Case No. S279622

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

HECTOR CASTELLANOS, et al.,
Plaintiffs-Respondents,

vs.

STATE OF CALIFORNIA, et al.,
Defendants-Appellants,

PROTECT APP-BASED DRIVERS AND SERVICES, et al.
Intervenors-Appellants.

First Appellate District, No. A163655
Alameda County Superior Court, No. RG21088725
Hon. Frank Roesch, Judge

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF THE CITY AND COUNTY OF SAN FRANCISCO, THE CITY OF OAKLAND, THE CITY OF SAN DIEGO, AND THE COUNTY OF SANTA CLARA

DAVID CHIU, State Bar #189542
City Attorney, City and County of San Francisco
YVONNE R. MERÉ, State Bar #173594
Chief Deputy City Attorney
MATTHEW D. GOLDBERG, State Bar #240776
Chief Worker Protection Attorney
IAN ELIASOPH, State Bar # 227557
MOLLY J. ALARCON, State Bar #315244
Deputy City Attorneys
1 Dr. Carlton B. Goodlett Pl., Room 234
San Francisco, California 94102-5408
Telephone: (415) 554-4686
E-Mail: matthew.goldberg@sfcityatty.org

Attorneys for Amicus Curiae City and County of San Francisco

BARBARA J. PARKER, State Bar #069722
City Attorney, City of Oakland
MARIA BEE, State Bar #167716
Chief Assistant City Attorney
DIVYA MUSINIPALLY, State Bar #316114
Deputy City Attorney
One Frank H. Ogawa Plaza, 6th Floor
Oakland, California 94612
Telephone: (510) 238-3601
E-mail: dmusinipally@oaklandcityattorney.org

Attorneys for Amicus Curiae the City of Oakland

MARA W. ELLIOTT, State Bar #175466
City Attorney, City of San Diego
MARK ANKCORN, State Bar #166871
Senior Chief Deputy City Attorney
ERIC LAGUARDIA, State Bar #272791
KEVIN KING, State Bar #309397
JULIE RAU, State Bar #317658
Deputy City Attorneys
1200 Third Avenue, Suite 1100
San Diego, California 92101-4100
Telephone: (619) 533-5403
E-mail: ELaGuardia@sandiego.gov

Attorneys for Amicus Curiae the City of San Diego

TONY LOPRESTI, State Bar #289269
County Counsel, County of Santa Clara
KAVITA NARAYAN, State Bar #264191
MEREDITH A. JOHNSON, State Bar #291018
RAPHAEL N. RAJENDRA, State Bar #255096
70 West Hedding Street
East Wing, Ninth Floor
San José, California 95110-1770
Telephone: (408) 299-5900
E-Mail: raphael.rajendra@cco.sccgov.org

Attorneys for Amicus Curiae the County of Santa Clara

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFFS-RESPONDENTS

Pursuant to California Rule of Court 8.520(f), the City and County of San Francisco, the City of Oakland, the City of San Diego, and the County of Santa Clara hereby request permission to file the attached brief as amici curiae supporting Plaintiffs-Respondents Hector Castellanos, et al. This application is timely made within 30 days of the filing of the last party brief.

Amici are California municipalities that provide for the health and welfare of residents and workers within our jurisdictions. To promote the general welfare, Amici enforce workplace standards and requirements that protect workers and promote fundamental fairness for all Californians. This includes a comprehensive set of safeguards and benefits established by state law and supplemented in substantial ways by California cities and counties, such as minimum wages, overtime premium pay, reimbursement for business expenses, workers' compensation coverage for on-the-job injuries, paid sick leave, and wage replacement programs like disability insurance and paid family leave.

Amici also provide public services such as housing assistance, nutrition support, and other social services to residents and workers, particularly low-wage earners. Amici protect workers by passing and enforcing municipal laws such as minimum wage floors and sick leave ordinances, which protect workers' livelihoods and contribute to the overall health of our economies. The San Francisco Office of Labor Standards

Enforcement, the Oakland Department of Workplace and Employment Standards, the County of Santa Clara Office of Labor Standards Enforcement, and the San Diego Compliance Department, agencies within our localities, investigate labor violations, including misclassification, and return millions of dollars in wages to workers each year when enforcing municipal labor laws. Amici's experiences with labor standards enforcement have shown that when workers, especially low-wage earners and people of color, receive robust employment protections and benefits, our communities are stronger. Conversely, when workers are improperly denied these rights and receive far fewer of these protections and benefits, working families struggle, our economies are weaker, and our jurisdictions must often step in to provide additional support.

Whether Proposition 22, challenged in this case, validly strips important benefits and protections from app-based drivers—or the initiative must fall because it is unconstitutional—matters to our jurisdictions, and to the residents, workers, and families within them. Prior to the enactment of Proposition 22, state and local law promised a full slate of protections to app-based drivers. And our jurisdictions are committed to ensuring that drivers secure these rights. (See, e.g., Lab. Code, § 2775; see also *People v. Uber Technologies, Inc.* (2020) 56 Cal.App.5th 266, 293, as modified on denial of rehg. (Nov. 20, 2020), review den. (Feb. 10, 2021) [upholding trial court finding of likelihood of success on the merits of claims that ride-hail companies misclassified drivers] (*People v. Uber*).) As

recognized by the trial court, those important protections were eliminated by a constitutionally infirm initiative.

If Proposition 22 is deemed valid, our jurisdictions will continue to expend resources to support those drivers, their families, and the broader economy—resources that we otherwise would not have to expend. Amici estimate that tens of thousands, and as many as hundreds of thousands, of app-based drivers live and work in San Francisco, Oakland, San Diego, and Santa Clara. Thus, the outcome of this appeal will directly impact our jurisdictions and residents.

No party or counsel for a party has authored any part of the attached brief. Likewise, no party or counsel for any party has made a monetary contribution intended to fund the preparation or submission of this brief.

