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Supreme Court of California
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No. S279622

In the Supreme Court of the State of California

HECTOR CASTELLANOS ET AL.,
Plaintiffs and Respondents,
v.
STATE OF CALIFORNIA ET AL.,
Defendants and Appellants;

PROTECT APP-BASED DRIVERS AND SERVICES ET AL.,
Interveners and Appellants.

First Appellate District, Case No. A163655
Alameda County Superior Court, Case No. RG21088725
The Honorable Frank Roesch, Judge

ANSWER TO BRIEFS OF AMICI CURIAE

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INTRODUCTION

The amicus briefs on both sides of this case mostly debate whether Proposition 22 is good or bad policy. But that debate has no bearing on the correct answer to the legal issue presented by this Court when it granted review. That issue is whether article XIV, section 4 of the California Constitution deprived the electors of the power to enact one provision of Proposition 22: the new worker-classification test for app-based drivers in Business and Professions Code section 7451.

The answer to that question is straightforward under our constitutional framework and this Court's precedent. Our Constitution gives voters broad power to enact statutory initiatives. This Court has already held that the initiative power extends even to a subject as to which the Constitution expressly grants the Legislature a "plenary" lawmaking role, "unlimited" by other constitutional provisions. (*Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 1032-1044 [construing Cal. Const., art. XII, § 5].) The same reasoning applies here, where the voters legislated in a manner that affects workers' compensation—the only other area in which the Legislature enjoys an express constitutional grant of "plenary" and "unlimited" lawmaking power. (Cal. Const., art. XIV, § 4.) Whatever one thinks of the wisdom of section 7451 as a matter of policy, it was within the constitutional prerogatives of the electors to enact that provision.

To the extent amici address the legal question in this case, they mostly stake out positions that align with those advanced by

plaintiffs or interveners. Plaintiffs' amici contend that article XIV, section 4 hamstrings the voters' initiative power in the area of workers' compensation—leaving them powerless to change anything the Legislature has done (except perhaps by expanding coverage or extending it to new categories of workers). Interveners' amici contend not only that the voters have the power to enact initiative statutes regarding any aspect of workers' compensation, but also that, once they do so, the Legislature becomes powerless to change the statute absent permission from the voters.

Both sides go too far. Precedent and first principles dictate that the voters may legislate on workers' compensation even if (as in section 7451) their initiative is at odds with policy choices previously made by the Legislature. The Court need not go any further than that to uphold section 7451 and answer the narrow issue the Court presented when it granted review. But if the Court does consider whether section 7451's enactment had the effect of stripping away the Legislature's prospective authority to specify that app-based drivers are entitled to workers' compensation coverage, it should reject the contentions of interveners and their amici. Article XIV, section 4 guarantees the Legislature plenary, prospective, and "unlimited" authority to make laws regarding workers' compensation. That guarantee is not compatible with the view that the voters can claim the "final word" on that subject in a statutory initiative (e.g., Br. of Cal. Const. Scholars 10), and leave the Legislature powerless to make further changes without voter approval.

ARGUMENT

I. AMICI PRINCIPALLY FOCUS ON POLICY DEBATES THAT HAVE NO BEARING ON THE ISSUE PRESENTED

This Court framed the issue presented in this case narrowly: whether Business and Professions Code section 7451 conflicts with article XIV, section 4 of the California Constitution. The answer to that question is no. (State ABM 24-37.)

Rather than focusing on the narrow legal issue before the Court, many of the amici devote most of their attention to policy arguments. Plaintiffs' amici argue that Proposition 22 "is bad policy." (E.g., Br. of San Francisco et al. 17.) They criticize Proposition 22 for denying app-based drivers a host of basic protections, including "a minimum wage of $16.00 per hour" (*id.* at p. 24); overtime (*ibid.*); "reimburse[ment] for all business expenses" (*ibid.*); "paid sick leave" (*id.* at p. 26); and "workers' compensation benefits" (*id.* at p. 29).[1] Interveners' amici contend that Proposition 22 "is good policy." (E.g., Br. of Chamber of Progress et al. 6.) Among other things, they argue that "independent contracting . . . offers greater flexibility to workers." (E.g., *id.* at p. 12.)[2]

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[1] See, e.g., Br. of Rideshare Drivers United et al. 21-34; Br. of Teamsters Locals et al. 12-20; Br. of Labor Law Professors 17-25; Br. of Cal. Applicants' Attorneys Assn. 17-28.

