CASE NO. S279622

IN THE

Supreme Court of the State of California

HECTOR CASTELLANOS, et. al,
Petitioners-Respondents,

v.

STATE OF CALIFORNIA AND KATIE HAGEN, in her official capacity as Director of the California Department of Industrial Relations,
Defendants-Appellants,

PROTECT APP-BASED DRIVERS AND SERVICES; DAVIS WHITE AND KEITH YANDELL,
Intervenors-Appellants.

AFTER A DECISION OF THE COURT OF APPEAL
FIRST APPELLATE DISTRICT, DIVISION FOUR

NO. A163655

UNOPPOSED APPLICATION FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF AND PROPOSED BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF DEFENDANTS AND INTERVENORS

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APPLICATION FOR PERMISSION TO FILE AMICUS BRIEF IN SUPPORT OF DEFENDANTS AND INTERVENORS

Pursuant to California Rules of Court, rule 8.520(f), the Chamber of Commerce of the United States of America (the "Chamber") respectfully files this unopposed application for permission to file an amicus brief.[1]

Under the California Rules, applications for permission to file amicus briefs must "state the applicant's interest" and "explain how the proposed amicus curiae brief will assist the court in deciding the matter." (Cal. Rules of Court, rule 8.520(f)(3).)

Applicant's interest. The Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

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[1] Pursuant to California Rule of Court, rule 8.520(f)(4), *amicus* certifies that no counsel for a party authored this brief in whole or in part and that no person other than *amicus*, its members, or its counsel has made any monetary contributions intended to fund the preparation or submission of this brief.

Amicus has a strong interest in this proceeding. One of the Chamber's key priorities is protecting innovation and entrepreneurialism against policies that stifle economic growth. *Amicus*'s members include network companies[2] and other businesses that rely on the flexibility of independent contractor relationships, which has promoted innovation and growth for *amicus*'s members and contractors alike. *Amicus* therefore encourages this Court to uphold Proposition 22, which protects such relationships.

How the amicus brief will assist the court in deciding the case. "Amici curiae, literally 'friends of the court,' perform a valuable role for the judiciary precisely because they are nonparties who often have a different perspective from the principal litigants." (*Connerly v. State Pers. Bd.* (2006) 37 Cal.4th 1169, 1177 [39 Cal.Rptr.3d 788, 793, 129 P.3d 1, 5].) "Amicus curiae presentations assist the court by broadening its perspective on the issues raised by the parties. Among other services, they facilitate informed judicial consideration of a wide variety of information and points of view that may bear on important legal questions." (*Id.* [39 Cal.Rptr.3d at 793, 129 P.3d at 5-6] (quotation marks omitted).) The Chamber's proposed amicus brief fulfills all three of these functions. The Chamber's broad and diverse membership gives it particular expertise in assessing the policy implications of judicial decisions. Moreover,

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[2] Proposition 22 uses "network compan[ies]" to describe companies such as Lyft that provide platforms for purposes of facilitating local transportation and delivery. (Bus. & Prof. Code, § 7463(f), (*l*), (p)).

the Chamber argues its own unique "points of view that may bear on important legal questions." (*Id.* [39 Cal.Rptr.3d at 793, 129 P.3d at 6] (quotation marks omitted).) Although the parties rightly focus on the legal issues addressed by the Superior Court, the Chamber provides policy arguments regarding Proposition 22's impact on businesses. For these reasons, the Chamber's proposed amicus brief would assist the Court in deciding this case.

CONCLUSION

The application for permission to file an amicus brief should be granted.