Dated: April 3, 2024

Respectfully submitted,

DAVID CHIU
City Attorney
YVONNE R. MERÉ
Chief Deputy City Attorney
IAN ELIASOPH
MOLLY J. ALARCON
Deputy City Attorneys

By: */s/ Matthew D. Goldberg*
MATTHEW D. GOLDBERG
Chief Worker Protection Attorney

Attorneys for Amicus Curiae
City and County of San Francisco

BARBARA J. PARKER
City Attorney
MARIA BEE
Chief Assistant City Attorney

By: */s/ Divya Musinipally*
DIVYA MUSINIPALLY
Deputy City Attorney

Attorneys for Amicus Curiae
City of Oakland

MARA W. ELLIOTT
City Attorney
MARK ANKCORN
Senior Chief Deputy City Attorney
KEVIN KING
JULIE RAU
Deputy City Attorneys

By: */s/ Eric LaGuardia*
ERIC LAGUARDIA
Deputy City Attorney

Attorneys for Amicus Curiae
City of San Diego

TONY LOPRESTI
County Counsel
KAVITA NARAYAN
Chief Assistant County Counsel
MEREDITH A. JOHNSON
Lead Deputy County Counsel

By: */s/ Raphael N. Rajendra*
RAPHAEL N. RAJENDRA
Deputy County Counsel

Attorneys for Amicus Curiae
County of Santa Clara

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MOLLY J. ALARCON, State Bar #315244
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1 Dr. Carlton B. Goodlett Pl., Room 234
San Francisco, California 94102-5408
Telephone: (415) 554-4686
E-Mail: matthew.goldberg@sfcityatty.org

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MARIA BEE, State Bar #167716
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DIVYA MUSINIPALLY, State Bar #316114
Deputy City Attorney
One Frank H. Ogawa Plaza, 6th Floor
Oakland, California 94612
Telephone: (510) 238-3601
E-mail: dmusinipally@oaklandcityattorney.org

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JULIE RAU, State Bar #317658
Deputy City Attorneys
1200 Third Avenue, Suite 1100
San Diego, California 92101-4100
Telephone: (619) 533-5403
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TONY LOPRESTI, State Bar #289269
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MEREDITH A. JOHNSON, State Bar #291018
RAPHAEL N. RAJENDRA, State Bar #255096
70 West Hedding Street
East Wing, Ninth Floor
San José, California 95110-1770
Telephone: (408) 299-5900
E-Mail: raphael.rajendra@cco.sccgov.org

Attorneys for Amicus Curiae the County of Santa Clara

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INTRODUCTION

In recent years, widespread employee misclassification has deprived California workers of hard-won rights and protections. Just as the California Legislature and public regulators, including Amici, began to crack down on this menace, Proposition 22 was approved in 2020 following the most expensive campaign to support a ballot proposition in United States history.

The adverse consequences followed quickly. Proposition 22 strips a century's worth of employment protections—covering compensation (e.g., minimum wages, overtime pay, and expense reimbursements), meal and rest periods, sick leave and health benefits, safety and health protections, anti-retaliation, unemployment insurance, disability insurance, paid family leave, and workers' compensation—from an entire class of workers.

But Proposition 22's sponsors over-reached. The law impermissibly overrides the California Constitution's explicit delegation of authority over workers' compensation to the Legislature. Therefore, by its own terms, Proposition 22 is invalid in its entirety.

ARGUMENT

I. Proposition 22 Conflicts with the California Constitution.

Amici agree with Plaintiffs-Respondents' arguments that Bus. & Prof. Code, § 7451 conflicts with article XIV, section 4 of the California Constitution and, therefore, that Proposition 22, by its own terms, is invalid in its entirety. Amici further agree with

Plaintiffs-Respondents that the invalidation of Proposition 22 would not have broader implications for the initiative power. Amici will not repeat those arguments here.

II. Proposition 22 is Bad Policy That Harms Workers and Our Municipalities.

Amici municipalities write separately to emphasize how a ruling upholding Proposition 22, despite its constitutional infirmities, will continue to harm our jurisdictions, including the workers, residents, and public services within them.

A. Proposition 22 Is a New Form of Worker Misclassification.

To understand the true nature of Proposition 22 requires a short, three-part historical tour: California's longstanding commitment to protecting its workers through strong employment laws, the rise of misclassification as the principal method to circumvent these protections, and, finally, the statutory and enforcement backlash to misclassification. This historical context helps show the true intent of Proposition 22. It is simply worker misclassification in new form: the designation of app-based drivers as independent contractors (rather than employees), effectuated through an unconstitutional statutory initiative.

1. California has a long, rich history of protecting its workers through statutory rights and benefits. Over a century ago, the California Legislature sought to eliminate unpermitted child labor. (Stats. 1905, ch. 17.) Shortly thereafter, it established the Industrial Welfare Commission (IWC), and delegated to it the

power "to fix minimum wages, maximum hours of work, and standard conditions of labor." (*Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038, 1045, citations and internal quotations omitted (*Frlekin*).) To achieve these goals, the IWC promulgated a series of industry- and occupation-specific "wage orders," now codified in the California Code of Regulations. (*Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 581; see Cal. Code Regs., tit. 8, § 11000 et seq.)

In the ensuing decades, the California Legislature and countless California cities and counties, including amici jurisdictions, have enacted laws to provide California employees crucial rights and benefits, covering: employee compensation (e.g., minimum wages (Lab. Code, §§ 1182.12, 1197),[1] overtime pay (Lab. Code, § 510), business expense reimbursements (Lab. Code, § 2802), meal and rest periods (Lab. Code, §§ 226.7, 512), sick leave and health benefits (Lab. Code, § 245 et seq.),[2] safety and health protections (Lab. Code, § 6300 et seq.), notice of layoffs (Lab. Code, § 1400 et seq.), retaliation (Lab. Code, §§ 98.6, subd. (a), 132a, subd. (1), 6310, subd. (a)), unemployment insurance (Unemp. Ins. Code, § 100 et seq.), disability insurance (Unemp. Ins. Code, § 2601 et seq.), paid family leave (Unemp Ins.

