

**CASE NO.: S279622**

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

—

**HECTOR CASTELLANOS ET AL.**

*Plaintiffs and Respondents,*

*vs.*

**STATE OF CALIFORNIA ET AL.,**

*Defendants and Appellants.,*

**PROTECT APP-BASED DRIVERS AND SERVICES ET AL.,**

*Intervenors and Appellants.*

—

On Review From The Court Of Appeal for the First  
Appellate District, Division Four  
Civil No. A163655

After an Appeal From the Superior Court for the State of  
California,  
County of Alameda, Case Number RG21088725, Hon. Frank  
Roesch

—

**APPLICATION TO FILE AMICUS BRIEF AND PROPOSED  
BRIEF OF AMICI CURIAE TEAMSTERS LOCALS 396, 542  
AND 848 AND LOS ANGELES COUNTY FEDERATION OF  
LABOR, AFL-CIO IN SUPPORT OF PLAINTIFFS-  
RESPONDENTS**

—

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**APPLICATION TO FILE AMICI BRIEF IN SUPPORT OF  
PLAINTIFFS-RESPONDENTS**

Pursuant to California Rules of Court, rule 8.520(f), amici curiae International Brotherhood of Teamsters, Local 396 (“Local 396”), International Brotherhood of Teamsters, Local 542 (“Local 542”) and International Brotherhood of Teamsters, Local 848 (“Local 848”) (collectively, “Teamsters Locals”) and the Los Angeles County Federation of Labor, AFL-CIO (“LA Fed”) (together with Teamsters Locals, “Amici Curiae”) respectfully request permission of the Chief Justice to file the attached amici curiae brief in support of plaintiffs-respondents Hector Castellanos et al.

The Teamsters Locals represent drivers, including last mile delivery drivers, bus drivers, and logistics drivers, and other employees in a range of industries throughout Southern California. The Locals’ interest in this action is two-fold. First, the Locals seeks to organize workforces that, like the app-based drivers subject to Proposition 22 (“Prop 22”), have been misclassified as independent contractors. Worker misclassification, possibly shielded by future initiatives like Prop 22, impedes the Locals’ ability to organize and represent these workers. Second, the industries in which the Locals represent drivers have begun to contract routes to non-represented, app-based drivers who are subject to Prop 22. Such contracting out of union jobs directly interferes with the Locals’ mission and harms their current membership, as well as the public that benefits

from employees' having strong workplace and social safety net protections.

The LA Fed is a federation of over 300 affiliated union and worker organizations representing more than 800,000 members in Los Angeles County. It is the AFL-CIO's chartered central body for Los Angeles County. One of its main missions is to assist its affiliates in organizing the unorganized in every line of work in the County. Another is to safeguard and improve laws strengthening collective bargaining rights, safe work environment, affordable health care, and a dignified retirement. An historic and continuing impediment to both these goals is the misclassification of employees as independent contractors. Misclassification is used to hinder representation elections and to prevent workers from benefitting from protective laws. The problem is particularly acute where businesses use app-based workers, who are almost always characterized by these businesses as independent contractors. This practice has made it very difficult for these workers to organize for collective bargaining through the LA Fed's affiliates. The LA Fed has a strong interest in ensuring that misclassified workers are not kept in a subordinate status through initiatives like Prop 22.

No party or any counsel to a party in the pending appeal, or any other person other than Amici and their counsel, authored this proposed amici brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief.



This brief will assist the court in understanding: (1) the harms that misclassification poses to workers and to the economy; (2) how Prop 22 establishes a model for entrenching an ever-growing number of vulnerable workforces in a subordinated status. The brief, while substantially similar to the letter that Amici Curiae filed in support of the petition for review in this matter, has been updated and contains additional supporting information.

Amici Curiae accordingly request that the Court accept and file the attached amici curiae brief.

