Supreme Court of California
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S279622

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 Appellants,

v.

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

Defendants and Respondents,

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

Intervenors and Respondents.

INTERVENORS-RESPONDENTS' ANSWER BRIEF

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

Under the California Constitution, "[a]ll political power is inherent in the people." (Cal. Const., art. II, § 1.) To protect this inherent power, the People have "reserve[d] to themselves the powers of initiative and referendum." (*Id.*, art. IV, § 1.) Over the past century, they have exercised that power to legislate on topics as varied as tax policy, criminal justice reform, and environmental regulation. California courts have *never* ruled *any* subject off-limits to initiative statutes. To the contrary, the judiciary has embraced its "solemn duty to jealously guard the precious initiative power, and to resolve any reasonable doubts in favor of its exercise." (*Legislature v. Eu* (1991) 54 Cal.3d 492, 501.)

Petitioners here (collectively, "SEIU") ask this Court to create the first-ever exception to this unbroken line of precedent. According to SEIU, the California Constitution carves out workers' compensation from the People's otherwise sweeping initiative power—thereby invalidating Proposition 22's reforms to the regulation of workers in today's on-demand economy. SEIU grounds this position in article XIV, which states that the "Legislature" has "plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of

workers' compensation, by appropriate legislation." (Cal. Const., art. XIV, § 4.)

The Court of Appeal properly rejected this argument. When this Court last confronted analogous language, it explained that the People's power of "statutory initiative *is coextensive* with the power of the Legislature," even when a constitutional provision vests "plenary" and "unlimited" power in the "Legislature." (*Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 1032.) That same reasoning applies to this case. The history of article XIV shows that the People did not intend to relinquish their reserved initiative power. And structural principles and the presumption against implied repeals underscore that both the Legislature and the People may exercise their shared legislative power over workers' compensation.

That power (as SEIU does not deny) is a power to craft a workers' compensation system for "*any* or all" workers, not a constitutional mandate to cover all workers. (See *Graczyk v. Workers' Comp. Appeals Bd.* (1986) 184 Cal.App.3d 997, 1002.) It follows that the People (like the Legislature) may make the policy judgment to include or exclude certain workers. While SEIU may not like the balance Proposition 22 struck, this case is not about whether the Legislature or the voters made better policy. It is about whether the voters have the power to disagree with the

Legislature. A century of jurisprudence makes clear that is the point of the statutory initiative power.

SEIU is correct that the Legislature cannot amend or repeal Proposition 22's central provision without the voters' approval. But that voter-approval process is a core structural feature of the Constitution, which protects all initiative statutes from unilateral interference by the Legislature. (Cal. Const., art. II, § 10(c).) To treat a structural feature of the Constitution designed to protect the initiative power as a sword to strike down an exercise of that power would turn the Constitution on its head.

In essence, SEIU would have this Court hold that the Legislature has complete supremacy over workers' compensation, unchecked by ordinary constitutional constraints. This Court should reject SEIU's gambit to insulate legislation affecting workers' compensation from direct democracy. It should instead confirm its holding in *McPherson* that "plenary" power is not "exclusive" and that the Legislature's policy preferences do not supersede the voters'. The Court should affirm the Court of Appeal's judgment.

STATEMENT OF THE CASE

I. In the Progressive Era, the People Approved Constitutional Provisions Reserving Their Initiative Power and Establishing a Constitutional Basis for Workers' Compensation

In 1911, the People enshrined the initiative power in the California Constitution, thereby reserving for themselves the power to enact statutes as a check on the Legislature's rapid consolidation of political power. (See *People v. Kelly* (2010) 47 Cal.4th 1008, 1035–1038.) This constitutional amendment "g[a]ve the [P]eople power to control legislation of the state," "reserve[d]" the People's "power to propose and to enact laws which the legislature may have refused," and provided a "safeguard which the [P]eople should retain for themselves" in order "to hold the legislature in check, and veto or negative such measures as it may … enact." (4AA756–759.)

Now codified as article IV § 1, the initiative power was "one of the outstanding achievements of the progressive movement of the early 1900's." (*Associated Home Builders., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591.) "Drafted in light of the theory that all power of government ultimately resides in the [P]eople," the initiative power is not *granted* to the People, but rather a right the People reserved. (*McPherson*, 38 Cal.4th at p. 1032.) This reserved initiative power is a bedrock principle of

California democracy. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 248.)

In the same 1911 election in which the People ratified the initiative power, the People also added article XX § 21 to the Constitution to provide a constitutional basis for the State's first workers' compensation laws, which were enacted in 1911 and revised in 1913. (*Mathews v. Workmen's Comp. Appeals Bd.* (1972) 6 Cal.3d 719, 729–730; 1 Hanna, Cal. Law of Employee Injuries and Workers' Compensation (2021) § 1.01 [available at 4AA761–764].) And in 1917, the Legislature substantially revised the workers' compensation system by enacting the Workmen's Compensation, Insurance, and Reform Act.

But the legal climate at the time was hostile to state economic regulation, which was frequently challenged on various constitutional grounds, often successfully, during the *Lochner* era. (See, e.g., *Lochner v. New York* (1905) 198 U.S. 45; *Ex parte Farb* (1918) 178 Cal. 592, 600 [striking down a statute prohibiting employers from requiring employees to surrender earned tips].) Workers' compensation laws were likewise the subject of frequent constitutional attack, on grounds ranging from due process to separation of powers. (1 Hanna, Cal. Law of Employee Injuries and Workers' Compensation (2021) § 1.02 [available at 4AA765]; see, e.g., *Western Indemnity Co. v. Pillsbury* (1915) 170 Cal. 686, 706 [rejecting, over a dissent, a due

process challenge to no-fault employer liability]; *Carstens v. Pillsbury* (1916) 172 Cal. 572, 580–581 [invalidating workers' compensation award as beyond the authority of the Industrial Accident Commission].)

To put the State's workers' compensation law on a "firm constitutional basis" and protect the 1917 statute from a *Lochner*-era attack for "want of constitutional authority," California voters adopted the current version of article XIV § 4. (*Mathews*, 6 Cal.3d at pp. 733–734 & fn. 11; see *Worswick Street Paving Co. v. Industrial Accident Com.* (1919) 181 Cal. 550, 560–561 [invalidating workers' compensation award as "being without constitutional sanction" for accident that occurred before the 1918 amendment].) That provision, enacted in 1918, states in relevant part:

> The Legislature is hereby expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability, and their dependents for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of any party.

(Cal. Const., art. XIV, § 4.)

This Court has explained that the "*sole* purpose" of this provision was to remove "all doubts as to the constitutionality" of

workers' compensation statutes. (*Mathews*, 6 Cal.3d at p. 735 & fn. 11, italics added.) In other words, § 4 "was designed to give authority for the legislation already enacted and to sanction the plan then in existence." (*Yosemite Lumber Co. v. Industrial Accident Com. of Cal.* (1922) 187 Cal. 774, 780, 782.) There was no intent to diminish the People's right to enact new legislation via the initiative power.

II. California Has Repeatedly Adjusted the Worker Classification Standards for Its Dynamic Economy

The standards for classifying workers as independent contractors or employees have frequently changed over the last century, both expanding and contracting the universe of workers covered by the workers' compensation system.

This Court's own classification holdings have prompted some of those changes. Decades ago, this Court adopted and refined a multi-factor test to determine whether a worker was an employee or independent contractor under the Workers' Compensation Act—the principal factor being "whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired." (*S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341, 345, 350, 352–353.) Later, this Court endorsed a different standard—the ABC test—which presumes employment status for purposes of wage order claims unless the putative

employer can show that the worker is free from its control, performs work outside its usual course of business, and is customarily engaged in an independent business. (See *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, 957.)

