No. S279622

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

HECTOR CASTELLANOS, *et al.*,
Plaintiffs and Respondents,
v.
STATE OF CALIFORNIA, *et al.*,
Defendants and Appellants,

PROTECT APP-BASED DRIVERS AND SERVICES, *et al.*,
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

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF HOWARD JARVIS TAXPAYERS ASSOCIATION IN SUPPORT OF INTERVENORS AND APPELLANTS

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APPLICATION FOR LEAVE TO FILE

Pursuant to Rule 8.520(f), leave is hereby requested to file the attached Brief of Amicus Howard Jarvis Taxpayers Association in support of Intervenors and Appellants Protect App-Based Drivers and Services, *et al.*, in the above-captioned action.

INTEREST OF AMICUS

The late Howard Jarvis, founder of the Howard Jarvis Taxpayers Association (HJTA), along with Paul Gann, authored and sponsored Proposition 13, an initiative constitutional amendment passed by Californians in 1978 and foundational to taxpayers to this day. (Cal. Const., art. XIII A.) Since then, HJTA has supported and facilitated the people's initiative power to enact additional statewide taxpayer protections. (See e.g., Cal. Const., art. XIII B, XIII C, XIII D; Gov. Code, §§ 53720-53730.)

This case presents a challenge to the people's initiative power. At issue is whether the people's work enacting Business and Professions Code section 7451 is cancelled by the Legislature's authority "to create, and enforce a complete system of workers' compensation, by appropriate legislation." (Cal. Const., art. XIV, § 4.)

HJTA must frequently defend the initiative power in court to enforce its own initiatives, and has a vested interest in cases such as this related to current activity following *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, in which its attorneys served to represent the City of Upland. HJTA

therefore has a significant interest in this case.

AUTHORSHIP AND FUNDING

No party or attorney to this litigation authored the attached amicus brief or any part thereof. No one other than HJTA made a monetary contribution toward the preparation or submission of the brief.

POINTS TO BE ARGUED

Amicus will argue that cases before and after *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924 affirm the validity of Proposition 22 as an exercise of the initiative power. Amicus will also argue that the coextensive rule of the initiative power applies and is consistent with affirming the Court of Appeal.

Amicus will further argue that the ballot materials from 1911 and 1918 affirm the validity of Proposition 22 because the initiative power was never intended to be diminished by the 1911 and 1918 amendments. Certain word choices may have created a perceived ambiguity, but the legislative history demonstrates that words such as "plenary" and "unlimited" were meant to address due process and separation of powers issues. There was no clear intent expressed anywhere to restrict the initiative power exercised here in enacting Business and Professions Code section 7451.

Amicus will further argue that more emphasis must be placed on the 1911 election. The text of article XIV, section 4, and

the initiative power are easily harmonized, but even if that is not so, article II, section 10(b) requires finding that the initiative power prevails, because a higher percentage of voters approved the initiative power in 1911 than approved the functional shift of workplace tort doctrine management to the legislative branch that same year.

DATED: April 3, 2024

Respectfully submitted,

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BRIEF OF AMICUS CURIAE

ARGUMENT

I

Castellanos' Argument 1.F. Is Mistaken. The "Clear Statement" Cases Affirm Californians' Right To Enact Proposition 22.

Castellanos[1] argues that this Court's "clear statement" rule from *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924 should not apply because this case is not about procedure. (AOB at 38-39.) It is true that this is instead a case about substance, specifically Proposition 22's core content giving legal effect to evolved work modalities. This includes "side hustles" on top of traditional employment, a lifestyle now adopted by about 50% of all Americans, and thus naturally wanting flexibility given the total hours these Americans dedicate to working.

Amicus HJTA, which has litigated or been amicus in most of the referenced cases, agrees there are important differences between procedural and substantive questions. However, amicus must disagree with Castellanos here. Several of the post - "clear statement" cases indeed reference clear substantive limits on the initiative power. And so, they do not support Castellanos'

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[1] Amicus uses "Castellanos" throughout to refer to all Plaintiffs and Respondents Hector Castellanos, Joseph Delgado, Saori Okawa, Michael Robinson, Service Employees International Union California State Council, and Service Employees International Union.

position.