DATED: April 3, 2024

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**AMICI CURIAE BRIEF IN SUPPORT OF PLAINTIFFS-  
RESPONDENTS**

**INTRODUCTION**

Prop 22 was a calculated industry response to public concern about the misclassification of vulnerable workforces throughout our economy—an industry response that degrades basic protections for a huge and expanding workforce of drivers and that, when combined with the Court of Appeal’s flawed legal analysis, provides a blueprint for other industries to do the same with other workforces. Misclassification is pernicious because it deprives workers of basic protections including a minimum wage, overtime pay, freedom from discrimination, key workplace safety protections,<sup>1</sup> sick leave and family leave, reimbursement for job-related expenses, and social safety net protections such as workers’ compensation and unemployment insurance.<sup>2</sup> This allows companies that misclassify to unfairly compete and to profit at the expense of the workers who actually do the work that brings in those profits. To address this misclassification, California’s legislature enacted AB 5, enshrining under state law the ABC test for employee status that the California Supreme

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<sup>1</sup> Weil, *Lots of Employees Get Misclassified as Contractors. Here’s Why It Matters* (July 5, 2017) Harv. Bus. Rev.; see also Kennedy, *Freedom from Independence: Collective Bargaining Rights for “Dependent Contractors* (2005) 26 Berkeley J. Emp. & Lab. L. 143, 149–51, 152–53 [noting protections denied to misclassified workers].

<sup>2</sup> Weil, *supra* note 1.

Court had recognized in its 2018 *Dynamex* decision. Respondents' Opening Br. at 14-15.

In response, and through a massive and misleading marketing campaign, Prop 22 sought to carve Transportation Network Company (“TNC”) drivers and Delivery Network Company (“DNC”) couriers (collectively, “app-based drivers”) out of AB 5. These companies sought to neutralize voters' disquiet about misclassification by handing drivers token substitute protections and falsely claiming that employee status for drivers is inconsistent with scheduling flexibility. The feeble private accident insurance protections that Prop 22 offers app-based drivers—while stripping them of the more protective safeguards guaranteed employees under California's workers' compensation system (see Respondents' Opening Br. at 23 [detailing shortfalls of that insurance vis-à-vis the workers' compensation system]; State's Answer Br. at 39 n.10 [acknowledging policy experts have indicated Prop 22's accident insurance is an insufficient substitute for workers' compensation])—is one of numerous ways that Prop 22's supposed protections for drivers pale in comparison to those afforded employees under long-standing state law. Despite grandiose claims to the contrary by app-based companies, Prop 22 ultimately guarantees drivers far below minimum wage.

If the Court upholds Prop 22, the over a million app-based drivers throughout this state will continue to be denied employee protections. And the number of impacted workers is increasing steadily. Not only are public and private employers replacing

secure employee jobs with app-based drivers who fall under Prop 22, but the Court of Appeal’s flawed analysis, and the Prop 22 campaign blueprint, provide a roadmap for other industries to follow suit to remove workers from California’s worker’s compensation system and from coverage by other employee protections. This threatens countless strong, middle-class jobs—from health-care workers and home health aides, to warehouse workers, port truck drivers, hospitality and grocery workers, dishwashers, and innumerable others—and threatens California’s robust employee protection scheme which has made California one of the best states in the country for employees.

## ARGUMENT

**I. Prop 22 exposes a massive workforce to uncompensated injury and economic insecurity, for no reason but to increase profits for app-based companies.**

- A. Prop 22 subordinates drivers by denying them workers’ compensation insurance and other protections, including a real minimum wage.

The over a million app-based drivers whom Prop 22 withdraws from California’s workers’ compensation system are exposed to on-the-job injuries from many sources—including

ergonomic<sup>3</sup>, vehicular accidents<sup>4</sup>, and assault at the hands of the strangers with whom they interact in far-flung destinations<sup>5</sup>. (See also Respondents’ Opening Br. at 37.) Indeed, the Teamsters Locals have found ergonomic injuries, including persistent and at times incapacitating back pain, to be a frequent affliction of the driver workforces that they organize. These injuries are only made worse by the inhumane performance levels that many drivers will be pushed to in hopes of making money under Prop 22’s inadequate wage provisions. (*Infra* pp. 14-16).

Depriving app-based drivers of workers’ compensation protection is one piece of the full picture of how Prop 22

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<sup>3</sup> *E.g.* Joseph et al., *Prevalence of musculoskeletal pain among professional drivers: A systematic review*, *J. Occup. Health* (Jan. 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7434558/pdf/JOH2-62-e12150.pdf> [as of April 3, 2024] [“Professional drivers are at high risk of developing musculoskeletal pain (MSP) . . . Previous research has reported high prevalence of MSP in . . . taxi drivers (71%), with low back pain (LBP) being one of the most commonly reported MSPs. Other types of MSP such as shoulder and knee pain are also reported among the professional driving populations.”].

