No. S279622

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

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

Plaintiffs and Petitioners,

v.

STATE OF CALIFORNIA; KATIE HAGEN, in her official capacity as Director of the California Department of Industrial Relations,

Defendants and Respondents,

PROTECT APP-BASED DRIVERS AND SERVICES; DAVIS WHITE; KEITH YANDELL

Intervenors and Respondents.

INTERVENORS-RESPONDENTS' ANSWER TO PETITION FOR REVIEW

After a Decision by the Court of Appeal
First Appellate District, Division Four, Case No. A163655
Alameda County Superior Court No. RG21088725
The Honorable Frank Roesch, Presiding

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INTRODUCTION

Petitioners seek review of one issue raised in their facial challenge to Proposition 22: whether XIV § 4 of California's Constitution forbids the voters from enacting legislation affecting workers' compensation. Review should be denied because an unbroken line of this Court's precedent establishes that the People possess the same power as the Legislature to enact statutes, even when the Constitution gives the Legislature "plenary" or "unlimited" authority over an issue. The Court of Appeal properly applied this settled principle of law, and no other appellate decisions have ruled otherwise. There is thus no important question of law or disharmony in the lower courts for this Court to settle. (Cal. Rules of Court, rule 8.500(b)(1).)

The People's reserved right to legislate is a foundational feature of our governmental system. In Proposition 22, the voters used that power to reject a traditional employee model for app-based workers. In its place, the voters adopted a hybrid model, guaranteeing app-based drivers many of the benefits typically available to employees while maintaining their right to work flexibly as independent contractors. The voters approved this approach by a wide margin, embodying the promise that "[a]ll political power is inherent in the people." (CAL. CONST., art. II, § 1.)

Petitioners believe the hybrid approach that Proposition 22 creates is unsatisfactory. (Pet. at p. 15.) But this case is not about whether the Legislature or the voters made the wiser

policy decision. It is about whether the voters have the power to enact a statutory initiative embodying a *different* policy decision from the Legislature. A century of jurisprudence establishes the legal framework for answering that question, and the Court of Appeal applied that settled law to reach the same answer this Court has reached in case after case: The voters have that authority.

"Long-standing California decisions establish[] that references in the California Constitution to the authority of the Legislature to enact specified legislation generally are interpreted to include the people's reserved right to legislate through the initiative power." (*Independent Energy Producers v. McPherson* (2006) 38 Cal.4th 1020, 1043.) Only language that makes "explicit reference to the initiative power" can overcome this presumption. (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 945–946.) And as the Court of Appeal's opinion explains, *McPherson* held that the same "plenary" and "unlimited" language used in article XIV § 4 is not enough to "preclude the people, through their exercise of the initiative process," from passing the same statutes the Legislature could pass. (38 Cal.4th at pp. 1043–1044; see Op. at pp. 14–18.)

Petitioners argue that Proposition 22 improperly limits the Legislature's power because the Legislature cannot repeal or amend Proposition 22 without the voters' approval. But that voter-approval process is a core structural feature of the Constitution, which protects *all* initiative statutes from

unilateral interference by the Legislature. (CAL. CONST., art. II, § 10(c).) It does not make initiatives *un*constitutional.

Petitioners argue that a footnote in *McPherson* provides a basis to grant review. It does not. That footnote merely described questions that were not at issue in *McPherson*—whether a statutory initiative can eliminate a constitutional power of the Legislature or enact a law beyond the scope of the Legislature's power—and it reiterated the proper method of assessing the constitutionality of statutory initiatives. (38 Cal.4th at p. 1044, fn. 9.) This case does not present those questions either. As in *McPherson*, the straightforward application of established precedent requires the conclusion reached by the Court of Appeal: Because the Legislature can alter the scope of the workers' compensation system by changing the test for which workers are "employees," so too can the People.

The dissent in the Court of Appeal took a different approach, advancing a novel interpretation of article XIV § 4 that no court has ever adopted—that the Constitution *mandates* a workers' compensation system with specific features. On this theory, the Legislature was forced to enact such a system and *neither* the Legislature nor the People could enact statutes like Proposition 22. But Petitioners do not seriously endorse this theory. And for good reason: This Court and the Courts of Appeal have rejected it in over a century of uniform caselaw.

