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

Plaintiffs and Respondents,

v.

STATE OF CALIFORNIA; 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; KEITH YANDELL

Intervenors and Appellants.

INTERVENORS-APPELLANTS' CONSOLIDATED ANSWER TO AMICUS CURIAE BRIEFS

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

The amici supporting SEIU devote most of their briefing to policy advocacy. They argue that, on balance, app-based drivers would be better off if classified as employees so they could receive workers' compensation insurance and the full array of other employment-based benefits. This Court, however, does not "pass upon the wisdom, expediency, and policy of enactments by the voters any more than [it] would enactments by the Legislature." (*Professional Engineers in Cal. Gov. v. Kempton* (2007) 40 Cal.4th 1016, 1043-1044, citation and internal quotation marks omitted.) Policy determinations are for the People alone to make.

In any event, the policy arguments amici supporting SEIU make were already made to the People in the 2020 election. The voters rejected them by a 17-percent margin, opting instead for a hybrid system, under which drivers receive some employee-type benefits while maintaining the flexibility that independent contractors have. And as the amicus briefs supporting Proposition 22 show, the People had sound reasons to strike that policy balance.

To the extent SEIU's amici offer constitutional contentions salient to the issue before the Court, they offer no coherent legal theory. Senator Dave Cortese and Assembly Member Liz Ortega argue that Proposition 22 infringes on the Legislature's article XIV § 4 power. But they cannot explain why the People's initiative power should be treated any differently from other structural checks on the Legislature—such as the gubernatorial veto—which undisputedly apply to workers' compensation

legislation. A group of Labor Law Professors argue that an initiative can only expand, not contract, the workers' compensation system. But such a one-way ratchet for legislation has no basis in article XIV § 4's text, constitutional doctrine, or history. Labor Law Professors also make the novel claim that "all" workers are constitutionally required to be covered by the workers' compensation system. But this Court has repeatedly recognized this is not so, and any holding to the contrary would effectively outlaw independent contracting in California.

In the end, none of SEIU's amici comes to grips with the "centrality of direct democracy in the California Constitution." (*Cal. Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 946.) It thus comes as no surprise that the only amici here who are experts on California constitutional law, the California Constitution Scholars, urge affirmance based on settled constitutional principles and thorough historical analysis. Other amici supporting affirmance show that the use of the initiative power here is fully consonant with the structure and practice of statutory lawmaking in California, including with respect to workers' compensation, and is faithful to the role of direct democracy in our Constitution. (See, e.g., Berryhill Br.; Leslie & Peace Br.; Citizens in Charge Br.; Cal. Chamber Br.)

The Court should affirm.

ARGUMENT

I. Policy Arguments Concerning Proposition 22 Have No Bearing on the Initiative's Constitutional Validity

A. The Policy Wisdom of Proposition 22 Is an Issue for the Democratic Process, Not the Courts

The amici Municipalities contend that Proposition 22 is "bad policy" for allowing app-based drivers to be classified as independent contractors rather than as employees. (City of S.F. et al. ("Municipalities") Br. at pp. 17, 36.) Other amici supporting SEIU likewise devote the bulk of their briefs to arguing why it would be better policy, in their view, to classify app-based drivers as employees. (See, e.g., Teamsters Br. at pp. 13–22; Rideshare Drivers United ("RDU") Br. at pp. 21–39; Cal. Applicants' Attorneys Assn. ("CAAA") Br. at pp. 17–27; Labor Law Professors ("LLP") Br. at pp. 17–25.)

But the forum for that policy debate was the ballot box, not this Court. As the Court has repeatedly emphasized, "'we do not consider or weigh the economic or social wisdom or general propriety of the initiative'" when reviewing a constitutional challenge to it. (*Briggs v. Brown* (2017) 3 Cal.5th 808, 828; *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 814 [same]; *Amador Valley Joint Union High School Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 219 [same].) Courts' role is to "act as courts, and allow for the development of policy through the democratic process . . . ." (See *People v. Hardin* (2024) 15 Cal.5th 834, 865.)

