Case No. S279622

IN THE SUPREME COURT OF CALIFORNIA

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

Plaintiffs and Respondents,

v.

STATE OF CALIFORNIA; 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 No. RG21088725
The Honorable Frank Roesch, Presiding

CALIFORNIA CHAMBER OF COMMERCE'S [PROPOSED] BRIEF AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS-APPELLANTS AND INTERVENORS-APPELLANTS

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The California Chamber of Commerce ("CalChamber") is a non-profit business association with more than 13,000 members, both individual and corporate, representing twenty-five percent of the State's private-sector workforce and virtually every economic interest in the state of California. While CalChamber represents several of the largest corporations in California, seventy percent of its members have 100 or fewer employees. CalChamber acts on behalf of the business community to improve the State's economic and jobs climate by representing business on a broad range of legislative, regulatory, and legal issues.

CalChamber has a strong interest in protecting the People's right to effect change through the initiative and referendum processes. As a fierce advocate for democratic processes and principles that express the will of the People, CalChamber is frequently involved in analyzing the impact of proposed ballot initiatives and referenda and providing accompanying guidance from a business perspective. CalChamber issues statements of endorsement and opposition for initiatives and referenda based on the interests of the California business community—a perspective that may otherwise go unrepresented or unvoiced.

CalChamber's support of the initiative and referendum process often extends to specific legislative efforts. In 2020, CalChamber supported Proposition 22 to ensure that thousands of workers continue to have access to flexible options for earning income. CalChamber believes supporting app-based drivers in the gig economy is critical to a diverse and robust economy. Proposition 22 also provides important clarity in determining who is an independent contractor to help reduce costly litigation on this issue. CalChamber strongly supported the initiative's wage and benefit guarantees, and other protections, for drivers and passengers.

CalChamber also has a significant interest in a responsible, sustainable workers' compensation system. To that end, CalChamber offers support to businesses seeking to comply with workers' compensation requirements. This support includes creating and offering an employers' workers' compensation checklist, producing workers' compensation pamphlets and required posters and notices for use by businesses, and compiling relevant resources on related employment laws in California. CalChamber also offers HRCalifornia, an online resource

intended to help its member businesses easily navigate and comply with California's complex world of employment law. CalChamber views being a partner to businesses seeking a single source of truth for compliance solutions and training—including on workers' compensation—as central to its mission.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court has long recognized "the fundamental right of the electorate to enact legislation through the initiative process." (*Taxpayers to Limit Campaign Spending v. Fair Political Practices Com.* (1990) 51 Cal.3d 744, 768.) Consistent with that robust power, the People adopted Proposition 22, which enacted new occupational classification standards for app-based drivers. Plaintiffs in this case, unhappy with how the democratic process played out, now seek to undermine the People's authority. Intervenor-Appellants ably chronicle the various flaws in Plaintiffs' position. This brief focuses on one particularly untenable premise on which Plaintiffs rely.

According to Plaintiffs, Article XIV, section 4 of the State constitution creates a one-way ratchet governing changes to the workers' compensation system through the ballot process, with only *expansion* permitted. This is so, they claim, because that

section authorizes the Legislature to enact a "complete system of workers' compensation." (Cal. Const., art. XIV, § 4.) Plaintiffs' theory is grounded in neither law nor history and improperly limits the ability of the People to reform the State's workers compensation system. That is the case for several reasons.

First, imposing a constraint that initiatives must only expand the workers' compensation system impermissibly limits the initiative rights reserved to the People. *Second*, the history of the workers' compensation program demonstrates a dynamic process of expansion, contraction, and refinement. Given this history, it would be inappropriate to restrict the ability of the People to accomplish similar changes to the workers' compensation system through the initiative process. *Third*, reading "complete" to mean "only enlarge," as Plaintiffs argue, creates a judicially unmanageable standard for resolving legal challenges. Plaintiffs' standard invites arbitrary and inconsistent line-drawing between acceptable and unacceptable efforts to amend workers' compensation in California, as any change can be said to make the system more "complete"—or less "complete" for that matter. And *fourth*, Plaintiffs' standard would require the workers' compensation system to grow ever

larger, regardless of the consequences for the system's overall sustainability.