In sum, Petitioners' challenge to Proposition 22 is a policy outcome in search of a legal theory. There is no important

question of law or disharmony in the lower courts for this Court to settle. Accordingly, the petition should be denied.

BACKGROUND

1. In 1911, the People enshrined the initiative power in the California Constitution, reserving for themselves the power to enact statutes as a check on the Legislature's rapid consolidation of political power at the People's expense. This constitutional amendment "g[a]ve the people power to control legislation of the state," "reserve[d]" the People's "power to propose and to enact laws which the legislature may have refused," and provided a "safeguard which the people should retain for themselves … to hold the legislature in check, and veto or negative such measures as it may … enact." (AA 756–759.)

Just seven years later, the People adopted the current language of article XIV § 4. That provision states that the Legislature is "expressly vested with plenary power, unlimited by any provision of th[e] Constitution, to create, and enforce a complete system of workers' compensation." (CAL. CONST., art. XIV, § 4.) The motivation for enacting this provision had nothing to do with the initiative process—much less the People's desire to strip themselves of the very power they had enshrined in the Constitution earlier that decade. Rather, the "*sole* purpose" of article XIV § 4 was to remove "all doubts as to the constitutionality" of workers' compensation statutes. (*Mathews v. Workmen's Comp. App. Bd.* (1972) 6 Cal.3d 719, 735 & fn. 11, italics added.) This was during the *Lochner* era, when courts in

other states had struck down workers' compensation regimes on the view that such laws were beyond the legislative power of the state. (Hanna, Cal. Law of Employee Injuries and Workmen's Compensation (2d ed. 1981) § 1.02.)

Article XIV § 4 allows for the creation of a workers' compensation scheme for "*any* or all … workers." (Italics added.) But it does not *require* such a scheme for any particular group of workers. Thus, this Court has long upheld workers' compensation regimes that exclude categories of workers. (E.g., *Western Indemnity Co. v. Pillsbury* (1915) 170 Cal. 686, 701–702.) For example, independent contractors have remained outside the workers' compensation system from the start. (See *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341, 349.)

2. The standards for classifying workers as independent contractors or employees have changed over time, with the effect of expanding and contracting the workers' compensation system. In 2019, for instance, the Legislature enacted AB 5, which made it easier to classify workers as employees by expanding the "ABC" classification test applied by this Court in *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903. At the same time, AB 5 exempted from the ABC test numerous categories of workers who had previously been subject to it under *Dynamex*. (Lab. Code, § 2750.3 [revised and recodified at Lab. Code §§ 2775–2785 by AB 2257].) A year later, the Legislature continued to adjust those classification standards in AB 2257, newly exempting a long list of additional occupations that had been

subject to the ABC test under AB 5 and *Dynamex*. (*Id.*, §§ 2775–2785.)

3. Later in 2020, a coalition of over 120,000 app-based drivers, as well as a host of diverse organizations from across the political spectrum, put forward Proposition 22. The basic idea was to forge a compromise in this new setting. The initiative would establish a classification test under which app-based drivers are independent contractors if the network company does not: (a) unilaterally prescribe specific dates, times, or hours for them; (b) require them to accept any specific request; (c) restrict them from working with other network companies; or (d) prevent them from working in other occupations. (Bus. & Prof. Code, § 7451; Proposition 22, art. 2.) At the same time, the initiative would confer various benefits and protections normally unavailable to independent contractors—such as a health insurance stipend, minimum earnings guarantee (20% *above* the minimum wage that would apply if they were employees, plus compensation for mileage), medical and income protection, occupational-accident insurance, and certain contract, anti-discrimination, and termination rights. (Bus. & Prof. Code, §§ 7451, 7453–7455.)

Proposition 22 was one of the most visible initiative campaigns in California history. A diverse coalition of organizations—including Mothers Against Drunk Driving, the California NAACP State Conference, Crime Victims United of California, the California Farm Bureau Federation, and the National Black Chamber of Commerce—supported its new

system of independence and benefits for app-based drivers. In contrast, opponents (including Petitioners) argued that all app-based drivers should be classified as employees. In the November 2020 election, the voters approved Proposition 22 with overwhelming support. Proposition 22 garnered nearly 10 million "yes" votes, won in 50 of 58 counties, and passed by a 17% margin. (AA 101.)