A year after *Dynamex*, the Legislature adjusted the workers' compensation system, including by narrowing its scope. It enacted AB 5, codifying the ABC test and extending it to other subjects, including workers' compensation. AB 5 also explicitly *excluded* numerous categories of workers from the ABC test—reflecting the Legislature's policy judgment that a stricter test favoring employee classification is more appropriate for some occupations, while a more flexible test is better suited for others. (See Lab. Code, § 2750.3 [repealed].)

The Legislature modified the worker classification standard again in 2020, narrowing it in certain ways. AB 2257 exempted a long list of additional occupations from the ABC test—such as "people who provide underwriting inspections and other services for the insurance industry, a manufactured housing salesperson, ... people engaged by an international exchange visitor program, … consulting services, animal services, and competition judges with specialized skills, … licensed landscape architects, specialized performers teaching master classes, registered professional foresters, real estate appraisers and home

inspectors, and feedback aggregators." (Legis. Counsel's Dig., Assemb. Bill No. 2257 (2019–2020 Reg. Sess.).) This made it easier for workers in dozens more occupations to be classified as independent contractors rather than employees (and thus to fall outside the workers' compensation system). (Lab. Code, §§ 2775–2785.)

Just as worker classification standards have changed over time, so have the ways that Californians work. Recent technological advances have enabled novel, flexible ways for people to provide services to each other through on-demand digital platforms. (See Annette Bernhardt, Allen Prohofsky & Jesse Rothstein, *The "Gig Economy" and Independent Contracting: Evidence from California Tax Data*, California Policy Lab (Aug. 2019) at pp. 3–5.) These platforms created new businesses focused on helping customers find people willing to provide services to them directly in what is now known as the "sharing economy" or "gig economy."

These new forms of flexible app-based work have become extremely popular. App-based drivers enjoy unprecedented autonomy and can work (or choose not to work) virtually whenever and wherever they want, using any combination of platforms they choose. Whereas traditional employment models lack flexibility and emphasize fixed-in-advance hourly shifts or weekly schedules, app-based workers have the freedom to

schedule work around their lives and not the other way around. To combine that freedom with added economic security, some began advocating for an innovative "third way" aimed at giving app-based workers benefits traditionally associated with employment, such as health insurance, while preserving the autonomy of app-based work. (See, e.g., Seth D. Harris & Alan B. Krueger, *A Proposal for Modernizing Labor Laws for Twenty-First Century Work: The "Independent Worker"*, The Hamilton Project (Dec. 2015) at p. 2; Andre Andoyan, *Independent Contractor or Employee: I'm Uber Confused! Why California Should Create an Exception for Uber Drivers and the "On-Demand Economy"* (2017) 47 Golden Gate Univ. L.Rev. 153, 168.)

Dissatisfaction with the rigid dichotomy between employees and independent contractors led to the enactment of Proposition 22. The Proposition 22 coalition included a host of diverse organizations from across the political spectrum, from the Chamber of Commerce and the California Farm Bureau Federation to the National Diversity Coalition and Mothers Against Drunk Driving. It also included more than 120,000 app-based drivers who signed up to spearhead the campaign.

Proposition 22 was one of the most visible initiative campaigns in California history, with extensive advertisements and media coverage highlighting the arguments for and against this initiative. In the November 2020 election, the voters

approved Proposition 22 with overwhelming support. Proposition 22 garnered nearly 10 million "yes" votes, won in 50 of 58 counties, and passed by a 17% margin. (1AA101 ¶ 12.)

III. The People Established a New Worker Classification Standard Under Proposition 22

Proposition 22 comprehensively reforms the labor regulatory framework applicable to app-based workers. It aims to "protect[] the ability of Californians to work as independent contractors … using app-based rideshare and delivery platforms" while at the same time "providing these workers new benefits and protections not available under current law." (Bus. & Prof. Code, § 7449(e)–(f).) To that end, Proposition 22 establishes a new test for classifying certain workers, just as this Court did in *Borello* and *Dynamex*, and the Legislature did through AB 5 and AB 2257. App-based drivers are independent contractors if a "network company" does not: (a) unilaterally prescribe specific dates, times, or hours for them; (b) require them to accept any specific request; (c) restrict them from working with other network companies; or (d) prevent them from working in other occupations. (§ 7451.)[1]

[1] Proposition 22 uses the term "network company" to describe companies that maintain platforms for facilitating local delivery or transportation services. (Bus. & Prof. Code, § 7463(f), (l), (p).)

Proposition 22 not only preserves the flexibility and autonomy of app-based workers, but also prescribes regulations for their compensation, benefits, and working conditions. These workers are guaranteed a package of benefits, such as a health insurance stipend, minimum earnings guarantee (20% *above* minimum wage, plus compensation for mileage), medical and income protection, occupational-accident insurance, and certain contract, anti-discrimination, and termination rights, none of which has been traditionally extended to independent contractors. (Bus. & Prof. Code, §§ 7451, 7453–7455.)

IV. SEIU Challenged Proposition 22

Proposition 22 went into effect on December 16, 2020. (See Bus. & Prof. Code, § 7448 et seq.) Less than a month later, SEIU filed an emergency petition for a writ of mandate in this Court, asking for a declaration that Proposition 22 is invalid. The Court denied the petition. (See *Castellanos v. State of California* (Cal. Feb. 3, 2021, No. S266551).)

SEIU then re-filed its petition in the trial court. (1AA14–41.) Beyond the named respondents, the parties stipulated to allow Protect App-Based Drivers and Services, along with proponents Davis White and Keith Yandell, to intervene as real parties in interest. (1AA196–202.) Protect App-Based Drivers and Services is a coalition of more than 60 organizations that

support app-based drivers' access to independent, app-based work and seek to preserve the on-demand app-based economy in California. (Protect App-Based Drivers & Services, *About Our Coalition* <https://tinyurl.com/y55sw2w3> [as of Dec. 11, 2023].) This non-profit coalition established and operated the official ballot measure committee (YES on 22 – Save App-Based Jobs & Services) that successfully advocated for Proposition 22's passage. (1AA197 ¶ 3.)

The trial court granted SEIU's petition for a writ of mandate, declaring Proposition 22 unconstitutional. (4AA886–897.) The trial court held that Business & Professions Code § 7451 violates article XIV "because it limits the power of a future legislature to define app-based drivers as workers subject to workers' compensation law." (4AA896.) The court reasoned that article II § 10(c) of the California Constitution "conflicts with" article XIV § 4 because article II § 10(c) allows the Legislature to amend an initiative statute only if the voters so approve. (4AA889.) The trial court adopted SEIU's argument that, "[i]f the Legislature's authority is limited by an initiative statute, its authority is not 'plenary' or 'unlimited by any provision of [the] Constitution' (Cal. Const. art. XIV, § 4); rather, it would be limited by Article II, Section 10, subdivision (c)." (4AA889.)

V. The Court of Appeal Upheld Proposition 22 in Relevant Part

The Court of Appeal rejected the trial court's reasoning, holding "that Proposition 22 does not violate article XIV, section 4." (Op. at p. 28.) That outcome followed from this Court's interpretation of "nearly identical language" in *McPherson*, which involved a similar challenge to the People's right to enact legislation on a topic over which "the Legislature" has "plenary power, unlimited by" any other provision of the Constitution. (*Id.* at pp. 12, 15.) As the Court of Appeal explained, such language "cannot mean that workers' compensation laws are exempt from every other aspect of the Constitution"—including the People's reserved initiative power or article II § 10(c)'s protection of that power from the Legislature's unilateral interference. (*Id.* at p. 16.) *McPherson* and other "long-standing California decisions" had explained that other references to the Legislature should be read as meaning "[t]he Legislature *or* the electorate acting through the initiative power." (*Id.* at p. 14, italics changed.) So "the notion that article XIV, section 4 should be read as limiting the voters' initiative power falls apart." (*Id.* at p. 17.)