Whether the hybrid scheme that Proposition 22 embodies is a good idea is quintessentially a policy issue for the democratic

process. (See, e.g., U.S. Chamber Br. at pp. 6–21.) All the more so because the People already heard and rejected the core policy argument SEIU's amici now advance—namely, that app-based drivers should receive all benefits associated with employee classification, especially workers' compensation insurance. (See, e.g., RDU Br. at pp. 19, 21–34 [arguing that Proposition 22 "strips" app-based drivers of employee benefits]; Municipalities Br. at pp. 23–31; Teamsters Br. at pp. 13–22; LLP Br. at pp. 17–25.)

The initiative's official title is explicit: "Proposition 22: *Exempts* App-Based Transportation and Delivery Companies from Providing *Employee Benefits* to Certain Drivers." (AA 770, italics added.) The Voter Information Guide further explained: "the Attorney General says that [AB 5] means rideshare and delivery companies must hire drivers as employees," and "[a]s employees, drivers would get standard job benefits and protections that independent contractors do not get." (*Ibid.*) And if Proposition 22 were to pass, then app-based drivers would be "'independent contractors,' not 'employees,'" and would thus "not [be] covered by various state employment laws—including minimum wage, overtime, unemployment insurance, and workers' compensation." (*Ibid.*)

The Voter Information Guide also contained extensive arguments from Proposition 22's opponents about perceived advantages of employee classification. They argued that "[c]urrent law requires Uber, Lyft, and DoorDash to provide their drivers with a minimum wage, healthcare, paid sick leave,

unemployment, and workers' compensation coverage." (AA 773.) They urged voters to "vote No on Proposition 22" because it would "create a special exemption for [the companies] that will legally deny their driver[s'] basic rights and protections at work like paid sick leave[,] workers' compensation, or unemployment benefits," and replace those benefits with "LOWER" benefits "designed to save the companies money." (*Ibid.*)

The same goes for amici's arguments that independent contractor classification causes drivers to earn too little; harmed app-based drivers during the COVID-19 pandemic; disproportionately affects people of color; is unnecessary to preserve driver flexibility; and burdens the public fisc. (LLP Br. at p. 23; RDU Br. at pp. 24, 39; Municipalities Br. at pp. 31–35; Teamsters Br. at pp. 20–22.) These contentions, too, were advanced in the 2020 campaign. (AA 772–773; e.g., Said, *Prop. 22: What you need to know about gig companies' ballot measure*, S.F. Chronicle (Oct. 19, 2020) <https://tinyurl.com/mr24y5wk> [as of May 15, 2024].)

The Teamsters now question the legitimacy of the election, speculating that campaign expenditures "misled voters into supporting the initiative." (Teamsters Br. at pp. 23–24.) That is an "improbable assumption." (*Brosnahan v. Brown* (1982) 32 Cal.3d 236, 252.) With extensive media coverage of both sides of the policy debate, voters had access to far more information than what was conveyed by campaign advertisements alone. (See, e.g., S.F. Chron., *Editorial: Don't stifle the gig economy, vote yes on California Prop. 22* (Sept. 15, 2020)

<https://tinyurl.com/yc7wwsz7> [as of May 15, 2024]; L.A. Times, *Endorsement: Prop 22 the wrong solution for Uber drivers and the gig economy* (Sept. 23, 2020) <https://tinyurl.com/mw3bmwuv> [as of May 15, 2024].)

As former officials of the Fair Political Practices Commission show in their amicus brief, voters exercise independent judgment in initiative elections, and routinely reject initiatives where proponents had spending advantages greater than Proposition 22's proponents did, including in recent elections. (Quinn et al. Br. at pp. 9–13.) Having been presented with "extensive public debate" that "described the pros and cons of the measure," "the people knew exactly what they were doing" in enacting Proposition 22. (*Brosnahan*, 32 Cal.3d at p. 252.) SEIU's amici are entitled to their policy views and to urge the People to change their minds in the future, but those views provide no basis to ask *the Court* to overturn the People's policy judgment.

B. In Any Event, the People Struck a Sensible Policy Balance with Proposition 22

Even if the policy arguments advanced by SEIU's amici were relevant, the People had sound reasons for choosing a different path.