The "clear statement" rule Castellanos references comes from *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924. This Court declared that "the best way to implement our oft-repeated references to the importance of the initiative is to avoid presuming that a provision constrains that power without a clear statement or equivalent evidence that such was the provision's intended purpose." (*Id.* at 946.) Castellanos also references *Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245 for the point that "the electorate does not generally follow 'legislative' procedures when exercising the initiative power." (*Id.* at 252, n. 5.)

In the post - "clear statement" cases, however, courts of appeal have actually acknowledged express self-imposed substantive limits on local initiative power in charters. These acknowledgments have been used to defeat the argument (advanced and lost by amicus) that such limits were meant to be both procedural and substantive, thus concluding that they are firmly substantive and substantive only. (*Howard Jarvis Taxpayers Assn. v. City and County of San Francisco* (2021) 60 Cal.App.5th 227, 237 ["the charter imposes a substantive limit on the initiative power"]; *City and County of San Francisco v. All Persons Interested in the Matter of Proposition C* (2020) 51 Cal.App.5th 703, 724 ["the charter imposes a substantive limit on the initiative power"]; *City and County of San Francisco v. All Persons Interested in the Matter of Proposition G* (2021) 66

Cal.App.5th 1058, 1078 ["the [San Francisco] Charter 'imposes a substantive limit on the initiative power,'"]; see also *Safe Life Caregivers v. City of Los Angeles* (2016) 243 Cal.App.4th 1029, 1046 [pre-"clear statement" case in agreement that Los Angeles Charter section 450 is Angelenos' chosen substantive limit on their initiative power]; *City and County of San Francisco v. Patterson* (1988) 202 Cal.App.3d 95, 100-101 ["Under the relevant provisions of section 9.108 of the San Francisco City Charter, … the initiative power of the people is no broader in scope than the power of the board of supervisors."]; *Pettye v. City and County of San Francisco* (2004) 118 Cal.App.4th 233, 240; *Rossi v. Brown* (1995) 9 Cal.4th 688, 697.)

A charter is the constitution of a city. (*In re Pfahler* (1906) 150 Cal. 71, 82.) And the specific statements in the San Francisco and Los Angeles charters have no doubt been "clear statements" substantively limiting voter initiatives. In San Francisco, for example, each was akin to defining the substance of a valid initiative as "any ordinance, act or other measure which is within the power conferred upon the board of supervisors to enact." (*City & County of San Francisco v. Patterson*, 202 Cal.App.3d at 101.) This is very specific language addressed to the initiative power, and there is no similar language anywhere here, defeating Castellanos' argument.

In stark contrast to local constitutional provisions expressly limiting an initiative's substance, the California Constitution does *not* clearly, or with equivalent evidence, limit substance on

the topic of defining employment for purposes of worker's compensation. Nothing in article XIV, section 4 clearly indicates that an initiative cannot define work for purposes of the worker's compensation system[2]. Nor does anything in article XIV, section 4 clearly limit the initiative power as a whole. Rather, Castellanos admits that "plenary" does not mean "exclusive." (AOB at 40; Cal. Const., art. XIV, § 4.)

And turning to the general rule known as the "coextensive" rule, it is inherently against exclusivity. The people's legislative power is coextensive with the governing body's power. (*California Cannabis Coalition v. City of Upland*, 3 Cal.5th at 942 ["We explained that 'the power of the people through the statutory initiative is coextensive with the power of the Legislature.'," citing *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 675].) Accordingly, citing *Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, the Court of Appeal correctly put this rule in context here: "*McPherson* expressly approved 'long-standing California decisions establishing that 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.' (*McPherson*, *supra*, 38 Cal.4th at p. 1043.)." (*Castellanos v. Cal.*

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[2] If "plenary" could be proven to have meant "exclusive" of the initiative power, the Legislature might have exclusive power over the system, but it would still not be clear that it would have exclusive power to define work or workers. Section 7451 would still be valid.

(2023) 89 Cal.App.5th 131, 149.)