Dated: April 3, 2024

Respectfully submitted,

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PROPOSED AMICUS BRIEF IN SUPPORT OF DEFENDANTS AND INTERVENORS

This case concerns the gig economy—that is, the economic activity that arises when entrepreneurs seeking to accept gigs can find customers via digital platforms. Such entrepreneurs differ from employees of ordinary companies because they can accept gigs if and when they please, rather than having their wages and hours dictated by an employer. The gig economy is nothing new—independent contractors have always been a critical part of the economy. But new technology has opened the door for millions more entrepreneurs to strike out on their own without being tied down to a traditional job. Today, a person who wants to rent out a house, design software, be a personal trainer, or undertake innumerable other activities can use various digital platforms to find customers. Such workers benefit greatly from the independence and flexibility of app-based work. They can earn a living while working where and when they want, using as many apps as they want. (*See* U.S. Chamber of Commerce, Employment Policy Division (Jan. 2020) *Ready, Fire, Aim: How State Regulators Are Threatening the Gig Economy and Millions of Workers and Consumers*, at 12, https://bit.ly/3z0bKuF ("*Ready, Fire, Aim*").)

One prominent type of gig allows people to make extra money using their cars. App-based drivers can and do use multiple platforms for local delivery or transportation services to work as often or as little as they like, without being tied down to the requirements of a traditional job. This freedom allows workers to set their own schedules and choose their own projects.

Proposition 22 ensures that app-based drivers keep this autonomy, protecting their ability to work as independent contractors, while providing additional benefits and protections. (*See* Bus. & Prof. Code, § 7449(e)–(f).)

In addition to being constitutional, Proposition 22 is good policy. Classifying app-based drivers as employees is harmful to drivers, network companies, and consumers. Drivers would suffer as businesses might be forced to control how drivers provide services. For instance, if a court classified a ride-sharing app as the employer of drivers who use the app, then the app developers might be forced to control the hours during which drivers use the app, ban drivers from keeping the app open if they are not actively seeking passengers, or force drivers to work in high-volume areas—thus eliminating the very flexibility that drivers value about ride-sharing apps in the first place. Network companies would be subject to unexpected liability and cumbersome regulatory requirements. Companies may pass additional costs on to consumers in the form of higher prices or a different range or level of service. They may also scale back their business or adjust their operations to save costs, which could limit options for consumers.

Petitioners ask the Court to invalidate Proposition 22 and contend that app-based drivers should be deemed employees of the app developers. (*See Dynamex Operations, W., Inc. v. Superior Court* (2018) 4 Cal.5th 903, 959-60 [232 Cal.Rptr.3d 1, 44-45, 416 P.3d 1, 37-38].) But Proposition 22 reflects the overwhelmingly popular and sensible policy judgment of the

people of California that app-based drivers should not be treated as employees. Wage-and-hour laws were not designed for network companies that simply match drivers with passengers. Such platforms exercise virtually no control over drivers' activities. Instead, drivers typically have the unrestricted right to use multiple apps simultaneously and to use those platforms to control their own work. Classifying app-based drivers as employees would cause economic harm and would frustrate the will of California voters. The Court should uphold Proposition 22.

ARGUMENT

I. The Gig Economy Has Created Economic Opportunities for Millions of Independent Contractors, Including Drivers.

This case concerns the legal status of participants in the so-called gig economy—that is, the economy that allows entrepreneurs to accept gigs if and when they please, rather than being tied down to particular jobs requiring them to work a set number of hours per day at their employer's direction.

The gig economy is nothing new—independent contractors pursued gigs long before the Internet. (*See* Richard R. Carlson, *Why The Law Still Can't Tell an Employee When It Sees One and How It Ought to Stop Trying* (2001) 22 Berkeley J. Emp. & Lab. L. 295, 303 & fn. 35 (discussing early origins of the term "independent contractor" and citing early cases involving independent contractors "carrying on an open, distinct, and independent calling or employment, for the production of results," *Bennett v. Truebody* (1885) 66 Cal. 509, 510-11, and

"undertak[ing] to do specific jobs of work for other persons, without submitting [themselves] to their control with respect to all the petty details of the work," *McCarthy v. Second Parish of Town of Portland* (1880) 71 Me. 318)); Charles W. Pierson, *A Recent Attempt to Limit the Independent Contractor Doctrine* (1898) 8 Yale L.J. 63, 64-65 (discussing development of respondeat superior doctrine to accommodate independent contractors in the early- and mid-nineteenth century).) Electricians, plumbers, movers, interior designers, piano tuners, and innumerable other contractors work multiple jobs at multiple homes or businesses. Artists like creative writers and musical composers, too, have always taken commissions from multiple patrons and completed them in their own spaces, on their own timelines, and pursuant to their own creative processes.

