

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; KEITH
YANDELL,

Intervenors and Appellants.

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

**APPLICATION OF FORMER CALIFORNIA ASSEMBLYMAN
WILLIAM R. BERRYHILL FOR LEAVE TO FILE AMICUS CURIAE
BRIEF IN SUPPORT OF DEFENDANTS AND APPELLANTS;
PROPOSED AMICUS CURIAE BRIEF**

STANLEY J. PANIKOWSKI, SBN 224232
DLA PIPER LLP (US)
4365 Executive Drive, Suite 1100
San Diego, CA 92121
Telephone: (858) 677-1400
stanley.panikowski@us.dlapiper.com

Attorneys for Amicus Curiae
FORMER CALIFORNIA ASSEMBLYMAN WILLIAM R. BERRYHILL

TABLE OF CONTENTS

	Page
APPLICATION	5
I. APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF	6
II. STATEMENT OF AMICUS CURIAE’S INTEREST	7
BRIEF.....	10
I. INTRODUCTION AND SUMMARY OF ARGUMENT.....	11
II. ARGUMENT	12
A. Plaintiffs Vastly Overstate the California Legislature’s Powers in the Area of Workers’ Compensation.....	12
B. The California Legislature’s Longstanding Historical Practice Refutes Plaintiffs’ Theory of Absolute and Unrestrained Power over Workers’ Compensation.....	14
C. The Executive Branch Likewise Has Not Treated the Legislature’s Power over Workers’ Compensation as Absolute or Unrestrained.	17
D. Plaintiffs’ Attempt to Distinguish <i>McPherson</i> Shortchanges the People’s Legislative Power.	20
E. Acceptance of Plaintiffs’ Arguments Would Eviscerate Direct Democracy in California.	24
III. CONCLUSION.....	28
WORD COUNT CERTIFICATE.....	29
PROOFS OF SERVICE	30

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization</i> (1978) 22 Cal.3d 208.....	26
<i>Amwest Surety Ins. Co. v. Wilson</i> (1995) 11 Cal.4th 1243, 1251	23
<i>Associated Home Builders of the Greater Eastbay, Inc. v. City of Livermore</i> (1976) 18 Cal.3d 582.....	11, 27
<i>Briggs v. Brown</i> (2017) 3 Cal.5th 808	11
<i>Cal. Cannabis Coalition v. City of Upland</i> (2017) 3 Cal.5th 924	11, 12
<i>Calfarm Ins. Co. v. Deukmejian</i> (1989) 48 Cal.3d 805.....	11
<i>Carlson v. Cory</i> (1983) 139 Cal.App.3d 724.....	26
<i>Fair Political Practices Com. v. Super. Ct.</i> (1979) 25 Cal.3d 33.....	20, 26
<i>Indep. Energy Producers Ass’n v. McPherson</i> (2006) 38 Cal.4th 1020	passim
<i>Legislature v. Eu</i> (1991) 54 Cal.3d 492.....	11
<i>Lukens v. Nye</i> (1909) 156 Cal. 498.....	19

TABLE OF AUTHORITIES (CONT.)

Page(s)

STATUTES

Lab. Code § 4703.5	8, 14
Pub. Util. Code § 330	21
Pub. Util. Code § 365	21
Pub. Util. Code § 365.5	21
Pub. Util. Code § 366	21

OTHER AUTHORITIES

Cal. Const., art. II, § 1	20
Cal. Const., art. IV, § 1	11
Cal. Const., art. IV, § 4	24, 25
Cal. Const., art. IV, § 8(a).....	15
Cal. Const., art. IV, § 8(b)(1)	15
Cal. Const., art. IV, § 8(c)(1).....	15
Cal. Const., art. IV, § 8(c)(3).....	16
Cal. Const., art. IV, § 8(d).....	16
Cal. Const., art. IV, § 10(a).....	15, 18
Cal. Const., art. V, § 1.....	19
Cal. Const., art. XII, § 5.....	passim
Cal. Const., art. XIV, § 4.....	12, 13

TABLE OF AUTHORITIES (CONT.)

	Page(s)
Cal. Rules of Court, rule 8.520(f)	6
Cal. Rules of Court, rule 8.520(f)(4)	9
Executive Order N-62-20	18
<i>California Legislative Information</i> , https://leginfo.legislature.ca.gov	18
<i>California Public Utilities Commission</i> , https://www.cpuc.ca.gov/about-cpuc/cpuc-overview/about-us	25
Official Voter Information Guide, Special Statewide Election (Nov. 8, 2005), https://vig.cdn.sos.ca.gov/2005/general/pdf/english.pdf	21

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE
BRIEF AND STATEMENT OF INTEREST OF AMICUS
CURIAE

TO THE HONORABLE CHIEF JUSTICE OF THE
CALIFORNIA SUPREME COURT:

**I. APPLICATION FOR LEAVE TO FILE AMICUS
CURIAE BRIEF**

Pursuant to California Rules of Court, rule 8.520, subd. (f), Former California Assemblyman William R. Berryhill (“Amicus Curiae”) respectfully requests leave to file the attached amicus curiae brief in support of Defendants and Appellants State of California and Katie Hagen.