[2] See, e.g., Br. of U.S. Chamber of Commerce 6-20; Br. of Crum & Forster Holding Co. 11-27; Br. of David R. Henderson et al. 2-9; Br. of Indep. Drivers Alliance et al. 10-31; Br. of Marketplace Indus. Assn. 16-29.

But that policy debate is beyond the scope of this proceeding. In our constitutional system, policy-based decisions about which workers should receive workers' compensation coverage and what benefits and protections that coverage should include are entrusted to the Legislature and the electorate. (See, e.g., State ABM 24-29, 34-37; *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341, 352, fn. 6; *Stevens v. Workers' Comp. Appeals Bd.* (2015) 241 Cal.App.4th 1074, 1094-1095; *Bautista v. State of California* (2011) 201 Cal.App.4th 716, 729.)

Several amici highlight another policy concern: that Proposition 22 provides a roadmap for wealthy private companies to "buy their own ballot initiative[s] to carve further categories of workers out of [the] . . . workers' compensation [system]" or other programs and regulatory requirements. (Br. of Rideshare Drivers United et al. 44; see Br. of Teamsters Locals et al. 20-26.) They are not the first to raise that concern about Proposition 22, which was the most expensive initiative measure in the history of our State.[3] But here again, policy concerns about the initiative process do not provide a basis for holding that section 7451 conflicts with article XIV, section 4 of the state Constitution.

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[3] See, e.g., Siddiqui & Tiku, *Uber and Lyft Used Sneaky Tactics to Avoid Making Drivers Employees in California, Voters Say*, Washington Post (Nov. 17, 2020) <https://tinyurl.com/59sfbbf8> (as of May 15, 2024).

II. THE LEGISLATURE AND THE VOTERS SHARE THE POWER OF LAWMAKING REGARDING WORKERS' COMPENSATION

To the extent that amici advance legal rather than policy-based arguments, they mostly echo theories advanced by either plaintiffs or interveners. Both sides' arguments are overbroad.

A. Plaintiffs' amici identify no proper basis for invalidating section 7451

The issue presented by the Court does not require a complicated analysis. Article XIV, section 4, vests "[t]he Legislature . . . with plenary power, unlimited by any provision of [the] Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation[.]" Nothing in section 7451 conflicts with that provision. (State ABM 30-34.) Section 7451 establishes a four-part standard for determining whether app-based drivers qualify as independent contractors. That standard undoubtedly affects whether drivers are entitled to workers' compensation coverage. But every party to this proceeding—and every judge and justice to consider this case below—agrees that the Legislature's plenary power to enact statutes regarding workers' compensation is not exclusive. (See OBM 40; State ABM 27; Interveners' ABM 30-31; RBM 12; opn. 21-22; conc. & dis. opn. 31; 4 AA 888; see generally *Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 1035 [recognizing that "plenary" does not mean "exclusive"].) The

voters may enact initiatives that address or affect workers' compensation, as they did in section 7451. (State ABM 24-31.)[4]

1. Some of plaintiffs' amici disagree with that conclusion, suggesting that section 7451 conflicts with substantive protections in article XIV, section 4. They note that the Constitution empowers the Legislature "to create[] and enforce a *complete* system of workers' compensation" (Cal. Const., art. XIV, § 4, italics added), and contend that section 7451 "renders the state's workers' compensation system incomplete by purporting to remove" app-based drivers "from the protections of workers' compensation." (Br. of Labor Law Professors 26; see Br. of Sen. Cortese & Assem. Ortega 12; Br. of Rideshare Drivers United et al. 26-27; Br. of San Francisco et al. 34.)

