

Case No. S279622

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

HECTOR CASTELLANOS et al.,
Plaintiffs and Respondents,

v.

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

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

After Decision by the Court of Appeal,
First Appellate District, Division Four, Case No. A165103

Alameda County Superior Court, Case No. RG21088725,
The Honorable Frank Roesch, Presiding

**APPLICATION TO FILE AMICUS CURIAE BRIEF AND
AMICUS CURIAE BRIEF OF CHAMBER OF PROGRESS
ET AL. IN SUPPORT OF APPELLANTS**

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APPLICATION TO FILE AMICUS CURIAE BRIEF

Pursuant to California Rules of Court, rule 8.520(f), Chamber of Progress, NetChoice, Asian Industry B2B, the Silicon Valley Leadership Group, and sf.citi respectfully request this Court's permission to file the attached Amicus Curiae Brief.¹

Chamber of Progress is a center-left tech industry coalition dedicated to promoting technology's progressive future. Chamber of Progress supports public policies that ensure all Americans benefit from technological advancements, while the tech industry operates responsibly and fairly.

NetChoice is a national trade association of online businesses that share the goal of promoting convenience, choice, and commerce on the Internet. NetChoice advocates for free enterprise by challenging laws that subject online businesses to disfavored treatment and by filing *amicus curiae* briefs in cases that, like this one, could negatively affect the way businesses operate and innovate on the Internet.

Asian Industry B2B represents various Asian businesses, mostly in Southern California, that stand for the rights of independent contractors. It understands that not everyone wants to be a W-2 employee and believes attacking the freedom and flexibility of app-based work harms workers and the public.

¹ Pursuant to rule 8.520(f)(4), no party or counsel for a party in the pending appeal authored the proposed amicus brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity made a monetary contribution intended to fund the preparation or submission of this brief, other than the amici curiae, their members, or their counsel in the pending appeal.

The Silicon Valley Leadership Group (SLVG) represents Innovation Economy companies and workers. SVLG believes app-based drivers should have the independence and flexibility to set their own schedules and decide how and when they choose to work. California voters agreed when they passed Proposition 22, and SVLG believes that decision should be respected.

sf.citi, San Francisco's technology trade association, advocates for policies that promote innovation and align with the goals of its diverse coalition of members. By engaging government officials and tech leaders in meaningful dialogue, sf.citi emphasizes the critical role of collaboration in fostering a forward-thinking, technology-oriented San Francisco. sf.citi's members are committed to leveraging technology as a force for positive change and an inclusive future.

Amici have a strong interest in this proceeding because their partners and members include both app-based transportation and delivery network companies and individual workers engaged in app-based work, all of which rely on the flexibility of independent contractor relationships to connect workers and customers. Proposition 22 protects amici's members' freedom to choose such independent contractor relationships. Amici urge the Court to uphold Proposition 22, which provides important social goods and economic opportunities for millions of Californians, including communities of color and women. Proposition 22 is not only the resounding choice of the voters, it is good policy.

This proposed brief will assist the Court in deciding the matter because amici explain some of the policy arguments and

social science evidence supporting Proposition 22. As this Court has long recognized, amicus curiae briefs “assist the court by broadening its perspective on the issues raised by the parties.” (*Bily v. Arthur Young & Co.* (1992) 3 Cal. 4th 370, 405 fn. 14.) “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.” (*Ibid.*)

AMICUS CURIAE BRIEF

INTRODUCTION

Technology has created exciting new ways to connect workers who provide services directly to customers, thereby improving the accessibility, affordability, and efficiency of many services. The so-called “gig” economy allows entrepreneurs to accept gigs if, when, and where they choose, rather than being tied down to traditional jobs that require them to work certain hours and in conditions directed by their employers. Although independent contractors pursued freelance work long before the internet, apps such as Uber, Lyft, and DoorDash have dramatically popularized such opportunities, to the benefit of workers and customers alike. Millions of people can now work on their own terms—whether as their primary source of income or to supplement their existing income—more easily than ever before.