Regulators have long recognized the distinction between employees and independent contractors who pursue gigs. Since its earliest days, for example, the National Labor Relations Board has made clear that independent contractors are not covered by the National Labor Relations Act. The Board has recognized the independence of freelancers ranging from truckers who operated their own trucks and contracted with multiple companies, *In re the Kelly Co.* (1941) 34 NLRB 325; to contractors doing pictorial and lettering work for multiple businesses during "whatever hours [they] pleased, at times from early in the morning until late at night," *In re Theurer Wagon Works, Inc.* (1939) 18 NLRB 837, 870; and newsboys who sold multiple newspapers as well as

candy and sandwiches to passersby on the street, *In re Houston Chronicle Publishing Co.* (1941) 28 NLRB 1043.

Thus, gig workers have always existed—and thrived. But by facilitating the matching of entrepreneurs and their customers, new technologies have dramatically expanded the gig economy, to the benefit of both the gig economy's suppliers and its customers.

As of 2017 there were more than 40 million independent contractors in the United States—people "of all ages, skill, and income levels—consultants, freelancers, contractors, temporary or on-call workers—who work independently to build businesses, develop their careers, pursue passions and/or to supplement their incomes." (MBO Partners (2017) *The State of Independence in America: Rising Confidence Amid a Maturing Market*, at 2, https://bit.ly/3wVj9tQ; *see Ready, Fire, Aim*, *supra*, at 13-17 (cataloguing data on size of gig economy).) That segment of the workforce is growing rapidly, too, at a rate three times faster than the overall economy. (Freelancers Union & Upwork (2017) *Freelancing in America: 2017*, at 3, https://bit.ly/3xpmvaQ ("*Freelancing In America*").) If that growth rate holds, independent workers may be the majority of the U.S. workforce by 2027. (*Id.*)

A Pew nationwide survey found that 16% of Americans have used a gig platform to earn money. (Monica Anderson et al. (Dec. 8, 2021) *The State of Gig Work in 2021*, Pew Rsch. Ctr., https://bit.ly/3TGXP5g.) A recent report estimates that there were 7.3 million active rideshare and delivery drivers in 2022 on

the major platforms nationwide. (PublicFirst (2024) *U.S. App-Based Rideshare and Delivery: Economic Impact Report*, at 13, https://bit.ly/3IWJ7lK ("*PublicFirst Report*")).

The gig economy is particularly robust in California. If Petitioners have their way, overturning Proposition 22 could result in reclassification of nearly two million workers—10% of California's workforce. (*Ready, Fire, Aim, supra*, at 24; *see* Daniel Lewin et al. (updated Sept. 12, 2023) *Analysis of California App-Based Driver Job Losses if Network Platforms Are Required to Reclassify Drivers as Employees Rather Than Independent Contractors*, Berkeley Rsch. Grp., at 6, bit.ly/3PH6kfy (anticipating 93.2% decrease from current 1,444,315 unique driver jobs).)

Network companies that facilitate the process of matching providers with customers have spurred the dramatic growth of the gig economy. These platforms are remarkably diverse. Some focus on specific areas, such as Gigster (software engineering) and Airbnb (short term accommodations). Others encompass a wider range of services, such as Thumbtack (home, business, wellness, creative design), and Upwork (accounting, copy editing, personal fitness). Still others are involved in commercial real estate, healthcare, handyman services, pet care, legal services, finance, fundraising, customer services, logistics, and management consulting.