As no express substantive limit nor exclusivity can be applied here, California's electorate had as much right to enact Business & Professions Code section 7451 as the Legislature would have had to do so. Castellanos' case fails under the clear statement rule and the coextensive rule.

II

Ballot Materials For The 1911 And 1918 Workers' Compensation Propositions Demonstrate That They Had Nothing To Do With The Initiative Power.

Deeper history likewise rebuts Castellanos' arguments. The ballot materials of the 1911 and 1918 elections show that the concerns behind article XIV, section 4's word choices were due process (i.e., potential takings claims of employers) and separation of powers (i.e., how to transfer a traditionally judicial function to the legislative branch). On the bumpy road of making these word choices, Californians never expressed any intent to diminish the initiative power. Thus, it must not be diminished here today.

Two of the October 1911 ballot measures are relevant to this case – Proposition 7 (Senate Constitutional Amendment No. 22) by which the people reserved to themselves the powers of initiative and referendum, and Proposition 10 (Senate Constitutional Amendment No. 32) which authorized the Legislature to create a workers' compensation system. (https://repository.uchastings.

edu/cgi/viewcontent.cgi?article=1023&context=ca_ballot_props.)[3] Both passed.

Proposition 10 was placed on the ballot to ratify and strengthen an existing act of the Legislature named the "Roseberry Act." The Roseberry Act had established a voluntary system of workers' compensation. When an employer elected to participate in the workers' compensation system, employee injury claims were resolved by the Industrial Accident Commission rather than the courts.

It was in 1911 that power was transferred from the judicial branch —under common law tort doctrine — to the legislative branch: "[T]he Roseberry Act established a voluntary system of workmen's compensation. The liability of a participating employer for his employee's injuries was no longer governed by common law tort doctrines. Rather, the act imposed liability for compensation 'without regard to negligence' for injuries accidentally sustained by an employee while 'performing service growing out of and incidental to' their employment." (*Mathews v. Workers' Comp. Appeals Bd.* (1972) 6 Cal.3d 719, 729 [quoting Stats. 1911, ch. 399, § 3, pp. 796-797].)

The official summary for Proposition 10 described it as "an amendment to the constitution of the State of California, adding to

[3] The Repository of California Ballot Propositions and Initiatives maintained by the University of California's Hastings Law Library contains photographic reproductions of the actual ballot materials from past elections.

article XX a new section to be numbered section 21, relating to compensation for industrial accidents." (https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1023&context =ca_ballot_props at PDF p. 14.)

The proposed new section 21 read: "The Legislature may by appropriate legislation create and enforce a liability on the part of all employers to compensate their employees for any injury incurred by the said employees in the course of their employment irrespective of the fault of either party. The Legislature may provide for the settlement of any disputes arising under the legislation contemplated by this section, by arbitration, or by an industrial accident board, by the courts, or by either any or all of these agencies, *anything in this constitution to the contrary notwithstanding*.[4] (*Id.*)

Here, the parties disagree over the intent of the preceding italicized phrase. The arguments for and against the measure, however, disclose its true intent. Senator Roseberry wrote the argument for Proposition 10 and explained why it contained the phrase "*anything in this constitution to the contrary notwithstanding*." He wrote:

[4] Unless noted otherwise, all emphasis is added.

> "[Existing] law prohibits any *compulsory* scheme for compensation for accidents out of court by arbitration, industrial accident boards, etc., as it is construed by the courts to be a taking of property 'without due process of law.' The recent employers' liability act was made *elective* to avoid this constitutional objection. The proposed amendment is intended to remove this constitutional prohibition and will empower the legislature to enact a compensation law that may be compulsory on all employers. *This is the sole object of the proposed amendment*." (*Id.*)

Thus, the voters' relevant empowerment of the Legislature occurred in 1911, not 1918. Senator Roseberry's argument makes it clear that the sole purpose of the "notwithstanding" phrase was to protect the (forthcoming) compulsory workers' compensation system from any claim that it violated the state constitution's due process clause.[5] It had nothing to do with the initiative power.