Proposition 22 protects and respects worker autonomy by allowing gig workers to remain independent contractors in California, while receiving new benefits such as guaranteed earnings, health care subsidies, and accident insurance. Amici urge the Court to affirm the judgment of the Court of Appeal and uphold Proposition 22 for at least three reasons: (1) the gig economy provides important social goods and economic opportunities for millions of workers; (2) communities of color and women overwhelmingly benefit from and voted for Proposition 22 because it protects and improves the option to work as independent contractors; and (3) forcibly reclassifying independent contractors as employees would cause more harm than good. Ultimately,

Proposition 22 is good policy for workers, customers, and California's economy.

ARGUMENT

A. The Gig Economy Provides Important Social Goods and Economic Opportunities for Millions of Workers.

The independent contractor model reflects the changing preferences and composition of the modern workforce. Gig work provides hundreds of thousands of hardworking Californians the opportunity to earn income without sacrificing their other priorities. Gig work empowers entrepreneurs to build their own businesses or pursue new ventures without the constraints of a traditional 9-to-5 job: Parents can accommodate their children's school and extracurricular schedules; retirees can supplement their savings; and people with disabilities or chronic illnesses can work on their own terms. (See De Souza Briggs & Rowan, *To enhance community services and empower workers, local governments are building their own gig work platforms*, Brookings Institution (May 9, 2023), <https://tinyurl.com/5n6vmmsa>.) Time and again, studies show that gig workers prefer and benefit from independent contractor status.

An economic analysis conducted by two former White House economists explored the benefits and efficiencies of nontraditional "gig" work arrangements, including flexibility, independence, and lower barriers of entry to find work. (See Shapiro & Stuttgen, *The Many Ways Americans Work and the Costs of Treating Independent Contractors as Employees* (Apr. 6, 2022), <https://tinyurl.com/y2uxbu2r>.) Shapiro and Stuttgen estimated

that 16.7 million Americans worked as independent contractors in 2019.² (*Id.* At p. 4.) They found that many independent contractors appreciate the flexibility and independence to manage their own schedules and choose jobs that best accommodate their needs. (*Id.* At pp. 13–14.) For people whose family obligations, educational pursuits, health issues, and/or disabilities preclude regular employment, independent contracting enables them to be productive and self-supporting. (*Ibid.*)

Independent contractors may also, Shapiro and Stuttgen suggest, face lower barriers of entry to find work. (*Id.* at p. 14.) Specifically, people with disabilities may face systemic barriers in traditional employment settings, such as discriminatory hiring practices and a lack of reasonable accommodations. Immigrants may experience barriers to work due to their immigration status; people with convictions due to their criminal history. For myriad reasons, a traditional job does not work for everyone. Shapiro and Stuttgen concluded that the gig economy thus offers a viable alternative for people who previously may not have had other legal options to work.

Shapiro and Stuttgen also observed that the majority of independent contractors work on a part-time basis. A 2019 Freelancing in America survey found that 28% of independent

² Shapiro and Stuttgen noted that the most recent Bureau of Labor Statistics survey in 2017 found that 10.6 million Americans worked as independent contractors. The researchers adjusted this figure for employment growth in 2018 and 2019 and compared it to figures from other studies to arrive at a “midpoint estimate” of 16.7 million people. (*Id.* at pp. 14–15.)

contractors worked full-time, 44% worked part-time, and 25% were full-time employees who did freelance or gig work on the side. (See Shapiro & Stuttgen *supra*, at p. 16.) In other words, more than two-thirds of independent contractors worked fewer than 40 hours a week on freelance projects or gigs. (See *ibid.*) Shapiro and Stuttgen pointed to a JP Morgan Chase study that found many independent contractors use gig work to supplement their incomes when their earnings from other sources decline. (See *id.* at p. 18.) That is, Shapiro and Stuttgen explained, independent contractors can and do perform gig work as needed to stabilize their monthly income. (See *ibid.*) This is particularly easy because the majority of app-based drivers work on a part-time basis to supplement their income by simply using their existing personal assets—their cars. (See *id.* at p. 14.)

Other studies concur. A December 2023 survey found that 79% of app-based drivers said that the ability to make extra money is important to them, with 74% working less than 20 hours a week. (See Bloomfield, *Survey of California App-Based Rideshare and Delivery Drivers*, The Mellman Group (Dec. 13, 2023), <https://tinyurl.com/5n86vnay>.) Similarly, an April 2023 survey found that 69% of app-based drivers are employees in other professions and 77% perform app-based work less than 20 hours a week. (See Morning Consult, *The App-Based Economy* (Apr. 2023), <https://tinyurl.com/56zsdc7t>.)