This brief will assist the Court in deciding the issue presented by offering a legal and practical perspective on the California Legislature’s “plenary power” in the workers’ compensation area. Amicus Curiae served in the California State Assembly from 2008 to 2012. In the 2009-2010 legislative session, Amicus Curiae served as the Vice Chair of the Labor and Employment Committee. During his time in the Assembly, Amicus Curiae had substantial first-hand experience with workers’ compensation legislation.

Plaintiffs’ brief paints a picture of virtually unrestrained legislative power over workers’ compensation. Plaintiffs’ portrayal is unrecognizable to Amicus Curiae based on his experience in the Assembly and understanding of the

constitutional design. In reality, the Legislature acted within well-accepted constitutional constraints with respect to workers' compensation legislation. It did not treat workers' compensation as an area that stood outside ordinary constitutional processes and principles. And it certainly did not regard its authority over workers' compensation legislation to be entirely immune from the results of the voter initiative process in California.

Amicus Curiae respectfully submits that consideration of this perspective will reinforce the compelling legal arguments for affirming the Court of Appeal's decision made in the answer briefs on the merits.

This Application is timely made based on the April 3, 2024, deadline that this Court ordered for the filing and service of amicus briefs in this case. (See Extension of Time Order, Feb. 8, 2024.)

II. STATEMENT OF AMICUS CURIAE'S INTEREST

Amicus Curiae William R. Berryhill served in the California State Assembly from 2008 to 2012. He represented the 26th District, which covered parts of California's Central Valley. Before that, he was an elected member of the Ceres Unified School District Board of Trustees from 1996 to 2007. A lifelong Californian, he currently lives in Stanislaus County and works as a farmer, grape grower, and small businessperson.

During the 2009-2010 legislative session, Amicus Curiae served as Vice Chair of the Labor and Employment Committee of the California State Assembly. His other committee service during that session included: the Budget Committee; the

Elections and Redistricting Committee; and the Jobs, Economic Development, and the Economy Committee.

During the 2011-2012 legislative session, Amicus Curiae served as Vice Chair of the Business, Professions and Consumer Protection Committee. His other committee service during that session included: the Agriculture Committee; Budget Committee; Legislative Budget Committee; and Water, Parks and Wildlife Committee.

Amicus Curiae authored or otherwise sponsored numerous pieces of legislation during his service in the Assembly. One of these bills, discussed in greater detail in the proposed amicus brief, was Assembly Bill No. 1696. The act amended Section 4703.5 of the Labor Code, relating to workers' compensation, by extending the duration of workers' compensation benefit payments to children of certain public employees killed in the performance of duty. During the process of enacting the bill into law, the California Legislature followed all of the procedures applicable to legislation generally. There were no procedural shortcuts or rule exemptions based on the subject matter of the legislation.

As someone who was in the literal "room where it happened" on workers' compensation legislation, Amicus Curiae can offer insight that counters Plaintiffs' ahistorical and constitutionally flawed view of the Legislature's prerogatives. In addition, as a former California legislator and a lifelong citizen of California, Amicus Curiae has an interest in upholding the sanctity and efficacy of the voter initiative process. Amicus

Curiae believes that direct democracy is a vital constitutional constraint on the Legislature's exercise of its powers. This constraint governs workers' compensation law no less than any other area of law in which the People may exercise their own legislative power through the initiative process.

Pursuant to California Rules of Court, rule 8.520, subd. (f)(4), Amicus Curiae declares that no party or counsel for a party in the pending appeal authored the accompanying brief in whole or in part. Furthermore, no party, counsel for a party, or other person or entity has made a monetary contribution intended to fund the preparation or submission of the accompanying brief.

Dated: April 3, 2024

DLA PIPER LLP (US)

By: /s/ Stanley J. Panikowski
Stanley J. Panikowski
Attorneys for Amicus Curiae
FORMER CALIFORNIA ASSEMBLYMAN
WILLIAM R. BERRYHILL

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; KEITH
YANDELL,

Intervenors and Appellants.

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

**BRIEF OF AMICUS CURIAE FORMER CALIFORNIA
ASSEMBLYMAN WILLIAM R. BERRYHILL**

STANLEY J. PANIKOWSKI, SBN 224232
DLA PIPER LLP (US)
4365 Executive Drive, Suite 1100
San Diego, CA 92121
Telephone: (858) 677-1400
stanley.panikowski@us.dlapiper.com

Attorneys for Amicus Curiae
FORMER CALIFORNIA ASSEMBLYMAN WILLIAM R. BERRYHILL

I. INTRODUCTION AND SUMMARY OF ARGUMENT

The voter initiative process is sacred in California. This power that the People have reserved to themselves is “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, citations omitted.) California courts therefore have a “solemn duty” to “jealously guard” the initiative power. (*Legislature v. Eu* (1991) 54 Cal.3d 492, 501.)