<sup>4</sup> Olson & Grantham-Philips, *Attacks on delivery drivers add fears among gig workers* Associated Press News (May 3, 2023), <https://apnews.com/article/uber-eats-doordash-gig-worker-safety-44982ae66a350aeaa8632bde1dd216d4> [as of April 3, 2024] [“Ride-hailing and delivery driving are among the deadliest occupations in the country, according to occupational fatalities and injury data from the Bureau of Labor Statistics . . . While most deaths and injuries are from traffic accidents, the data also shows drivers are more at risk of assaults than other occupations.”].

<sup>5</sup> See *ibid.*

subordinates app-based drivers. If Prop 22 stands, it will simultaneously deny app-based drivers numerous other protections guaranteed to employees while giving them only second-class, inferior protections. For example, although Prop 22's proponents promised that app-based drivers would receive 120% of the state minimum wage, Bus. & Prof. Code §7449, subd. (f), drivers actually receive that wage rate only for time they are engaged with passengers.<sup>6</sup> They remain unpaid for so-called “non-engaged time”—i.e., the time they spend waiting for passengers or returning from outlying areas—which accounts for between 33 percent<sup>7</sup> and approximately half<sup>8</sup> of the time that they are working. Similarly, Prop 22 promised to reimburse drivers for expenses, but reimburses costs only if they are borne during engaged time, and even then the reimbursement rate provided by Prop 22 falls far short of the IRS estimate of the costs of owning and operating a vehicle.<sup>9</sup> All told, UC Berkeley Labor Center researchers concluded that Prop 22 guaranteed drivers

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<sup>6</sup> Jacobs & Reich, UC Berkeley Labor Center, *The Uber/Lyft Ballot Initiative Guarantees only \$5.64 an Hour* (Oct. 31, 2019), <https://laborcenter.berkeley.edu/the-uber-lyft-ballot-initiative-guarantees-only-5-64-an-hour-2/> [as of April 3, 2024].

<sup>7</sup> *Ibid.* [citing study commissioned by Lyft and Uber].

<sup>8</sup> National Employment Law Project (NELP), *App-Based Workers Speak: Studies Reveal Anxiety, Frustration, and a Desire for Good Jobs* (Oct. 2021), at 5-6, <https://s27147.pcdn.co/wp-content/uploads/App-Based-Workers-Speak-Oct-2021-1.pdf> [as of April 3, 2024] [collecting studies].

<sup>9</sup> Jacobs & Reich, *supra* note 6 [discussing this under-reimbursement in depth].

only between \$5.64 and \$6.77 an hour in net compensation, after accounting for non-engaged time, under-reimbursement, and payroll taxes drivers incur as independent contractors.<sup>10</sup> This is unacceptable when compared to the \$13.00 state-wide minimum wage (and higher minimum wages in certain localities) referenced in the study, to which drivers would have been entitled in 2021 absent Prop 22.<sup>11</sup> While Prop 22's guarantee might now amount to slightly more than \$6 per hour in light of the current \$16.00 per hour state-wide minimum wage, the deficiencies that the study highlighted remain; Prop 22 is no substitute for the minimum wage that employees earn. Indeed, the study's estimate of Prop 22's compensation guarantee predated recent gas price spikes that underscore the precarity of app-based drivers' positions—many drivers reported barely breaking even once gas costs surged.<sup>12</sup>

The Labor Center researchers put it well:

[n]ot paying for [non-engaged] time [is] the equivalent of a fast food restaurant or retail store saying they will only pay the cashier when a customer is at the counter. We have labor and employment laws precisely to protect workers from that kind of exploitation.<sup>13</sup>

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<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> See Browning, *Gig Workers Say High Gas Prices May Be a Breaking Point* N.Y. Times (Mar. 17, 2022), <https://www.nytimes.com/2022/03/17/technology/gas-prices-uber-lyft-drivers.html> [as of April 3, 2024].

<sup>13</sup> Jacobs & Reich, *supra* note 10.