One of the best-known new types of gigs in the Internet economy are gigs that allow people to use their car to make extra money. Before the app revolution, thousands of Americans

owned cars and were willing to use them to make extra cash. But they had no realistic way to find customers. Picking up hitchhikers or offering to deliver at restaurants was not a realistic option. If those Americans wanted to make money driving, they would have to quit their job, find employment as a taxi driver or courier, and—in many cases—drive someone else's car. This was undesirable for Americans who wanted to avoid being tied down to an employer.

Apps such as Uber, Lyft, Grubhub, Postmates, and DoorDash changed all that. Drivers who want to find passengers or deliveries can simply download an app and be connected with passengers or consumers who want their services. The rise of such apps has created new job opportunities for drivers of all stripes, especially those who want or need flexible arrangements. By working independently—when, where, how, and for whom they wish—drivers who are constrained from taking traditional 9-to-5 jobs can nevertheless boost their income. A parent can work around school functions; a retiree can supplement savings; an artist can work in between shows; a person with a long commute can make extra money by driving someone else home. Independent work allows workers to take control of their earning potential and to decide how to spend their time.

Meanwhile, many app-based drivers choose to contract with multiple companies simultaneously to ensure the greatest volume of work. Independent contractors may take full advantage of the flexible working relationship by "toggling back and forth between different … companies and personal clients, and by deciding how

best to obtain business" such that profits are "increased through their initiative, judgment, or foresight—all attributes of the typical independent contractor." (*Saleem v. Corp. Transp. Grp., Ltd.* (2d Cir. 2017) 854 F.3d 131, 144 (internal quotation marks and alterations omitted).) A driver, for example, could take a job for a traditional black-car company for one trip, find a passenger using Uber's app for the next trip, take a personal client to the airport after that, and then finally deliver a dinner using Grubhub's app. Or a student can minimize student loan debt by balancing a courseload with gig work to make ends meet. (*Ready, Fire, Aim*, *supra*, at 16 (noting that 37% of workers aged 18 to 29 reported engaging in gig work in the previous year, two-thirds of whom were students).)

This independent contractor arrangement offers real benefits to workers, including drivers. Because independent contractors own the necessary tools and equipment for the job, they have the flexibility and freedom to deploy those resources however they see fit. In turn, that independence and autonomy leads the overwhelming majority of independent workers to report being satisfied in the independent contractor relationship. "In survey after survey, gig workers report that the primary benefit of gig work is flexibility. They gravitate to gig work because it allows them to make their own schedules and choose their own projects. They like feeling like their own boss." (*Ready, Fire, Aim*, *supra*, at 36 (footnote omitted).) Indeed, according to the Bureau of Labor statistics, eight in ten independent contractors preferred their gig work to "traditional" employment,

while only one in ten said they would prefer a traditional job. (*Ready, Fire, Aim*, *supra*, at 17.) Independent workers also report feeling added security from having the power to choose diverse clients, rather than a single employer, and to control their own costs and benefits. (*Freelancing In America* at 4.)

It is no surprise that so many drivers have chosen to use these apps. The approximately 870,000 California workers who provide rides or deliveries through app-based platforms every month collectively earn billions of dollars in income. (*PublicFirst Report*, at 14.)

The rise of the gig economy has also benefited the public. It is now easier than ever for a consumer to find a driver, technician, or any other service provider within minutes, merely by using their cell phone. And it is now easier than ever for a driver, technician, or other service provider to find a customer, merely by using the same platform. The gig economy has carried particular benefits for lower-income Americans who historically have had trouble accessing goods and services that higher-income Americans take for granted. For example, many lower-income Americans live in "food deserts"—areas with low access to stores selling fresh, healthy food. Yet a recent study shows that 90% of people living in food deserts have at least one digital food access option—and the service rate exceeds 95% in food deserts within metropolitan areas. (Caroline George & Adie Tomer (May 11, 2022) *Delivering to Deserts: New Data Reveals the Geography of Digital Access to Food in the U.S.*, Brookings, https://brook.gs/3NI3YcG.) By allowing workers to be matched to

consumers, the gig economy has allowed all Americans, of all incomes, to access the goods and services they need.