[1] Amici San Francisco, Oakland, and San Diego have enacted local minimum wage laws. (See San Francisco Labor & Employment Code (S.F. Lab. & Emp. Code), art. 1; Oakland Municipal Code (Oak. Mun. Code), § 5.92.020; San Diego Municipal Code (S.D. Mun. Code), ch. 3, art. 9, § 39.0101 et seq.)

[2] Amici San Francisco, Oakland, and San Diego have enacted local sick leave and health care laws. (See S.F. Lab. & Emp. Code, art. 11 [sick leave]; S.F. Lab. & Emp. Code, art. 21 [health care], Oak. Mun. Code, § 5.92.030 [sick leave]; and S.D. Mun. Code, ch. 3, art. 9, § 39.0101 et seq. [sick leave].)

Code, § 3300 et seq.),[3] and workers' compensation (Lab. Code, § 3200 et seq.). The Legislature has also enacted various enforcement mechanisms to secure these rights, including the Labor Code Private Attorneys General Act of 2004 and the Wage Theft Prevention Act of 2011.

These laws "reflect the strong public policy favoring protection of workers' general welfare and society's interest in a stable job market." (*Cash v. Winn* (2012) 205 Cal.App.4th 1285, 1297, internal quotations omitted.) They "are to be construed so as to promote employee protection." (*Frlekin, supra,* 8 Cal.5th at p. 1046, internal quotations omitted.)

2. As California and its localities has enacted more laws to protect employees, unscrupulous employers have increasingly sought to evade them. In recent years, the chief method of evasion has been misclassification—i.e., treating workers as independent contractors when they are, in fact, employees.

In *Dynamex Operations W., Inc. v. Superior Court* (2018) 4 Cal.5th 903, rehearing denied (June 20, 2018) (*Dynamex*), this Court succinctly distilled the incentives and consequences associated with worker misclassification:

> [T]he risk that workers who should be treated as employees may be improperly misclassified as independent contractors is significant in light of the potentially substantial economic incentives that a business may have in mischaracterizing some workers as independent contractors. Such incentives include the unfair competitive advantage the business may obtain over competitors that properly classify similar workers as employees

[3] Amici San Francisco enacted a paid parental leave law. (S.F. Lab. & Emp. Code, art. 14.)

> and that thereby assume the fiscal and other responsibilities and burdens that an employer owes to its employees. In recent years, the relevant regulatory agencies of both the federal and state governments have declared that the misclassification of workers as independent contractors rather than employees is a very serious problem, depriving federal and state governments of billions of dollars in tax revenue and millions of workers of the labor law protections to which they are entitled.

(*Id.* at p. 913, footnote omitted.)

One prominent study estimates that companies avoid up to thirty percent of payroll, equipment, benefits, and tax costs by misclassifying workers as independent contractors. (National Employment Law Project, *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries* (Oct. 26, 2020) <https://tinyurl.com/5ezvfbte> [as of Mar. 31, 2024].)

These powerful incentives have taken hold of many employers and industries. Employee misclassification is a persistent problem in many of California's high-growth industries, including home care, janitorial, trucking, delivery, construction, personal services, hospitality and restaurants and, more recently, in app-dispatched jobs.

According to a National Employment Law Project report, state-level task forces, commissions, and research teams (using agency audits along with unemployment insurance and workers' compensation data) have concluded that "10 to 30 percent of employers (or more) misclassify their employees as independent contractors, which indicates that several million workers nationally may be misclassified." (National Employment Law

Project, *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries* (Oct. 26 2020) <https://tinyurl. com/4zrfptpk> [as of Mar. 31, 2024] pp. 2-6.)

3. In response to the growing problem of worker misclassification, the Legislature and public agencies have sought to crack down. Soon after *Dynamex*, the Legislature codified and extended the decision by enacting Assembly Bill 5 (AB5). (Stats. 2019, ch. 296). In so doing, the Legislature agreed with this Court's findings regarding "the harm to misclassified workers who lose significant workplace protections, the unfairness to employers who must compete with companies that misclassify, and the loss to the state of needed revenue from companies that use misclassification to avoid [financial] obligations." (Stats. 2019, ch. 296, § 1, subd. (b).) In enacting AB5, and codifying the ABC Test, the Legislature sought "to ensure workers who are currently exploited by being misclassified as independent contractors … have the basic rights and protections they deserve under the law, including a minimum wage, workers' compensation … , unemployment insurance, paid sick leave, and paid family leave." (*Id.* at subd. (e).)

The Legislature also empowered various California public entities—including some amici—to prosecute civil actions and obtain "injunctive relief to prevent the continued misclassification of employees as independent contractors." (Lab. Code, § 2786; Stats. 2020, ch. 38 (A.B. 2257).)

These developments enabled these municipalities and other California public entities, who have witnessed first-hand the proliferation of worker misclassification in our jurisdictions, to effectively combat this pernicious practice. Here are just a few of the enforcement actions in recent years where we have recovered millions of dollars in unpaid wages and required businesses to reclassify their workers:

- In November 2021, San Francisco resolved an investigation against DoorDash for over $5 million in restitution for healthcare benefits for nearly 4,500 misclassified delivery drivers (San Francisco City Attorney's Office, *San Francisco Secures Over $5 Million Settlement for DoorDash Workers* (Nov. 22, 2021) <https://tinyurl.com/mvruv42e> [as of Mar. 31, 2024]);
- In October 2022, San Diego resolved a statewide misclassification lawsuit against Instacart for $40 million in unpaid wages for 125,000 California Instacart workers (San Diego City Attorney's Office, *City Attorney Delivers for Instacart Workers* (Oct. 10. 2022) <https://tinyurl.com/yf9hn5sc> [as of Mar. 31, 2024]);
- In January 2023, San Francisco resolved an investigation against Instacart for over $5 million in restitution for over 5,000 misclassified delivery drivers who were denied their right to health care expenditures under San Francisco law (San Francisco City Attorney's Office, *San Francisco secures over $5 million settlement for*