But section 4 does not create any substantive entitlement to workers' compensation for particular classes of workers. (See, e.g., State ABM 34-37; Br. of Cal. Chamber of Commerce 10-20.) It instead grants the Legislature plenary authority to provide a system of workers' compensation to "any *or* all" workers. (Cal. Const., art. XIV, § 4, italics added.) The fact that section 7451

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[4] One amicus quotes a Court of Appeal decision stating that section 4 gives the Legislature "*exclusive* and 'plenary' authority to determine the contours and content of our state's workers' compensation system." (Br. of Cal. Applicants' Attorneys Assn. 13, quoting *Facundo-Guerrero v. Workers' Comp. Appeals Bd.* (2008) 163 Cal.App.4th 640, 650, italics added.) That statement is irreconcilable with the reasoning in *McPherson*, *supra*, 38 Cal.4th at p. 1035. It is also dictum: *Facundo-Guerrero* had nothing to do with the validity of an initiative. (See 163 Cal.App.4th at pp. 644-646.)

enacts a new worker classification standard that makes most app-based drivers ineligible for workers' compensation does not by itself create any conflict with section 4. (See, e.g., *Velasquez v. Workers' Comp. Appeals Bd.* (2023) 97 Cal.App.5th 844, 855-856 [rejecting worker's argument that Labor Code section 3301 "is unconstitutional as applied if it precludes him from workers' compensation benefits"]; *Wal-Mart Stores v. Workers' Comp. Appeals Bd.* (2003) 112 Cal.App.4th 1435, 1442 [rejecting argument that legislation "was unconstitutional [under section 4] insofar as it purports to abridge a worker's right to benefits"] ; *Graczyk v. Workers' Comp. Appeals Bd.* (1986) 184 Cal.App.3d 997, 1008-1009 [recognizing that section 4 allows for legislation "excluding" individuals from the workers' compensation system].)

Amici's understanding of section 4 is quite similar to the theory advanced in the dissent below. The dissenting justice reasoned that section 4 imposes "substantive limits on *any* exercise of legislative power, whether exercised by initiative statute or by enactment of the Legislature." (Conc. & dis. opn. 5, original italics; see Br. of Sen. Cortese & Assem. Ortega 9 & fn. 2; Br. of Rideshare Drivers United et al. 27.) He relied on certain "early cases" applying section 4. (Conc. & dis. opn. 6.) In those cases—which likely reflected judicial hostility at the time to an expansive workers' compensation regime (see generally Salyer, *Protective Labor Legislation and the California Supreme Court, 1911-1924* (1998-1999) 4 Cal. S. Ct. Historical Society Yearbook 1, 9-10, 15)—the Court concluded that the Legislature lacked authority to expand the workers' compensation system in ways

not explicitly described in section 4. (See, e.g., *Yosemite Lumber Co. v. Industrial Acc. Com.* (1922) 187 Cal. 774, 780-783; *Pacific Gas & Electric Co. v. Industrial Acc. Com.* (1919) 180 Cal. 497, 500.)[5] According to the dissent, those cases stand for the broad principle that neither the Legislature nor electorate may expand or contract "'basic features'" of the "pre-1918 statutory scheme." (Conc. & dis. opn. 6; see also Br. of Labor Law Professors 30-31.)

But plaintiffs have not attempted to defend that reasoning, and for good reason. This Court has disavowed the approach reflected in the "early cases" invoked by the dissent. (*Borello*, *supra*, 48 Cal.3d at p. 352, fn. 6.) In *Borello*, for example, the Court explained that the Legislature may "expan[d] or contract[]" the definition of employees eligible for workers' compensation relative to the statutory definition that pre-dated the 1918 constitutional amendment. (*Ibid.*) And in *San Francisco v. Workers' Compensation Appeals Board* (1978) 22 Cal.3d 103, 114, the Court held that "absolutely nothing" in section 4 "erect[s] any new restrictions on the exercise of legislative power." (See *Mathews v. Workmen's Comp. Appeals Bd.* (1972) 6 Cal.3d 719, 734-735 [similar].)[6]

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[5] See also Pillsbury, *The Power of the Courts to Declare Laws Unconstitutional* (1923) 11 Cal. L.Rev. 313, 320-327 (summarizing numerous workers' compensation-related cases decided by this Court between 1915 and 1923).