In the gig economy, independent contractors have the flexibility to work with multiple platforms, often simultaneously. Drivers often use multiple apps—that is, work with multiple

distinct platforms—*at the same time* to maximize their earnings. (See *id.* at p. 3 [81% of app-based earners report using multiple apps during a given work period].) If one app does not currently offer the driver’s preferred work, he or she can easily switch to another app that does. As Shapiro and Stuttgen explained, independent contracting thus offers greater flexibility to workers to balance their schedules, earning needs, and other family, health, and education-related responsibilities. (See Shapiro & Stuttgen *supra*, at pp. 13–14.)

It is unsurprising then that numerous studies confirm that app-based drivers themselves ***prefer to be classified as independent contractors***. In 2021, the Pew Research Center found that 65% of gig workers view themselves as independent contractors, while only 28% view themselves as employees. (See Anderson et al., *The State of Gig Work in 2021*, Pew Research Center (Dec. 8, 2021), <https://tinyurl.com/4ah8adn4>.) This continues to be true today. Across three different surveys reaching over 2,000 app-based drivers, the findings were consistent: the vast majority prefer to be classified as independent contractors. (See Bloomfield, *supra* [71% of drivers]; Morning Consult, *Economy, supra* [75% of drivers]; Morning Consult, *Attitudes of App-Based Workers* (Sept. 2022), <https://tinyurl.com/55y8h2vz> [77% of drivers].) The most common reasons drivers cited for working in the gig economy were the flexibility to choose the number of work hours (35%); the ability to choose when to work (42%); the ability to have more than one source of income (41%);

and wanting to be their own boss (33%). (See Morning Consult, *Attitudes*, *supra* at p. 7.)

Drivers thus overwhelmingly supported Proposition 22, which preserves these important benefits. One survey found that 80% of drivers said Proposition 22 is good for them. (See Bloomfield, *supra* at p. 2.) Another found that 82% of drivers were happy Proposition 22 passed because the measure benefits them personally.³ (See Benenson & Markel, *Key Findings from Prop 22 Survey with CA Drivers and Delivery People*, Benenson Strategy Group at p. 1 (May 13, 2021), <https://tinyurl.com/2mbtkyna>.) This means that the very app-based drivers who would be most affected by Proposition 22 are in favor of the measure four to one.

B. Communities of Color and Women Overwhelmingly Prefer Independent Contractor Status and Voted for Proposition 22.

In 2020, nearly 10 million Californians (58.6% of voters) voted in favor of Proposition 22. That support was especially strong among Black, Hispanic, and women voters.

In a study commissioned by Chamber of Progress, economists from Berkeley Research Group conducted a quantitative analysis of the Proposition 22 voting results and the

³ Most of the drivers surveyed preferred to remain independent contractors (84%) and agreed that Proposition 22 preserves their flexibility and independence (83%), which is a critical reason they drive in the first place. (See *id.* at pp. 2–3.) The study observed that “[a]lthough freedom and flexibility continue to be the most important benefit, drivers are excited about the addition of new benefits as a result of Prop 22” and “see the passing of Prop 22 as the best of both worlds.” (*Id.* at p. 3.)

demographic composition of counties and cities in California. (See Lewin & Kim, *Analysis of Voter Support of Proposition 22 in California and Los Angeles County*, Berkeley Research Group (Feb. 11, 2022), <https://tinyurl.com/yc89kjbb>.) The researchers found that the proportion of voters who supported Proposition 22 was significantly higher in counties and cities with large Black or Hispanic communities. (See *id.* at pp. 3–8.) In California’s ten counties with the highest share of Black residents, voters approved Proposition 22 by an average margin of 20.7% more “yes” votes than “no” votes compared to the statewide margin of 17.2%. (*Id.* at p. 3.) Similarly, in California’s ten counties with the highest share of Hispanic residents, voters approved Proposition 22 by an average margin of 26.8% more “yes” votes than “no” votes. (*Ibid.*) In other words, there was higher support for Proposition 22 in counties and cities with a higher proportion of Black or Hispanic residents.⁴ (See *ibid.*)