Instacart workers (Jan. 12, 2023) <https://tinyurl.com/mrydujr8> [as of Mar. 31, 2024]); and

- In February 2024, San Francisco secured a judgment and injunction to resolve litigation against Qwick, Inc., a hospitality staffing company, for misclassifying thousands of temporary workers. The judgment requires Qwick to pay $1.5 million to over 6,000 workers in unpaid overtime wages, establish a sick leave bank for eligible workers of up to $350,000, and permanently reclassify its thousands of temporary workers as employees (San Francisco City Attorney's Office, *Chiu secures $2.1 million deal requiring gig economy company to reclassify workers as employees* (Feb. 22, 2024) <https://tinyurl.com/ypsda4yz> [as of Mar. 31, 2024]).

B. Proposition 22 Harms Workers.

Proposition 22 establishes that if certain limited conditions are met, "an app-based driver is an independent contractor and not an employee." (Bus. & Prof. Code, § 7451.) The simplicity of these words belies their impact: Proposition 22 eviscerates a century's worth of rights and benefits for employees who happen to be app-based drivers. As a result, app-based drivers working long hours are often unable to make ends meet and to provide for themselves and their families. And they are deprived of basic protections afforded to workers who, through no fault of their own, become unemployed, get sick, need to take care of sick loved ones, are subjected to discrimination, or sustain an injury while

working. A short summary of just some of the worker protections eliminated by Proposition 22 puts this in sharp relief.

Compensation, Expenses, and Payroll Taxes: California employees are entitled to be paid a minimum wage of $16.00 per hour, time-and-a-half pay for hours worked in excess of 8 per day and 40 per week, and double-time pay for hours worked in excess of 12 per day. (See Lab. Code, §§ 510, 1182.12, 1197; Cal. Code Regs., tit. 8, § 11090, subd. (3).)[4] These employees are further entitled to be reimbursed for all business expenses, including vehicle fuel and maintenance expenses. (Lab. Code, § 2802.) The Internal Revenue Service (IRS) rate of 67 cents per mile is a presumptively reasonable measure of vehicle-related expenses under California Labor Code section 2802. (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 569; see Internal Revenue Service Notice 2024-08 (Dec. 2023) <https://tinyurl.com/mrzpusnj> [as of Mar. 29, 2024] p. 2.)

Notably, these minimum wages, overtime wages, and expense reimbursements apply to *all* "hours worked," which should include all the time from the start of a rideshare or delivery shift through the end of the shift. (See Cal. Code Regs., tit. 8, § 11090, subd. (2)(G) [defining "Hours worked"]; *Dynamex, supra,* 4 Cal.5th at p. 953 [courts must construe "hours worked"

[4] In a pre-pandemic survey, more than one-third of San Francisco Uber and Lyft drivers reported working more than 40 hours per week, on average, for one of these companies. (Benner et al., *On-Demand and On the Edge: Ride-Hailing & Delivery Workers in San Francisco* (May 5, 2020) U.C. Santa Cruz <https://tinyurl.com/yb3qys7k> [as of Mar. 31, 2024].)

definition liberally to achieve wage order's terms and serve its remedial purposes].)

In stark contrast, under Proposition 22, app-based drivers are only paid for the time from when an app-based driver accepts a rideshare or delivery request to when the app-based driver completes that request. (Bus. & Prof. Code, §§ 7453, subd. (d)(4), 7463, subd. (j)), thus excluding the substantial time spent during a shift driving and waiting for rides or deliveries (while logged on and ready to work).[5] And even for this artificially truncated work period, app-based drivers are only entitled to 120 percent of the minimum wage, zero overtime pay, and just thirty-five cents per mile regardless of actual expenses that make driving for ride-sharing companies possible in the first place. (Bus. & Prof. Code, §§ 7453, subd. (d)(4), 7463 subd. (j); California State Treasurer, *Per-Mile Compensation Annual Adjustment for App-based Drivers* <https://tinyurl.com/2jjvmz46> [as of Apr. 1, 2024].)

California employees pay 7.65 percent of their wages as a payroll tax to cover eligibility for Social Security and Medicare. By contrast, drivers subject to Proposition 22 must pay a Self-Employment Tax of 15.3 percent of their net earnings to cover these two programs. For a full-time minimum wage-worker (2,000 hours at $16 per hour), this amounts to annual tax difference of $2,448.

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[5] According to an industry-funded study, drivers spend as much as 37 percent of a shift logged into a shift, but without a passenger. (Melissa Balding, et al., *Estimating TNC Share of VMT in Six U.S. Metropolitan Regions (Revision 1)* (Aug. 6, 2019) Fehr & Peers <https://tinyurl.com/5yvxjhcz> [as of Apr. 1, 2024] p. 7.)

Researchers with the University of California, Berkeley, estimate that—after accounting for unpaid waiting time, under-reimbursed expenses, and higher payroll taxes—the true wage of app-based drivers is around $5.64/hour.[6] (See Ken Jacobs & Michael Reich, *The Uber/Lyft Ballot Initiative Guarantees Only $5.64 an Hour* (Oct. 31, 2019) UC Berkeley Labor Center & UC Berkeley Center on Wage & Employment Dynamics <https://tinyurl.com/2rx6m79u> [as of Mar. 31, 2024]; Ken Jacobs & Michael Reich, *The Effects of Proposition 22 on Driver Earnings: Response to a Lyft-Funded Report by Dr. Christopher Thornberg* (Aug. 26, 2020) UC Berkeley Labor Center & UC Berkeley Center on Wage & Employment Dynamics <https://tinyurl.com/92knx8a4> [as of Mar. 31, 2024].)