Following the voters' authorization in 1911, the Legislature passed the 1913 Boynton Act to make the workers' compensation system compulsory. "Because few employers had chosen coverage under the voluntary plan established by the Roseberry Act, in 1913 the Legislature exercised the power conferred upon it by section 21 of article XX and enacted a *compulsory* scheme of workmen's compensation. Officially titled the 'workmen's compensation,

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[5] Then article I, section 13 read (as it still reads today in article I, section 7), "A person may not be deprived of life, liberty, or property without due process of law ...."

insurance and safety act,' the new act was popularly known as the "Boynton Act." Aside from changing workmen's compensation from a voluntary to a compulsory system, the Boynton Act strengthened the powers of the Industrial Accident Commission, extended greater control over compensation insurers, and gave the commission power to prescribe safety regulations for employers. Section 12 of the Boynton Act carried forward the provisions of section 3 of the Roseberry Act, imposing liability for compensation 'without regard to negligence.' " (*Mathews v. Workers' Comp. Appeals Bd.*, 6 Cal.3d at 730-31 [citations and paragraph break omitted].)

The Legislature made additional changes in 1917. "In 1917 the Legislature substantially revised the existing law to meet problems which had arisen under the Boynton Act. The 'workmen's compensation, insurance and safety act of 1917' (Stats. 1917, ch. 586, § 2, p. 833) represented the full evolution of the workmen's compensation system. The policy behind the statute and its goals were summarized in its first section." (*Id.*) "Section 1 of the workmen's compensation, insurance and safety act of 1917 provided: ... 'A complete system of workmen's compensation includes ... the establishment and management of a state compensation insurance fund, full provision for otherwise securing the payment of compensation, and full provision for vesting *power, authority and jurisdiction in an administrative body with all the requisite governmental functions* to determine any matter arising under this act to the end that the administration of this act shall accomplish substantial justice in all cases ... without incumbrance

of any character." (*Id.*, n.8.)

Concerns arose that the broad definitions in the 1917 Act actually fell outside the Legislature's authority under article XX, section 21, as enacted in 1911 via Proposition 10. Concerns also arose that the judicial powers conferred on the Commission, an executive branch agency, violated the constitutional separation of powers doctrine. To address these concerns, the Legislature placed Proposition 23 on the ballot in 1918 to amend article XX, section 21. It passed.

Notably, Proposition 23 jettisoned the terms "employer" and "employee," which the Legislature had previously defined in the 1917 Act. The text now read, "The legislature is hereby expressly vested with plenary power, unlimited by any provision of this constitution, to create and enforce a complete system of workmen's compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any and all persons to compensate any or all of their workmen for injury or disability, and their dependents for death incurred or sustained by the said workmen in the course of their employment, irrespective of the fault of any party." (https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1127&context =ca_ballot_props, at PDF pp. 56-57.)[6]

In the same way that the "notwithstanding" phrase had been

[6] Proposition 23 also proposed other powers for the Legislature, including power to create a state insurance fund and to impose minimum workplace safety standards.

added to Proposition 10 in 1911 to protect the Roseberry Act from claims that it violated the state's due process clause, Proposition 23's "unlimited" phrase protected the 1917 Act against the same concern as well as concerns that, by expanding the jurisdiction and powers of the Industrial Accident Commission, it violated the separation of powers. So yet again, this word choice had nothing to do with the initiative power.

Although no senator wrote an argument against Proposition 23, the argument in favor of the measure acknowledged these objections but insisted that a "complete plan" of worker's compensation must include, as "an essential component of one act ... insurance regulation, including state participation in insurance of this character [and] an administrative system involving the exercise of *both judicial and executive functions*." (https://repository.uchastings .edu/cgi/viewcontent.cgi?article=1127&context=ca_ballot_props, at PDF p. 57.) The concern was separation of powers. The initiative power was still entirely untouched.

Here, Castellanos claims that the "notwithstanding" and "unlimited" phrases in the 1911 and 1918 propositions were intended to prohibit the voters from exercising their power of initiative. As this historical summary proves, however, their explanation has no historical support. Those phrases were intended to protect existing statutes from challenges that they took property from employers without due process or violated the separation of powers. They were not at all aimed at the people's

initiative power.