[6] Contrary to the suggestion in one amicus brief, *Mathews* did not hold that section 4 allows "the Legislature [to] exclude workers from coverage of the system only where there is a reasonable basis for the decision to exclude." (Br. of Labor Law

(continued…)

2. Several amici echo plaintiffs' contention that section 7451 impermissibly interferes with the Legislature's plenary authority under section 4 by "mak[ing] it impossible for the Legislature to pass legislation conferring additional protections on app-based drivers." (Br. of Sen. Cortese & Assem. Ortega 14; see, e.g., Br. of Labor Law Professors 38-39, 46; Br. of Cal. Applicants' Attorneys Assn. 17-18; see also RBM 8, 26-27.) But they do not actually contend that section 7451, by itself, interferes with the Legislature's authority under article XIV, section 4. They instead contend that other provisions of law—the restrictive amendment provision in section 7465 and the separate constitutional provision addressing the general requirements for amending statutory initiatives (Cal. Const., art. II, § 10, subd. (c))—create obstacles to the Legislature's future exercise of its plenary authority. In their view, those provisions collectively would prevent the Legislature from providing workers' compensation coverage to app-based drivers without first obtaining approval from the voters. (See Br. of Cal. Applicants' Attorneys Assn. 10, 18, 27; Br. of Labor Law Professors 40; OBM 22-24; RBM 10.)

As the State has explained, the Court does not have to reach those contentions to resolve the case before it. (See State ABM

(…continued)

Professors 43, italics omitted.) The cited portion of *Mathews* applied settled principles of rational-basis review—not section 4—in upholding a statute that limited the scope of coverage. (See *Mathews*, *supra*, at pp. 737-740.) Neither plaintiffs nor amici contend that section 7451 would fail rational-basis review.

37-38.) The sole issue presented is whether section 7451 violates article XIV, section 4. The Court can uphold section 7451 on the ground that the Legislature's authority over workers' compensation is not exclusive (*ante*, pp. 11-12), and reserve any questions about how section 7465 or article II, section 10(c) might conflict with article XIV, section 4 for another day.

Indeed, the Court generally avoids wading into issues that "depend for their immediacy on speculative future events." (*Pacific Legal Found. v. California Coastal Com.* (1982) 33 Cal.3d 158, 173; see State ABM 39-40.) AB 5 provided a broad range of protections and benefits to workers in hundreds of different industries. (See Supp. Opening Br., Dkt. No. 82 at pp. 3-7, 10-17, *Olson v. State* (9th Cir. 2023) 88 F.4th 781.) But the Legislature has not yet expressed a position on whether, in the wake of Proposition 22, it would attempt to provide workers' compensation coverage to app-based drivers—even though drivers would remain ineligible for the other protections and benefits enjoyed by employees. (See State ABM 39 & fn. 10.) In the event that the Legislature actually enacts a law of that nature, and a proper challenger claims that the enactment is unlawful, there would be a ripe judicial controversy. (Cf. *Greener v. Workers' Comp. Appeals Bd.* (1993) 6 Cal.4th 1028, 1038 [noting possibility that Legislature could exercise section 4 powers to create a statutory "exempt[ion] . . . from the strictures of" a general constitutional requirement]; *Prop 103 Enforcement*

Project v. Quackenbush (1998) 64 Cal.App.4th 1473 [addressing contention that Legislature unlawfully amended an initiative].)[7]

But even if the Court reached questions about the Legislature's prospective authority in this case, there would be no conceivable basis to grant the sweeping remedy requested by plaintiffs and their amici. (State ABM 44-46.) At most, the appropriate remedy would be a declaration that the Legislature has prospective authority to provide app-based drivers with workers' compensation through its normal process for enacting statutes, notwithstanding the general provisions of section 7465 or article II, section 10(c). (See State ABM 40-46; see also Br. of Citizens in Charge 36-37.) Any broader relief would be unnecessary to safeguard the Legislature's section 4 authority and would unduly restrict the electorate's "precious right[]" to exercise the initiative power. (*Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591.)