Paid Sick Leave: California employees are entitled to one hour of paid sick leave for every 30 hours worked. (Lab. Code, § 246, subd. (a).) By contrast, under Proposition 22, app-based drivers are not entitled to *any* paid sick leave whatsoever.

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[6] Not only is this well below the state minimum wage, but it is also less than one-fifth of "the hourly labor cost (including wages, taxes, health care, etc.) for a driver with employee status who is paid 120% of the California minimum wage"—which EPI estimates is approximately $30.93. (See Lynn Rhinehart, Celine McNicholas, Margaret Poydock & Ihna Mangundayao, *Misclassification, the ABC Test, and Employee Status* (June 16, 2021) EPI, <https://tinyurl.com/2s3j8pva> [as of April 2, 2024] p. 11; see also Martha Ockenfels-Martinez & Lili Farhang, *Driving Away Our Health: The Economic Insecurity of Working for Lyft and Uber* (Aug. 2019) Human Impact Partners & Gig Workers Rising, <https://tinyurl.com/5bar57mn> [as of Mar. 31, 2024] p. 7 (hereinafter *Gig Worker Health Report*) ["In cities like San Francisco, Los Angeles, and San Diego, Uber drivers earn less than the locally mandated minimum wage once driving expenses, Uber fees, self-employment taxes, and the cost of health insurance and other similar employee benefits are taken into account."].)

Paid Rest Breaks: California employees are entitled to 10-minute paid breaks every four hours worked. (Lab. Code, § 226.7; Cal. Code Regs., tit. 8, § 11090, subd. (12).) By contrast, under Proposition 22, app-based drivers are not entitled to *any* paid rest time whatsoever.

Unemployment Insurance Benefits: Because all persons benefit from "goods and services" offered to the public, California law protects service providers against the harm of "periods of unemployment." (Unemp. Ins. Code, § 100.) California employees (who have earned sufficient recent wages and become unemployed through no fault of their own) are entitled to up to 26 weeks of unemployment insurance benefits at up to $450 per week. (Unemp. Ins. Code, §§ 1280, 1281.) This results in a maximum benefit amount of $11,700 per year. But contrary to the state's express policy, drivers subject to Proposition 22 are not entitled to *any* form of unemployment insurance benefits whatsoever.

Paid Family Leave. California employees (who have earned sufficient recent wages) are entitled to up to eight weeks of paid family leave benefits at up to $1,620 per week to care for a seriously ill family member, bond with a new child, or address needs related to a family member's overseas military deployment. (Unemp. Ins. Code, §§ 3301, 3303.) This results in a maximum benefit amount of $12,960 per year. By contrast, under Proposition 22, app-based drivers are not eligible for *any* paid leave whatsoever.

Disability Insurance Benefits. California employees (who have earned sufficient recent wages) are entitled to up to 52 weeks of disability insurance benefits at up to $1,620 per week when unable to work due to a non-work-related illness or injury, either physical or mental. (Unemp. Ins. Code, §§ 2653, 2655.) This results in a maximum benefit amount of $84,240 per year. By contrast, under Proposition 22, app-based drivers are not entitled to *any* non-occupational injury or illness benefits whatsoever.

Prohibitions on Retaliation. California employees are protected from myriad forms of workplace retaliation, including termination or discipline for: reporting health and safety violations (Lab. Code, § 6310, subd. (a)), pursuing wage theft claims (Lab. Code, § 98.6, subd. (a)), and filing workers' compensation claims (Lab. Code, § 132a, subd. (1)). By contrast, under Proposition 22, the retaliation protections afforded to app-based drivers are limited to a mandatory company policy that prohibits retaliation stemming from complaints of sexual harassment. (Bus. & Profs. Code, § 7457, subd. (a)(6).)

Occupational Safety and Health. California law requires all employers to ensure a safe and healthy workplace. (Lab. Code, § 6300.) Among other things, employers must furnish safety devices and safeguards (Lab. Code, § 6300) and establish an Injury and Illness Prevention Program for all employees. (Lab. Code, § 6401.7; Cal. Code Regs., tit. 8, § 3203.)

By contrast, under Proposition 22, app-based drivers are not entitled to *any* analogous health and safety protections.

Workers' Compensation Benefits: Article XIV, section 4 of the California Constitution "expressly declare[s]" a complete system of workers' compensation "to be the social public policy of this State." (Cal. Const., art. XIV, § 4.) A "complete system" includes "full provision" for medical care and financial support for injured workers or their dependents, "full provision for securing safety in places of employment," and the vesting of power in an administrative body "to determine any dispute … expeditiously, inexpensively, and without incumbrance of any character." (*Ibid.*)

Commencing in 1913—with numerous substantive and procedural changes over the years—the Legislature has exercised its article XIV power by adopting such a system, which "shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment." (Lab. Code, § 3202; see Lab. Code, § 3200 et seq.)

Today, for every workplace injury or illness, regardless of fault, California's employees are potentially entitled to: 1) *all* medical treatment reasonably required to cure or relieve the effects of the injury or illness, 2) temporary disability benefits to partially replace wages lost as a result of the injury or illness, 3) lifetime permanent disability benefits (when an employee does not make a full recovery), 4) a voucher for education-related retraining and/or skill enhancement, and 5) upon a fatality, death benefits, including reasonable burial expenses and survivor benefits. (Lab. Code, §§ 4213, 4659, 4703.5.)

This suite of benefits is particularly important for drivers, who suffer injuries at disproportionately high rates given the nature of the work. (See California Dept. of Insurance and California Public Utilities Commission, *Joint Study of Transportation Network Company (TNC) Insurance Coverage Requirements in California* (Dec. 31, 2017) <https://tinyurl.com/ybsbkv6l> [as of Mar. 31, 2024] pp. 21, 23 [finding that from 2014 to 2016, insurance companies incurred $185.6 million in payouts on 9,377 claims related to traffic accidents involving ridehailing vehicles across California].)