Drivers' widespread confusion about how to access Prop 22's health care subsidy further exposes Prop 22's deficiencies. A survey conducted more than half a year after voters approved Prop 22 found that forty percent of drivers could not recall ever being notified about the subsidy and their entitlement to that subsidy.<sup>14</sup> These dismal figures are to be expected: while the app-based companies behind Prop 22 had every incentive to try to neutralize public concern about misclassification by publicizing the right to a health care stipend during their deceptive campaign to pass Prop 22, they have no incentive to ensure that drivers receive this stipend.

The precarity app-based drivers face from being removed from the workers' compensation system is exacerbated by denying them these other employee protections. Drivers who do not make a minimum wage, for example, often feel compelled to drive through and perpetuate incipient ergonomic injuries to try to earn enough money to break even. Moreover, that denial endangers public safety. Drivers who make little pay and lack entitlements to paid sick and family leave are more likely to drive

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<sup>14</sup> McCullough, PolicyLink, Most California Rideshare Drivers Are Not Receiving Health-Care Benefits Under Proposition 22 (Aug. 19, 2021), <https://www.policylink.org/prop22> [as of April 3, 2024].



while feeling ill,<sup>15</sup> drive too fast and for more hours than is safe,<sup>16</sup> and put necessary vehicle repairs and maintenance on the backburner. Even if TNCs and DNCs limit the hours drivers can use their app, it is not clear that they can effectively prevent drivers from maxing their hours on each of multiple apps, or from driving on the app while worn out from a non-driving job.

B. Employers are increasingly replacing secure jobs with drivers subject to Prop 22.

Already, a growing number of secure jobs across the state are being replaced by app-based drivers—including jobs where *Amici Curiae* have fought for decades to ensure a living wage and strong benefits. Once Prop 22 took effect, for example, the grocery company Albertsons announced that it was replacing employee delivery drivers at various Vons and Pavilions locations in California with DNC drivers.<sup>17</sup> And even the public

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<sup>15</sup> See DeRigne et al., *Workers Without Paid Sick Leave Less Likely to Take Time Off For Illness or Injury Compared to Those with Paid Sick Leave* (Mar. 2016) 35:3 *Health Affairs* 520, 523, <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2015.0965?journalCode=hlthaff> [as of April 3, 2024].

<sup>16</sup> An investigation of port truck drivers classified as independent contractors found that many break federal safety laws that limit truckers to 11 hours on the road each day, because their net hourly pay is too low to otherwise sustain a livelihood. Murphy, *Rigged: Forced into debt. Worked past exhaustion. Left with nothing.* (June 16, 2017) *USA Today*, <https://www.usatoday.com/pages/interactives/news/rigged-forced-into-debt-worked-past-exhaustion-left-with-nothing/> [as of April 3, 2024].

<sup>17</sup> Sonnemaker, *A major grocery store called its workers ‘first responders’ early in the pandemic. Now, it’s making the ‘strategic*

transportation industry has begun to contract out routes to app-based drivers who are subject to Prop 22. For example, the Orange County Transportation Authority enacted a program in 2016 that subsidized Lyft to replace two bus routes that the Authority had operated.<sup>18</sup> Public transportation has long been a source of union jobs that offer security and a middle-class life to civil servant bus drivers. Outsourcing such as that in Orange County eliminates these jobs and replaces them with drivers who, if Prop 22 is upheld, will lack employment law rights that are necessary for achieving the security public bus drivers have long enjoyed. There is a similar shift in the delivery world, with apps like Amazon Flex growing across the state.

- C. Depriving drivers of workers' compensation and other employee protections is not necessary for preserving flexibility.

Throughout the Prop 22 ballot initiative campaign, companies such as Lyft, Uber, and Instacart persistently threatened that employee status would cause drivers to lose scheduling flexibility.<sup>19</sup> But no law or economic imperative

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*decision' to ditch in-house delivery in favor of contractors* (Jan 4, 2021) Insider, <https://www.businessinsider.com/albertsons-vons-delivery-california-doordash-prop-22-2021-1> [as of April 3, 2024].

<sup>18</sup> Pho, *Orange County's Outsourcing of Public Transit to Lyft Nearly Left Residents Stranded* (Aug. 24, 2020, updated Dec. 8, 2020) Voice of OC, <https://voiceofoc.org/2020/08/orange-countys-outsourcing-of-public-transit-to-lyft-nearly-left-residents-stranded/> [as of April 3, 2024].