The Court of Appeal also held that Proposition 22 was a proper exercise of the People's power because "article XIV, section 4 does not require every worker to be covered by workers'

compensation." (Op. at p. 24.) Far from "impos[ing] a lawmaking mandate upon the Legislature," article XIV allows the Legislature or the voters to "limit benefits" and to "exclude certain workers." (*Id.* at pp. 24–25, quoting *Facundo-Guerrero v. Workers' Comp. Appeals Bd.* (2008) 163 Cal.App.4th 640, 650 and *Wal-Mart Stores v. Workers' Comp. Appeals Bd.* (2003) 112 Cal.App.4th 1435, 1442; see *id.* at pp. 16–17, fn. 8.) Proposition 22 merely did what the Legislature has done on numerous occasions—change the test for who is an "employee." (*Id.* at pp. 25–26.)

Finally, the Court of Appeal found unconstitutional, and severed, an aspect of Proposition 22's amendment provisions as violating the separation of powers, and it concluded that Proposition 22 does not violate the single-subject rule. (Op. at pp. 29–38, 48–62.) Neither holding is at issue in this Court.

Justice Streeter dissented as to the article XIV claim. (Dissent at p. 1.) In his view, article XIV § 4 "charges the Legislature with the responsibility … to 'create' a 'complete system of workers' compensation'" and precludes any legislative attempt to alter the "'basic features' of that system." (*Id.* at pp. 30–46, italics changed.) Justice Streeter pointed to Justice Jackson's concurrence in *Youngstown Sheet & Tube Co. v. Sawyer* (1952) 343 U.S. 579—a case that neither SEIU nor the trial court had cited—and argued that, just as the federal executive branch

cannot overrule the laws enacted by Congress, when the People legislate about workers' compensation, "they must do so in a manner that is consistent with any prior exercise of article XIV, section 4 power by the Legislature." (Dissent at p. 25.) Justice Streeter believed that the Legislature has a "preeminent role" and "superior position" relative to the People, who "were required to respect what the Legislature had done" in AB 5 "and lacked power to countermand it" via Proposition 22. (*Id.* at pp. 12, 25.)

The majority rejected Justice Streeter's theory, explaining that absent an "unambiguous indication that a provision's purpose was to constrain the initiative power," the People are free to enact laws under that provision that contradict the Legislature's policy judgment. (Op. at pp. 26–28, quoting *Cal. Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 945.)

ARGUMENT

Under settled constitutional principles, the People may legislate through initiative statutes unless the Constitution contains a clear statement explicitly limiting their power to do so. Neither article XIV § 4 nor any other constitutional provision contains any restriction (explicit or otherwise) on the People's initiative authority to enact laws affecting workers' compensation. Just as the Legislature could have enacted Proposition 22, so too can the People.

I. The Initiative Power Is Liberally Construed and Presumptively Valid

The Constitution recognizes that "[a]ll political power is inherent in the people." (Cal. Const., art. II, § 1.) It provides a mechanism for them to exercise that power directly: by enacting initiative statutes. (*Id.*, art. II, §§ 8, 10; see *id.*, art. IV, § 1.) Through this initiative power, "the people of California have reserved to themselves the ultimate legislative power" (*Citizens Against a New Jail v. Bd. of Supervisors* (1976) 63 Cal.App.3d 559, 563)—"one of the most precious rights of our democratic process" (*Amador*, 22 Cal.3d at p. 248).

The Court has a "solemn duty to jealously guard the precious initiative power, and to resolve any reasonable doubts in favor of its exercise." (*Eu*, 54 Cal.3d at p. 501.) Accordingly, the People's reserved initiative power is "liberally construed" to include every subject within the legislative power of the State. (*Ibid.*, italics omitted.)

There are a few provisions of the Constitution that expressly restrict the initiative power. (See Cal. Const., art. II, § 12 [prohibiting any initiative statute that "names any individual to hold any office, or names or identifies any private corporation to perform any function or to have any power or duty"]; *id.*, § 8, subd. (d) [single-subject requirement]; *id.*, § 8, subd. (e) [prohibiting initiatives that include or exclude political

subdivisions based on the votes in each subdivision], *id.*, § 8, subd. (f) [prohibiting conditional provisions that become law depending on a specific percentage of votes cast].) But where a constitutional provision says nothing explicit about the initiative process, courts presume voters have *not* "limited their power." (*Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 250.) In fact, "[d]uring the [over] 100 years since adoption of the statewide initiative process in California," this Court has never interpreted any provision "to place any section or segment of the state Constitution off-limits to the initiative process or to preclude the use of the initiative with respect to specified subjects." (*Strauss v. Horton* (2009) 46 Cal.4th 364, 456.)

Summarizing this longstanding precedent six years ago, this Court reiterated the governing interpretative framework: In the absence of an "unambiguous indication that a [constitutional] provision's purpose was to constrain the initiative power, [the Court] will not construe it to impose such limitations." (*Cal. Cannabis Coalition*, 3 Cal.5th at pp. 945–946.) As explained below, there is no such indication here—much less an unambiguous one.

II. The People Share the Legislature's Power to Enact Legislation Implicating Workers' Compensation

The People's legislative power is coextensive with the Legislature's power under article XIV § 4. The Court of Appeal correctly followed "'long-standing California decisions establishing that references in the California Constitution to the authority of the Legislature to enact specified legislation generally are interpreted to include the people's reserved right to legislate *through the initiative power*.'" (Op. at p. 14, quoting *McPherson*, 38 Cal.4th at p. 1043, italics added.) SEIU is wrong to posit that article XIV limits the initiative power—as the plain text, ratification history, and constitutional structure all confirm.

A. The Text of Article XIV Does Not Restrict the Initiative Power

SEIU argues that article XIV's language, which grants the Legislature "plenary" power "unlimited" by any other provision of the Constitution to create and enforce a workers' compensation system, displaces the People's power to legislate on the same topic. (See OBM at pp. 21–24.) This Court confronted a constitutional provision with materially identical language in *McPherson*—and rejected the very same arguments SEIU advances here. As the Court of Appeal recognized, that decision confirms the Legislature shares this "plenary" and "unlimited" power with the People.

1. This Court Held in *McPherson* That a Grant of "Plenary" and "Unlimited" Power to the Legislature Does Not Displace the Initiative Power

The challengers in *McPherson* argued that article XII § 5 of the California Constitution precluded the electorate from conferring additional authority on the Public Utilities Commission through the initiative process. (38 Cal.4th at p. 1023.) Article XII has "analogous" language to article XIV, as this Court recognized. (*Id.* at p. 1036, fn. 4.)

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

This Court unanimously rejected essentially the same arguments that SEIU makes here, applying "numerous California decisions that have held, in a variety of contexts, that language in the California Constitution establishing the authority of 'the Legislature' to legislate in a particular area must reasonably be interpreted to include, rather than to preclude, the right of the people through the initiative process to exercise similar legislative authority." (*McPherson*, 38 Cal.4th at p. 1033.) *Plenary* means "complete" and "unqualified," "not

exclusive." (*Id.* at p. 1035 [citing Black's Law Dict. (5th ed. 1979) p. 1038].) And *unlimited* need not be interpreted "so expansively to exclude the application of provisions like those relating to the initiative power or the gubernatorial veto." (*Id.* at p. 1036.) This Court thus determined that these terms do not "preclude the people, through their exercise of the initiative process," from exercising the same power that the Constitution grants to the Legislature where the structure and purpose of the provision evinced no intent to implicitly repeal the initiative power. (*Id.* at pp. 1043–1044.)