By contrast, drivers subject to Proposition 22 are not entitled to a remotely comparable system or suite of benefits. There are no provisions for vocational training if a driver cannot return to work, no compensation for permanent disability, a cap on medical benefits, and no provision for an administrative body to resolve disputes. (See Bus. & Profs. Code, § 7455.) Moreover, these benefits are limited to "injuries" (not illnesses) and are only available during "engaged time" (not when drivers are between rides, logged on, and ready to work). (*Ibid*.)

In short, Proposition 22 harms workers in virtually every respect, including compensation and expenses, paid sick leave, paid rest breaks, unemployment insurance benefits, paid family leave, disability insurance benefits, prohibitions on retaliation, occupational safety and health, and workers' compensation benefits. And these harms "are not mere abstractions; they represent real harms to real working people." (*People v. Uber,*

supra, 56 Cal.App.5th at p. 310 [quoting trial court order].) Proposition 22 also disproportionately impacts workers of color.[7]

In the face of all these harms—all these foregone rights and benefits—is there some counter-veiling upside for workers? Unfortunately, no. Among the (supposed) chief purposes of Proposition 22 is "[t]o protect the individual right of every app-based rideshare and delivery driver to have the flexibility to set their own hours for when, where, and how they work." (Bus. & Prof. Code, § 7450, subd. (b).) But this is a mirage. This flexibility has always been available to businesses, whether they rely upon contractors or employees. As this Court pointed out in *Dynamex*,

> [i]f a business concludes that there are economic or noneconomic advantages other than avoiding the obligations imposed by the wage order to be obtained by according greater freedom of action to its workers, the business is, of course, free to adopt those conditions while still treating the workers as employees for purposes of the applicable wage order. Thus, for example, if a business concludes that it improves the morale and/or productivity of a category of workers to afford them the freedom to set their own hours or to accept or decline a particular assignment, the business may do so while still treating the workers as employees for purposes of the wage order.

(*Dynamex, supra,* 4 Cal.5th at p. 961, fn. 28.)

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[7] Nationwide and in the Bay Area, people of color are more likely to earn money via app-based platforms. (See Risa Gelles-Watnick & Monica Anderson, *Racial and Ethnic Differences Stand out in the U.S. Gig Workforce* (Dec. 15, 2021) Pew Research Center <https://tinyurl.com/25p6t6cs> [as of Mar. 31, 2024]; see also Chris Benner, Erin Johansson, Kung Feng & Hays Witt, *On-Demand and On-the-Edge: Ride Hailing and Delivery Workers in San Francisco*, (May 5, 2020) UC Santa Cruz Institute for Social Transformation. <https://tinyurl.com/3tuxnhmd> [as of Mar. 31, 2024] p. 2 [study finding that 78% of representative sample of ride-hailing and delivery app workers in San Francisco are workers of color].)

C. Proposition 22 Harms Our Communities and the Public.

The harms to app-based drivers created by Proposition 22 reverberate and extend to our families, communities, and public coffers and services. "California courts have long recognized wage and hours laws concern not only the health and welfare of the workers themselves, but also the public health and general welfare." (*Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1148, internal quotations omitted.) When "minimum employment standards" are unmet, "the public will often be left to assume the responsibility of the ill effects to workers and their families resulting from substandard wages or unhealthy and unsafe working conditions." (*Dynamex*, *supra*, 4 Cal.5th at p. 953.) These ill-effects manifest in several different areas.

1. For many families already struggling to afford the necessities of life, the wholesale elimination of worker protection laws (including minimum wage protections for all hours worked, overtime, and expense reimbursement laws) can mean the difference between needing to visit a food pantry or not. Amici operate programs to support those who cannot afford food. For example, San Francisco contracts with multiple community partners to provide food support to hungry or food-insecure residents, including the San Francisco-Marin Food Bank, which manages a food pantry network; the County of Santa Clara does the same, including by supporting the Second Harvest Food Bank. Similarly, Oakland operates several programs providing food to low-income residents and families. When workers make

less money, these types of local programs require higher levels of government funding, forcing taxpayers to subsidize what the law asks employers to contribute through wages and benefits. In California, app-based drivers draw upon these public resources. A study of Los Angeles ride-hail drivers revealed that one in five reported using food stamps or other public benefits. (UCLA Inst. for Research on Labor & Employment, *More than a Gig: A Survey of Ride-Hailing Drivers in Los Angeles* (May 2018) <https://tinyurl.com/msbzz7c7> [as of Mar. 31, 2024] p. 15.)

2. Denying app-based drivers basic employment rights also ripples into the housing market. Housing shortages and homelessness are some of the most pressing issues facing Amici's residents. When earning lower wages, app-based drivers may miss rent payments and grapple with evictions. It may lead to an increase in rates of homelessness, or at the very least, housing instability and unaffordability. To mitigate the housing crisis, our jurisdictions already fund a range of housing programs including shelters, transitional housing, and permanent supportive housing. (E.g., City of Oakland, *Fiscal Year 2021-23 Adopted Policy Budget* (June 2021) <https://tinyurl.com/2s3esxuz> [as of Mar. 31, 2024]; Cnty. of Santa Clara Office of Supportive Housing, *Home* <https://tinyurl.com/2u83s2vr> [as of Apr. 2, 2024]; S.F. Dept. Homelessness & Supportive Housing, *Housing Program Types* <https://tinyurl.com/sfnbr5uv> [as of Mar. 31, 2024]; City of San Diego, *Mayor Gloria Announces New Funding Awards for Bridge to Home Program* <https://tinyurl.com/ywhc5wsv> [as of March 31, 2024].) Demand

for these programs only increases when app-based drivers earn lower wages and cannot afford the growing cost of housing.