<sup>19</sup> Hiltzik, *Commentary: Uber reneges on the 'flexibility' it gave drivers to win their support for Prop 22* The L.A. Times (May 28, 2021), [https://www.latimes.com/business/story/2021-05-](https://www.latimes.com/business/story/2021-05-28)

requires that companies restrict employees' scheduling flexibility. And the claim that employee status would change TNC and DNC firms' incentives, encouraging them to restrict that flexibility, is undermined by the fact that Instacart has allowed the subset of its workforce that it classified as employees to set their own schedules.<sup>20</sup> (See also Respondents' Opening Br. at 37 [explaining that nothing in the workers' compensation system precludes scheduling flexibility]).

The actual, pressing threat to flexibility is that a TNC or DNC will scale back drivers' freedom to choose their own hours if it learned that it was more profitable to set certain hours for its drivers. That is a possibility because despite its stated purpose, Prop 22 leaves the door open for TNCs or DNCs to exert some higher level of control over drivers' hours, so long as they are not unilaterally dictating the exact hours drivers must work. (Bus. & Prof. Code §7451(a) [classifying app-based drivers as independent contractors so long as, in relevant part, "[t]he network company does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the app-based driver must be logged into" the company's platform].) Indeed, that is

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[28/uber-flexibility-prop-22](#) [as of April 3, 2024].

<sup>20</sup> Alba, *Instacart Shoppers Can Now Choose to Be Real Employees* (June 22, 2015) *Wired*, <https://www.wired.com/2015/06/instacart-shoppers-can-now-choose-real-employees/> [as of April 3, 2024] [(noting Instacart promised that workers who chose to be classified as employees "will still have flexibility when it comes to picking their own shifts"); Sachs, *Uber, Flexibility and Employee Status* (May 18, 2018) OnLabor, <https://perma.cc/CH2X-VCL6> [citing Instacart job posting for employees that shows Instacart kept this promise].

what happened after Prop 22 passed, when Uber clawed back flexibility options that it had offered drivers during the Prop 22 campaign, flexibility options that had given drivers the power to refuse more trips.<sup>21</sup> Moreover, TNCs and DNCs already indirectly control scheduling through the use of surge pricing and work incentives for drivers.

**II. Under the Court of Appeal majority’s analysis, misleading initiative campaigns can take workers’ compensation protections from numerous other workforces.**

The Court of Appeal majority’s analysis, paired with the increased spread of gig-work and the Prop 22 campaign blueprint, provides a roadmap for removing more and more vulnerable workforces from California’s workers’ compensation system and from coverage by other employee protections. (See Respondents’ Opening Br. at 31-32 [noting that the majority’s opinion would allow a provision in a statutory initiative to remove *all* workers from that system]; Respondents’ Reply Br. at 15 [same].) In a comprehensive fifty-state comparison, Oxfam ranked California as having the strongest worker protections.<sup>22</sup> California was the first state to pass a \$15 minimum wage,<sup>23</sup> the

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<sup>21</sup> Hiltzik, *supra* note 19.

<sup>22</sup> Oxfam, Best And Worst States to Work in America 2023, <https://www.oxfamamerica.org/explore/countries/united-states/poverty-in-the-us/best-states-to-work-2023/> [as of April 3, 2024].

<sup>23</sup> MacGillvary & Jacobs, UC Berkeley Labor Center, The Union Effect in California #3: A Voice for Workers in Public Policy (Jun 20, 2018), <https://laborcenter.berkeley.edu/union-effect-in->

second to require paid sick leave in private sector employment, and is one of only ten states that require paid family and medical leave.<sup>24</sup> This is a strong indication of the State's voter's preference for and belief in protecting workers, particularly the most vulnerable workers in society. Would those voters have supported binding app-based drivers to Prop 22's inferior protections had they understood the realities of Prop 22's framework compared to existing protections? There is no reason to think so.