1. Drivers Themselves Overwhelmingly Recognize That Independent Contractor Status Preserves Flexibility and Autonomy

To begin, drivers themselves overwhelmingly support being classified as independent contractors. (Independent Drivers Alliance ("IDA") Br. at pp. 27–30; Chamber of Progress Br. at pp.

11–13; see AA 772.) As one of SEIU's amici has conceded, "[a] majority of drivers in all survey studies—including my own—stated a preference for independent contractor status." (Dubal, *An Uber Ambivalence*, UC Hastings Research Paper No. 381 (Nov. 2019) at p. 9, <https://tinyurl.com/4yjb49vk> [as of May 15, 2024].) For example, an independent survey in September 2020 found that "68.8% [of California drivers] said they wanted to remain independent contractors," while "only 11.5% wanted to become employees." (Campbell, *Lyft & Uber Driver Survey 2020*, The Rideshare Guy (last updated Nov. 8, 2022) <https://tinyurl.com/2vzaxpen> [as of May 15, 2024].) Those sentiments have solidified and grown after the 2020 election, as "4 out of 5 drivers are happy Prop 22 passed (82%)." (Benenson & Markel, *Key Findings from Prop 22 Survey with CA Drivers and Delivery People*, Benenson Strategy Group (May 13, 2021) at p. 1, <https://tinyurl.com/5yz2nvvs> [as of May 15, 2024]; Bloomfield, *Survey of California App-Based Rideshare and Delivery Drivers*, The Mellman Group (Dec. 13, 2023) <https://tinyurl.com/4u4pub4a> [as of May 15, 2024] ["83 percent of drivers support Prop 22"].)

Drivers support independent-contractor status because they value the flexibility to work when and where they want, on whichever platforms they choose. Most drive only part time: Pew Research Center found that 68 percent of gig workers describe gig work as a "side job," and only 8 percent do such work more than 30 hours per week. (Anderson et al., *The State of Gig Work in 2021*, Pew Research Center (Dec. 8, 2021) at pp. 6, 25

<https://tinyurl.com/7tur3jaz> [as of May 15, 2024].) The Independent Drivers Alliance's amicus brief illustrates the value of flexibility too. For example, Kelly Rickert cannot work a fixed schedule due to health challenges; Ali Mazhin needed to care for his ailing father at unpredictable times while also holding a traditional job; and Stephanie Whitfield takes care of four children and step-children. (IDA Br. at pp. 13–18, 22–24.) Drivers like them choose independent app-based work to earn needed income while balancing other important obligations.

SEIU's amici say that the longstanding association between flexibility and independent contractor status is a "mirage." (Municipalities Br. at p. 31; Teamsters Br. at pp. 20–22.) Economic reality suggests otherwise. Employment laws incentivize employers to control employees' schedules and how employees go about their work. (Henderson et al. ("Economists") Br. at pp. 13–15.) And drivers—and the People—know from their own experiences that employers control whether, when, where, and how employees work. That is why nearly half of independent contractors nationwide are people who need flexibility most—that is, people who choose independent contracting work because disabilities, illnesses, or family obligations make traditional employment a poor fit. (Chamber of Progress Br. at p. 17.)

Requiring employee classification would thus impose real costs on drivers. (*Id.* at pp. 16–19; IDA Br. at pp. 13–27.) Economists predict that platform companies would be incentivized to control drivers' schedules and how they spend their time on the app, in order to ensure that time is used

productively. (E.g., Williams, *Impacts of Eliminating Independent Contractor Status for California App-Based Rideshare and Delivery Drivers*, Capitol Matrix Consulting (July 2020), at pp. 6–8 <https://bit.ly/3iQMThJ> [as of May 15, 2024]; U.S. Chamber Br. at pp. 15–16; Economists Br. at p. 13.) One study concluded this would likely mean relying on much smaller numbers of employee-drivers who are required to work as they are told, instead of maintaining open platforms where large numbers of drivers are free to use it as they see fit—and that the number of app-based drivers in California could decline by as much as *93 percent*. (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> [as of May 15, 2024]; see also Chamber of Progress Br. at pp. 17–19.) The People sensibly decided that path was not desirable.