The Court of Appeal in this case correctly recognized that *McPherson* squarely governs the interpretation of the materially identical language in article XIV. (Op. at pp. 14–18.) By "vest[ing]" "the Legislature" with "plenary power, unlimited by any provision of this Constitution," article XIV ensures that both the Legislature and the People have the power to create a complete system of workers' compensation for any or all workers, just as article XII allowed both the Legislature and the People to confer additional authority on the PUC.

SEIU protests that *McPherson* "did not hold that … the words '[t]he Legislature'" in article XII § 5 "refer to the initiative power." (OBM at pp. 27–28, italics omitted.) But that is precisely what *McPherson* held: that "long-standing California decisions establish[] that references in the California

Constitution to the authority of the Legislature to enact specified legislation generally are interpreted to include the people's reserved right to legislate through the initiative power." (38 Cal.4th at p. 1043.) The point is not that the Constitution defines the "Legislature" as the People—rather than as "the Senate and Assembly" (Cal. Const., art. IV, § 1; contra OBM at p. 28)—but simply that grants of legislative power to "the Legislature" must be read to authorize the People to exercise that legislative power as well. (See *McPherson*, 38 Cal.4th at p. 1043.)

As the Court noted in *McPherson*, several other decisions had upheld the People's power to enact initiative statutes under provisions that refer to "the Legislature." (*Kennedy Wholesale*, 53 Cal.3d at pp. 249–251; *State Comp. Insurance Fund v. State Bd. of Equalization* (1993) 14 Cal.App.4th 1295, 1299–1300; *Carlson v. Cory* (1983) 139 Cal.App.3d 724, 728–729.) SEIU argues that "[n]one of those cases involved constitutional provisions that expressly grant the Legislature power that is 'unlimited by the other provisions of th[e] Constitution.'" (OBM at pp. 28–29, fn. 6.) But *McPherson* did. And it held that such language does not "trump" the constitutional provisions protecting the initiative power—just as it does not exempt the Legislature from requirements to enact legislation, such as "the provision authorizing the Governor to veto a bill approved by the Legislature." (*McPherson*, 38 Cal.4th at p. 1036.)

Since *McPherson*, the Court has continued to apply the rule that the People possess the same legislative power as the Legislature. This Court, for example, has reaffirmed that if "the Legislature has plenary authority … then so, too, does the electorate." (*Prof. Engineers in Cal. Government v. Kempton* (2007) 40 Cal.4th 1016, 1042.) And this Court has reiterated "that, constitutionally, the legislative power in California is shared by the Legislature and the electorate acting through its powers of initiative and referendum, not exclusively exercised by the Legislature." (*Consulting Engineers & Land Surveyors of Cal., Inc. v. Prof. Engineers in Cal. Government* (2007) 42 Cal.4th 578, 587 (*CELSOC*).) SEIU's proposal to eliminate the initiative power over an entire subject matter would call into question these and numerous other of this Court's precedents.

Moreover, as in *McPherson*, article XIV does not overcome the rule against construing a provision as limiting the initiative power absent a clear statement to that effect—as neither its "text" nor "ballot materials" contain any "explicit reference to the initiative power." (*Cal. Cannabis Coalition*, 3 Cal.5th at p. 946; see Part I, *ante*.) SEIU contends that this clear-statement requirement applies only to "procedural constraints" on the lawmaking process, not to substantive restrictions on the subjects fit for statutory initiatives. (OBM at p. 38.) But this Court has never cabined the clear-statement rule that way, instead

grounding it in "the centrality of direct democracy in the California Constitution." (*Cal. Cannabis Coalition*, 3 Cal.5th at p. 946.) And *McPherson* has already held that the phrase "unlimited by the other provisions of this constitution" is not a "direct or explicit statement" that the People have "*limit[ed]* the use of the initiative power." (*McPherson*, 38 Cal.4th at p. 1042, original italics.) The Court thus applied the clear-statement requirement to an asserted subject-matter limitation on the People's lawmaking authority—the same scenario (and indeed the same language) as in this case. (*Id.* at pp. 1042–1044.)

2. Footnote 9 of *McPherson* Does Not Support SEIU

SEIU points to footnote 9 of *McPherson*, where this Court described an issue that it was *not* deciding. The footnote stated that the Court "ha[d] no occasion … to consider whether an initiative measure relating to the PUC may be challenged on the ground that it improperly limits the PUC's authority or improperly conflicts with the Legislature's exercise of its authority to expand the PUC's jurisdiction or authority." (*McPherson*, 38 Cal.4th at p. 1044, fn. 9, italics omitted.) SEIU construes that footnote as barring initiatives that reduce the number of workers eligible for workers' compensation when compared to prior laws enacted by the Legislature. (OBM at pp. 27–29.)

The Court of Appeal properly rejected SEIU's argument, for it cannot be reconciled with *Kennedy Wholesale*, *Kempton*, or *CELSOC*, let alone *McPherson* itself. (Op. at pp. 19–20.) Start with constitutional theory: Under SEIU's position, the Legislature's policy preference prevails over the People's. But that rule would be flatly at odds with the very purpose of the initiative power, which is to permit the People to override the Legislature. Put differently, "[v]oter initiatives" are "legislative battering ram[s]" that "tear through the exasperating tangle of the traditional legislative procedure and strike directly toward the desired end." (*Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1035, italics omitted.) That is true regardless of the direction the People's policy choice takes—in this context, whether the People are expanding or contracting the definition of "employee" or providing independent contractors with additional benefits.

Precedent confirms these first principles of constitutional theory. In *McPherson*, the Legislature had provided that electric service providers' "rates and terms of service explicitly were *not* subject to PUC regulation." (38 Cal.4th at p. 1026; see Pub. Util. Code, § 394, subd. (f).) But the Court held that the People could overrule the Legislature's policy judgment.

At any rate, this case does not present the hypothetical situation described in the *McPherson* footnote. Article XII

explicitly vested the PUC with a floor of constitutional powers and authorized only future legislation that "confer[s] *additional* authority and jurisdiction upon the commission." (Cal. Const., art. XII, § 5, italics added.) Critically, Article XIV contains no similar constitutional baseline. It gives the Legislature and the People the "power" to enact a workers' compensation system for "any or all" workers "by appropriate legislation" (*id.*, art. XIV, § 4)—rather than a more limited power to provide "additional" coverage over some specified constitutional floor (*id.*, art. XII, § 5). In contrast to article XII, article XIV leaves "[w]ide discretion" to "exclude[] certain classes of persons from coverage under the Workmen's Compensation Act"; it is neither a constitutional floor nor a one-way ratchet—not for the Legislature *or* the People. (*Mathews*, 6 Cal.3d at p. 739; see Part III, *post*.)

SEIU protests that, "after Proposition 22, the Legislature is powerless to" undo the core provisions of the Proposition "without voter approval." (OBM at pp. 23–24.) But as discussed further below (see Part II.B–C, *post*), that is the longstanding consequence of the Constitution's reservation of direct democracy; article II § 10(c) gives the People "the final legislative word" every time they enact an initiative statute (*Carlson*, 139 Cal.App.3d at p. 728), in that "the Legislature is powerless to act on its own to amend an initiative statute" (*Kelly*, 47 Cal.4th at p. 1045, italics

omitted). As this Court has recognized, "[t]he people's reserved power of initiative is greater than the power of the legislative body"—the voters may override the Legislature, not vice versa. (*Rossi v. Brown* (1995) 9 Cal.4th 688, 715, italics omitted.)