Proposition 22 went into effect on December 16, 2020. (See Bus. & Prof. Code, § 7448 et seq.)

4. A month after Proposition 22 took effect, Petitioners filed an emergency petition for a writ of mandate in this Court, asking it to declare Proposition 22 invalid. (See *Castellanos v. State of California*, No. S266551 (Cal. Jan. 12, 2021).) The Court denied the petition. (See *Castellanos v. State of California*, No. S266551 (Cal. Feb. 3, 2021).)

Petitioners re-filed their petition in the trial court. (AA 14–41.) That court granted Petitioners' petition for a writ of mandate, declaring Proposition 22 unconstitutional. (AA 886–897.)

The trial court held that Business & Professions Code section 7451 is unconstitutional "because it limits the power of a future legislature to define app-based drivers as workers subject to workers' compensation law." (AA 896.) The court reasoned that article II § 10(c) of the California Constitution "conflicts with" article XIV § 4 because article II § 10(c) allows the Legislature to amend an initiative statute only if the voters approve, and thus deprives the Legislature of its "plenary" and

"unlimited" power over workers' compensation. (AA 889.) In the court's view, "[i]f the Legislature's authority is limited by an initiative statute, its authority is not 'plenary' or 'unlimited by any provision of [the] Constitution' (Cal. Const. art. XIV, § 4); rather, it would be limited by Article II, Section 10, subdivision (c)." (*Ibid.*)

The trial court also held that a severable provision of Proposition 22 unconstitutionally limits the Legislature's ability to pass future legislation about collective bargaining and violates the single-subject rule. (AA 897.)

5. The Attorney General and Intervenors appealed. Numerous individuals and organizations filed twelve amicus briefs to support Proposition 22 and to protect the initiative power. California officials from across the political spectrum—including a former Governor, a former Attorney General, and former members of the California Fair Political Practices Commission—wrote to defend the People's ability to enact initiative statutes about any subject, and thereby override the Legislature's policy preferences. They were joined by constitutional scholars from the University of California, Berkeley School of Law's California Constitution Center, as well as pro-direct democracy groups such as Citizens in Charge and the California Policy Center, who wrote that striking down Proposition 22 would imperil the initiative right as a whole. A group representing hundreds of app-based drivers noted that invalidating Proposition 22 would harm drivers who need the freedom, flexibility, benefits, and protections the statute

provides. And organizations representing communities of color—such as the California Hispanic Chambers of Commerce, the National Diversity Coalition, and Rev. Al Sharpton's National Action Network—explained that holding Proposition 22 unconstitutional "would shut off income-earning opportunities to … many workers of color" and "reduce vital transportation, food, and delivery services in communities of color throughout the State." (Communities of Color Amicus Br., at p. 11.) Six other briefs urged affirmance.

The Court of Appeal reversed in relevant part, holding "that Proposition 22 does not violate article XIV, section 4." (Op. at p. 28.) It explained that this Court, in *McPherson*, had interpreted "nearly identical language" in a way "contrary to the trial court's ruling." (*Id.* at pp. 12, 15.) Like article XIV § 4, the constitutional provision at issue in *McPherson* also says that "the Legislature" has "plenary power, unlimited by" any other provision "of this constitution." (CAL. CONST., art. XII, § 5.) But this language does not and "cannot mean that workers' compensation laws are exempt from every other aspect of the Constitution"—including the People's *reserved* initiative power or article II § 10(c)'s protection of it by restricting the Legislature's ability to enact laws that repeal or amend initiative statutes. (Op. at p. 16.) Accordingly, *McPherson* teaches—consistent with "long-standing California decisions"—that article XIV § 4's reference to the Legislature must be read as meaning "the Legislature *or the electorate acting through the initiative power*." (*Id.* at p. 14.) And when *McPherson* is combined with this Court's

precedent making clear that the sole reason for article XIV's enactment had nothing to do with the initiative power (*Mathews*), "the notion that article XIV, section 4 should be construed as limiting the voters' initiative power falls apart." (*Id.* at p. 17.)