II. Independent Drivers Should Not Be Treated as Employees.

Petitioners ask the Court to overturn Proposition 22 and restore the pre-existing legal regime, under which employee classification was governed by the so-called "ABC" test. The California Supreme Court adopted that test in *Dynamex Operations, West Inc. v. Superior Court* (2018) 4 Cal.5th 903, 959-60 [232 Cal.Rptr.3d 1, 44-45, 416 P.3d 1, 37-38]. In Assembly Bill No. 5, as amended by Assembly Bill No. 2257, the Legislature subsequently codified *Dynamex*'s holding (with some modifications). (*See* Lab. Code § 2750.3 [repealed], §§ 2775-2787.) If Proposition 22 is overturned, Petitioners and others would doubtless argue that drivers should be classified as employees under that test.

If that outcome materializes, businesses, drivers, and consumers would be harmed. Assembly Bill No. 2257 itself exempts numerous types of workers from the ABC test, ranging from photographers to underwriters to architects, demonstrating that the Legislature understood that the "ABC" test does not fit many types of workers. Voters had sound reasons for reaching a similar conclusion with respect to drivers who use apps.

A. Deeming gig economy drivers to be employees would have major negative impacts on businesses, labor, and the economy.

If overturning Proposition 22 resulted in the classification of gig-economy businesses as employers and drivers as

employees, that outcome would have negative consequences for businesses, drivers, and consumers.

From businesses' perspective, deeming drivers to be employees would stifle innovation. Technology products like the Lyft and Doordash apps are successful precisely because they do *not* create traditional employer-employee relationships, but instead allow independent drivers and independent consumers to find each other, or allow restaurants, delivery drivers, and consumers to find each other. Such a business model is more attractive to both drivers and consumers than the traditional top-down business model. This outcome would harm not only technology businesses, but also other businesses, such as restaurants, that rely on technology apps to match delivery drivers with customers.

Yet Petitioners now ask the Court to overturn Proposition 22, with the ultimate goal of causing app-based drivers to be classified as employees of the platforms that those drivers use. Given that many gig economy workers use multiple apps, often simultaneously, the result would be that every driver has numerous employers—and every app has enormous numbers of employees. Apps would be forced to adjust their business models and bar drivers from using multiple apps. Such an outcome would prevent network companies from pursuing the new business models that have transformed modern commerce.

Independent drivers in the gig economy, too, would be worse off. If network companies are deemed employers of independent drivers, they will be forced to act like employers—to

their employees' detriment. The high cost of compliance with labor laws and regulations will force companies to sharply limit the number of people who work using their product, and the employees that remain would lose the flexibility they enjoy as independent contractors. (*See Ready, Fire, Aim, supra*, at 37 ("[O]nce platform holders have to guarantee wages and other benefits, they will behave more like traditional employers and be more selective about whom they partner with. They will have to ensure that every new service provider can generate enough revenue to justify his or her wages and benefits, and that will make them more careful about offering work opportunities.").)

In particular, if drivers using rideshare or delivery apps are classified as employees and declare all of their time with the app activated to be compensable work time, the network companies might be forced to micromanage when the app is turned on or off. For instance, network companies might prevent the app from being turned on if the drivers are in an area unlikely to get delivery offers, or force drivers to be in high-yield areas at particular times of day. This would eliminate one of the apps' fundamental selling points for drivers—they can turn the app on when they want, where they want. Indeed, one study suggests that repealing Proposition 22 would cost hundreds of thousands of drivers their jobs. (Brad Williams (July 2020) *Impacts of Eliminating Independent Contractor Status for California App-Based Rideshare and Delivery Drivers*, Capitol Matrix Consulting, at 1-2, 6-8, https://bit.ly/3iQMThJ.)