2. Contrary to What SEIU's Amici Argue, Proposition 22 Is Sensible Economic Policy

In addition to classifying drivers as drivers themselves prefer, and thus protecting their independence and flexibility, the People had ample additional reasons to adopt the policy balance struck in Proposition 22.

First, Proposition 22 provides drivers with protections unavailable to other independent contractors—including occupational accident insurance, an earnings guarantee of at least 120 percent of the minimum wage, healthcare subsidies, and protections from discrimination and sexual harassment.

(Bus. & Prof. Code §§ 7453–7457.) SEIU's amici argue these benefits, especially occupational accident insurance, are "inferior" to what employees receive. (See, e.g., CAAA Br. at pp. 17–27; RDU Br. at pp. 27–29.) But, as amicus Crum & Forster shows, occupational accident insurance is a well-established product that has long been used by independent contractors, such as truckers, to insure against the risk of work-related injury. (Crum & Forster Br. at p. 16.)

The People had good reason to conclude that occupational accident insurance likewise is well tailored to drivers' needs and risk profiles, providing strong protections at lower cost than workers' compensation. (*Id.* at pp. 16–27.) Occupational accident insurance under Proposition 22 includes medical coverage of at least $1 million, 104 weeks of disability payments with payment rates determined under the Labor Code, and death benefits and burial expenses as determined under the Labor Code. (Bus. & Prof. Code § 7455, subds. (a)–(b).) Within coverage limits, reimbursements and payments under these provisions are "effectively identical" to analogues in the workers' compensation system. (Crum & Forster Br. at p. 20.) And contrary to the insinuation of some of SEIU's amici, occupational accident insurance provides protection on a no-fault basis, just like workers' compensation. (*Id.* at p. 23.)

The $1 million cap on medical coverage was also a reasonable balance to strike. (Bus. & Prof. Code § 7455, subd. (a).) Of the 17,000 occupational accident claims Crum & Forster has received for gig workers nationwide since 2019, only *two*

exceeded $1 million, and only by a few thousand dollars. (Crum & Forster Br. at p. 25.) That is not surprising; contrary to what some amici suggest (e.g., RDU Br. at pp. 22–25; LLP Br. at pp. 18–22), driving is not an exceptionally dangerous activity but rather one most Californians undertake every day, and app-based drivers undergo mandatory safety training aimed at making it even safer (Bus. & Prof. Code § 7459). The Legislature has exempted far riskier occupations from the ABC test, including construction and commercial fishing. (See, e.g., Lab. Code §§ 2781, 2783.)

Second, Proposition 22's combination of flexibility and protections provides economic benefits to workers and the State as a whole. "[E]ighty-two percent of [California] drivers report being satisfied with their work on rideshare and delivery platforms." (UC Riverside School of Business, *An Analysis of App-Based Drivers in California* (Feb. 2022) at p. 15 <https://tinyurl.com/yyxm67jv> [as of May 15, 2024]; see also Anderson et al., *The State of Gig Work in 2021*, *supra*, at p. 34 [64 percent nationwide believe their earnings are "fair"].) The data shows why. By 2021, California drivers were earning an average of $34.46 per engaged hour, including tips. (UC Riverside, *supra*, p. 8.) After expenses, which generally amount to 10 percent of earnings (and which drivers can deduct from taxes as independent contractors), this is well above minimum

wage. (*Id.* at p. 19.)[1] What's more, the on-demand services enabled by the gig economy have also helped consumers obtain critical services, helped small businesses grow, and provided an economic cushion to workers between jobs. (Marketplace Industry Assn ("MIA") Br. at pp. 26–28; Economists Br. at p. 16.)

Third, communities of color report that Proposition 22 is especially beneficial to them. (Communities of Color Br. at pp. 20–29.) Proposition 22 counts among its supporters the NAACP California Hawaii State Conference, the California Hispanic Chambers of Commerce, and many other organizations that advocate for people of color. (*Id.* at p. 9; AA 772–773.) Indeed, "the proportion of voters who supported Proposition 22 was significantly higher in counties and cities with large Black or Hispanic communities." (Chamber of Progress Br. at p. 14.)