3. Under Proposition 22, app-based drivers are likely suffering a range of adverse health consequences. They are denied a complete system of workers' compensation (and associated benefits), denied paid sick days, and denied paid family leave. They earn less money, and are thus less able to purchase health insurance. Under these circumstances, app-based drivers forego necessary medical treatments or the kind of care that can prevent more serious hospitalizations.[8] Without paid family leave or paid sick days, app-based drivers also keep working to avoid losing vital income, in turn further risking their and other's health. Studies report that drivers are prone to a range of medical issues. Drivers in California report experiencing musculoskeletal disorders and chronic pain in their backs and knees as a result of sitting for many hours a day in their cars. Drivers also report headaches, fatigue, and dehydration as a result of their work, not to mention the mental toll of the job, which many say has led them to experience anxiety and depression. (*Gig Worker Health Report* at pp. 12-15.)

These negative consequences are particularly important for jurisdictions, like San Francisco and Santa Clara, that fund and operate public safety net hospitals. When drivers lack the

[8] A lack of adequate health care coverage can pose fatal consequences—one study found that "uninsured people had a 35% higher chance of dying at the hospital for the same diagnoses as someone with health insurance." (*Gig Worker Health Report* at pp. 16-17.)

support of workers' compensation or the health benefits they would otherwise receive, our localities are often forced to expend resources through our hospitals, mental health programs, or other clinics to assist.

4. The wholesale exclusion of an entire class of workers from employee status also directly harms public coffers. "[T]he misclassification of workers as independent contractors rather than employees is a very serious problem, depriving federal and state governments of billions of dollars in tax revenue and millions of workers of the labor law protections to which they are entitled." (*Dynamex, supra,* 4 Cal.5th at p. 913.)

One clear example of this in California is with the state's Unemployment Insurance Trust Fund. Uber and Lyft alone evaded paying $413 million into this fund between 2014 and 2019. (See Ken Jacobs & Michael Reich, *What Would Uber and Lyft Owe to the State Unemployment Insurance Fund?* (May 2020) UC Berkeley Labor Center & UC Berkeley Center on Wage & Employment Dynamics <https://tinyurl.com/4utz96ry> [as of Mar. 31, 2024] p. 1.) Under Proposition 22, they have continued to evade these otherwise obligatory tax payments on behalf of their app-based drivers.

CONCLUSION

The California Constitution explicitly delegates authority over workers' compensation to the Legislature. Proposition 22 impermissibly overrides this authority and it does so to plainly strip app-based drivers of their rights. This new form of

misclassification is bad policy that harms workers and our communities. The Court of Appeal decision should be reversed in part. This Court should hold that section 7451 conflicts with article XIV, section 4 and, therefore, that Proposition 22, by its own terms, is invalid in its entirety.

Dated: April 3, 2024

Respectfully submitted,

DAVID CHIU
City Attorney
YVONNE R. MERÉ
Chief Deputy City Attorney
IAN ELIASOPH
MOLLY J. ALARCON
Deputy City Attorneys

By: */s/ Matthew D. Goldberg*
MATTHEW D. GOLDBERG
Chief Worker Protection Attorney

Attorneys for Amicus Curiae
City and County of San Francisco

BARBARA J. PARKER
City Attorney
MARIA BEE
Chief Assistant City Attorney

By: */s/ Divya Musinipally*
DIVYA MUSINIPALLY
Deputy City Attorney

Attorneys for Amicus Curiae
City of Oakland

MARA W. ELLIOTT
City Attorney
MARK ANKCORN
Senior Chief Deputy City Attorney
KEVIN KING
JULIE RAU
Deputy City Attorneys

By: */s/ Eric LaGuardia*
ERIC LAGUARDIA
Deputy City Attorney

Attorneys for Amicus Curiae
City of San Diego

TONY LOPRESTI
County Counsel
KAVITA NARAYAN
Chief Assistant County Counsel
MEREDITH A. JOHNSON
Lead Deputy County Counsel

By: */s/ Raphael N. Rajendra*
RAPHAEL N. RAJENDRA
Deputy County Counsel

Attorneys for Amicus Curiae
County of Santa Clara

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately double-spaced 13-point Century Schoolbook typeface. According to the "Word Count" feature in my Microsoft Word for Windows software, this brief contains 5,840 words up to and including the signature lines that follow the brief's conclusion.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on April 3, 2024.

DAVID CHIU
City Attorney
YVONNE R. MERÉ
Chief Deputy City Attorney
IAN ELIASOPH
MOLLY J. ALARCON
Deputy City Attorneys

By: */s/ Matthew D. Goldberg*
MATTHEW D. GOLDBERG
Chief Worker Protection Attorney

PROOF OF SERVICE

I, KATHLEEN K. HILL, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

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on the following persons at the locations specified:

Robin B. Johansen
Richard R. Rios
Deborah B. Caplan
Benjamin N. Gevercer
OLSON REMCHO, LLP
1901 Harrison Street, Suite 1550
Oakland, CA 94612
Telephone: (510) 346-6200
Email: rjohansen@olsonremcho.com
Attorneys for Plaintiffs-Respondents Hector Castellanos et al.
[Submitted Electronically Through TrueFiling]

Stephen P. Berzon
Scott A. Kronland
Stacey M. Leyton
Juhyung Harold Lee
Robin Tholin
ALTSHULER BERZON LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: (415) 421-7151
Email: skronland@altber.com
Attorneys for Plaintiffs-Respondents Hector Castellanos et al.
[Submitted Electronically Through TrueFiling]

Steven K. Ury
Claire Prestel
SERVICE EMPLOYEES
INTERNATIONAL UNION
1800 Massachusetts Avenue, NW
Washington, DC 20036
Telephone: (202) 730-7383
Email: steven.ury@seiu.org
Attorneys for Plaintiffs-Respondents Hector Castellanos et al.
[Submitted Electronically Through TrueFiling]

Rob Bonta
Attorney General of California
Michael J. Mongan
Solicitor General
Thomas S. Patterson
Senior Assistant Attorney General
Samuel T. Harbourt
Deputy Solicitor General
Mark R. Beckington
Supervising Deputy Attorney General
Lara Haddad
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3919
Email: Samuel.Harbourt@doj.ca.gov
Attorneys for Defendants-Appellants State of California and Katie Hagen
[Submitted Electronically Through TrueFiling]