III

Harmonization Is Simple And, If Not, Article II, Section 10(b) Would Require Finding Proposition 22 Valid.

The above historical summary shows that it was not in the year 1918 when the Legislature was first charged with creating a workers' compensation system unlimited by any provision of the constitution. That task was entrusted to the Legislature in 1911. The 1918 amendment added nothing that could be construed as newly implicating the initiative power.

Since both the initiative power (Proposition 7) and the creation of a workers' compensation system (Proposition 10) were on the same ballot at the same election, at least from a chronological standpoint the two propositions have equal dignity.

Since both propositions were on the ballot simultaneously, the first duty is to harmonize them, if possible. (*McWilliams v. City of Long Beach* (2013) 56 Cal.4th 613, 627.) Either the clear statement rule or coextensive rule accomplish this, as discussed above.

The above historical summary also provides grounds for harmonizing the two provisions. Article XIV, section 4, gives the Legislature plenary power to create a workers' compensation system that imposes on employers, regardless of fault, liability for injuries or death suffered by employees during the course of their employment, notwithstanding the due process clause or the fact

that fault-finding and liability are generally within the exclusive purview of the Judiciary. However, in article IV, section 1, the people added a *caveat* to the Legislature's power to make laws: "*but* the people *reserve to themselves* the powers of initiative and referendum." The Legislature's power comes from the constitution. The people's power does not rely on the constitution. Rather, "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.) It is this "inherent" power that the people reserved when they reserved the power of initiative.

At most, Castellanos has pointed out a perceived ambiguity, which is easily harmonized. The "unlimited" phrase in Proposition 23 can serve its full intended purpose without stepping on the people's initiative power, "one of the most precious rights of our democratic process," and one which the courts have a duty to "jealously guard." (*California Cannabis Coalition v. City of Upland*, 3 Cal.5th at 934, 948.)

However, if the two propositions on the same 1911 ballot were considered irreconcilable, then the initiative power must still prevail due to another important constitutional rule. Under article II, section 10(b): "If provisions of two or more measures approved at the same election conflict, the provisions of the measure receiving the highest number of affirmative votes shall prevail." Proposition 7, reserving the initiative power, received more votes than Proposition 10, granting the Legislature power to establish a

system of workers' compensation. Proposition 10 (workers' compensation) received 147,567 affirmative votes, or 69.34% of the total. Proposition 7 (initiative and referendum) received 168,744 votes, or 76.41% of the total. (https://ballotpedia.org/California_1911_ballot_propositions.)

CONCLUSION

For the reasons above, the Court of Appeal should be affirmed.

DATED: April 3, 2024

Respectfully submitted,

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WORD COUNT CERTIFICATION

I certify, pursuant to Rule 8.204(c) and Rule 8.520 of the California Rules of Court, that the attached amicus curiae brief, including footnotes but excluding the caption page, tables, application, and this certification, as measured by the word count of the computer program used to prepare this pleading, contains 2,965 words.

DATED: April 3, 2024

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PROOF OF SERVICE

I, Kiaya Algea, declare:

I am employed in the County of Sacramento, California. I am over the age of 18 years, and not a party to the within action. My business address is: 1201 K Street, Suite 1030, Sacramento, California 95814. My electronic service address is: kiaya@hjta.org. On April 3, 2024, I served: **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF HOWARD JARVIS TAXPAYERS ASSOCIATION IN SUPPORT OF INTERVENORS AND APPELLANTS** on the interested parties below, using the following means:

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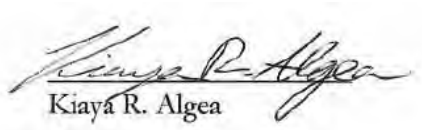

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STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

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Case Number: **S279622**
Lower Court Case Number: **A163655**

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Hon. Frank Roesch	Alameda County Superior Court, Administration Building, Dept. 17, 1221 Oak Street Oakland, CA 94612	Mail	4/3/2024 5:02:44 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/Kiaya Algea

Signature

Dougherty, Laura (255855)

Last Name, First Name (PNum)

Howard Jarvis Taxpayers Foundation

Law Firm