One reason is that gig work has expanded economic opportunities for communities of color. (Communities of Color

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[1] SEIU's amici offer no contrary evidence. They claim instead that Proposition 22's earnings guarantee provides less protection than the minimum wage, mainly on the ground that the former applies only to "engaged time," i.e. when a driver is engaged in ride or a delivery. (E.g., RDU Br. at p. 32-33.) That argument is misguided, as it assumes that a driver should receive compensation whenever an app is turned on. But during non-engaged time, drivers may have an app on in the background while focusing on personal activities, or while engaged in completing deliveries or rides on another app. (UC Riverside, *supra*, at p. 19.) And since drivers are free to decline any ride or delivery request, if earnings were guaranteed for non-engaged time, drivers may be incentivized to keep apps open while rejecting every request.

Br. at pp. 23–26.) People of color are more likely than white workers to have earned money using a gig platform, and *81 percent* of non-white gig workers rate their experiences as "positive," a rate higher than their white counterparts. (Gelles-Watnick & Anderson, *Racial and ethnic differences stand out in the U.S. gig workforce*, Pew Research Center (Dec. 15, 2021) <https://tinyurl.com/ydbkfmvm> [as of May 15, 2024].) App-based services have also dramatically improved the availability of transportation and fresh food in historically underserved areas. (Communities of Color Br. at pp. 26–29.)

In sum, even if it were this Court's job to ensure that Proposition 22 is sensible policy, it is clear that the People had ample reasons for overwhelmingly enacting Proposition 22.

II. SEIU's Amici Offer No Coherent Basis to Overturn Proposition 22 under the California Constitution

A. Article XIV § 4 Does Not Elevate the Legislature Above the People

Having overwhelmingly lost the popular vote at the ballot box, SEIU's amici now insist that the People of California are subordinate to the Legislature in the area of workers' compensation. In particular, SEIU's amici suggest that Proposition 22 cannot stand because article XIV § 4 precludes the People from enacting any law affecting the availability of workers' compensation. (Cortese & Ortega Br. at pp. 9–13; LLP Br. at pp. 25–27.) They articulate no coherent theory, however, in support of this novel and dramatic constitutional argument.

1. The Legislature's Power under Article XIV § 4 Is Subject to Structural Constitutional Constraints

No one disputes that workers' compensation bills are subject to at least certain structural checks on the Legislature's law-making power. Indeed, as former Assemblyman Berryhill's amicus brief shows, the Legislature itself has always understood that its enactments under article XIV § 4 are subject to the same structural checks that apply to any other legislation. (Berryhill Br. at pp. 14–20.) For example, workers' compensation laws have been subject to the 90-day period that allows the People to petition for a referendum. (Berryhill Br. at p. 15; Cal. Const. art. IV, § 8, subd. (c)(1).) Likewise, the Legislature has always presented workers' compensation bills to the Governor for signature or veto. More than 50 workers' compensation bills have been vetoed in just the last 25 years. (Berryhill Br. at p. 18; Cal. Const. art. IV, § 10, subd. (a).)

SEIU's amici nevertheless argue that the Legislature's "plenary" and "unlimited" authority to enact legislation under article XIV § 4 cannot be checked by the People's initiative power. (E.g., LLP Br. at pp. 25–27.) But there is no reason why article XIV § 4 would respect every other structural limitation on the Legislature's power but would uniquely nullify the People's initiative power.

The initiative, just like the other constitutional provisions just mentioned, is "a limitation upon the power of the Legislature." (*Rossi v. Brown* (1995) 9 Cal.4th 688, 704.) Indeed, the very constitutional provision that vests the "Legislative

power" in the Legislature makes clear that "the people reserve to themselves the powers of initiative and referendum." (Cal. Const. art IV, § 1; see also art II, § 1 ("*All* political power"—not *some*—"is inherent in the people") [italics added].) Accordingly, the initiative power is a "*paramount* structural element" of the Constitution. (*Cal. Cannabis Coalition*, 3 Cal.5th at p. 946, italics added.)