ARGUMENT

I. THE CALIFORNIA CONSTITUTION RESERVES TO THE PEOPLE PLENARY POWER TO MODIFY THE WORKERS' COMPENSATION SYSTEM

A. The People's Power Under The Initiative Process Is Coextensive With The Legislature's Plenary Power

Article XIV, section 4 provides that the "Legislature" has "plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation." Plaintiffs contend (Opening Br. at p. 23) that Proposition 22 is invalid because it "is not a complete system of workers' compensation as defined in Article XIV or in any sense of the term." This purported defect stems from Proposition 22's development of classification standards for app-based drivers that increase the likelihood drivers will be classified as independent contractors, and therefore fall outside the workers' compensation system. In Plaintiffs' telling (*id.* at pp. 22–24), these changes render the system "incomplete." Plaintiffs' argument both misconstrues the relationship between the authority of the Legislature and the

People and ignores how the Legislature has previously exercised its "plenary" power under Article XIV, section 4 to modify the workers' compensation system.

This Court has explained that even when a constitutional provision—such as article XIV, section 4—vests "plenary" and "unlimited" power in the "Legislature," the People's power of "statutory initiative *is coextensive* with the power of the Legislature." (*Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal. 4th 1020, 1032, original italics; *Professional Engineers in Cal. Gov. v. Kempton* (2007) 40 Cal.4th 1016, 1042; see also Intervenor-Respondents Answering Br. at pp. 29–37.) Plaintiffs' interpretation of the "completeness" requirement as imposing a one-way ratchet would thus apply to both the Legislature and the People's reserved initiative power alike. Such a restraint on the legislative process is contrary to this Court's precedent, and clearly unsupported in history.

As to precedent, this Court has expressly acknowledged the Legislature's "[w]ide discretion" to change classifications for workers, even if these changes would exclude some workers from coverage. (*Mathews v. Workmen's Comp. Appeals Bd.* (1972) 6 Cal. 3d 719, 739; *accord Kempton*, *supra*, 40 Cal.4th at p. 1042;

Western Indemnity Co. v. Pillsbury (1915) 170 Cal. 686, 701–702.) More recently, the Court of Appeal rejected a constitutional challenge to a statute that permitted workers' compensation for injuries to the psyche only after six months' employment, even though such a change effectively excluded employees (such as students or seasonal workers) who were on the job for less than six months from benefits. (*Wal-Mart Stores v. Workers' Comp. Appeals Bd.* (2003) 112 Cal.App.4th 1435, 1442 & fn.24.) Because the "California Constitution does not make [a workers' right to benefits] absolute" (*ibid.*), this retrenchment of the system was permissible. (See also *ibid.* [Article XIV, section 4 "gives the Legislature 'plenary power' to establish a system of workers' compensation for 'any or all' workers; in enacting the statute, the Legislature has merely elected to exercise its power to exclude certain workers."].)

The Cout of Appeal's decision in *Bautista v. State of California* (2011), 201 Cal.App.4th 716, is a still more recent example of judicial rejection of a one-way ratchet. *Bautista* held, in response to a claim that certain regulations insufficiently protected farmworkers' workplace safety, that section 4 "does not create an affirmative duty on the part of the state." (*Id.*

at p. 726.) Under that logic, just as it was not mandatory to enact certain safety rules, so too is it not mandatory to include any particular group of workers in the workers' compensation system.

Under *Mathews*, *Wal-Mart Stores*, and *Bautista*, the Legislature unquestionably could have enacted Proposition 22. Because the People's authority under the initiative process is "*coextensive*" with the Legislature's (*McPherson*, *supra*, 38 Cal. 4th at p. 1032, original italics,) Article XIV, section 4 is likewise no bar to the means of enactment actually utilized.

The history of Article XIV, section 4's enactment confirms nothing in that provision created a one-way upwards ratchet on legislative authority to modify the workers' compensation system. As this Court explained, the purpose of enacting Article XIV, section 4 "was simply to remove any doubt as to the constitutionality of the existing workers' compensation legislation, and not to erect any new restrictions on the exercise of legislative power." (*City & County of S.F. v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 103, 114 (in bank).) Plaintiffs' efforts to read in a restriction on the legislative power—namely, that such power could not be used to make the workers'

compensation system less complete—is thus decidedly ahistorical.

B. The Legislature Has Repeatedly Reformed The Workers' Compensation System To Limit Workers' Compensation Claims

The history of legislative changes to the workers' compensation system also undermines Plaintiffs' "one-way ratchet" construction of Article XIV, section 4. Over time, the system has been adjusted, reformed, and changed, befitting a dynamic system that contracts, expands, and transforms based on the needs of workers and available resources. Such refinement of economic policy is a paradigmatic legislative function, which the Constitution allows the People as well as the Legislature to exercise.