The Court of Appeal also held that Proposition 22 does not violate the single-subject rule. (Op. at pp. 29–38.) Finally, the court held unconstitutional a provision of Proposition 22 defining what constitutes an "amendment" to the initiative. (*Id.* at 38–62.) The court held that this provision violated the separation of powers by "intrud[ing] on the judiciary's authority to determine what constitutes an amendment to Proposition 22." (*Id.* at 62.) The court recognized, however, that there was no "meaningful[]" difference between severing that provision and accepting Intervenors' argument that this provision was merely precatory to begin with. (*Id.* at 61–62.) (Intervenors accordingly do not seek review of this ruling.)[1]

Justice Streeter dissented, but only as to the article XIV claim. (Dissent at p. 1.) In his view, article XIV § 4 "charges the Legislature with the *responsibility* … to 'create' a 'complete system of workers' compensation'" and precludes any legislative

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[1] The Court of Appeal's decision does not affect the ways the People allowed the Legislature to amend Proposition 22 without voter approval. Although the People could have chosen to forbid all such amendments, they authorized the Legislature to enact, by a seven-eighths vote, amendments that are "consistent with and, and further[] the purpose," of the initiative. (Bus. Prof. 7465(a); *People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 568 [Legislature may amend an initiative only if authorized by the voters, subject to "whatever conditions the voters attached"].)

attempt to alter the "'basic features' of that system." (*Id.* at pp. 30–46, italics changed.) According to him, "there is a minimum constitutional baseline to our workers' compensation system no statute can go below." (*Id.* at p. 8.)

The dissent also relied heavily on Justice Jackson's concurrence in *Youngstown Sheet & Tube Co. v. Sawyer* (1952) 343 U.S. 579—a case that neither Petitioners nor the trial court ever cited—and argued that, just as the executive branch cannot overrule the laws enacted by Congress, when the People legislate about workers' compensation, "they must do so in a manner that is consistent with any prior exercise of article XIV, section 4 power by the Legislature." (Dissent at p. 25.) Justice Streeter therefore believed that the People "were required to respect what the Legislature had done" in AB 5 "and lacked power to countermand it." (*Ibid.*)

Adding these two views together, the dissent concluded that "ballot statutes may be used to build upon" the workers' compensation system, but "the power to legislate by initiative may not be used to undermine that system" by withdrawing workers from its coverage. (*Id.* at p. 23.) Because Justice Streeter viewed Proposition 22 as creating a new category of worker relationship that made an impermissible "policy choice" to give drivers "second-class citizenship treatment," he would have invalidated the initiative. (*Id.* at pp. 4, 57, 61.)

The majority explained a central flaw in the dissent's reasoning: "[A]rticle XIV, section 4 does not require every worker to be covered by workers' compensation." Far from "impos[ing] a

lawmaking mandate upon the Legislature," that provision allows the Legislature or the voters to "limit benefits" and to "exclude certain workers." (Op. at pp. 24–25, quoting *Facundo-Guerrero v. Workers' Comp. Appeals Bd.* (2008) 163 Cal.App.4th 640, 650; see Op. at pp. 16–17, fn. 8.) As the majority explained, Proposition 22 merely did what the Legislature has done on numerous occasions—change the test for who is an "employee." (*Id.* at p. 26.) Adopting the dissent's view "would completely defeat the long-established rule that references to the Legislature should be read as including the initiative power." (*Ibid.*)

REASONS FOR DENYING REVIEW

I. The Petition Raises No Question of Law Not Already Answered by This Court's Precedents

The Court of Appeal broke no legal ground in upholding Proposition 22 under a long line of this Court's cases stretching before and after *McPherson*. This application of established precedent does not merit review, particularly where Petitioners have made no serious claim of a division of authority that this Court must resolve.

A. The Court Has Made Clear That the People Share the Legislature's "Plenary" and "Unlimited" Powers

Petitioners ask this Court to address whether article XIV's language, which grants the Legislature "plenary" power "unlimited" by any other provision of the Constitution, displaces the People's power to legislate on the same topic. This Court has already answered this question with a resounding no.