⁴ The researchers’ regression model showed that when the proportion of the Hispanic population increases by 10%, the share of voters who voted “yes” on Proposition 22 increases by 1.4%. (*Id.* at p. 4.) When the proportion of the Black population increases by 10%, the share of voters who voted “yes” increases by 6.2%. (*Ibid.*) To understand these findings, the researchers explained that in an “average” county in California that precisely reflects the state-wide average proportions of women, Hispanic, Black, and Democratic party registered voters, their regression model predicts that 60.1% of voters in the county would have voted “yes” on Proposition 22. (*Id.* at p. 5.) If, for example, the proportion of the Black population in this “average” county was 10% higher than the state-wide average but everything else stayed the same, the model predicts that 66.3% of voters in the county would have voted “yes” on Proposition 22—6.2% higher than the “average.” (*Ibid.*)

This finding may be explained by the demographic composition of the gig workforce itself. According to the Pew Research Center, “participation in the gig workforce is more common among Hispanic or Black adults than among White adults.” (DeSilver, *Q&A: How Pew Research Center studied gig workers in the U.S.*, Pew Research Center (Dec. 8, 2021), <https://tinyurl.com/2vm9m6tu>.) The “demographic makeup of the gig workforce tends to skew more non-White, younger—that is, below the age of 30—and lower-income.” (*Ibid.*) Gig workers may depend on the flexibility of their work schedules to balance multiple jobs with other obligations, such as caregiving duties and educational pursuits.

Further, driver surveys consistently show that the majority of Black and Hispanic gig workers support maintaining independent contractor status and are satisfied with app-based work. (See Morning Consult, *Attitudes*, *supra* at p. 3 [76% of Black and 71% of Hispanic app-based workers surveyed support maintaining their current classification as independent contractors]; Bloomfield, *supra* at pp. 5, 9 [70% of Black and 75% of Hispanic app-based workers are satisfied with their work; 75% of Black and 68% of Hispanic app-based workers prefer to be classified as independent contractors].)

In underserved communities where people are more likely to be gig workers, Proposition 22 also plays an important role stimulating local economies. Drivers and delivery workers spend their earnings supporting local businesses. The availability of these on-demand services can attract more visitors and business

activities to the area. And a study published by the National Bureau of Economic Research found that the arrival of the gig economy in a city correlates with a 5% increase in new business registrations thereafter. (See Barrios et al., *Launching with a parachute: The gig economy and new business formation* (Apr. 2022) 144 J. Fin. Econ. 22.) In this way, gig workers foster economic growth for themselves and for their communities.

The Berkeley Research Group study also found higher support for Proposition 22 among women voters. (See Lewin & Kim, *supra* at p. 5.) The researchers' regression model revealed that holding other variables constant, a 10% increase in a population's share of women correlated with a 7.4% increase in support for Proposition 22. (*Ibid.*) As with Black and Hispanic app-based drivers, the majority of women drivers support maintaining independent contractor status (74%) and are satisfied with app-based work (76%). (See Morning Consult, *Attitudes, supra* at p. 3.) While women choose gig work for many reasons, the most common include flexibility, income, and building a business. (See Maier et al., *Can't Stop, Won't Stop Her Side Hustle: Women in the Gig Economy 2018* (Sept. 5, 2018), <https://tinyurl.com/4ph7sn99>.)

C. Forcibly Reclassifying Independent Contractors as Employees Would Disparately Harm the Diverse Communities That Voted to Enact Proposition 22.

Proposition 22 is good for app-based drivers, consumers, and California's economy as a whole. But it is especially important for the diverse communities who voted to enact it. In California,

approximately 870,000 app-based drivers—many of them people of color or women—take advantage of the flexible earning opportunities facilitated by platforms such as DoorDash, Grubhub, Instacart, Lyft, Shipt, and Uber. (See Public First, *U.S. App-Based Rideshare and Delivery: Economic Impact Report* at p. 14 (Mar. 21, 2024), <https://tinyurl.com/2sy8fh2p>.) Were this Court to reach to find Proposition 22 unconstitutional, app-based drivers might be forced to be reclassified as employees, even if they do not want to be. Forcing independent contractors to become employees would restrict their freedom to work on their own terms and undermine the concentrated community benefits gig work provides to historically disadvantaged communities.