Take the various legislative limitations placed on workers' compensation for psychiatric injuries. In 1989, Governor Deukmejian signed the Margolin-Bill Greene Workers' Compensation Reform Act of 1989. Because the system had been criticized for delays, costs, and complexity, the Act introduced a number of procedural and administrative reforms. One such reform was the appointment of independent medical evaluators to evaluate medical claims. The Act also established substantive

limits to benefits by, for example, heightening the threshold of compensability for psychiatric injuries. (*See* Orchik, Legislative Note, *Tackling Workers' Compensation in California: The Margolin–Bill Greene Workers' Compensation Reform Act of 1989* (1990) 21 Pac. L.J. 853, 871; see also *Hansen v. Workers' Compensation Appeals Bd.* (1993) 18 Cal.App.4th 1179, 1183.)

In the early 1990s, the Legislature further restricted the compensability of psychiatric injuries by enacting AB 971 (Peace) in July 1991 and SB 223 (Lockyer) in 1993. (Assem. Bill No. 971 (1991–1992 Reg. Sess.); Sen. Bill No. 223 (1993–1994 Reg. Sess.).) Both efforts aimed to combat fraud and reduce costs to employers by tightening requirements and improving processes. Among other changes, workers could now only receive compensation if they were employed by their employer for more than six months (Stats. 1991, ch. 115, § 4,) and only if the actual events of their employment predominated over all other causes of their injuries (Stats. 1993, ch. 1242, § 22.) These changes thus served to limit claims employees could pursue.

Other reforms further prove the nuanced and varied history of legislative changes to the workers' compensation system. For example, in 2002, a law known as AB 749 was

enacted. This statute, among other things, increased investigation and prosecution of workers' compensation fraud. (Assem. Bill No. 749 (2001–2002 Reg. Sess.).) And in 2003, two other laws—AB 227 and SB 228—standardized rates for medical care and surgery centers, and established fee schedules for prescription medications. As relevant here, these provisions also capped the number of chiropractor and physical therapy visits, further limiting the workers' compensation system to contain fraud and prevent abuse. (See also Assem. Bill No. 227 (2003–2004 Reg. Sess.); Sen. Bill No. 228 (2003-2004 Reg. Sess.).)

The workers' compensation system experienced arguably its most significant reform in 2004 with the enactment of SB 899. Seeking to contain rampant costs and fraud, the Legislature passed the statute after Governor Schwarzenegger threatened to seek to accomplish reform through the other legislative avenue: a ballot initiative. (*Schwarzenegger Signs Workers' Compensation Reform Bill*, Cal. Healthline (daily ed. Apr. 20, 2004) https://bit.ly/4aOWikP; Sen. Bill No. 899 (2003-2004 Reg. Sess.).) The measure, which was sponsored by CalChamber as part of its efforts to represent business interests in the State, made fundamental changes in the determination of level of injury and

disability and aligned the State with nationally recognized guidelines for treatment. (Cal. Lab. Code, §§ 3207, 4604.5, 4656.) For instance, the statute abolished a presumption that the employee's treating doctor's recommendation was correct, and underscored that the worker had the burden to prove medical necessity. (See, e.g., *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (2008) 44 Cal.4th 230, 239–243.) SB 899 also reduced the availability of temporary disability benefits and occupational therapy visits, and entirely removed vocational rehabilitation as an available benefit. (Cal. Lab. Code, §§ 3207, 4604.5, 4656.)

In the past few years, the Legislature has enacted yet more change to the workers' compensation system inconsistent with a one-way upwards ratchet. Take, for example, AB 2257, which imposed on several varied categories of workers a classification standard that increased the likelihood those workers would be deemed independent contractors, and so fall outside the workers' compensation system. (Assem. Bill No. 2257 (2019–2020 Reg. Sess.); Cal. Lab. Code, §§ 2775–2785.)

This history of legislative activity directly contradicts Plaintiffs' narrative (Opening Br. at pp. 23, 26–27) that the

workers' compensation system operates only as a one-way ratchet, with access only able to be expanded, never restricted. On the contrary, several of the reforms over the past three decades have limited the workers' compensation system, removing some types of claims entirely and excluding some classes of claimants from benefits, as part of efforts to strengthen the sustainability of the system overall.