3. Finally, plaintiffs' amici read footnote 9 in *McPherson* as suggesting that any conflict in policy between a statute enacted by the Legislature regarding workers' compensation and a subsequent statutory initiative would be sufficient to render the initiative unconstitutional. (See, e.g., Br. of Sen. Cortese & Assem. Ortega 16; see also OBM 26; RBM 12.) That argument

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[7] Alternatively, the Legislature might itself seek a judicial declaration that neither section 7465 nor article II, section 10(c) would stand in the way of the Legislature enacting a law specifying that app-based drivers are entitled to workers' compensation. (Cf. *Legislature v. Eu* (1991) 54 Cal.3d 492, 500.)

makes little sense as a matter of first principles. (See State ABM 33; see generally *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 255 ["A corollary of the legislative power to make new laws is the power to abrogate existing ones."].) And it rests on a flawed understanding of *McPherson*, where the Court upheld a proposed initiative even though it conflicted with a statute previously enacted by the Legislature under a "plenary power" provision that is nearly identical to section 4. (State ABM 31-34; see *McPherson*, *supra*, 38 Cal.4th at pp. 1026, 1033-1035.)

Like plaintiffs, amici emphasize that the plenary-power provision in *McPherson* gave the Legislature authority to "confer additional authority" on the Public Utilities Commission (PUC). (See Br. of Labor Law Professors 39-40, 43-44; Br. of Sen. Cortese & Assem. Ortega 15; see also OBM 24-25, 29; RBM 13, 25.) Because the proposed voter initiative considered in *McPherson* expanded the PUC's jurisdiction, amici observe, it did not interfere with the Legislature's plenary authority in a way that they view as comparable to section 7451's alleged interference with the Legislature's plenary section 4 authority. (See, e.g., Br. of Labor Law Professors 43-44.)

But that understanding of *McPherson* has no basis in the text or history of the constitutional provision construed by the Court in that case. The most natural reading of article XII, section 5—which grants the Legislature "plenary power . . . to confer additional authority and jurisdiction upon" the PUC—is that the Legislature has plenary authority to determine how far

the PUC's jurisdiction should be expanded above the constitutional baseline established in the other provisions of article XII.[8] Before *McPherson*, the Legislature had already made a decision about how far to extend the PUC's jurisdiction with respect to independent electric service providers—deciding that those providers should register with the PUC but that their rates and terms of service would not be subject to PUC regulation. (State ABM 32.) The ballot proposal considered in *McPherson* contradicted that decision: it subjected independent electric service providers to regulation of their rates and terms of service. (*McPherson*, *supra*, at p. 1026.) This Court nonetheless upheld the measure on the ground that "the term 'plenary power'" does not "mean[] exclusive power." (*Id.* at p. 1035.) The Court plainly did not view the voters' proposed modification of the existing statutory scheme as creating an "improper[] conflict[] with the Legislature's exercise of its authority to expand the PUC's jurisdiction or authority." (*Id.* at p. 1044, fn. 9, italics omitted.)

The contrary understanding of *McPherson* advanced by plaintiffs and their amici would create a highly anomalous framework: The voters would be barred—by virtue of article XII,

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[8] The relevant ballot materials explained that section 5 was intended to allow the Legislature to confer on the PUC "such powers as it sees fit without any restriction whatever, provided only that the powers thus given are not inconsistent with the powers specifically conferred in the constitution." (*McPherson*, *supra*, 38 Cal.4th at p. 1038, quoting Sect. of State, Proposed Amends. to Const. with Legislative Reasons, Special Elec. (Oct. 10, 1911), Reasons Why ACA No. 6 Should Be Adopted.)

section 5—from contracting the scope of PUC jurisdiction conferred by the Legislature. The Legislature would be barred—by virtue of article II, section 10(c)— from contracting the scope of jurisdiction provided by the voters. Nothing in *McPherson* or the relevant ballot materials suggests that article XII, section 5, was intended to create a system of competing one-way ratchets. And there is certainly no basis for importing such a system into article XIV, section 4. (See State ABM 31-34.)