Courts discharge this duty, in part, by liberally construing the initiative power. (See *Legislature v. Eu, supra*, 54 Cal.3d at p. 501 [“[T]he people reserve to themselves the powers of initiative and referendum.’ (Cal. Const., art. IV, § 1.) Accordingly, the initiative power must be *liberally construed* to promote the democratic process.”] [italics in original].) Any reasonable doubts must be resolved in favor of the voters’ exercise of their initiative power. (*Ibid.*) “[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.” (*Ibid.*, citing *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 814.) Proposition 22’s validity therefore need only be “fairly debatable” for it to be sustained. (*Briggs v. Brown* (2017) 3 Cal.5th 808, 827, citations and quotations omitted.)

Moreover, this Court has confirmed “the status of [the] presumption liberally construing the initiative power as a *paramount structural element* of our Constitution.” (*Cal. Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 946,

italics added.) This presumption upholds “the centrality of direct democracy in the California Constitution.” (*Ibid.*)

Plaintiffs’ arguments in this appeal turn these principles on their head. Plaintiffs take the California Legislature’s “plenary power” over workers’ compensation to extremes that neither the law nor history can bear. The Legislature’s power in this realm is not—as Plaintiffs would have it—unrestrained, boundless, or absolute. And Amicus Curiae’s first-hand experience of how the California Legislature exercised this power is markedly different from Plaintiff’s untenable view of that power’s scope.

Amicus Curiae supports affirmance of the Court of Appeal’s decision.

II. ARGUMENT

A. Plaintiffs Vastly Overstate the California Legislature’s Powers in the Area of Workers’ Compensation.

Plaintiffs’ radical claim that the voter initiative power “must yield” to the California Legislature on workers’ compensation gets it backwards. As the answer briefs on the merits have persuasively explained, Plaintiffs’ have improperly divorced the phrases “plenary power” and “unlimited by any provision of this Constitution” from their historical context and this Court’s precedent.

Plaintiffs’ assert there is a “direct conflict” between article XIV, section 4 on workers’ compensation and article II, section 10 on the voter initiative process. (Plaintiffs’ Opening Brief, at p.

27.) But this premise is false because, as this Court's precedent cited above shows, the initiative power that the People of California reserved to themselves takes precedence over the powers they vested in the Legislature.

Worse still, Plaintiffs make the brazen claim that the voter initiative power "must yield" to the Legislature's power in the workers' compensation area. (Plaintiffs' Opening Brief, at p. 27; see also Plaintiffs' Reply Brief, at pp. 15-16 [arguing Legislature's power "must prevail" if there is a conflict].) History and precedent teach exactly the opposite.

Plaintiffs also contend that article XIV, section 4 "elevates the Legislature's power with respect to workers' compensation over and above its ordinary lawmaking power as to other subjects." (Plaintiffs' Reply Brief, at p. 9.) Plaintiffs similarly assert that this provision "distinguished that power from other grants of lawmaking power to the Legislature." (*Id.*, at p. 14.) But the Constitution does not compare and contrast the Legislature's power over workers' compensation with other areas of lawmaking power. Nor does it give the Legislature boundless powers in that realm. Rather, as the answer briefs on the merits explain, article XIV, section 4 was enacted in 1918 to address a specific threat to workers' compensation laws that had arisen in that particular historical context. Plaintiffs' attempt to divorce the issue presented from that crucial context should be rejected.

B. The California Legislature’s Longstanding Historical Practice Refutes Plaintiffs’ Theory of Absolute and Unrestrained Power over Workers’ Compensation.

Plaintiffs’ flawed theory also does not reflect how the California Legislature has actually made law in the area of workers’ compensation. During his tenure as Vice Chair of the Labor and Employment Committee of the California State Assembly, Amicus Curiae authored a workers’ compensation bill that ultimately was enacted into law. The path of this bill—Assembly Bill No. 1696 (Stats. 2010, ch. 361, 2009–2010 Reg. Sess.) (AB 1696)—is an instructive example of how the Legislature handles workers’ compensation legislation generally.

Before AB 1696, the workers’ compensation system provided benefits to totally-dependent minor children of a deceased public employee only until the youngest child turned 18 years old. AB 1696 extended workers’ compensation death benefits to the children of police officers and firefighters killed in the line of duty until the youngest child reached 19 years of age if still attending high school. (See Labor Code § 4703.5.)

When working to enact AB 1696 into law, Amicus Curiae never believed—nor was told by Legislative Counsel, Committee staff, Assembly leadership, or other legislative colleagues—that the bill was exempt from ordinary constitutional lawmaking procedures. Instead, the Legislature followed every constitutional rule that governs every bill. No exceptions were made just because AB 1696 is a workers’ compensation bill.