II. "COMPLETENESS" IS AN UNTENABLE BASIS TO DETERMINE THE CONSTITUTIONALITY OF CHANGES TO THE WORKERS' COMPENSATION SYSTEM

In their reply brief, Plaintiffs argue (at p. 25) that some initiatives, but not others, are within the People's power to enact. In Plaintiffs' telling (*ibid.*), whether Article XIV, section 4 permits an initiative depends on whether that initiative "creat[es] and enforce[s] … a complete system of workers' compensation." Plaintiffs contend that Proposition 22 fails this standard because, in their view, the initiative restricts, not expands, protections.

That cannot be right. After all, properly calibrating how "complete" the workers' compensation system is involves "difficult and policy-laden questions" best left to "the legislative branch." (*Campaign for Quality Education v. State of California* (2016)

246 Cal.App.4th 896, 902–903.) And regardless, the utter unworkability of a "completeness" standard militates against reading the State Constitution to have imposed a one-way ratchet on changes to the workers' compensation system.

Critically, no discernable benchmark exists for determining what makes a workers' compensation program "complete." Plaintiffs fail to supply such a benchmark, and the Legislature's various changes to the workers' compensation system over time underscore that whether a given change makes the system more "complete" is fundamentally in the eyes of the beholder. For example, psychiatric injuries were not originally compensable at all when Article XIV, section 4 was enacted. Accordingly, the significant limits placed on such injuries in the late 1980s and early 1990s, *supra* at pp. 13–14, arguably resulted in a more "complete" system than the one at the time of Article XIV, section 4's enactment.

The SB 899 reforms further demonstrate the "completeness" standard's nebulousness. Even though those reforms made receipt of benefits harder for workers, *supra* at pp. 13–16, the system was arguably more "complete" following SB 899 because the likelihood that *deserving* claimants would receive

compensation increased, given the reduction in fraudulent claims. Can a workers' compensation system significantly vulnerable to fraud truly be regarded as "complete" until such vulnerabilities are fixed?

Plaintiffs' "completeness" theory is not just inherently ambiguous, it is also deeply irrational. Under Plaintiffs' theory, the People (and therefore the Legislature, given the coextensive nature of who may exercise legislative power, *supra* at p. 10) are perpetually obligated to push the workers' compensation system to an ever-increasing level of coverage, notwithstanding what perpetually-growing coverage means for the viability of the system over the long term. In other words, neither the People nor the Legislature would have power to do anything to the workers' compensation system that might mean someone, somewhere, sees her payments reduced, even if doing so would put the system on firmer footing.

That makes little sense. After all, workers are most helped by a responsible, sustainable workers' compensation program that minimizes abuse and maximizes results for workers and businesses. It is this type of thriving, economically sound workers' compensation system that CalChamber vigorously

strives to support and maintain. It would be poor policy indeed to allow the Legislature and the People only to increase availability of workers' compensation at the expense of the system itself or the business community. Plaintiffs' framework ignores that a healthy, robust workers' compensation system requires refinement and amendment to ensure the system's longevity.

CONCLUSION

For the foregoing reasons, the Court should affirm.

DATED: April 3, 2024

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to Rule of Court 8.504(d)(1), I hereby certify that, including footnotes, the foregoing brief contains 2,783 words. This word count excludes the exempted portions of the brief as provided in Rule of Court 8.504(d)(3). As permitted by Rule of Court 8.504(d)(1), the undersigned has relied on the word count feature of Microsoft Word for Office 365, the computer program used to prepare this brief, in preparing this certificate.

DATED: April 3, 2024

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APPLICATION OF CALIFORNIA CHAMBER OF COMMERCE FOR LEAVE TO FILE ACCOMPANYING BRIEF AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS-APPELLANTS AND INTERVENORS-APPELLANTS

CALIFORNIA CHAMBER OF COMMERCE'S [PROPOSED] BRIEF AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS-RESPONDENTS AND INTERVENORS-RESPONDENTS

APPLICATION FOR PRO HAC VICE ADMISSION OF KELLY P. DUNBAR
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
VERIFIED APPLICATION OF KELLY P. DUNBAR

APPLICATION FOR PRO HAC VICE ADMISSION OF SAMUEL M. STRONGIN
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
VERIFIED APPLICATION OF SAMUEL M. STRONGIN

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

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

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STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
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Case Name: **CASTELLANOS v. STATE OF CALIFORNIA (PROTECT APP-BASED DRIVERS AND SERVICES)**
Case Number: **S279622**
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APPLICATION	Application of California Chamber of Commerce for Leave to File Accompanying Brief as Amicus Curiae in Support of Defendants-Appellants and Intervenors-Appellants
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4/3/2024

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