A national study illustrates the consequences for California. (See Shapiro & Stuttgen, *supra* at p. 2.) Shapiro and Stuttgen considered the economic effect if all independent contractors in the United States were forcibly reclassified as employees. (*Ibid.*) The researchers estimate that more than 60% of all reclassified workers would suffer substantial, direct income losses. (*Ibid.*) Nearly half of reclassified workers choose independent contracting because disabilities, chronic illness, or family obligations preclude traditional employment. (*Ibid.*) Shapiro and Stuttgen posit that “[i]nvoluntary reclassification would cost those vulnerable people an average of \$20,759 across full-time and part-time contractors for direct income losses[.]” (*Ibid.*) Meanwhile, 20% of reclassified workers perform freelance or gig work in addition to their regular jobs to supplement their income and save for other goals—such as tuition, student debt, down payments on real estate, and

investments in new ventures. (*See ibid.*) These people would also suffer because they might be forced to forfeit their additional work.

This leaves only four in ten formerly independent contractors who could work as regular employees if offered the chance. (*Ibid.*) But a significant percentage of that subset would not be able to find traditional jobs because employers cannot afford to hire that many of their former independent contractors as regular full- or even part-time employees. (*Ibid.*) Shapiro and Stuttgen estimated that even in a normal economy, more than 43% of reclassified workers “able to take regular positions would not find such jobs.” (*Id.* at p. 3.) This figure could be much worse during an economic downturn. (*Ibid.*)

The harms in California will be amplified. (*See* Lewin et al., *Analysis of California App-Based Driver Job Losses if Network Platforms are Required to Reclassify Drivers as Employees Rather than Independent Contractors*, Berkeley Research Group (Sept. 12, 2023), <https://tinyurl.com/yc4anytn>.) According to a Berkeley Research Group analysis, the reclassification of app-based drivers as employees will significantly and negatively affect transportation and delivery network companies’ continued operations in California, thereby adversely affecting drivers’ ability to continue earning income. (*Id.* at pp. 2–3.)

There are at least three reasons for this. *First*, companies will have to discontinue the flexible independent contractor model and require drivers to adhere to a set schedule to comply with wage and hours laws. (*Ibid.*) The loss of flexibility will fundamentally change how drivers engage with the platform companies and is

likely to bring about a massive reduction in the number of drivers willing to provide rideshare and delivery services. (*Ibid.*) *Second*, in order to cover the significantly higher costs associated with the employment model, platform companies will be forced to raise prices for customers. (*Id.* at p. 3.) An increase in prices charged to consumers will reduce the demand for the services offered by the drivers. (*Ibid.*) *Third*, the interaction of these two consequences—fewer drivers and higher prices—is likely to produce a downward spiral in consumer demand, further threatening drivers’ income-earning opportunities. (*Id.* at pp. 3–4.)

Based on the economic realities of the platform companies’ markets, published research and data regarding the industry, and the results of their own research and economic modeling, Lewin et al. conclude that the reclassification of California app-based drivers as employees will significantly reduce the income-earning opportunities of the drivers who currently work as independent contractors. (*Id.* at p. 6.) The authors estimate that reclassification will reduce the number of app-based drivers that companies will need to satisfy the lower consumer demand by at least 93%. (*Ibid.*) In turn, the elimination of hundreds of thousands of app-based driver jobs would disproportionately affect communities of color and lower-income families who depend on this work for their economic well-being. (*Ibid.*)

Proposition 22 strikes the right balance between preserving worker flexibility and ensuring worker well-being. Most important, it is the balance that the most-affected Californians have chosen.

CONCLUSION

The Court should affirm the judgment of the Court of Appeal.

Dated: April 3, 2024

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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to the California Rules of Court, rules 8.204(c)(1) and 8.360(b)(1), the enclosed Amicus Curiae Brief in Support of Appellants contains approximately 2,998 words, which is fewer than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: April 3, 2024

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PROOF OF SERVICE

I, the undersigned, declare that I am over the age of 18 years, employed in the City and County of Los Angeles, California, and not a party to the within-entitled action. I am an employee of DAVIS WRIGHT TREMAINE LLP, and my business address is 865 South Figueroa Street, Suite 2400, Los Angeles, CA 90017.

On April 3, 2024, I served the following document: **APPLICATION TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF CHAMBER OF PROGRESS ET AL. IN SUPPORT OF APPELLANTS** as follows:

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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.

Executed on April 3, 2024, at Los Angeles, California.



Ellen Duncan

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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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/Adam Sieff

Signature

Sieff, Adam (302030)

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