SEIU's position, if accepted, also would lead to an absurd result: The People could never enact an initiative statute that has any conceivable effect on workers' compensation—even one expanding it—because the Legislature would need voter approval to repeal or amend that initiative. This is not merely a hypothetical concern. The People could not have enacted Proposition 210 in 1996 because raising the minimum wage would have the effect of increasing workers' compensation payments (which are a percentage of wages) and the Legislature could not undo the law without voter approval. Nor could the People have proposed Proposition 166 in 1992, which would have amended Labor Code § 3700 to permit employers to purchase a single policy covering both workers' compensation and health insurance. And the People would not be able to enact initiatives that directly increase workers' compensation benefits, as voters in other states have done (see, e.g., *City of Fort Smith v. Tate* (1993) 311 Ark. 405, 409), because any further changes would also require voter approval. There is no principled basis to challenge Proposition 22 without categorically excluding the People from an entire field of public policy.

B. The History of Article XIV Evinces No Intent to Restrict the Initiative Power

Article XIV's history confirms that § 4 does not foreclose initiatives affecting workers' compensation. As the Court of Appeal explained, the ratification history demonstrates that article XIV § 4 only established the constitutionality of workers' compensation and was "not concerned with the allocation of power between the Legislature and the electorate." (Op. at pp. 15–18.)

This Court has held that considering the "origin and background" of a constitutional provision is "appropriate and necessary" before concluding the provision took the drastic step of stripping the People of their legislative powers. (*McPherson*, 38 Cal.4th at p. 1036; see *Kennedy Wholesale*, 53 Cal.3d at pp. 249–250.) This historical cross-check is important because a reference to "plenary" and "unlimited" power, standing alone, "cannot be given an unreasonably expansive construction unrelated to the purpose and intended scope of the constitutional provision in which that language appears." (*McPherson*, 38 Cal.4th at p. 1036, fn. 4.) *McPherson* upheld the initiative power because the history and purpose of the constitutional provision revealed no clear intent to limit that power. (See *id.* at pp. 1037–1043.)

So too here. As the Court of Appeal recognized, the "plenary power" language in article XIV § 4 was added with the

"sole purpose" of protecting the workers' compensation system against *Lochner*-era constitutional challenges—not to preclude the People from exercising the initiative power in ways that might affect that system. (Op. at p. 16, italics omitted.) This Court held just a few years after article XIV's adoption that the word "plenary" was inserted merely to reaffirm the Legislature's power to adopt a workers' compensation system: "Nothing is added to the force of the provision by the use of the word 'plenary'" in article XIV § 4, which was "merely surplus verbiage" that "was designed to give authority for the legislation already enacted and to sanction the plan then in existence." (*Yosemite Lumber*, 187 Cal. at pp. 780, 782; see *Mathews*, 6 Cal.3d at pp. 733–735 & fn. 11 [similar].)

That is why the only two ballot arguments in support of article XIV § 4 focused on ensuring the constitutionality of workers' compensation. (4AA796 [Senator Jones stating that "[o]ur workmen's compensation act … should be put upon a firm constitutional basis, beyond the possibility of being attacked on technical grounds or by reason of any questioned want of constitutional authority"]; *ibid.* [Senator Luce advocating that the statute "should receive full constitutional sanction"].) Nothing in these two arguments ever suggested that the voters supporting the enactment of article XIV § 4 would be limiting

their own initiative power, which they added to the Constitution by a wide margin just seven years prior.

The same is true of the contemporaneous press coverage of the amendment. None of the major California newspapers ever indicated that a purpose of the amendment was to limit the initiative power. (See, e.g., 4AA798 [also attached as Ex. G to Intervenors' Request for Judicial Notice] [Sacramento Bee stating that the amendment's purpose is to "make sure that the important departments of compensation, insurance and safety shall have full constitutional authority"].) Accordingly, after an exhaustive review of its history, this Court concluded that article XIV § 4's "sole purpose" was "removing all doubts as to the constitutionality of the then existing workmen's compensation statutes." (*Mathews*, 6 Cal.3d at pp. 733–735 & fn. 11; 1 Hanna, Cal. Law of Employee Injuries and Workers' Compensation (2021) § 1.02 [available at 4AA766] [leading workers' compensation treatise confirming that article XIV § 4 was proposed "to assure the validity of workers' compensation legislation"].) That is essentially the same purpose as the provision in *McPherson*: "to remove all doubt of the right of the legislature to confer additional powers upon the commission." (38 Cal.4th at p. 1038.)

Nothing in this history provides any indication, let alone the necessary clear statement, that article XIV was meant to

repeal the voters' initiative power over workers' compensation. (See *Kennedy Wholesale*, 53 Cal.3d at p. 250; *McPherson*, 38 Cal.4th at pp. 1041–1043.) The initiative power "grew out of dissatisfaction with the then governing public officials and a widespread belief that the people had lost control of the political process." (*Perry v. Brown* (2011) 52 Cal.4th 1116, 1140.) Given this Progressive Era backdrop, it would have made no sense for voters to cede exclusive power to elected officials just seven years after reserving the initiative power. And as far as Intervenors are aware, no other State has ever excluded its voters from legislating on workers' compensation. (See, e.g., *Tate*, 311 Ark. at p. 409.)

Notably, SEIU concedes that the "voters did not have the initiative power in mind" when ratifying article XIV § 4. (OBM at p. 33.) But citing cases interpreting statutes (not structural features of the Constitution), SEIU advances a tunnel-vision approach, directly contradicted by case law, that would negate the initiative power even when no shred of historical evidence supports that purpose. (*Id.* at pp. 33–34 & fn. 8.) Article XIV's text, as explained, does not support SEIU's reading. (See Part II.A, *ante*.) Just as importantly, though, SEIU's myopic focus on the word "unlimited" conflicts with *McPherson*, where this Court searched an analogous constitutional provision's "origin and background" for signs of a purpose to repeal the

initiative power—and, finding none, upheld the initiative. (38 Cal.4th at pp. 1036–1037.) This Court should reject SEIU's attempt to read "plenary" and "unlimited" as an oblique and unintentional relinquishment of the People's own legislative power.

C. Structural Constitutional Principles Require a Reading That Harmonizes Article XIV with Article II

The Constitution's structure further confirms that the People may enact initiative statutes impacting workers' compensation. Article II safeguards the People's right to exercise legislative power via initiative, and article XIV clarifies the existence and scope of substantive legislative power over workers' compensation. When the two provisions are read together, the People can enact initiative statutes exercising the same "plenary" and "unlimited" authority as the Legislature.

SEIU argues that Proposition 22 "impermissibly conflicts with article XIV, section 4" by "preventing the Legislature from exercising its plenary power to protect app-based drivers with a complete workers' compensation system." (OBM at p. 10.) But SEIU is coy about the source of its premise that Proposition 22 "prevent[s]" the Legislature from doing anything. (*Ibid.*) Only halfway through its brief does it admit that its objection stems not from any unique feature of Proposition 22, but from the

Constitution itself—specifically, article II § 10(c). (See *id.* at pp. 23–24.) Article II § 10(c) protects *all* initiative statutes, including Proposition 22, from legislative interference by imposing a procedural requirement for amending initiatives—the Legislature must present the bill to the People for approval, just as it must present a bill to the Governor for his signature. (Cal. Const., art. II, § 10(c).) The Legislature routinely invokes this process: It has passed bills amending an initiative statute and submitted them to the voters for approval on more than 30 occasions, and the voters have almost always approved the amendments. (See Appendix, Ex. A.)

