on the part of employers "to compensate any or all of *their workers* for injury or disability ... incurred or sustained by the said workers in the *course of their employment* . . . ." (Cal. Const., art. XIV, § 4, italics added.)

Given the provision's precondition of an employment relationship, it is unsurprising that this Court has held that article XIV, section 4 does not authorize the Legislature to create "a liability on the part of any person to compensate the workmen of other persons, nor the dependents of workmen of other persons . . . ." (*Commercial Cas. Ins. Co. v. Industrial Acc. Com.* (1930) 211 Cal. 210, 217.) This is because the "phrase 'their workmen' necessarily confines the persons to be compensated to workmen who are *in the employ* of the person who is made liable." (*Ibid.,* italics added.)

Accordingly, even if article XIV, section 4 gave the Legislature authority that the People cannot exercise (which it does not), Proposition 22 is constitutionally valid because it does not curb the Legislature's power to "create" or "enforce" liabilities for employers vis-a-vis their employees. It merely clarifies that there *is* no employment relationship between app-based drivers and the network companies whose apps they use.

Similarly, article XIV, section 4 does not state that the Legislature has "exclusive" authority over workers' compensation. It provides only for "plenary" power, which the Court of Appeal accurately recognized means "complete" but "not necessarily exclusive." (Opn. at p. 13 [*citing McPherson, supra,* 38 Cal.4th at p. 1035].) And rather than providing only that the Legislature has power only to "create" and "enforce" a complete system of workers' compensation, article XIV, section 4 could have provided that the Legislature had the plenary power to "regulate workers' compensation and identify the workers subject to workers' compensation." It did not do so, and this Court should not interpret article XIV, section 4 as though it did. This Court's jurisprudence counsels that it do the opposite, *particularly* because Proposition 22 was enacted by the People through their initiative power.

In summary, accepting SEIU's arguments would undo much of the work of the last century and eviscerate the People's reserved right to override the Legislature. It would also bypass decades of precedent urging courts "to jealously guard this right of the people" by harmonizing constitutional provisions with the People's ultimate democratic power of initiative. This Court may readily construe article XIV, section 4 as consistent with Proposition 22, including Section 7451. It must do so to preserve the primacy of the initiative power and the ultimate expression of democracy that power embodies.

## IV. SEIU's Position Invites The Very Sort Of Special Interest Abuse The People Reserved The Initiative Power To Override

Ultimately SEIU's position defies common sense. What could possibly be the policy rationale for exempting workers' compensation, uniquely among all the subject matters of government, from the vote of the People? What about workers' compensation could warrant making it the exclusive province of the Legislature, insulated from the power of the People to alter the workers' compensation system by majority vote of the electorate or – as is the case here – to simply clarify that a new class of autonomous, independent workers arising from technology that did not exist a century ago should or should not be subject to the workers' compensation regime? There is no reason why workers' compensation should have a special exemption from the most fundamental democratic right of the electorate to enact the policy of the State.

SEIU does not seriously attempt to suggest any such reason. The dissent below tried, making the conclusory argument that article XIV, section 4 placed the Legislature at the "apex" of workers' compensation because it is a "complex new administrative system." (Opn. at p. 36.) But the Constitution places no simplicity requirement, or complexity limitation, on the initiative power. Neither the dissent nor SEIU identifies any jurisprudence supporting such a distinction. Rather, the electorate has repeatedly enacted initiatives creating similarly detailed administrative regimes, which have encountered no "complexity" challenge. (See, e.g., Proposition 24 [establishing

California Privacy Protection Agency and an array of civil and criminal laws], Proposition 64 [implementing detailed measures fundamentally altering marijuana regulation], and Proposition 103 [enacting detailed revisions to insurance policy rating and terms and significantly revising the processes of the Insurance Commissioner].) Accepting the argument that the Legislature should have primacy where the subject matter is "complex" would invite a challenge to *every* initiative, without any Constitutional basis.

In any event, Proposition 22 is anything but complex, for it simply classifies one readily-identifiable segment of workers as independent contractors. Even if there were some "complexity" justification for circumscribing the initiative power – and there is none – it would not apply here.

In short, rather than implementing some valid constitutional policy, the practical result of adopting SEIU's position would be to take away the issue of whether app-based workers should be classified as independent contractors from the voters and instead hand that issue over to special interest groups led by the SEIU. That is the opposite of what articles II and IV and a century of this Court's supporting jurisprudence require. Worse still, were the Court to accept SEIU's position, it would for the first time *ever* permit a subject matter challenge to a citizen initiative in California, inviting future attacks on initiatives by special interests, and undermining the People's most basic avenue for democracy.