Consumers would also be hurt if gig economy participants were considered employees. If an app is forced to cut the number of drivers working for it, or to prevent drivers from working in low-demand areas or at low-volume times such as at night, consumers may become unable to obtain the late-night ride that those apps previously facilitated. At a minimum, the cost of transportation for consumers would surely go up. Further, classifying gig economy drivers covered by Proposition 22 as employees would make it more logistically challenging to launch new Internet matching apps, to the detriment of the economy as a whole. Studies have shown that the "economic benefits of independent contracting … are substantial" and that making "it more difficult for workers and firms to enter into such arrangements would thus result in slower economic growth, lower levels of employment and job creation, and lower consumer welfare overall." (Jeffrey A. Eisenach, Navigant Economics (2010) *The Role of Independent Contractors in the U.S. Economy*, at ii, https://bit.ly/3wQn61D; *see also* Steven Cohen & William B. Eimicke (Aug. 2013) Colum. Sch. of Int'l Affairs, *Independent Contracting Policy and Management Analysis* 85, https://bit.ly/3MPy91L.)

In short, requiring that network companies classify independent drivers as employees creates a lose-lose-lose situation that is bad for businesses, workers, and consumers.

B. The policy justifications for classifying workers as employees do not extend to rideshare drivers.

The policy justifications for adopting an expansive understanding of "employees" do not apply to the drivers subject

to Proposition 22. "Wage and hour statutes and wage orders were adopted in recognition of the fact that individual workers generally possess less bargaining power than a hiring business and that workers' fundamental need to earn income for their families' survival may lead them to accept work for substandard wages or working conditions." (*Dynamex*, 4 Cal.5th at 952 [232 Cal.Rptr.3d at 37-38, 416 P.3d at 32].) Employers' control over employees is the core reason for wage-and-hour statutes. Employees need to put food on the table every week. In many areas of the country, few employers exist, and it is difficult to move. An employee who wants to keep her family where it is has little choice but to accept the local employers' conditions of employment. Even in areas where there are many employers, many employees live paycheck-to-paycheck and are unwilling to quit their jobs based on the speculative possibility of obtaining higher pay elsewhere. The difficulty of finding a new job creates the risk that employees will accept work for substandard wages or working conditions. Wage and hour statutes were designed to protect workers from this type of exploitation.

But that justification does not make sense in the context of rideshare and delivery apps. Concerns about the difficulty of finding a new job simply do not apply in the context of rideshare apps, where drivers may sign up at any time to use as many apps as they want.

A similar analysis applies to overtime and sick pay rules. Overtime rules and sick pay rules protect employees from abusive employers who force them to work excessive hours or

while they are sick. But drivers can use apps whenever they want, for as long as they want. And many drivers and gig economy workers use apps to find work only sporadically. Indeed, according to a study by the Federal Reserve, only a third of gig economy workers had performed gig work in all or most months in the prior year, and the median amount of hours spent on gig work per month was five. (*Ready, Fire, Aim*, supra, at 17.) Similarly, according to a study by the New York City Taxi and Limousine Commission, the average taxi driver took 91 trips per week, whereas the average driver using Uber took 44—suggesting that unlike taxi drivers, drivers using Uber were working mostly part time. (*Id.*) That makes the flexible relationship between drivers and network companies very different from the relationships that form the basis for wage-and-hour laws.

Moreover, drivers have significant control over the amount of money they earn. Drivers largely determine the amount of revenue they take in from apps based on whether, when, where, and for how long they choose to drive. Further, drivers must make substantial out-of-pocket capital investments—and they decide how to manage those investments. The driver decides whether to buy, lease, or rent the vehicle they use, and on what terms (subject to market availability). And the driver chooses how to manage carrying costs, like gasoline, vehicle maintenance and upkeep, and insurance. The ability to turn a greater profit by operating more efficiently is a classic hallmark of an independent contractor. By contrast, wage-and-hour orders are

intended to protect employees who *cannot* earn a greater profit by operating more efficiently, but whose hours and wages are at the discretion of an employer that is able to exploit them.