For example:

- The Committee did not hear or act upon AB 1696 until the 31st day after it was introduced. (See Cal. Const., art. IV, § 8, subd. (a).)
- Neither the Assembly nor the Senate passed AB 1696 until after it was read by title on three separate days. (See Cal. Const., art. IV, § 8, subd. (b)(1).)
- After passing AB 1696, the Legislature presented the bill to the Governor for his signature or veto. (See Cal. Const., art. IV, § 10, subd. (a).)
- Even after the Governor signed AB 1696, it did not become effective until the next January 1 that followed 90 days from enactment in order to give the People the opportunity to file a referendum petition against the statute. (See Cal. Const., art. IV, § 8, subd. (c)(1); *Busch v. Turner* (1945) 26 Cal.2d 817, 823 [“Prior to the adoption of the referendum system, the Constitution contained no provision precluding immediate operation of statutes, and the effective dates of the statutes were determined by the Legislature. The obvious purpose of placing the ninety-day limitation in the Constitution was to give the people an opportunity to express their judgment as to the merits of a statute by filing a referendum petition.”] [citations and quotations omitted].)

All of these requirements are provisions of the California Constitution. Yet the Legislature did not believe, nor act as if, it was unrestrained by these constitutional provisions simply because AB 1696 was a workers' compensation bill.

Other instances of workers' compensation legislation make the same point—and perhaps even more strongly. For example, Senate Bill No. 899 (Stats. 2004, ch. 34, 2003–2004 Reg. Sess.) overhauled key aspects of the California workers' compensation system. And Senate Bill No. 1159 (Stats. 2020, ch. 85, 2019–2020 Reg. Sess.) redefined “injury” to include contracting COVID-19 and created a presumption that, under certain circumstances, the injury arose in the course of employment for purposes of workers' compensation.

Both of these statutes were adopted as “urgency statutes.” Article IV, section 8(c)(3) of the California Constitution provides that, unlike ordinary statutes, an “urgency statute” can take immediate effect upon enactment. But as the price of this immediacy, article IV, section 8(d) of the California Constitution establishes a much higher threshold for enactment as an emergency statute. Urgency statutes are “those necessary for the immediate preservation of the public peace, health, or safety.” (See Cal. Const., article IV, § 8, subd. (d).) One section of the bill must contain “[a] statement of facts constituting the necessity.” (*Ibid.*) Each house must pass the section and the bill itself “separately, each by rollcall vote entered in the journal.” (*Ibid.*) The most significant hurdle is that *two-thirds* of the membership

of each house must vote to approve the bill, as opposed to the majority vote required for most legislation. (*Ibid.*)

If there were ever a situation where it would make sense for the Legislature to claim a constitutional exemption for workers' compensation legislation, an urgency statute would seem to be it. Yet that is not what the Legislature did in either of these instances. Rather, the Legislature undertook the rigorous process of passing an urgency statute with complete fidelity to the constitutional requirements set forth above.

Under Plaintiffs' theory of unrestrained power, one would be logically forced to conclude that the Legislature's careful adherence to constitutional procedures in these examples was pointless folly. Amicus Curiae submits that, to the contrary, the Legislature followed the Constitution because it was *required* to do so, regardless of the subject matter. The Legislature did not go through all the constitutional paces just for fun or for show.

C. The Executive Branch Likewise Has Not Treated the Legislature's Power over Workers' Compensation as Absolute or Unrestrained.

Perhaps needless to say, California's executive and legislative branches do not always see eye-to-eye. This is true not just in matters of policy, but sometimes in matters of seemingly basic procedure. But on the issue of whether workers' compensation legislation is subject to ordinary constitutional constraints, historical practice shows that the two branches have been in lockstep.

Article IV, section 10(a) of the California Constitution provides: “Each bill passed by the Legislature shall be presented to the Governor. It becomes a statute if it is signed by the Governor. The Governor may veto it by returning it with any objections to the house of origin.” In the past quarter-century alone, California Governors have vetoed more than 50 workers’ compensation bills. (Info. available via Bill Search at *California Legislative Information*, <https://leginfo.legislature.ca.gov>.) Each Governor during this time vetoed multiple workers’ compensation bills: Governor Davis, Governor Schwarzenegger, Governor Brown, and Governor Newsom. A number of these vetoes across two different Governors occurred during Amicus Curiae’s service in the Assembly.

This collective gubernatorial spilling of much veto pen ink on workers’ compensation bills is yet another practical refutation of Plaintiffs’ theory of unbounded legislative power in this area. Amicus Curiae is not aware of *any* instance in which the Governor’s veto of a workers’ compensation bill elicited any objection that the Governor’s veto was unconstitutional due to the Legislature’s “plenary power, unlimited by any provision of this Constitution,” as to workers’ compensation.

The same is true of other executive actions regarding workers’ compensation. For example, in 2020, Governor Newsom issued Executive Order N-62-20. This executive order modified aspects of the workers’ compensation system in response to COVID-19. Specifically, Executive Order N-62-20 provided that all California employees who tested positive for COVID-19 within

14 days of working at a jobsite outside their home at the direction of their employer between certain dates were presumed to have contracted any COVID-19-related illness at work for the purposes of awarding workers' compensation benefits. Yet Amicus Curiae is not aware of any objection to this direct substantive modification of the workers' compensation system as somehow abrogating the Legislature's "plenary power."