SEIU argues that article XIV overrides the initiative power because the article II process for amending initiative statutes would otherwise restrain the Legislature's power over workers' compensation. As SEIU sees it, article XIV prevents the People from enacting initiative statutes affecting workers' compensation because it vests the Legislature with plenary power "unlimited by *any* provision of th[e] Constitution," and article II would prevent the Legislature from unilaterally revising such statutes. (Cal. Const., art. XIV, § 4, italics added; OBM at p. 24.) Though SEIU is loath to admit it, its theory is, as the trial court put it, that article II § 10(c) "conflicts with" article XIV § 4. (4AA889.)

The Court of Appeal was right that the Constitution is not at war with itself. (Op. at p. 28.) The procedures for enacting

and amending initiative statutes coexist comfortably with article XIV's recognition of plenary and unlimited legislative power to create a system of workers' compensation. The electorate first ratified the initiative power in 1911, just seven years before it adopted article XIV § 4. The initiative process is how the People exercise the "legislative power" they "reserve to themselves." (Cal. Const., art. IV, § 1.) Just as article IV sets the procedure for the Legislature to pass bills—which become statutes if signed by the Governor—article II sets the procedures for the People to pass initiative statutes and for the Legislature to amend them.

The Court of Appeal was also right that SEIU's argument proves too much. (Op. at p. 20.) The Constitution imposes several procedural requirements on lawmaking, such as bill readings (Cal. Const., art. IV, § 8(b)(1)), a rollcall vote (*id.,* § 8(b)(3)), and gubernatorial presentment (*id.*, § 10). SEIU's reading of article XIV "logically would signify that a statute passed by the Legislature pursuant to [article XIV] would not be subject to *any* provision of the California Constitution, including, for example, the provision authorizing the Governor to veto a bill approved by the Legislature." (*McPherson*, 38 Cal.4th at p. 1036.) But there is "no basis whatsoever in the California Constitution … for concluding that measures" affecting workers' compensation "are not laws that must be enacted pursuant to the

Constitution," and subject to its procedural requirements, such as "the Governor's veto." (*Legislature v. Reinecke* (1972) 6 Cal.3d 595, 601.) The Governor in fact has exercised the power to veto multiple workers' compensation bills. (See, e.g., Sen. Bill No. 1717 (2007–2008 Reg. Sess.), passed Aug. 30, 2008, vetoed Sept. 30, 2008; Sen. Bill No. 320 (1999–2000 Reg. Sess.), passed Sept. 9, 1999, vetoed Sept. 28, 1999.)

Faced with this difficulty, SEIU insists that article XIV displaces only one of these procedural requirements: A law that amends an initiative "becomes effective only when approved by the electors." (Cal. Const., art. II, § 10(c).) But as the Court of Appeal held, there is no structural reason why that would be so. (Op. at pp. 20–21.) The Legislature certainly cannot enact a workers' compensation statute by a voice vote, by a vote of one house, or without presentment to the Governor. (See *McPherson*, 38 Cal.4th at p. 1036.) These lawmaking procedures are no different in kind from the constitutional rule that a bill amending an initiative statute is ineffective without voter approval.

Nor, as the Court of Appeal recognized, can article XIV's reference to the power to enact workers' compensation laws "by appropriate legislation" distinguish article IV's procedural rules from article II § 10(c)'s presentment-to-the-voters requirement. (Op. at p. 20; contra OBM at p. 30.) Just the opposite: That language confirms that, when the Legislature seeks to exercise

its "plenary" and "unlimited" power under article XIV § 4, it must abide by the Constitution's lawmaking procedures. Those procedures include three readings, a rollcall vote, presentment to the Governor, and—if the bill is amending an initiative statute—presentment to the voters. Because legislation is "appropriate" only when enacted in compliance with *all* lawmaking procedures, the Court of Appeal correctly declined SEIU's invitation to carve out voter presentment under article II § 10(c) "as a 'special limitation' on the Legislature's power" apart from the "'normal legislative process.'" (Op. at pp. 20–21.)

The U.S. Supreme Court's interpretation of the federal Constitution's Elections Clause bolsters Intervenors' structural reading. Much as article XIV § 4 of the California Constitution provides that the "Legislature" may enact laws on a certain topic (workers' compensation), the federal Elections Clause gives state "Legislature[s]" the power to prescribe "[t]he Times, Places and Manner of holding Elections for Senators and Representatives." (U.S. Const., art. I, § 4, cl. 1.) Time and again, the High Court has rejected arguments that this language gives a state legislature carte blanche to legislate free from all normal constitutional procedures.

In *Smiley v. Holm* (1932) 285 U.S. 355, the Court held that, even though the Elections Clause singles out state legislatures to the exclusion of other aspects of government, it does not override

"the method which the state has prescribed for legislative enactments," including presentment to the Governor. (*Id.* at pp. 367–368.) Similarly, in *Arizona State Legislature v. Arizona Independent Redistricting Commission* (2015) 576 U.S. 787, the Court concluded that the People of Arizona could constitutionally enact a ballot initiative "remov[ing] redistricting authority from the Arizona Legislature and vest[ing] that authority in an independent commission." (*Id.* at p. 792.)

And earlier this year, in *Moore v. Harper* (2023) 600 U.S. 1, the Court rejected the so-called independent-state-legislature theory. The Court held that state courts do not violate the Elections Clause when they invalidate elections legislation on state constitutional grounds. The Court reaffirmed that the People's right "to approve or disapprove by popular vote any law" is no different than the Governor's exercise of "veto power." (600 U.S. at pp. 23–24.) A state legislature's power under the Elections Clause is therefore not "exclusive [or] independent" but remains "subject to the ordinary constraints on lawmaking in the state constitution." (*Id.* at pp. 26, 30.)

This Court should likewise reject SEIU's effort to exempt the Legislature from state constitutional protections and to hold that the People may not exercise legislative power. (OBM at p. 28.) SEIU's own authority, *Barlotti v. Lyons* (1920) 182 Cal. 575, proves the point. This Court held in *Barlotti* that the

provision for amending the U.S. Constitution, which requires ratification by "the legislatures of three-fourths of the several states or by conventions in three-fourths thereof," does not include the voters acting by referendum. (*Id.* at pp. 577–578.) But that is only because the provision singles out the Legislature for "a ratifying function" instead of "traditional lawmaking." (*Moore*, 600 U.S. at p. 28.) This Court relied on this very distinction in *Barlotti*. (182 Cal. at pp. 581–582.) Article XIV involves a lawmaking function and falls under *McPherson*, not *Barlotti*.

D. The Presumption Against Implied Repeal Confirms That the Initiative Power Works in Tandem with Article XIV

The presumption against implied repeal underscores that article XIV did not silently strip the People of their power under article II. As this Court has recognized, "the law shuns repeals by implication," and courts "'are bound to harmonize … constitutional provisions' that are claimed to stand in conflict." (*Kennedy Wholesale*, 53 Cal.3d at pp. 249–250.) Indeed, the presumption is so "strong" that the Court "will find an implied repeal only where there is no way to reconcile the two provisions." (*Cal. Cannabis Coalition*, 3 Cal.5th at p. 945.)

This presumption applies with even greater force where, as here, SEIU is "arguing for a limitation on the initiative power, …

one of the most precious rights of our democratic process." (*Kennedy Wholesale*, 53 Cal.3d at p. 250.) "Unless a provision explicitly constrains the initiative power or otherwise provides a similarly clear indication that its purpose includes constraining the voters' initiative power, [this Court] will not construe provisions as imposing such limitations." (*Cal. Cannabis Coalition*, 3 Cal.5th at p. 948.)