Workers also benefit from their capital investments even after they stop using the apps. An employee of a trucking company who quits his job cannot take the truck with him. By contrast, a person who buys a car and uses an app can keep the car even after he stops using the app. This decreases drivers' economic dependence on apps and decreases the need for a wage-and-hour law.

This does not mean, of course, that drivers who use apps should be left completely on their own. As such, Proposition 22 includes extensive protections tailored to the needs of those drivers. For instance, drivers, whether employees or independent contractors, need a safety net if they are injured on the job. Proposition 22 preserves such a safety net: it contains detailed provisions guaranteeing that injured drivers will be compensated. (*See* Bus. & Prof. Code, § 7455.)

In that respect, Proposition 22 is more protective of independent contractors than the historic baseline. Historically, workers' compensation schemes have covered only employees and have offered independent contractors *no* protection. (*See* 2 Witkin (11th ed., database updated May 2023) *Summary of California Law*, § 207, Westlaw ("Independent contractors are excluded [from workers' compensation]….").) As this Court has explained, "[t]he express exclusion of 'independent contractors'" from workers' compensation laws "recognizes" the fact that

"imposing the risk of 'no-fault' work injuries directly on the provider, rather than the recipient, of a compensated service" made good sense "when the provider of service has the primary power over work safety, is best situated to distribute the risk and cost of injury as an expense of his own business, and has independently chosen the burdens and benefits of self-employment." (*S.G. Borello & Sons, Inc. v. Dep't of Indus. Relations* (1989) 48 Cal.3d 341, 354 [256 Cal.Rptr. 543, 550-51, 769 P.2d 399, 406].) Other states similarly exclude independent contractors from workers' compensation laws. (*See, e.g.*, *Panaro v. Electrolux Corp.* (Conn. 1988) 545 A.2d 1086, 1093; *Baya's Bar & Grill v. Alcorn* (Fla. 1949) 40 So.2d 468; *Daleiden v. Jefferson Cnty. Joint Sch. Dist. No. 251* (Idaho 2003) 80 P.3d 1067; *City of Shreveport v. Kingwood Forest Apartments* (La. Ct. App. 1999) 746 So.2d 234; *Elms v. Renewal by Andersen* (Md. 2014) 96 A.3d 175; *Hawbaker v. Workers' Comp. Appeal Bd.* (Pa. Commw. Ct. 2017) 159 A.3d 61; *Smith v. Squires Timber Co.* (S.C. 1993) 428 S.E.2d 878; *Cnty. of Spotsylvania v. Walker* (Va. Ct. App. 1997) 487 S.E.2d 274, 276.) Far from stripping drivers of all protections, Proposition 22 strikes a balance between offering drivers *more* protections than they would have obtained under traditional workers' compensation schemes, while ensuring they can retain the flexibility associated with independent contractor status.

III. The Court Should Not Allow Policy Disagreement with Proposition 22 to Distort Constitutional Analysis.

This Court granted review to decide whether Section 7451 conflicts with Article XIV of the California Constitution. The Superior Court ruled in Plaintiffs' favor on this issue, and the dissent in the Court of Appeal would have reached the same conclusion. Both the Superior Court and the dissent below, however, appear to rely on policy considerations that have little relevance to the legal analysis of Proposition 22. That reasoning was misguided. To the extent public policy is relevant to the constitutional issues presented here, it is a basis to uphold Proposition 22, not to strike it down. The Court should therefore decline Petitioners' request to reinstate the Superior Court's faulty reasoning and holding regarding § 7451.

The Superior Court opined that Proposition 22 does not "protect work flexibility, nor does it provide minimum workplace safety and pay standards," but instead "protect[s] the economic interests of the network companies." (AA 896). The Court of Appeal dissent likewise accused Proposition 22 proponents of "seek[ing] to justify for app-based drivers the same kind of second-class citizenship treatment that agricultural and domestic workers were given in the original policy debate over the reach of workers' compensation coverage," and of "dismiss[ing]" as "archaic" the "enduring constitutional achievement of the progressive reform era" that is Article XIV of the California Constitution. (Ct. App. Diss. 17, 29, 61). The Superior Court's decision and Court of Appeal dissent reflect an implicit premise

that it is better for more workers to be treated as employees for purposes of California's worker's compensation laws, and that the Constitution should be construed with that goal in mind.