McPherson concerned a constitutional provision with "analogous language" to article XIV § 4. (38 Cal.4th at p. 1036, fn. 4.) The similarity is striking:

> <u>*McPherson*</u>: "*The Legislature* has *plenary power, unlimited by the other provisions of this constitution* but consistent with this article, to confer additional authority and jurisdiction upon the commission." (CAL. CONST., art. XII, § 5, italics added.)
>
> <u>Here</u>: "*The Legislature* is hereby expressly vested with *plenary power, unlimited by any provision of this Constitution*, to create, and enforce a complete system of workers' compensation, by appropriate legislation." (CAL. CONST., art. XIV, § 4, italics added.)

This Court held in *McPherson* that the "plenary" and "unlimited" language does not "preclude the people, through their exercise of the initiative process," from exercising the same power the Constitution grants to the Legislature. (38 Cal.4th at pp. 1043–1044.) The Court of Appeal correctly recognized that this holding squarely governed the interpretation of the identical language in article XIV. (Op. at pp. 14–18.)

Petitioners protest that *McPherson* "did *not* hold that … the words '[t]he Legislature' … refer to the initiative power." (Pet. at pp. 29–30 & fn. 6.) But that is precisely what *McPherson* held. It explained that "long-standing California decisions establish[] that references in the California Constitution to the authority of the Legislature to enact specified legislation generally are interpreted to include the people's reserved right to legislate through the initiative power." (38 Cal.4th at p. 1043.) Under

these same "long-standing … decisions," article XIV's reference to "the Legislature" likewise includes the initiative power.

The decisions relied on by *McPherson* include *Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, *State Comp. Ins. Fund v. State Bd. of Equalization* (1993) 14 Cal.App.4th 1295, and *Carlson v. Cory* (1983) 139 Cal.App.3d 724, all of which upheld initiative statutes that legislate under provisions that refer to "the Legislature." Petitioners respond that "[n]one of those cases involved constitutional provisions that expressly grant 'the Legislature' power that is unlimited by the other provisions of the Constitution." (Pet. at p. 30, fn. 6.) But *McPherson* held that such language does not "trump" the constitutional provisions protecting the initiative power, just as it does not exempt the Legislature from requirements to enact legislation, such as "the provision authorizing the Governor to veto a bill approved by the Legislature." (38 Cal.4th at p. 1036.)

Since *McPherson*, the Court has continued to apply the rule that the People possess the same legislative power as the Legislature. Petitioners fail to mention *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, which reaffirmed that if "the Legislature has plenary authority, then so, too, does the electorate." (*Id.* at p. 1043.) Petitioners also never acknowledge *Consulting Engineers & Land Surveyors of California, Inc. v. Professional Engineers in California Government* (2007) 42 Cal.4th 578 (*CELSOC*), where this Court reiterated "that, constitutionally, the legislative power is shared by the Legislature and the electorate acting through its powers of

initiative and referendum, not exclusively exercised by the Legislature." (*Id.* at p. 587.)

"Without an *unambiguous indication* that a provision's purpose was to constrain the initiative power, [the Court] will not construe it to impose such limitations." (*California Cannabis Coalition*, 3 Cal.5th at pp. 945–946, italics added.) Petitioners do not argue there is any such unambiguous indication here—which is unsurprising given there is no "explicit reference to the initiative power in [article XIV § 4]'s text" or "ballot materials." (*Id.* at p. 946.) Accepting their argument would require the Court to overrule the clear statement rule it articulated six years ago in *California Cannabis Coalition* and applied in a "long-standing and consistent line of cases" before it. (*Ibid.*)

The history and purpose of article XIV offer no reason to depart from the "general[]" rule that "the Legislature" includes the People acting through the statutory initiative process. (*McPherson*, 38 Cal.4th at p. 1043.) Just as the word "unlimited" in article XII was meant "to eliminate any potential legal argument that other provisions of the Constitution" would limit the Public Utility Commission's rate-setting authority (*id.* at pp. 1039–1040), "unlimited" in article XIV had "the sole purpose of removing all doubts as to the constitutionality of the then existing workmen's compensation statutes" (*Mathews*, 6 Cal.3d at pp. 734–735). Nothing in this history provides any indication, let alone the necessary clear statement, that article XIV was meant to repeal the voters' initiative power over workers' compensation.