For the same reason, it makes no sense to say that an initiative "improperly limits" the Legislature simply because article II § 10 requires the Legislature to submit initiative amendments to the People for approval. (LLP Br. at p. 40; Cortese & Ortega Br. at p. 14.) That is the Constitution's process for amending initiative statutes—it does not "improperly limit" the Legislature's power any more than does the gubernatorial veto. (See Leslie & Peace Br. at pp. 25–27, fn. 31 [discussing long history of the Legislature submitting proposed amendments to voters for approval].)

The Court's decision in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, does not undercut this analysis. In that case, the Court suggested that the Constitution's requirement in article IV § 12, subd. (d), that revenue bills secure a "supermajority vote of two-thirds of the members of each house" might conflict with article XIV § 4. (43 Cal.3d at pp. 57–60.) But the Court had no occasion to decide how to resolve any such conflict. (See Intervenors' Ans. Br. at p. 49.) It instead held that the legislation at issue did not trigger

any supermajority voting requirement in relation to workers compensation. (43 Cal.3d at pp. 60–61.)

At any rate, a supermajority voting requirement is fundamentally different from the constitutional principle that the Legislature cannot amend initiatives without approval of the People. The former is not a structural restriction on legislative power; that is, it is not a separation-of-powers check from the executive branch (like the presentment requirement) or the People themselves (like the amendment approval requirement in article II § 10) that even "unlimited" legislative power cannot bypass. Accordingly, even if an internal legislative rule like the supermajority requirement in *County of Los Angeles* might have to give way to article XIV § 4 if the two ever came into conflict, that reasoning would not apply to the external structural check at issue here.

Nor does it make any difference that workers' compensation is a complex subject on which the Legislature has repeatedly acted. (Cortese & Ortega Br. at pp. 12–13.) The Legislature routinely legislates in other such areas, ranging from taxation to environmental regulation—but nobody contends that the People lack authority to legislate on these matters too. (See Leslie & Peace Br. at pp. 17–18 [collecting initiatives]; Citizens in Charge Br. at pp. 34–35.)

2. History Refutes the Position of SEIU's Amici

The history of the initiative power and workers' compensation further underscores the implausibility of the constitutional position advanced by SEIU's amici. The People

adopted the initiative power in 1911 out of "dissatisfaction with the then governing public officials," and in order to "restor[e] the people's rightful control over their government." (*Perry v. Brown* (2011) 52 Cal.4th 1116, 1140.) In fact, the initiative power was intended precisely to ensure that the People could exercise direct control, if needed, over economic legislation such as workers' compensation. (Cal. Const. Scholars Br. at p. 23.)

It is improbable that, just seven years later and without an express word on the subject, the People then surrendered their initiative power to distrusted legislators—much less that they did so *only* with respect to legislation that affects the People's own compensation and benefits as workers. (See Citizens in Charge Br. at pp. 27–29, 34–35.) Rather, the historical record makes clear that the People adopted article XIV § 4 in 1918 to protect workers' compensation laws from potentially meddlesome courts, not from the People themselves. The need to do so arose because *Lochner*-era courts were aggressively striking down economic legislation. The California Constitution Scholars' brief recounts that history in detail, showing that contemporary discussion of article XIV § 4 focused almost exclusively on concerns about *Lochner*-style judicial challenges to workers' compensation legislation. (Cal. Const. Scholars Br. at pp. 33–42.)

As this Court has explained, article XIV § 4's "sole purpose" was to "remov[e] all doubts as to the constitutionality of the then existing workmen's compensation statutes." (*Mathews v. Workingmen's Comp. Appeals Bod.* (1972) 6 Cal.3d 719, 734–735; Intervenors' Ans. Br. at pp. 35–42.) The People did not intend to

restrict their own power. It is indeed ironic that SEIU's amici now try to use a provision intended to *prevent* judicial invalidation of economic regulation to do exactly that.

B. There Is No One-Way Ratchet that Allows the People Only to Expand, and Never Contract, the Workers' Compensation System

Echoing SEIU, Labor Law Professors argue that the People can only expand, and never contract, the workers' compensation system. (LLP Br. at p. 43 [an initiative may "add[] rights or protections," but not "strip[] them away"].) But there is no principled basis to infer such a one-way ratchet on the power of the electorate. Any such test would also be incoherent and impossible to apply, with serious ramifications for labor regulation broadly.