Plaintiffs' attempt to explain away the executive branch's indispensable role in enacting a workers' compensation bill into law is unconvincing and unrealistic. Plaintiffs quote one of this Court's cases as follows: "While engaged in considering bills which have passed both houses of the legislature and which are presented to him for approval or disapproval, [the Governor] is acting in a legislative capacity and not as an executive." (Plaintiffs' Reply Brief, at p. 20, fn. 3 [quoting *Lukens v. Nye* (1909) 156 Cal. 498, 501] [alteration in original].)

But this Court's functional characterization of this capacity does not equal a pronouncement that the Governor is institutionally part of the Legislature while performing that function. Nor could it. The California Constitution states: "The supreme executive power of this State is vested in the Governor." (Cal. Const., art. V, § 1.) Nowhere does the Constitution state that the Governor is part of the Legislature, or somehow becomes part of the Legislature when considering or signing legislation. Rather, the Governor is at all times part of the executive branch, and the Legislature cannot bypass the Governor to enact workers' compensation laws.

Paradoxically, Plaintiffs try to shoehorn the head of the executive branch into the legislative branch while at the same time ousting the People from Plaintiffs' conception of legislative power. But this Court has recognized that the People have "reserved the legislative power to themselves" through the initiative process, and "there is no reason to hold that the people's power is more limited than that of the Legislature." (*Fair Political Practices Com. v. Super. Ct.* (1979) 25 Cal.3d 33, 42.) And the Constitution emphatically states: "All political power is inherent in the people." (Cal. Const., art. II, § 1.) Plaintiffs' attempt to reconfigure California's fundamental constitutional structure to achieve their preferred outcome in this case should be resoundingly rejected.

D. Plaintiffs' Attempt to Distinguish *McPherson* Shortchanges the People's Legislative Power.

The Legislature's "plenary power" with respect to workers' compensation does not displace the People's initiative power over that subject matter. (See *Indep. Energy Producers Ass'n v. McPherson* (2006) 38 Cal.4th 1020, 1043 (*McPherson*).) In fact, the People can choose to act *as* the Legislature by exercising their initiative power, for "references 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." (*Ibid.*)

Plaintiffs cannot plausibly deny these bedrock principles of California governance. Rather, Plaintiffs try to sidestep these principles by distinguishing *McPherson* in their reply brief. (See

Plaintiffs’ Reply Brief, at pp. 11-13.) But *McPherson* merely confirms that Plaintiffs’ argument is wrong.

McPherson involved article XII, section 5 of the California Constitution, which provides that “[t]he Legislature has plenary power, unlimited by the other provisions of this constitution but consistent with this article, to confer additional authority and jurisdiction upon the Public Utilities Commission.” As this Court explained, “the Court of Appeal interpreted [article XII, section 5] to mean that only the Legislature, and not the electorate through the initiative process, has the authority to enact statutory provisions that confer additional authority upon the PUC.” (*McPherson, supra*, 38 Cal.4th at p. 1023.)

The voter initiative at issue in *McPherson* was Proposition 80. This initiative was titled “The Repeal of Electricity Regulation and Blackout Prevention Act.” (See Official Voter Information Guide, Special Statewide Election (Nov. 8, 2005), <https://vig.cdn.sos.ca.gov/2005/general/pdf/english.pdf>, at pp. 72-76.) Proposition 80 not only would have conferred additional authority upon the PUC, but also would have *repealed in their entirety* certain sections of the Public Utilities Code that the Legislature previously had enacted. (See *id.*, at p. 72 [“This initiative measure amends, *repeals*, and adds sections to the Public Utilities Code”] [italics added]; *id.*, at pp. 73-74 [proposing to repeal sections 330, 365, 365.5, and 366 of the Public Utilities Code].) In addition, Proposition 80 restricted the Legislature’s power to amend the act and imposed a supermajority requirement to do so: “The Legislature may amend

this act only to achieve its purposes and intent, by legislation receiving at least a two-thirds vote of each house and signature by the Governor.” (*Id.*, at p. 76.) Though it failed at the ballot box, this Court nonetheless proceeded to review “the important legal issue whether article XII, section 5 . . . precludes the use of the initiative process to enact statutes conferring additional authority upon the PUC.” (*McPherson, supra*, 38 Cal.4th at p. 1024.)

On this question, this Court “conclude[d] that the Court of Appeal erred in interpreting article XII, section 5 as precluding the people, through the initiative process, from adopting a statutory provision that grants additional authority to the PUC.” (*McPherson, supra*, 38 Cal.4th at p. 1025.) This Court explained: “Past California decisions establish that language in the California Constitution recognizing the authority of the Legislature to take specified action generally is interpreted to encompass the exercise of such *legislative power* either by the Legislature or *by the people through the initiative process*.” (*Ibid.* [italics added].) The Court ultimately concluded: “Particularly when this language is read *in light of the origin and purpose of the provision*, it is clear that the constitutional provision cannot reasonably be interpreted to bar the people, through the initiative process, from enacting a statute or statutes conferring additional authority upon the PUC.” (*Ibid.* [italics added].)