B. The Court should not embrace the contentions by interveners' amici about limits on the Legislature's prospective authority

The State thus agrees with interveners and their amici insofar as they conclude that section 7451 does not conflict with article XIV, section 4. But some of those amici urge the Court to hold that the voters' adoption of section 7451 all but eliminates the Legislature's prospective authority to make policy in this area. Those amici argue that, despite the explicit constitutional grant of plenary and "unlimited" power to the Legislature over workers' compensation, the relationship between the Legislature and the voters in this area is no different from their relationship with respect to "every other legislative subject." (Br. of Cal. Const. Scholars 14.) The result would be that, because of article II, section 10(c), the Legislature could not "amend or repeal" any initiative related to workers' compensation "without the voters' approval." (Interveners' ABM 13; see, e.g., Br. of Citizens in Charge 36; Br. of Former Assem. Berryhill 12-13.)

As discussed above (*ante*, pp. 15-17), this case does not require the Court to resolve questions about the Legislature's

prospective authority to make app-based drivers eligible for workers' compensation. If the Court were to address those questions, however, the better view would be that the Legislature *does* have authority to enact such legislation without voter approval. Even assuming that such legislation would constitute an "amendment" of section 7451 (see State ABM 40; see generally *People v. Rojas* (2023) 15 Cal.5th 561, 568-581), it would be a valid exercise of the Legislature's section 4 authority. The text and purposes of section 4 preserve an active and ongoing role for the Legislature in adjusting the contours of the workers' compensation system in the future. The Legislature should thus be allowed to amend initiative statutes without voter approval in those limited circumstances where it exercises its "plenary" and "unlimited" lawmaking powers under article XIV, section 4. (Cal. Const., art. XIV, § 4; see State ABM 24-27, 40-44.)

Several amici respond that section 4's limited historical purpose was "to remove judicial doubts about the constitutionality of the workers' compensation system" under *Lochner* and other judicial doctrines. (E.g., Br. of Cal. Const. Scholars 18; see *id.* at pp. 19-23; Br. of Citizens in Charge 27-28.) But the text reveals a broader objective: to ensure that the Legislature's future power to set and recalibrate workers' compensation policy would be "unlimited by any provision of [the] Constitution." (Cal. Const., art. XIV, § 4.) Even if "judicial impediments" to workers' compensation policy at the beginning of the 20th century provided the principal motivation for section 4's adoption (Br. of Cal. Const. Scholars 9), "the particular impetus

for [an] enactment does not limit its scope" where—as here—its terms are "more general." (*Los Angeles Unified School Dist. v. Garcia* (2013) 58 Cal.4th 175, 192, 193.)

Amici effectively ask the Court to treat section 4 as a historical relic. The Court does not typically construe constitutional provisions to be dead letter. (See generally *ITT World Communications, Inc. v. City & County of San Francisco* (1985) 37 Cal.3d 859, 867 [discussing "long-established rule" requiring the Court, where possible, to "give significance to every word in the constitutional text"].) And it would be especially inappropriate to do so with respect to section 4, which expressly contemplates an ongoing role for the Legislature on a policy issue that remains of critical importance to our State. (See State ABM 25-27; *County of Los Angeles v. California* (1987) 43 Cal.3d 46, 59-62 [applying section 4 outside the context of *Lochner* and other early 20th century judicial doctrines]; *Subsequent Injuries Fund v. Industrial Acc. Com.* (1952) 39 Cal.2d 83, 88 [similar].)[9]

As to the constitutional text, several of interveners' amici echo the Court of Appeal's assertion that section 4's reference to "[t]he Legislature" must be read "as though it said, [t]he

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[9] Section 4 was renumbered by a constitutional initiative enacted in 1976 as part of a broader effort throughout the 1970s to "update and modernize our California Constitution." (Ballot Pamp., Primary Elec. (June 8, 1976) argument in favor of Prop. 14, p. 59.) While that effort led the voters to approve the deletion of over 40,000 words deemed obsolete or unnecessary (see *ibid.*; e.g., *Marine Forests Society v. California Coastal Com.* (2005) 36 Cal.4th 1, 38-39), section 4's wording was left untouched.