1. To justify their theory, Labor Law Professors try to analogize article XIV § 4 to article XII § 5. (LLP Br. at pp. 39–40.) The latter provision authorizes legislation to confer "additional authority and jurisdiction upon [the Public Utilities Commission]"—i.e. to add to the baseline regulatory jurisdiction already granted by article XII—but not legislation to reduce that baseline jurisdiction. Article XIV § 4, however, contains no similar language allowing legislation regarding workers' compensation only when it confers "additional" protections. (Intervenors Ans. Br. at pp. 34–37.)

To the contrary, the workers' compensation system "has expanded and contracted over the years." (*Cal. State Automobile Assn. Inter-Ins. Bureau v. Workers' Comp. Appeals Bd.* (2006) 137 Cal.App.4th 1040, 1047.) That is, the Legislature has

repeatedly, in the exercise of its policy judgment and in response to changing circumstances, acted to remove or reduce workers' coverage and benefits. (See Cal. Chamber Br. at pp. 13–17.) For example, the Legislature has excluded workers formerly included in the system. (E.g., *Cal. State Automobile Assn.*, 137 Cal.App.4th at pp. 1047–1048 [discussing changing criteria for covering household workers]; Stats. 2020, ch. 38, § 2, pp. 1838–1850 [exempting workers from ABC test].) The Legislature has removed or reduced previously available benefits for covered workers. (E.g., Stats. 2003, ch. 635, § 14, p. 4883; Legis. Counsel's Dig., Assem. Bill No. 227 (2003–2004 Reg. Sess.) 6 Stats. 2003, Summary Dig., p. 310 [discussing repeal of vocational rehabilitation benefits]; Lab. Code § 4656 [cutting duration of temporary disability benefits].) And the Legislature has made it harder to qualify for compensation. (E.g., Lab. Code § 3208.3, subd. (c) [establishing a "new and higher threshold of compensability for psychiatric injury"].)

Any of these reforms could be characterized as "strip[ping]" "rights or protections" from workers. (Cf. LLP Br. at pp. 43–44.) But no one, including the Labor Law Professors, suggests that the Legislature could not adopt such laws under article XIV § 4. SEIU itself has acknowledged that the Legislature could have excluded app-based drivers from the workers' compensation system. (Court of Appeal Op. at p. 17 fn. 8.) So too can the People. That is because "'the power of the people [to enact statutes] through the statutory initiative *is coextensive* with the power of the Legislature.'" (*Independent Energy Producers Assn.*

v. McPherson (2006) 38 Cal.4th 1020, 1032); Intervenors' Ans. Br. at pp. 29–34.)

2. Any one-way rachet limitation would upend the legal landscape for workers' compensation, and indeed for labor regulation broadly. Any law that has an effect on workers' compensation coverage or benefits—like Proposition 22, which affects the worker' compensation system only as a downstream result of its classification standard—would be potentially subject to the ratchet.

But the ratchet test's dichotomy between "adding" and "stripping" "rights" is not even a coherent concept for the complexities of the workers' compensation system. For example, a major focus of workers' compensation reform in the last two decades has been the establishment of procedures to standardize medical treatments and help contain "'a perceived crisis in skyrocketing workers' compensation costs.'" (See, e.g., *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (2008) 44 Cal.4th 230, 241–243 [discussing SB 899 of 2004].) It is unclear how one would even begin to analyze such legislation under a one-way ratchet test. Some might argue that SB 899, which "repealed . . . a presumption of correctness for the findings of an injured employee's treating physician" and required treatment based on standardized guidelines (*id.* at p. 242), "strip[ped]" workers of a "right" to the treating physician's recommended treatment. But standardized guidelines also arguably made the workers' compensation system more "complete" by conforming treatments to accepted medical science, and by containing costs

to ensure the system's overall economic viability. (Cal. Chamber Br. at pp. 18–19.)