## V. Should The Court Accept SEIU's Position On Article XIV, Section 4, It Should Preserve The Initiative Power and Proposition 22 To The Fullest Extent Possible

After correctly explaining that Section 7451 does not run afoul of article XIV, section 4, the State veers in another direction. The State argues that, although the dispute is not ripe, article II, section 10(c)'s requirement of a vote of the electorate might have to yield to article XIV, section 4 in the event the Legislature enacts workers' compensation legislation in the future that conflicts with Section 7451. (State Answer Brief, at pp. 37-46.)

The State is incorrect on both the procedural, ripeness issue and the latter substantive point. As explained above, the Court may and should adjudicate presently that (a) under *McPherson*, the initiative power is at least co-extensive with the Legislature's power, so Section 7451 does not violate article XIV, section 4; and (b) Section 7451, Proposition 22, and the initiative provisions of articles II and IV – including the article II, section 10(c) requirement of a voter approval of any legislation altering Proposition 22 – are readily harmonized with article XIV, section 4.

Nevertheless, the State's position is valid and consistent with preserving the fundamental initiative power of the electorate, to the following limited and *provisional* extent. *If*, despite the foregoing analysis, the Court were to accept SEIU's position and determine that the Legislature's plenary power over workers' compensation set forth in Article XIV, section 4 does

circumscribe the voters' initiative power, *then* the Court should confine that limitation of the initiative power to the smallest possible degree. Rather than nullify Proposition 22, the Court should simply limit the application of article II, section 10(c), and hold that if the Legislature validly enacts legislation that amends or repeals Proposition 22, that legislation need not be approved by the electorate to the extent, and only to the extent, the legislation directly addresses workers' compensation. Proposition 22, the will of the People, and nearly all of the initiative provisions of the Constitution would survive; the only effect would be to excuse the requirement of approval of the electorate touching upon workers' compensation. As the State suggests, if the Court were to conclude that Section 7451 cannot be reconciled with article XIV, section 4, the State's proposal would preserve the initiative power to the maximum extent possible and limit invalidation to the minimum extent necessary. (*People v. Kelly* (2010) 47 Cal.4th 1008, 1047.)

The severability provisions of Section 7467, subdivision (b), would pose no obstacle to this narrow result. The Court would not be holding any part of Section 7451 "invalid." Rather, it would be harmonizing constitutional provisions as fully as possible by declining to enforce the "effective only when approved by the electors" requirement of article II, section 10(c), only to the extent the Legislature's enactment directly addressed workers' compensation. Section 7451, Proposition 22, and the remainder of articles II and IV would remain fully effective, thereby most fully preserving the will of the People.

For the reasons already articulated, the Court need not, and should not, arrive at this result; it should simply affirm.

## CONCLUSION

Established constitutional principles, sound public policy, and – most fundamentally – the core democratic principle that the will of *the People* must prevail, all dictate that the Court should construe article XIV, section 4 to permit Proposition 22 and Section 7451.

Dated: April 3, 2024

ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP
MARSHALL C. WALLACE
ALEXANDER J. DOHERTY
KIMBERLY F. MACEY

By: 
MARSHALL C. WALLACE
Attorney for Amicus Curiae Citizens in Charge and The Initiative And Referendum Institute At The University Of Southern California

## CERTIFICATE OF WORD COUNT

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Dated: April 3, 2024

ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP
MARSHALL C. WALLACE
ALEXANDER J. DOHERTY
KIMBERLY F. MACEY

By: 
MARSHALL C. WALLACE
Attorney for Amicus Curiae Citizens in Charge and The Initiative And Referendum Institute At The University Of Southern California

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*Castellanos, et al., v. State of California, et al.*

California Supreme Court Case No. S279622

I, Janet Martorano, declare:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within action; my business address is Three Embarcadero Center, 12th Floor, San Francisco, California 94111. My email address is jmartorano@allenmatkins.com. On April 3, 2024, I served the following document(s):

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***AMICUS CURIAE* BRIEF OF CITIZENS IN CHARGE AND THE INITIATIVE AND REFERENDUM INSTITUTE AT THE UNIVERSITY OF SOUTHERN CALIFORNIA IN SUPPORT OF APPELLANTS**

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Thomas S. Patterson
**Senior Assistant Attorney General**
Samuel T. Harbourt
**Deputy Solicitor General**
Mark R. Beckington
**Supervising Deputy Attorney General**
Lara Haddad
**Deputy Attorney General**
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
(415) 510-3919
Samuel.Harbourt@doj.ca.gov
*Attorneys for Defendants-Appellants State of California and Katie Hagen*