Arthur G. Scotland
Sean P. Welch
David J. Lazarus
Kurt R. Oneto
NIELSEN MERKSAMER PARRINELLO GROSS & LEONI, LLP
1415 L Street, Suite 1200
Sacramento, CA 95814
Telephone: (916) 446-6752
Email: ascotland@nmgovlaw.com; swelch@nmgovlaw.com; dlazarus@nmgovlaw.com; kurt.oneto@gmail.com
Attorneys for Intervenors-Appellants Protect App-Based Drivers and Services; Davis White; and Keith Yandell
[Submitted Electronically Through TrueFiling]

Jeffrey L. Fisher
O'MELVENY & MYERS LLP
2765 Sand Hill Road
Menlo Park, CA 94025
Telephone: (650) 473-2633
Email: jlfisher@omm.com
Attorneys for Intervenors-Appellants
Protect App-Based Drivers and Services; Davis White; and Keith Yandell
[Submitted Electronically Through TrueFiling]

California Court of Appeal
First Appellate District
350 McAllister Street
San Francisco, CA 94102
[Submitted Electronically Through TrueFiling]

The Hon. Frank Roesch
Alameda County Superior Court
Administration Building, Dept. 17
1221 Oak Street
Oakland, CA 94612
[**VIA U.S. MAIL**]

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KATHLEEN K. HILL

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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Lower Court Case Number: **A163655**

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Arthur Scotland Nielsen Merksamer Parrinello Gross Leoni LLP	ascotland@nmgovlaw.com	e-Serve	4/3/2024 5:16:08 PM
David Lazarus NIELSEN MERKSAMER PARRINELLO GROSS & LEONI 304352	dlazarus@nmgovlaw.com	e-Serve	4/3/2024 5:16:08 PM
Andrew Lockard HEWGILL COBB & LOCKARD, APC 303900	contact@hcl-lawfirm.com	e-Serve	4/3/2024 5:16:08 PM
Kurt Oneto Nielsen Merksamer, LLP	kurt.oneto@gmail.com	e-Serve	4/3/2024 5:16:08 PM
Jeffrey L. Fisher O'Melveny & Myers LLP 256040	jlfisher@omm.com	e-Serve	4/3/2024 5:16:08 PM
Sean Welch Nielsen Merksamer 227101	swelch@nmgovlaw.com	e-Serve	4/3/2024 5:16:08 PM
Kathleen Hill City Attorney's Office	kathleen.hill@sfcityatty.org	e-Serve	4/3/2024 5:16:08 PM

Ryan Guillen California State Legislature	Ryan.guillen@asm.ca.gov	e-Serve	4/3/2024 5:16:08 PM
Michael Reich University of California Berkeley	mreich@econ.berkeley.edu	e-Serve	4/3/2024 5:16:08 PM
David Carrillo UC Berkeley School of Law, California Constitution Center 177856	carrillo@law.berkeley.edu	e-Serve	4/3/2024 5:16:08 PM
Scott Kronland Altshuler Berzon LLP 171693	skronland@altber.com	e-Serve	4/3/2024 5:16:08 PM
Marshall Wallace Allen Matkins Leck Gamble Mallory & Natsis LLP 127103	mwallace@allenmatkins.com	e-Serve	4/3/2024 5:16:08 PM
Jean Perley Altshuler Berzon LLP	jperley@altber.com	e-Serve	4/3/2024 5:16:08 PM
Robin Johansen Olson Remcho, LLP 79084	rjohansen@olsonremcho.com	e-Serve	4/3/2024 5:16:08 PM
Erwin Chemerinsky UC Berkeley School of Law 3122596	echemerinsky@berkeley.edu	e-Serve	4/3/2024 5:16:08 PM
Matthew Goldberg San Francisco City Attorney's Office 240776	matthew.goldberg@sfcityatty.org	e-Serve	4/3/2024 5:16:08 PM
David Rosenfeld Weinberg, Roger & Rosenfeld 058163	drosenfeld@unioncounsel.net	e-Serve	4/3/2024 5:16:08 PM
Janill Richards Office of the Attorney General 173817	janill.richards@doj.ca.gov	e-Serve	4/3/2024 5:16:08 PM
Molly Alarcon San Francisco City Attorney's Office 315244	Molly.Alarcon@sfcityatty.org	e-Serve	4/3/2024 5:16:08 PM
Mitchell Keiter Keiter Appellate Law 156755	Mitchell.Keiter@gmail.com	e-Serve	4/3/2024 5:16:08 PM
Janet Martorano Allen Matkins Leck Gamble Mallory & Natsis LLP	jmartorano@allenmatkins.com	e-Serve	4/3/2024 5:16:08 PM
Samuel Harbourt California Department of Justice 313719	samuel.harbourt@doj.ca.gov	e-Serve	4/3/2024 5:16:08 PM
VEENA Dubal 249268	VDUBAL@GMAIL.COM	e-Serve	4/3/2024 5:16:08 PM
Julie Gutman Dickinson Bush Gottlieb, a Law Corporation 148267	JGD@bushgottlieb.com	e-Serve	4/3/2024 5:16:08 PM

George Warner Legal Aid at Work 320241	gwarner@legalaidatwork.org	e-Serve	4/3/2024 5:16:08 PM
Kimberly Macey Allen Matkins Leck Gamble Mallory & Natsis LLP 342019	kmacey@allenmatkins.com	e-Serve	4/3/2024 5:16:08 PM
Kenneth Trujillo-Jamiso Willenken LLP 280212	ktrujillo-jamison@willenken.com	e-Serve	4/3/2024 5:16:08 PM

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Date

/s/Kathleen Hill

Signature

Goldberg, Matthew (240776)

Last Name, First Name (PNum)

San Francisco City Attorney's Office

Law Firm