The constitutional provision at issue in *McPherson*—just like here—used the phrase “plenary power, unlimited by the other provisions of this constitution.” (*McPherson, supra*, 38

Cal.4th at p. 1032, citations and quotations omitted) Yet—unlike Plaintiffs’ briefs here—the Court refused to construe this phrase in a wooden and overbroad fashion. (*Id.*, at p. 1025.) Rather, as the Court of Appeal’s decision and answer briefs on the merits do here, the Court interpreted the phrase “in light of [its] origin and purpose” to conclude it did not derogate from the People’s initiative power. (*Ibid.*; see also *id.*, at pp. 1037-1044 [interpreting article XII, section 5 in light of detailed historical analysis].) The Court did so despite the fact that Proposition 80 would have directly repealed multiple statutes that the Legislature had enacted and restricted the Legislature’s ability to amend Proposition 80 if passed. (See also *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1251 [“[U]nder article II, section 10, subdivision (c) [of the California Constitution], the voters have the power to decide whether or not the Legislature can amend or repeal initiative statutes. This power is absolute and includes the power to enable legislative amendment *subject to conditions attached by the voters.*”] [italics in original, citations and quotations omitted].) Plaintiffs’ attempt to distinguish *McPherson* thus fails.

Above all, this Court explained in *McPherson* that “the Court of Appeal’s limited view of the potential meaning of [article XII, section 5] fails adequately to take into account the numerous California decisions that have held, in a variety of contexts, that language in the California Constitution establishing 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.” (*McPherson*, *supra*, 38 Cal.4th at p. 1033.) Plaintiffs’ complaint that the Court of Appeal interpreted article IV, section 4 in *exactly* the manner that this Court instructed in *McPherson* is therefore ill-taken. (See Plaintiffs’ Opening Brief, at p. 27.) This rule instead is dispositive here, and the Court of Appeal’s decision should be affirmed.

E. Acceptance of Plaintiffs’ Arguments Would Eviscerate Direct Democracy in California.

During Amicus Curiae’s service in the Legislature, it was important to follow constitutional procedures for enacting legislation in every single instance—no exceptions. Yet Plaintiffs tell this Court not to worry about the unprecedented exception they advocate here, because “[o]nly two provisions of the California Constitution vest the Legislature with plenary power unlimited by other provisions of the Constitution.” (Plaintiffs’ Opening Brief, at p. 41.) Plaintiffs’ breezy dismissal of the People’s initiative power ignores two crucial realities.

First, the “[o]nly two provisions of the California Constitution” that Plaintiffs cite are no small deal. One is article XII, section 5—the constitutional provision at issue in *McPherson*. That provision, as described above, concerns the California Public Utilities Commission (CPUC). “The CPUC regulates privately owned electric, natural gas, telecommunications, water, railroad, rail transit, and passenger transportation companies, in addition to authorizing video

franchises.” (*California Public Utilities Commission*, <https://www.cpuc.ca.gov/about-cpuc/cpuc-overview/about-us>.) “California’s economy *depends* on the infrastructure the California Public Utilities Commission (CPUC) and utilities provide.” (*Ibid.* [italics added].) The fundamental economic activities within the CPUC’s jurisdiction profoundly affect the daily lives and livelihoods of all California citizens and their families. Preventing the voters from having a direct say in these matters is not just a nibble at the edges. Rather, it would cut a wide swath out of the heart of direct democracy.

The same is true of the other provision to which Plaintiffs refer: article IV, section 4, the one at issue in this case. As Vice Chair of the Labor and Employment Committee and the author of AB 1696, Amicus Curiae gained a deep understanding of the role that the workers’ compensation system plays in the lives of Californians. Moreover, Amicus Curiae appreciates the delicate balance that workers’ compensation issues often involve. The protection of workers and their families through the provision of benefits must coexist with policies that enable commerce to flourish in California and create the very economic opportunities that workers and their families need to thrive. Plaintiffs themselves take an expansive view of workers’ compensation issues, counting even the indirect effects of Proposition 22’s occupational classification test for app-based drivers as touching workers’ compensation. Plaintiffs’ flawed notion that any such tangential issues are beyond the reach of the voter’s initiative

power is a far-reaching proposition—one that, contrary to Plaintiffs’ urging, should not be taken so lightly.

Plaintiffs’ contention that these two “grants of plenary and unlimited power are narrowly focused” is therefore out of touch with the lives of Californians and how our State’s economy works. Their proposed exceptions to direct democracy are significant. If adopted, these exceptions would take away from the People a substantial amount of the initiative power they reserved to themselves in the Constitution. And future challengers to direct democracy will try to drive a truck through those holes.

Second, this Court has repeatedly proclaimed the sanctity and primacy of the People’s reserved power of initiative. (See, e.g., *Carlson v. Cory* (1983) 139 Cal.App.3d 724, 728 [“This reservation of power by the people is, in the sense that it gives them the final legislative word, a limitation upon the power of the Legislature.”]; *Fair Political Practices Com. v. Super. Ct.* (1979) 25 Cal.3d 33, 42 [explaining that because the People have “reserved the legislative power to themselves as well as having granted it to the Legislature, there is no reason to hold that the people’s power is more limited than that of the Legislature”]; *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 229 [holding that the People are free to use the initiative process as a “legislative battering ram” to change the law] [citation omitted].) Regardless of the number or breadth of the exceptions that Plaintiffs advocate, their arguments improperly strike at this fundamental principle of self-determination.