Legislature or the electorate acting through the initiative power." (Opn. 14, italics and internal quotation marks omitted; see Br. of Former Assem. Berryhill 20; Br. of Cal. Const. Scholars 18, 48; Br. of Former Senators Leslie & Peace 16.) If that view were correct, the Court of Appeal reasoned, it would "not [be] significant that . . . the people may exercise their initiative power in a way that limits the Legislature's authority" over workers' compensation. (Opn. 15.) But it is not correct. Section 4's reference to "Legislature" means "Senate and Assembly." (Cal. Const., art. IV, § 1; see State ABM 43, fn. 13; *County of Los Angeles*, *supra*, 43 Cal.3d at p. 59 [equating "[t]he Legislature" in section 4 with the two "house[s] of the Legislature"].)

One amicus brief invokes *Hotel Employees and Restaurant Employees International Union v. Davis* (1999) 21 Cal.4th 585 on that issue. (See Br. of Former Senators Leslie & Peace 16.) But that case involved very different circumstances. The Court struck down a statutory initiative under a constitutional provision restricting "[t]he Legislature['s]" ability to "authorize . . . casinos." (Cal. Const., art. IV, § 19.) The Court emphasized that the constitutional provision "parallels in language, and was presumably based upon," a gambling-related provision adopted in 1879—well before the enactment of "the 1911 constitutional amendment that provided for the initiative." (*Hotel Employees*, *supra*, at p. 603.) It thus made sense in that context to construe "Legislature" to mean "legislative power" more generally. (*Ibid.*; see *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 676 [similar].) By contrast, section 4 was added to our Constitution just a few

years after the voters approved the initiative power. (State ABM 12-16.) The Progressive reformers who proposed and authored section 4 were intimately familiar with the difference between the Legislature's authority and the initiative power.

Amici also point to the assertion in *Yosemite Lumber* that section 4's use of the word "plenary" is "merely surplus verbiage." (Br. of Cal. Const. Scholars 47, quoting *Yosemite Lumber*, *supra*, 187 Cal. at p. 780; see Br. of Amicus Populi 37.) That century-old dictum is inconsistent with the well-established rule against constitutional superfluity. (See *ITT World*, *supra*, 37 Cal.3d at p. 867.) And amici ignore the other language in section 4 supporting the broad and continuing authority of the Legislature in this area. Section 4 contains not only the "unlimited by any provision of [the] Constitution" clause, but also specific provisions contemplating that the "Legislature" will continue to monitor, adjust, and enforce particular details of our workers' compensation system going forward. (See State ABM 25-27.) Indeed, experience demonstrates that sometimes the Legislature must move swiftly to "enforce [the] complete system of workers' compensation" and ensure that its provisions are "adequate" to meet the needs of the moment. (Cal. Const., art. XIV, § 4.) Statutory changes enacted in 2020 to address the exigencies of the COVID-19 pandemic provide just one example.[10]

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[10] See Stats. 2020, ch. 85, § 2, p. 2061 (addressing workplace COVID infections); see also, e.g., Stats. 2004, ch. 34, p. 213 (enacting urgency statute to address "the current workers' compensation crisis"); Dickerson, *Workers' Comp Crisis Worsens*, (continued…)

It would be difficult for the Legislature to exercise those specifically enumerated powers under the regime envisioned by interveners and their amici. Amici observe that "the Legislature is not *powerless* to amend an initiative statute" (e.g., Br. of Former Senators Leslie & Peace 23, italics added) because it may enact an amendment "that becomes effective only when approved by the electors" (Cal. Const., art. II, § 10, subd. (c)). But that process is incompatible with swift legislative action of the type sometimes needed to ensure the adequate functioning of the workers' compensation system: depending on the timing of statewide elections, it can sometimes take well over a year before such a bill goes before the voters for approval.[11] Those delays, along with the costs and other difficulties involved in mounting statewide campaigns to educate the voters, mean that the process is rarely invoked. The Legislature has proposed amendments to initiatives *only 31 times* since 1946 (when its authority to propose amendments was added to the Constitution)—an average of only about four times per decade. (See Br. of Former Senators Leslie & Peace 25; Interveners' ABM 67-73.)