Arthur G. Scotland
Sean P. Welch
David J. Lazarus
Kurt R. Oneto
**Neilsen Merksamer Parrinello Gross & Leoni, LLP**
1415 L Street, Suite 1200
Sacramento, CA 95814
swelch@nmgovlaw.com
*Attorneys for Intervenors-Appellants Protect App-Based Drivers and Services; Davis White; and Keith Yandell*

Jeffrey L. Fisher
**O'Melveny & Myers LLP**
2765 Sand Hill Road
Menlo Park, CA 94025
Telephone: (650) 473-2633
Facsimile: (650) 229.7520
jlfisher@omm.com
*Attorneys for Intervenors-Appellants*
*Protect App-Based Drivers and Services; Davis White;*
*and Keith Yandell*

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Alameda County Superior Court
Administration Building, Dept. 17
1221 Oak Street
Oakland, CA 94612

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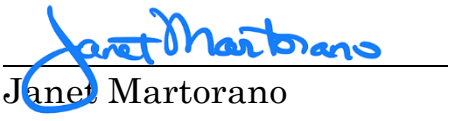

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**STATE OF CALIFORNIA**
Supreme Court of California

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Lower Court Case Number: **A163655**

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| Jeffrey L. Fisher<br>O'Melveny & Myers LLP<br>256040 | jlfisher@omm.com | e-Serve | 4/3/2024 2:16:53 PM |
| Sean Welch<br>Nielsen Merksamer<br>227101 | swelch@nmgovlaw.com | e-Serve | 4/3/2024 2:16:53 PM |
| Ryan Guillen<br>California State Legislature | Ryan.guillen@asm.ca.gov | e-Serve | 4/3/2024 2:16:53 PM |
| Michael Reich<br>University of California Berkeley | mreich@econ.berkeley.edu | e-Serve | 4/3/2024 2:16:53 PM |
| David Carrillo<br>UC Berkeley School of Law, California Constitution Center | carrillo@law.berkeley.edu | e-Serve | 4/3/2024 2:16:53 PM |

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| 177856 | | | |
| Scott Kronland<br>Altshuler Berzon LLP<br>171693 | skronland@altber.com | e-Serve | 4/3/2024 2:16:53 PM |
| Marshall Wallace<br>Allen Matkins Leck Gamble Mallory & Natsis LLP<br>127103 | mwallace@allenmatkins.com | e-Serve | 4/3/2024 2:16:53 PM |
| Jean Perley<br>Altshuler Berzon LLP | jperley@altber.com | e-Serve | 4/3/2024 2:16:53 PM |
| Robin Johansen<br>Olson Remcho, LLP<br>79084 | rjohansen@olsonremcho.com | e-Serve | 4/3/2024 2:16:53 PM |
| Erwin Chemerinsky<br>UC Berkeley School of Law<br>3122596 | echemerinsky@berkeley.edu | e-Serve | 4/3/2024 2:16:53 PM |
| David Rosenfeld<br>Weinberg, Roger & Rosenfeld<br>058163 | drosenfeld@unioncounsel.net | e-Serve | 4/3/2024 2:16:53 PM |
| Janill Richards<br>Office of the Attorney General<br>173817 | janill.richards@doj.ca.gov | e-Serve | 4/3/2024 2:16:53 PM |
| Molly Alarcon<br>San Francisco City Attorney's Office<br>315244 | Molly.Alarcon@sfcityatty.org | e-Serve | 4/3/2024 2:16:53 PM |
| Mitchell Keiter<br>Keiter Appellate Law<br>156755 | Mitchell.Keiter@gmail.com | e-Serve | 4/3/2024 2:16:53 PM |
| Janet Martorano<br>Allen Matkins Leck Gamble Mallory & Natsis LLP | jmartorano@allenmatkins.com | e-Serve | 4/3/2024 2:16:53 PM |
| Samuel Harbourt<br>California Department of Justice<br>313719 | samuel.harbourt@doj.ca.gov | e-Serve | 4/3/2024 2:16:53 PM |
| VEENA Dubal<br><br>249268 | VDUBAL@GMAIL.COM | e-Serve | 4/3/2024 2:16:53 PM |
| Julie Gutman Dickinson<br>Bush Gottlieb, a Law Corporation<br>148267 | JGD@bushgottlieb.com | e-Serve | 4/3/2024 2:16:53 PM |
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| Kenneth Trujillo-Jamiso<br>Willenken LLP<br>280212 | ktrujillo-jamison@willenken.com | e-Serve | 4/3/2024 2:16:53 PM |

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Wallace, Marshall (127103)

Last Name, First Name (PNum)

Allen Matkins Leck Gamble Mallory & Natsis LLP

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