In this case, Plaintiffs’ policy preferences are on the receiving end of the “legislative battering ram” that the voter initiative process represents in California. In other instances, Plaintiffs’ policy preferences might garner the support of a majority of initiative voters. But this Court has made clear that direct democracy must be “jealously guarded” in California regardless of whether one likes the fruits of any particular exercise of that right. (*Associated Home Builders of the Greater Eastbay, Inc. v. City of Livermore, supra*, 18 Cal.3d at p. 591.)

During his service in the Legislature, Amicus Curiae saw first-hand the importance of a shared and steadfast commitment to constitutionally mandated procedures in the face of vigorous disagreements about the substance of policy. That commitment is no less at stake in this case. If the Legislature could disregard the results of direct democracy—the most basic and cherished feature of our constitutional landscape—then there is no other constitutional constraint on the workers’ compensation lawmaking process to which the Legislature would need to yield. Plaintiffs’ view is not the law. Nor is it the practice that Amicus Curiae ever followed or observed during his service in the California Assembly. Plaintiffs’ view was correctly rejected by the Court of Appeal. It should be rejected by this Court too.

III. CONCLUSION

The People of the State of California have reserved the initiative power to themselves. The People also conferred on the Legislature “plenary power” over workers’ compensation. Defying history and precedent, Plaintiffs try to conjure a conflict between those two powers in this case. But no such conflict exists. Rather, the portion of Proposition 22 at issue in this appeal is entirely consistent with California’s constitutional design and the historical practices of the California Legislature. The Court of Appeal’s decision therefore should be affirmed.

Dated: April 3, 2024

Respectfully submitted,

DLA PIPER LLP (US)

By: /s/ Stanley J. Panikowski
Stanley J. Panikowski

Attorneys for Amicus Curiae
FORMER CALIFORNIA ASSEMBLYMAN
WILLIAM R. BERRYHILL

WORD COUNT CERTIFICATE

This Amicus Curiae Brief complies with the type limitations of the California Rules of Court, Rules 8.204(b)-(c). This brief contains 13-point font, in Century Schoolbook typeface, and, together with the accompanying Application for leave to file it, contains 4,803 words, not including the Tables of Contents and Authorities, the caption pages, signature blocks, and this Word Count Certificate.

Dated: April 3, 2024

DLA PIPER LLP (US)

By: /s/ Stanley J. Panikowski
Stanley J. Panikowski

Attorneys for Amicus Curiae
FORMER CALIFORNIA ASSEMBLYMAN
WILLIAM R. BERRYHILL

PROOF OF SERVICE

I am employed in the County of San Diego, State of California, I am over the age of 18 and not a party to the within action. My business address is DLA Piper LLP (US), 4365 Executive Drive, Suite 1100, San Diego, CA 92121.

On April 3, 2024, I served the foregoing APPLICATION OF FORMER ASSEMBLYMAN WILLIAM R. BERRYHILL FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANTS AND APPELLANTS, STATE OF CALIFORNIA AND KATIE HAGEN; PROPOSED AMICUS CURIAE BRIEF in this action, as follows:

Trial Court:

René C. Davidson Courthouse
Alameda County Superior Court
Attn: Clerk of the Court
1225 Fallon Street
Oakland CA 94612

Court of Appeal:

California Court of Appeal
First Appellate District,
Division 4
Attn: Clerk of the Court
350 McAllister Street
San Francisco, CA 94102

[X] (VIA MAIL) I placed a true copy of the foregoing document in a sealed envelope addressed to each recipient as set forth above. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing at San Diego, California 92121. I am readily familiar with 's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day in the ordinary course of business. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 3, 2024, at San Diego, California.



Eloy Rodriguez

PROOF OF SERVICE

I am a citizen of the United States, over 18 years of age, and not a party to the within action. I am employed by the law firm of DLA Piper LLP (US). My business address is DLA Piper LLP (US), 4365 Executive Drive, Suite 1100, San Diego, CA 92121.

On April 3, 2024, I served the within APPLICATION OF FORMER ASSEMBLYMAN WILLIAM R. BERRYHILL FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANTS AND APPELLANTS, STATE OF CALIFORNIA AND KATIE HAGEN; PROPOSED AMICUS CURIAE BRIEF on the parties interested in this proceeding, as addressed below, by causing true copies thereof to be distributed as follows:

All Counsel—As listed on TrueFiling Servicing Notifications List (Via TrueFiling)

I am familiar with my firm's practice for collecting and processing correspondence for mailing and/or electronic service. Under that practice, any copies placed in the mail would be deposited with the service carrier that day in the ordinary course of business.

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

Executed April 3, 2024, at San Diego, California.