SEIU's lead case illustrates the presumption against implied repeal. (OBM at pp. 21–22.) In *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, the plaintiffs argued that article XIII B (which requires that the State pay local governments when it enacts a statute that imposes costs on those governments) conflicted with article XIV when workers' compensation statutes cover local public employers. (*Id.* at p. 60.) This Court disagreed, construing article XIII B to "*avoid* conflict with" article XIV in light of "the presumption against implied repeal." (*Id.* at p. 60, italics added.) The Court declined to find—as SEIU urges here—a pro tanto repeal because there was nothing in article XIII B's history or purpose to suggest that a repeal of article XIV was "intended or … necessary." (*Id.* at p. 61.) *County of Los Angeles* thus underscores that the Court of Appeal correctly harmonized article II and article XIV rather than creating a constitutional collision.

This Court's decision in *Hustedt v. Workers' Compensation Appeals Board* (1981) 30 Cal.3d 329 further supports an interpretation that harmonizes articles II and XIV, as the Court of Appeal recognized. (Op. at pp. 21–22.) *Hustedt* held that there was no basis for concluding article XIV worked a "*pro tanto* repeal of conflicting state constitutional provisions" authorizing this Court to decide matters concerning attorney discipline. (*Id.* at p. 343.) Nothing in the text, structure, or history of article XIV suggested that keeping attorney discipline outside the scope of the workers' compensation system would "prohibit the realization of the objectives" of the provision. (*Id.* at p. 344.) Here, too, there is no reason why the initiative power cannot coexist with the Legislature's power to create a complete system of workers' compensation for any or all workers.

Similarly, in *Subsequent Injuries Fund v. Industrial Accident Commission* (1952) 39 Cal.2d 83, this Court found that workers' compensation payments did not constitute an impermissible "gift of public money" under article XVI § 6. (*Id.* at p. 88.) The Court did so to avoid "a repeal *pro tanto* of state constitutional provisions in conflict" with article XIV's substantive authorization for workers' compensation laws. (*Ibid.*)

Just as all these provisions can coexist with article XIV, so too can article II. This Court should heed its "strong" duty to "harmonize" article II with article XIV § 4. (*Bd. of Supervisors v.*

Lonergan (1980) 27 Cal.3d 855, 868–869.) Repealing the People's right to vote on amendments to initiatives is no more necessary to the workers' compensation system than repealing the Governor's veto.

III. Proposition 22 Is a Proper Exercise of Legislative Power

Because the People's power to legislate under article XIV § 4 is coextensive with the Legislature's power, the only remaining question is whether Proposition 22's substantive classification rule for app-based drivers is proper legislation. It is.

A. Article XIV § 4's "Complete System" Language Creates a Power, Not a Duty, to Cover "Any or All" Workers

SEIU argues that Proposition 22, whether enacted by the Legislature or the People, violates article XIV because California's workers' compensation system would not be "complete" if it did not cover app-based drivers who satisfy the Proposition 22 standard for independent contractors. (OBM at pp. 23, 26–27; see Dissent at pp. 5–8.) That is a problem, according to SEIU, because article XIV § 4 vests the Legislature with power to create "a *complete* system of workers' compensation." (Cal. Const., art. XIV, § 4, italics added.)

This argument incorrectly presumes that workers' compensation *must* be extended to *all* workers—or, perhaps, that

coverage extended by one statute can never be cut back by a subsequent measure. If that were true, California's workers' compensation system—which has never included independent contractors—would have violated article XIV every moment from its inception through today. But it is not true: SEIU's theory has no support in text, history, or precedent.

By its plain text, article XIV provides that workers' compensation laws may require "any or all persons to compensate any or all of their workers for injury or disability." (Cal. Const., art. XIV, § 4.) But article XIV does not include any substantive rules about its coverage or scope—e.g., any minimum or maximum number of workers who must be covered by the workers' compensation system. Instead of being ensconced in the constitutional text, the "right to workers' compensation benefits is 'wholly statutory.'" (*Graczyk*, 184 Cal.App.3d at p. 1002.) "*Any* or all" thus means what it says: As this Court has repeatedly recognized, the Legislature has "[w]ide discretion" to change worker "classification," and has thereby "excluded certain classes of persons from coverage" throughout its history. (*Mathews*, 6 Cal.3d at p. 739; accord *Graczyk*, 184 Cal.App.3d at p. 1007; *Wal-Mart Stores*, 112 Cal.App.4th at pp. 1442–1443 & fn. 12; *Bautista v. State* (2011) 201 Cal.App.4th 716, 721, 723.)

In urging the contrary, the dissent below suggested that article XIV § 4 requires the Legislature and the People to leave in

place the "'basic features' of th[e workers' compensation] system" as it existed in 1918 under then-existing statutory enactments. (Dissent at pp. 8, 42.) For support, the dissent pointed not to any authority construing the People's initiative power, but instead to Justice Robert Jackson's gloss on federal executive power in his *Youngstown* concurrence. (*Id.* at pp. 20, 25–26, 33, 35.) Unsurprisingly, even SEIU does not defend this theory—much less the dissent's strained reliance on *Youngstown*.

The dissent's constitutional-baseline theory is wrong and, even if accepted, does not bear on Proposition 22's constitutionality. One "basic feature" of the workers' compensation system is that its coverage has always been limited to employees. (*Borello*, 48 Cal.3d at p. 349; see also Lab. Code, §§ 3351, 3353.) And although SEIU suggests that app-based drivers have been employees under California law since at least 1918 (OBM at pp. 35–36)—despite the fact that app-based platforms did not then exist—courts have repeatedly held that app-based drivers are independent contractors under *Borello*.[2]

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[2] (See, e.g., *Lawson v. Grubhub, Inc.* (N.D.Cal. 2018) 302 F.Supp.3d 1071, 1093 [finding, after a trial, that app-based driver was an independent contractor under *Borello*]; *Alatraqchi v. Uber Techs., Inc.* (Labor Com. Aug. 1, 2012, No. 11-42020-CT) [finding that an app-based driver was an independent contractor under *Borello*]; *Uber Techs., Inc. v. Biafore* (Super. Ct. S.F. County July 2, 2018, No. BS172429) [confirming reasoned arbitration decision that app-based driver was an independent

At the end of the day, the Court of Appeal correctly held that article XIV does not hard-wire the "basic features" of the 1918 workers' compensation system into the Constitution. (Op. at pp. 23–26 & fn. 12.) Article XIV § 4 recognizes the Legislature's "power" to enact a workers' compensation system for "any or all" workers—not a duty to freeze the 1918 system in amber. (Cal. Const., art. XIV, § 4.) Nor does article XIV demand that power be wielded to the hilt; it does not "impos[e] a mandate on the Legislature to create and enforce an unlimited system of workers' compensation benefits"—or *any* "lawmaking mandate upon the Legislature." (*Facundo-Guerrero*, 163 Cal.App.4th at p. 650.)

To hold otherwise would require the Court to overturn numerous precedents. Under such a theory, the Legislature could not have enacted AB 2257 or the law upheld in *Graczyk*, each of which withdrew some workers from the workers' compensation system by excluding them from the definition of "employee." (184 Cal.App.3d at pp. 1005–1006 & fn. 4; see also, e.g., *Cal. State Automobile Assn. Inter-Ins. Bureau v. Workers'*

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contractor under *Borello*]; *Uber Techs., Inc. v. Dorr* (Super. Ct. L.A. County Mar. 9, 2018, No. BS172342) [same]; *Gollnick v. Uber Techs., Inc.* (Super. Ct. S.F. County Oct. 10, 2017, No. CGC-15-547878) [same]; see also *Cotter v. Lyft, Inc.* (N.D.Cal. 2016) 193 F.Supp.3d 1030, 1037 [finding it "genuinely unclear … whether those drivers must be classified as employees or independent contractors under California law"].)