(*Kennedy Wholesale*, 53 Cal.3d at p. 250; see *McPherson*, 38 Cal.4th at pp. 1041–1043.)

In short, the Court of Appeal simply applied the well-established rule that "the electorate's lawmaking powers are identical to the Legislature's" absent a clear statement of intent to withdraw or limit the statutory initiative power. (*State Compensation Insurance Fund*, 14 Cal.App.4th at p. 1300.) The Court of Appeal's decision addresses no question of law this Court has not already resolved.

B. *McPherson*'s Footnote Provides No Reason to Grant Review

Petitioners insist that review is necessary because *McPherson* explained in a footnote that the Court "ha[d] no occasion … to consider whether an initiative measure relating to the PUC may be challenged on the ground that it improperly limits the PUC's authority or improperly conflicts with the Legislature's exercise of its authority to expand the PUC's jurisdiction or authority." (38 Cal.4th at p. 1044, fn. 9.) The claims that footnote hypothesized are different from the claim Petitioners assert here. In any event, *McPherson*'s reasoning still forecloses Petitioners' contention.

1. *McPherson* first clarified in footnote 9 that it was not addressing a scenario in which an initiative statute could violate the Constitution by "improperly limit[ing] the PUC's authority." (38 Cal.4th at p. 1044, fn. 9.) That possibility was top of mind in *McPherson* because the constitutional provision there, article XII, grants a baseline of authority to the PUC (CAL. CONST., art. XII,

§ 4) and gives the Legislature only the power to "confer *additional* authority and jurisdiction upon the commission" (*id.*, § 5, italics added). So, an initiative that goes below the § 4 constitutional floor might well violate article XII.

Article XIV contains no similar constitutional baseline. It gives the Legislature the "power" to enact a workers' compensation system for "any or all" workers—rather than a more limited power to provide "additional" coverage over some specified constitutional floor. (See Pet. at pp. 28–29.) This Court already has resolved that this provision leaves the Legislature "[w]ide discretion" to "exclude[] certain classes of persons from coverage under the Workmen's Compensation Act." (*Mathews*, 6 Cal.3d at p. 739.) The Court of Appeal has applied this settled principle in case after case. (Op. at pp. 16–17, fn. 8, 24–26 & fn. 12; see, e.g., *Facundo-Guerrero*, 163 Cal.App.4th at p. 650; *Rio Linda Union School Dist. v. Workers' Comp. Appeals Bd.* (2005) 131 Cal.App.4th 517, 532; *Wal-Mart Stores v. Workers' Comp. Appeals Bd.* (2003) 112 Cal.App.4th 1435, 1442; *Graczyk v. Workers' Comp. Appeals Bd.* (1986) 184 Cal.App.3d 997, 1002, 1006.) Unlike article XII, article XIV is *not* a one-way ratchet.

The Court of Appeal dissent took issue with this principle. It argued that article XIV § 4 requires the Legislature and the People to leave in place the "'basic features' of th[e workers' compensation] system" as it existed in 1918. (Dissent at pp. 8, 42.) Even if accepted, that false premise would fail to call Proposition 22's validity into question, for several reasons. To begin, one "basic feature" of the workers' compensation system is

that it has *always* been limited to employees. (See *Borello*, 48 Cal.3d at p. 349.) Furthermore, coverage of *app-based drivers* hardly could have been a "basic feature" of a 1918 system—nearly a hundred years before apps were invented. Nor does Article XIV prescribe any particular employee classification test. If it did so, the Constitution would foreclose any revisions to the classification test by anyone, contrary to prior actions of both the courts (e.g., *Borello*) and the Legislature (e.g., AB 2257).

More fundamentally, the dissent's premise is incorrect. Article XIV § 4 recognizes the Legislature's "power" to enact a workers' compensation system—it does not impose a duty to encase the 1918 system in acrylic. (CAL. CONST., art. XIV, § 4.) The 1918 voters enacted section 4 "for the sole purpose of removing all doubts as to the constitutionality of the then existing workmen's compensation statutes," not to make those statutes (much less *future* statutes like AB 5) untouchable. (*Mathews*, 6 Cal.3d at pp. 734–735.) Article XIV § 4 does not "impos[e] a mandate on the Legislature to create and enforce an unlimited system of workers' compensation benefits"—or *any* "lawmaking mandate upon the Legislature." (*Facundo-Guerrero*, 163 Cal.App.4th at p. 650.) Instead, article XIV § 4 simply recognizes the legislative "authority to determine the contours and content of our state's workers' compensation system, *including the power to limit benefits*" (*ibid.*, italics added) and the "*power to exclude certain workers*" (*Wal-Mart*, 112 Cal.App.4th at p. 1442, italics added).