The realistic inference is instead that Prop 22's unprecedented marketing blitz misled voters into supporting the initiative. Confronted with public concern about misclassification of app-based drivers, TNCs and DNCs disingenuously touted Prop 22 as drivers' saving grace. Outspending their opponents ten to one,<sup>25</sup> app-based companies' more-than-\$200 million in campaign spending made Prop 22 the most expensive ballot initiative in California history.<sup>26</sup> These proponents deceptively

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[california-3/](#) [as of April 3, 2024].

<sup>24</sup> National Conference of State Legislatures, State Family and Medical Leave Laws (Apr. 29, 2022), <https://www.ncsl.org/labor-and-employment/state-family-and-medical-leave-laws> [as of April 3, 2024].

<sup>25</sup> Sainato, *I can't keep doing this': gig workers say pay has fallen after California's Prop 22* (Feb. 18, 2021), <https://www.theguardian.com/us-news/2021/feb/18/uber-lyft-doordash-prop-22-drivers-california> [as of April 3, 2024].

<sup>26</sup> Mohamed, *Uber and Lyft Gain \$13 billion in combined market value after Californians approve Prop 22* (Nov. 4, 2020) Markets Insider, <https://markets.businessinsider.com/news/stocks/uber-lyft-stock-prices-california-votes-for-prop-22-2020-11-1029764137>

claimed that app-based drivers would receive 120 percent of the minimum wage, *supra* pp. 14-15, and Uber and Lyft blasted talking points to captive audiences of app-users statewide.<sup>27</sup> California's Fair Political Practice Commission later found that Lyft failed to include required disclosures on its electronic media and text message ads supporting Prop 22.<sup>28</sup>

As elaborated below, there is a serious risk that more and more workforces will be replaced with a putative independent contractor model. California's AB 5 represents a considered legislative judgment to enact a framework that would impede tech companies' ability to shunt these workforces outside the protections that attend employee status, a judgment that explicitly rejected vociferous lobbying by the app-based delivery industry that had sought to obtain a carve-out from the legislation. When the legislature refused to exempt it, the app-based delivery industry turned to deceiving the public through Prop 22. Prop 22's model of blank-check, deceptive marketing schemes, combined with the Court of Appeal's analysis in this

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[as of April 3, 2024].

<sup>27</sup> Hawkins, Uber and Lyft had an edge in the Prop 22 fight: their apps, (Nov 4, 2020) Verge, <https://www.theverge.com/2020/11/4/21549760/uber-lyft-prop-22-win-vote-app-message-notifications> [as of April 3, 2024] [elaborating unprecedented use of in-app messaging to reach voters in Prop 22 campaign].

<sup>28</sup> California Fair Political Practices Commission, FPPC Enforcement Decisions, February 18, 2021 (Feb. 18, 2021), <https://www.fppc.ca.gov/content/fppc-v2/fppc-www/media/press-releases/2021-news-releases/enf-release-feb-2021.html> [as of April 3, 2024].

case, creates a roadmap that employers in numerous industries can use to remove workers from the workers' compensation scheme and other protections afforded employees. The Court must prevent this from happening.

Studies from the U.S. Department of Treasury and U.S. Bureau of Labor Statistics have found that employment as an independent contractor has risen approximately 30% since the early 2000s.<sup>29</sup> This growth has been disproportionately concentrated among low-wage workers, indicating that a large portion of the growth is attributable to misclassification.<sup>30</sup> Indeed, misclassification has spread to all kinds of workforces, including nail salon workers,<sup>31</sup> janitors, home health aides, port truck drivers, cooks, and loading dock workers<sup>32</sup>. Moreover, once misclassification enters an industry, it creates a race-to-the-bottom because employers who classify their workers as employees are at a competitive disadvantage vis-à-vis employers who use misclassification to shed labor costs.<sup>33</sup>

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<sup>29</sup> Brief of the United States Department of Justice As Amicus Curiae In Support of Neither Party, *The Atlanta Opera* (Feb 10, 2022) Case 10-RC-276292, United States of America National Labor Relations Board, 8-9, <https://www.justice.gov/atr/case-document/file/1470846/dl?inline> [as of April 3, 2024] [discussing studies].

<sup>30</sup> *Ibid.*

<sup>31</sup> Dubal, *Winning the Battle, Losing the War?: Assessing the Impact of Misclassification Litigation on Workers in the Gig Economy* (2017) 2017 Wis. L.Rev. 739, 752 & n.53.