Eloy Rodriguez

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.
2. My email address used to e-serve: **stanley.panikowski@dlapiper.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
APPLICATION	Application of Former California Assemblyman William R. Berryhill for Leave to File Amicus Curiae Brief in support of Defendants and Appellants; Proposed Amicus Curiae Brief

Service Recipients:

Person Served	Email Address	Type	Date / Time
Brendan Begley Weintraub Tobin 202563	bbegley@weintraub.com	e-Serve	4/3/2024 4:23:42 PM
Michael Mongan Office of the Attorney General 250374	Michael.Mongan@doj.ca.gov	e-Serve	4/3/2024 4:23:42 PM
Arthur Scotland Nielsen Merksamer Parrinello Gross Leoni LLP	ascotland@nmgovlaw.com	e-Serve	4/3/2024 4:23:42 PM
David Lazarus NIELSEN MERKSAMER PARRINELLO GROSS & LEONI 304352	dlazarus@nmgovlaw.com	e-Serve	4/3/2024 4:23:42 PM
Andrew Lockard HEWGILL COBB & LOCKARD, APC 303900	contact@hcl-lawfirm.com	e-Serve	4/3/2024 4:23:42 PM
Kurt Oneto Nielsen Merksamer, LLP	kurt.oneto@gmail.com	e-Serve	4/3/2024 4:23:42 PM
Jeffrey L. Fisher O'Melveny & Myers LLP 256040	jlfisher@omm.com	e-Serve	4/3/2024 4:23:42 PM
Sean Welch Nielsen Merksamer 227101	swelch@nmgovlaw.com	e-Serve	4/3/2024 4:23:42 PM
Ryan Guillen California State Legislature	Ryan.guillen@asm.ca.gov	e-Serve	4/3/2024 4:23:42

			PM
Michael Reich University of California Berkeley	mreich@econ.berkeley.edu	e-Serve	4/3/2024 4:23:42 PM
David Carrillo UC Berkeley School of Law, California Constitution Center 177856	carrillo@law.berkeley.edu	e-Serve	4/3/2024 4:23:42 PM
Scott Kronland Altshuler Berzon LLP 171693	skronland@altber.com	e-Serve	4/3/2024 4:23:42 PM
Marshall Wallace Allen Matkins Leck Gamble Mallory & Natsis LLP 127103	mwallace@allenmatkins.com	e-Serve	4/3/2024 4:23:42 PM
Jean Perley Altshuler Berzon LLP	jperley@altber.com	e-Serve	4/3/2024 4:23:42 PM
Robin Johansen Olson Remcho, LLP 79084	rjohansen@olsonremcho.com	e-Serve	4/3/2024 4:23:42 PM
Erwin Chemerinsky UC Berkeley School of Law 3122596	echemerinsky@berkeley.edu	e-Serve	4/3/2024 4:23:42 PM
David Rosenfeld Weinberg, Roger & Rosenfeld 058163	drosenfeld@unioncounsel.net	e-Serve	4/3/2024 4:23:42 PM
Janill Richards Office of the Attorney General 173817	janill.richards@doj.ca.gov	e-Serve	4/3/2024 4:23:42 PM
Molly Alarcon San Francisco City Attorney's Office 315244	Molly.Alarcon@sfcityatty.org	e-Serve	4/3/2024 4:23:42 PM
Mitchell Keiter Keiter Appellate Law 156755	Mitchell.Keiter@gmail.com	e-Serve	4/3/2024 4:23:42 PM
Janet Martorano Allen Matkins Leck Gamble Mallory & Natsis LLP	jmartorano@allenmatkins.com	e-Serve	4/3/2024 4:23:42 PM
Samuel Harbourt California Department of Justice 313719	samuel.harbourt@doj.ca.gov	e-Serve	4/3/2024 4:23:42 PM
VEENA Dubal 249268	VDUBAL@GMAIL.COM	e-Serve	4/3/2024 4:23:42 PM
Julie Gutman Dickinson Bush Gottlieb, a Law Corporation 148267	JGD@bushgottlieb.com	e-Serve	4/3/2024 4:23:42 PM
George Warner Legal Aid at Work 320241	gwarner@legalaidatwork.org	e-Serve	4/3/2024 4:23:42 PM
Kimberly Macey Allen Matkins Leck Gamble Mallory & Natsis LLP	kmacey@allenmatkins.com	e-Serve	4/3/2024 4:23:42

342019			PM
Kenneth Trujillo-Jamiso Willenken LLP 280212	ktrujillo-jamison@willenken.com	e-Serve	4/3/2024 4:23:42 PM
Stanley Panikowski DLA Piper LLP (US) 224232	stanley.panikowski@dlapiper.com	e-Serve	4/3/2024 4:23:42 PM
Eloy Rodriguez	eloy.rodriguez@dlapiper.com	e-Serve	4/3/2024 4:23:42 PM
Kiersten Houst	Kiersten.Houst@us.dlapiper.com	e-Serve	4/3/2024 4:23:42 PM

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.

4/3/2024

Date

/s/Stanley Panikowski

Signature

Panikowski , Stanley (224232)

Last Name, First Name (PNum)

DLA Piper LLP (US)

Law Firm