In order to adopt the dissent's approach, this Court would have to overturn numerous precedents. For example, under the dissent's theory, the Legislature could not have enacted AB 2257 or the law upheld in *Graczyk*, each of which withdrew some workers from the workers' compensation system by excluding them from the definition of "employee." (184 Cal.App.3d 997, 1005–1006 & fn. 4.) Nor could the Legislature have enacted the provision this Court upheld in *Mathews*, which withdrew a feature that article XIV § 4 labels part of a "complete" workers' compensation system—provision of benefits "irrespective of the fault of any party." (6 Cal.3d at p. 734.) The Legislature also could not have reduced available benefits below the "full provision" included in a "complete system," as it did in the laws upheld in *Facundo-Guerrero*, 163 Cal.App.4th at pp. 647–651, *Wal-Mart*, 112 Cal.App.4th at p. 1442, and *Rio Linda*, 131 Cal.App.4th at p. 532.

Tellingly, Petitioners do not defend the dissent's rationale that article XIV by its own force *requires* the inclusion of app-based drivers in the workers' compensation system. Although Petitioners repeatedly hint that Proposition 22 makes the workers' compensation system no longer "complete" (e.g., Pet. at pp. 31, 36), they are forced to concede that the Legislature's "authority is necessarily broader than that at issue in *McPherson*, where the Legislature's authority was limited to enlarging the jurisdiction of the PUC" (*id.* at pp. 28–29). In other words, the Legislature *can* contract the workers' compensation system. Accordingly, so can the People. And contrary to

Petitioners' claim (*id.* at pp. 26, 38), there is no reason the People need to amend the Constitution to do so. (See, e.g., *Kempton*, 40 Cal.4th at p. 1042.)

2. Petitioners are also wrong that the second scenario that *McPherson* footnote 9 declined to address—where an initiative "improperly conflicts with the Legislature's exercise of its authority"—is a basis to grant review, or could possibly lead to a different result. (38 Cal.4th at p. 1044, fn. 9.) Proposition 22 reforms worker classification standards for app-based drivers, and its effect on the workers' compensation system is only a consequence of that reform. Nothing about that effect could be called "improper." (See AG Answer at p. 13, fn. 6.) As Petitioners concede, the Legislature has the power to exclude app-based drivers from the workers' compensation system. (See *ante*, p. 24.) Accordingly, so do the People.

Furthermore, to the extent there is any "conflict" here, it is one that is deliberately baked into the very structure of the Constitution—that when the People enact an initiative statute, the Legislature cannot undo the People's will without obtaining their consent. (CAL. CONST., art. II, § 10(c).) Petitioners lament that, "[a]fter Proposition 22, the Legislature is powerless to" undo the core provisions of the Proposition "without voter approval." (Pet. at p. 26.) But that is the very purpose of the Constitution's democratic structure; article II § 10(c) gives the People "the final legislative word" every time they enact an initiative statute (*Carlson*, 139 Cal.App.3d at p. 728), in that "the Legislature is powerless to act on its own to amend an initiative statute" (*People*

v. Kelly (2010) 47 Cal.4th 1008, 1045). As this Court has recognized, "[t]he people's reserved power of initiative is greater than the power of the legislative body" in the sense that the Legislature may not upset the voters' initiatives, but the voters may overturn the Legislature. (*Rossi v. Brown* (1995) 9 Cal.4th 688, 715.)

To treat a structural feature of the Constitution as an "improper[] conflict" (Pet. at p. 28) would not only "cast aside" *McPherson*'s holding (Op. at p. 20), but also contradict this Court's reasoning in *Kempton*. There, as here, the challengers argued that an initiative had impermissibly taken away the Legislature's authority in a particular area. (40 Cal.4th at pp. 1046–1047.) This Court rejected that argument, explaining that the initiative did "not usurp the Legislature's plenary authority *in a global sense*" but merely repealed particular statutes. (*Id.* at p. 1047, italics added.)