Would these packages of reform legislation have to be assessed on a holistic basis to determine whether, in overall terms, they "added" or "stripped" rights? Or would SEIU's amici have courts invalidate all of the limitations in such legislation while upholding all of the worker benefits—thereby making compromise legislation impossible in this area? The amici do not say. Nor is it clear why any one-way ratchet would apply only to enactments by the People, and not those by the Legislature. What is certain is that a one-way ratchet test would push all legislation affecting workers' compensation into a quagmire of litigation. This Court should not go down that path.

C. Article XIV § 4 Does Not Require All Workers to Be Classified as Employees

Unable to offer any cogent theory why article XIV § 4 would restrict the initiative power, Labor Law Professors also assert an even more dramatic theory—that Proposition 22 is unconstitutional simply because it favors classifying a group of workers as independent contractors. They argue that article XIV § 4 charges the Legislature with creating a "*complete system* of workers' compensation," and thus, in their view, "the workers' compensation system . . . must adequately cover *all* workers." (LLP Br. at p. 30.) Because workers' compensation covers only employees, that logic would render all independent contracting unconstitutional in California. That cannot be right.

Article XIV § 4 authorizes workers' compensation legislation for "any or all" workers, with the contours of the

system to be determined by statutory law. (See Cal. Const. art. XIV, § 4; Intervenors' Ans. Br. at p. 36.) The workers' compensation system has never extended to all workers, and has always excluded independent contractors. (See *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341, 354.) As early as 1916, this Court upheld the exclusion of multiple groups of workers from the workers' compensation system. (*Western Indemnity Co. v. Pillsbury* (1915) 170 Cal. 686, 702.) The Workmen's Compensation, Insurance, and Safety Act of 1917 ("1917 Act")—which "represented the full evolution of the workmen's compensation system" (*Mathews*, 6 Cal.3d at p. 731)—continued to exclude many categories of workers, including all "independent contractors" (Stats. 1917, ch. 586, § 8, subd. (a) & (b), pp. 835–836).

Since *Western Indemnity*, this Court and the Courts of Appeal have repeatedly reaffirmed that statutory legislation may "exclud[e] certain classes of persons from [workers' compensation] coverage." (*Mathews*, 6 Cal.3d at pp. 738–739 [noting that the power to exclude has "long been settled"]; *Graczyk v. Workers' Comp. Appeals Bd.* (1986) 184 Cal.App.3d 997, 1006 [right to workers' compensation is "wholly statutory"]; *Wal-Mart Stores, Inc. v. Workers' Comp. Appeals Bd.* (2003) 112 Cal.App.4th 1435, 1442 ["'plenary power'" includes the "power to exclude certain workers"].)

The People, who have "the final legislative word," can make the same policy judgments. (See *Rossi*, 9 Cal.4th at p. 704.) Far from prohibiting the People from classifying certain workers as

independent contractors, article XIV § 4's reference to a "complete system of workers' compensation"—like the provision overall (see ante, at p. 24)—was intended only to protect the 1917 Act from *Lochner*-era court challenges. (See *Mathews*, 6 Cal.3d at pp. 734–735.) The official ballot arguments supporting article XIV § 4 explained that a "complete" system includes four components: "[c]ompulsory compensation," "safety provisions," insurance regulation," and "[a]n administrative system." (*Id.* at p. 733, fn. 11.) Although the then-existing statutory scheme already contained all four components, the original constitutional provision authorizing workers' compensation "contain[ed] no expression covering safety and insurance matters, and contain[ed] only meager and indefinite authority for administration." (*Ibid.* [discussing Proposition 10 of 1911].) By laying out the components of a "complete" system of workmen's compensation, article XIV § 4 aimed simply to give the then-existing workers' compensation laws "*full constitutional sanctions*." (*Ibid.*)

* * *

In sum, rather than apply longstanding constitutional principles, SEIU's amici would override the People's will with novel and unsound theories. This Court should reject these arguments and adhere to the well-settled principle that the People have the reserved power to make policy judgments that are different from existing legislation. That principle is just as true respecting initiatives affecting workers' compensation as any other policy matter.

CONCLUSION

The judgment of the Court of Appeal should be affirmed.

DATED: May 16, 2024

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CERTIFICATE OF WORD COUNT

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