To be sure, that is the process our Constitution envisions for most every context where the voters have enacted a statutory

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(…continued)

L.A. Times (May 25, 2003) <https://www.latimes.com/archives/la-xpm-2003-may-25-fi-work25-story.html> (as of May 15, 2024).

[11] See, e.g., Stats. 2000, ch. 867, p. 6476 (approved by the Legislature in September 2000, approved by the voters in March 2002); see also Br. of Sen. Cortese & Assem. Ortega 13.

initiative. What is different here is that the voters themselves expressly granted "[t]he Legislature" the "plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation"—in terms that plainly contemplate a role for the Legislature in calibrating the details of that system going forward. (Cal. Const., art. XIV, § 4; cf. Br. of Cal. Applicants' Attorneys Assn. 13 & fn. 2 [discussing the "unique[ly]" "broad scope" of section 4's language]; see State ABM 25-27.)

As this Court has recognized, section 4 effects a "pro tanto repeal of conflicting state constitutional provisions . . . insofar as necessary [to] . . . prohibit the realization of [section 4's] objectives." (*Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329, 343, internal quotation marks omitted.) That understanding is consistent with the settled principle that, in the event of a conflict between two constitutional provisions, the "general provision is controlled by one that is special, the latter being treated as an exception to the former." (*Rose v. State* (1942) 19 Cal.2d 713, 723-724.)[12] In this context, those principles would weigh in favor of allowing the Legislature to amend

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[12] See also, e.g., *People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 637 ("special provisions control more general provisions, and the general and special provisions operate together, neither working the repeal of the other"); *Bowens v. Superior Court* (1991) 1 Cal.4th 36, 45 ("a recent, specific provision is deemed to carve out an exception to and thereby limit an older, general provision"); *San Francisco Taxpayers Assn. v. Bd. of Supervisors* (1992) 2 Cal.4th 571, 577 (similar).

initiative statutes without voter approval notwithstanding article II, section 10(c)—but only in those narrow circumstances where the Legislature exercises its "plenary," "unlimited" lawmaking powers under article XIV, section 4. (State ABM 40-42.) Otherwise, the general voter-approval requirement of section 10(c) would improperly interfere with "the ability of the Legislature to make future changes" to workers' compensation policy. (*County of Los Angeles*, *supra*, 43 Cal.3d at p. 59.)[13]

The State's disagreement with interveners and their amici on that score should not obscure our bottom-line agreement on the narrower issue presented in this case. Section 4 does not give the Legislature exclusive authority in the field of workers' compensation. (See *ante*, pp. 11-12; State ABM 27-30.) And there is no basis for granting the sweeping relief requested by plaintiffs and their amici. (See *ante*, pp. 11-20; State ABM 44-46.) Consistent with the important role reserved for the voters within California's democratic system (see State ABM 24-25), the Court should uphold section 7451.

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[13] As the Court has noted, in most other States where the voters have statutory initiative power, there are no restrictions on the legislature's ability to amend initiatives. (See *People v. Kelly* (2010) 47 Cal.4th 1008, 1035; see also Persily et al., *When Is a Legislature Not a Legislature?* (2016) 77 Ohio St. L.J. 689, 715-716 & fns. 194-198.) In effect, article XIV, section 4, allows the California Legislature to follow that "majority model" (*Kelly*, *supra*, at p. 1035) in the limited field of workers' compensation.

CONCLUSION

The judgment of the Court of Appeal should be affirmed

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWER TO AMICUS BRIEFS uses a 13 point Century Schoolbook font and contains 5,341 words.

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/s/ Samuel T. Harbourt

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May 16, 2024

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No.: **S279622**

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on May 16, 2024, at San Francisco, California.

Samuel T. Harbourt	*/s/ Samuel T. Harbourt*
Declarant	Signature

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STATE OF CALIFORNIA
Supreme Court of California

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Date

/s/Samuel Harbourt

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