Here, because the Legislature could have repealed AB 5 as to app-based drivers and enacted Proposition 22 in its place, there is no reason why that "permissible legislative decision" could not "be effected by the other constitutionally empowered legislative authority, the electorate." (*Kempton*, 40 Cal.4th at p. 1047.) "Voter initiatives" are, as this Court has said, "legislative battering ram[s]" that "tear through the exasperating tangle of the traditional legislative procedure and strike directly

toward the desired end." (*Tuolumne Jobs & Small Bus. Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1035.)[2]

Such ordinary exercise of the initiative power does not present any question that *McPherson* did not already resolve. The Court of Appeal followed existing precedent, and there is no need for this Court's review.

II. The Lower Court Decisions on the Issues Presented Are Uniform as Well

Petitioners do not identify any conflict among the lower courts on the constitutionality of Proposition 22 or the voters' ability to legislate under article XIV. They instead ask this Court to review the *first* appellate decision addressing the issue because *future* decisions *might* create a conflict. (Pet. at pp. 22–23.) The petition's order of operations flips this Court's practice of waiting until ruling is "necessary to secure uniformity of decision." (Cal. Rules of Court, rule 8.500(b)(1).)

The prospect of a future conflict is doubtful in any event. Petitioners have not identified a single other case that even involves the constitutionality of Proposition 22. Intervenors are

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[2] That fundamental feature of the initiative process also disposes of the dissent's novel analogy to Justice Jackson's concurrence in *Youngstown*—a theory even Petitioners do not adopt. (See Dissent at pp. 20, 24–25, 36.) *Youngstown* addressed a conflict between the federal legislative branch (Congress) and the federal executive branch (the President). Here, the conflict is between two state bodies—the Legislature and the electorate—that each have the power to legislate. (*CELSOC*, 42 Cal.4th at p. 587.) And here the Constitution tells us what happens in the event of such a policy conflict: the voters prevail. (CAL. CONST., art. II, § 10(c).)

aware of only one—and that motion has not even been heard yet, and will end up before the same District Court of Appeal that upheld Proposition 22. (See *People v. DoorDash, Inc.* (S.F. Super., No. CGC-20-584789).)

Nor is there any reason to presume that, if this issue is litigated further, a conflict of authority will arise. On the contrary, as noted above, the Courts of Appeal agree about the legal principles that govern this case. Uniform lines of appellate decisions from across the state hold, in numerous contexts, that legislation may remove workers, benefits, or even features listed in article XIV from the workers' compensation system—and that the People may enact any legislation the Legislature may enact. (See *ante*, pp. 17–26.) That is unsurprising given that *McPherson* and *Mathews* together establish that the People can withdraw classes of workers under article XIV no less than the Legislature can. The petition's disagreement with settled law is no basis for review.

CONCLUSION

The Court should deny the petition for review.

DATED: May 11, 2022 O'MELVENY & MEYERS LLP

By: */s/ Jeffrey L. Fisher*
Jeffrey L. Fisher

Attorney for Intervenors and Respondents

CERTIFICATE OF COMPLIANCE

I certify, under rule 8.504(d)(1) of the California Rules of Court, that this answer contains 5,631 words, as counted by Microsoft Word, excluding the tables, this certificate, and the signature blocks.

DATED: May 11, 2022 O'MELVENY & MEYERS LLP

By: /s/ Jeffrey L. Fisher
Jeffrey L. Fisher

Attorney for Intervenors and Respondents

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am a citizen of the United States employed in the County of Marin. I am over the age of 18 and not a party to the within cause of action. My business address is 2350 Kerner Boulevard, Suite 250, San Rafael, California 94901. On May 11, 2023, I served the following document(s):

Intervenors-Respondents' Answer to Petition for Review

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I declare under penalty of perjury that the foregoing is true and correct. Executed in San Rafael, California on May 11, 2023.

Paula Scott

_____

Paula Scott

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**

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5/11/2023

Date

/s/David Lazarus

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