Proposition 22's opponents presented the same portrait of Proposition 22 during the campaign, but voters were not persuaded. Characterizing a worker as an independent contractor neither treats the worker as a "second-class citizen" nor constitutes "mistreatment." To the contrary, it reflects that the worker uses a different business model than a traditional employee, warranting different regulatory treatment. Indeed, that is precisely why California has long distinguished between independent contractors and employees under Article XIV—a historic tradition that Proposition 22 carries forward. Network companies forced to provide more expansive workers' compensation may be forced to restrict the number of drivers who sign up, demand intrusive personal information as a condition of signing up, restrict drivers to working at particular times or particular locations, or restrict drivers from using other apps. This would eliminate one of the primary benefits of apps to drivers—that they can use whichever apps they want and work whenever they want. Most drivers will never submit workers' compensation claims, yet all drivers may be harmed if app developers are forced to treat them as de facto employees. In enacting Proposition 22, the People recognized these realities with respect to app-based drivers, but still conferred those drivers significant protection in the event of an injury.

Disagreement with that conclusion should not influence the constitutional analysis.

The Superior Court similarly expressed dismay with the fact that under Proposition 22, app-based workers would not participate in collective bargaining: according to the Superior Court, collective bargaining would "alter their bargaining power" but would not "diminish their 'independence.'" (AA 895). That aspect of Proposition 22 is not at issue in this appeal, which addresses only the issue of workers' compensation, so the Superior Court's policy concerns should not affect the disposition of this case. In any event, those concerns are unfounded. A core premise of Proposition 22 was that collective bargaining *would* diminish the very independence that Proposition 22 was designed to protect. Collective bargaining agreements routinely include provisions such as minimum-hour guarantees and seniority protections. In the gig economy, however, those guarantees become requirements that would wipe out the benefits of apps for many drivers. If a collective bargaining agreement included a minimum-hour guarantee, network companies would be forced to ban drivers who only use the app occasionally. If it included seniority protections, drivers might not be able to use the app in their preferred locations or preferred times—such as on their commute home at the end of the working day. The Superior Court's disagreement with the People's assessment of the impact of collective bargaining was not a permissible basis to find a constitutional violation.

CONCLUSION

The Court should uphold Proposition 22.

Dated: April 3, 2024

Respectfully submitted,

/s/ Laurie J. Edelstein

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief contains 5,517 words, excluding the cover, tables, signature block, and this certificate, according to the word count generated by the computer program used to produce this brief.

Dated: April 3, 2024 /s/ Laurie J. Edelstein

PROOF OF SERVICE

I, Laurie Edelstein, declare that I am over the age of eighteen years and not a party to this suit. My business address is 455 Market Street, Suite 2100, San Francisco, CA 94105-2453. On April 3, 2024, I served the document listed below on the interested parties via TrueFiling and U.S. mail:

Unopposed Application for Permission to File *Amicus Curiae* Brief and Proposed Brief of the Chamber of Commerce of the United States of America in Support of Defendants and Intervenors.

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On April 3, 2024, I also served the Unopposed Application for Permission to File *Amicus Curiae* Brief and Proposed Brief of the Chamber of Commerce of the United States of America in Support of Defendants and Intervenors on the interested parties below via U.S. Mail:

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Alameda, CA 94501

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **CASTELLANOS v. STATE OF CALIFORNIA (PROTECT APP-BASED DRIVERS AND SERVICES)**
Case Number: **S279622**
Lower Court Case Number: **A163655**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **ledelstein@jenner.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
APPLICATION	Unopposed Application for Permission to File Amicus Curiae Brief and Proposed Brief of the Chamber of Commerce of the United States of America in Support of Defendants and Intervenors

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

4/3/2024

Date

/s/Laurie Edelstein

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