<sup>32</sup> Weil, *supra* note 1.

<sup>33</sup> See Shierholz, Economic Policy Institute, *Strengthening Labor Standards and Institutions to Promote Wage Growth* (Feb. 2018),



Investors increasingly pressure startups to classify their workers as independent contractors.<sup>34</sup> And venture capital is nurturing on-demand platforms that are poised to transition a wide range of workforces to an independent contractor model.<sup>35</sup> Uber, through its Uber Works initiative, recently sought to expand its exploitation beyond its vehicle drivers, to supply app-based workers for shift work in positions such as servers, dishwashers, caterers, warehouse workers, and cleaners.<sup>36</sup> The pandemic shutdown—which vastly reduced work in such industries—forced Uber to close this fledgling initiative, for now, and prioritize its core business.<sup>37</sup> But that initiative foretells the

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<https://www.epi.org/publication/strengthening-labor-standards-and-institutions-to-promote-wage-growth/> [as of April 3, 2024].

<sup>34</sup> See, e.g., Wingfield, *Redfin Shies Away From the Typical Start-Up's Gig Economy*, N.Y. Times (July 9, 2016),

<https://perma.cc/2YET-Z2W2> [“[P]rospective venture fund investors [initially] walked away [from an online real estate start-up that refused to use an independent contractor model], saying that betting on full-time employees was a deal killer for them.”]; Sapone, *The On-Demand Economy Doesn't Have to Imitate Uber to Win* (July 10, 2015) Quartz,

<https://perma.cc/WP59-RPGN> [noting that a resident management startup’s decision to classify its workers as employees “was met with skepticism by the investment community. Would-be investors balked at the added cost and complication . . . .”].

<sup>35</sup> Dubal, *supra* note 31, at 742 n.4.

<sup>36</sup> Kim, *The Gig Economy is Coming for Your Job*, N.Y. Times (Jan. 10, 2020), <https://perma.cc/C2UK-HZXJ>

<sup>37</sup> See Staffing Industry Analysts, *Uber to Close Its Uber Works Staffing Operations* (May 19, 2020), <https://www2.staffingindustry.com/Editorial/Daily-News/Uber-to-close-its-Uber-Works-staffing-operations-53856> [as of April 3,



gig economy's expansion in coming, post-pandemic years, into industries whose workers have long depended on the protections that attend employee status. For example, the start-up Jyve! is currently replacing grocery store stockers with app-based workers.<sup>38</sup> Service and hospitality workers in catering, event venues, stadiums, and hotels face the same fate, from platforms such as Qwick and Instawork.<sup>39</sup>

The health care industry offers another example. Venture capitalists have recently buoyed healthcare-worker staffing platforms.<sup>40</sup> In 2022, a ballot initiative was filed with the California attorney general's office that aimed to classify as independent contractors many nurses, dental hygienists, occupational therapists, and other healthcare workers who obtain work through apps or online.<sup>41</sup> Although the initiative has been withdrawn for now, it signals how industries beyond app-based driving are susceptible to maneuvers like Prop 22.

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2024].

<sup>38</sup> Jyve, *Flexibility. Freedom. Income.* <https://www.jyve.com/> [as of April 3, 2024].

<sup>39</sup> Qwick, *How Hospitality Works*, <<https://www.qwick.com/>> [as of March 26, 2024]; Instawork, *Connect with thousands of workers near you*, <https://www.instawork.com/> [as of April 3, 2024].

<sup>40</sup> Sumagaysay, *'Uber for nurses?': Initiative targets healthcare for a 'gig work' law* (Jan. 31, 2022) MarketWatch, <https://www.marketwatch.com/story/uber-for-nurses-initiative-targets-healthcare-for-a-gig-work-law-11643404860> [as of April 3, 2024].

<sup>41</sup> *Ibid.*


This growth in gig work, coupled with companies' ability to eviscerate California's employee protections through misleading initiatives, could lead to California regressing and workers across the state being negatively impacted. This is the opposite of what either our legislature or our voting public would want and was only made possible by app-based companies' lies and by a flawed decision from the majority in the court below. This must not be allowed to stand.

### CONCLUSION

For these reasons Amici Curiae urge the Court to hold that Prop 22 is invalid in its entirety.

DATED: April 3, 2024

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