Comp. Appeals Bd. (2006) 137 Cal.App.4th 1040, 1047 ["[w]orkers' compensation coverage for residential employees has expanded and contracted over the years"].) Nor could the Legislature have enacted the provision this Court upheld in *Mathews*, which withdrew a feature that article XIV § 4 labels part of a "complete" workers' compensation system—provision of benefits "irrespective of the fault of any party." (6 Cal.3d at pp. 728, 734.) The Legislature also could not have reduced available benefits below the "full provision" included in a "complete system," as it did in the laws upheld in *Facundo-Guerrero*, 163 Cal.App.4th at pp. 647–651, *Wal-Mart Stores*, 112 Cal.App.4th at p. 1442, and *Rio Linda Union School Dist. v. Workers' Comp. Appeals Bd.* (2005) 131 Cal.App.4th 517, 532.

This Court should preserve these decisions and resolve this issue by repeating what it has already said: The Legislature has "[w]ide discretion" to change the "classification" of which workers the system would cover. (*Mathews*, 6 Cal.3d at p. 739.) Article XIV did not prescribe any particular employee classification test in 1918, much less one for app-based drivers nearly a century before apps were invented.

B. Article XIV § 4's Declaration of "Social Public Policy" Does Not Mandate Any Particular Workers' Compensation System

SEIU also invokes article XIV § 4's statement that a complete system of workers' compensation is "expressly declared to be the social public policy of this State, binding upon all departments of the State government." SEIU did not even cite, much less rely on, this provision below, but Justice Streeter suggested in his dissent below that it establishes a constitutional baseline for the workers' compensation system that neither the Legislature nor the People can modify. (Dissent at pp. 32–33, 45–46.) As explained in the preceding section, SEIU cannot defend that constitutional-baseline theory, so it now argues for the first time that § 4's declaration of "social public policy" requires courts to "broadly" "construe[]" employee tests and precludes the People from removing app-based drivers from the workers' compensation system. (OBM at pp. 35–39.) SEIU's retooled version of the dissent's flawed theory lacks any support in the constitutional text, ratification history, or precedent.

The "social public policy" language does not address either of the two key issues before the Court: whether the People share the Legislature's power under article XIV and whether Proposition 22 is a proper exercise of such power. (See Parts I, II, III.A, *ante*.) Rather, the reference to "social public policy" buttresses the constitutional foundation for workers'

compensation laws by ensuring that courts and other governmental entities heed the State's police power to modify the common-law rules governing workers' compensation. (See *Pillsbury*, 170 Cal. at p. 694.) As discussed in Part II.B above, courts in the *Lochner* era (when art. XIV § 4 was enacted) closely scrutinized claimed exercises of the Legislature's police power, striking down statutes when they believed the Legislature had gone "beyond the limits thus prescribed by the constitution." (*People v. Yosemite Lumber Co.* (1923) 191 Cal. 267, 273.) The People enacted article XIV § 4 in response: By declaring a complete workers' compensation system to be the *social public policy* of the state, they ensured courts would view workers' compensation laws as "necessary or proper for the protection or furthering of a *legitimate public interest*" under the police power. (*Pillsbury*, 170 Cal. at p. 694, italics added.)

But the "social public policy" language does not impose a substantive requirement that the workers' compensation system cover any particular group of workers. After all, the "sole purpose" of article XIV § 4 was to "remov[e] all doubts as to the constitutionality of the then existing workmen's compensation statutes." (*Mathews*, 6 Cal.3d at pp. 733–735 & fn. 11, italics added.) The then-existing statutes—the Workmen's Compensation, Insurance, and Reform Act of 1917—declared the same "social public policy" in favor of establishing a system of

workers' compensation, while also excluding numerous workers (including all independent contractors) from the system. (Stats. 1917, ch. 586, § 1; § 8(a) & (b).) Whether any particular group of workers is covered is a matter of statutory legislation, not constitutional command. (Op. at pp. 24–25.)

When article XIV § 4 states that workers' compensation is "social public policy" and "binding upon all departments of the State government," that merely means that state agencies and local governments may be subject to the workers' compensation system when they act as employers. (Cal. Const., art. XIV, § 4; see Op. at p. 27.) Courts have repeatedly endorsed this state-as-employer interpretation. In *State Compensation Insurance Fund v. Workers' Compensation Appeals Board* (1979) 88 Cal.App.3d 43, the Court of Appeal pointed to this language in explaining why "our workers' compensation laws have always defined the term 'employer' to include all governmental agencies." (*Id.* at p. 57.) And in *Brooks v. Workers' Compensation Appeals Board* (2008) 161 Cal.App.4th 1522, the Court of Appeal again noted that, because workers' compensation "represents the 'social public policy of this State, binding upon all departments of the State government,'" the term "'State and every State agency' is expressly included within the definition of an 'employer' under the Workers' Compensation Act." (*Id.* at p. 1529; see also *City of*

Sacramento v. Industrial Accident Com. of Cal. (1925) 74 Cal.App. 386, 395.)

At most, the "social public policy" language creates a "broad construction" rule for interpreting potentially ambiguous workers' compensation statutes enacted under article XIV—i.e., that ambiguity be resolved in favor of compensating injured employees. (*Pacific Employers Ins. Co. v. Industrial Accident Com.* (1945) 26 Cal.2d 286, 288–289; see, e.g., *Bartlett Hayward Co. v. Industrial Accident Com.* (1928) 203 Cal. 522, 529–530; *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 233–234; *Granado v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 399, 405; *Fireman's Fund Insurance Co. v. Workers' Comp. Appeals Bd.* (2010) 181 Cal.App.4th 752, 770–771; *Cal. Insurance Guarantee Assn. v. Workers' Comp. Appeals Bd.* (1992) 10 Cal.App.4th 988, 1000.)

Those cases applying "broad construction" to statutory provisions do not bear on the constitutionality of Proposition 22's classification test. As the Court of Appeal explained, this Court has never broadly construed article XIV to generate conflict with other constitutional provisions. (Op. at pp. 21–22; see, e.g., *Hustedt*, 30 Cal.3d at p. 343 [rejecting broad interpretation of article XIV to avoid pro tanto repeal of this Court's exclusive jurisdiction over disciplinary proceedings]; *County of Los Angeles*, 43 Cal.3d at pp. 56, 60 [construing article XIII B to "avoid conflict

with" article XIV in light of "the presumption against implied repeal"].) This case asks this Court to decide only the constitutionality of Proposition 22, not the application of its classification test on any particular facts. (Cf. *Drillon v. Industrial Accident Com.* (1941) 17 Cal.2d 346, 350–356 [concluding it was not "the purpose or intention of the legislature in adopting the Horse Racing Act … to make jockeys independent contractors rather than employees"].)

Relatedly, SEIU suggests that article XIV's social public policy would be frustrated if workers who allegedly face a risk of injury could be excluded from the workers' compensation system. (OBM at p. 37.) But again, whether to treat particular workers as employees or contractors is a matter of policy rather than constitutional compulsion. The Legislature and courts have long treated workers in risky industries—for example, "plumbers and electricians"—as "unquestionably independent" and thus outside the workers' compensation system. (*Dynamex*, 4 Cal.5th at p. 949; see also, e.g., Lab. Code, § 2781 [AB 2257 exemption for construction workers]; *id.*, § 2783(g) [AB 2257 exemption for fishers].) The Court of Appeal also has upheld against constitutional challenge the exclusion of student athletes from workers' compensation. (*Graczyk*, 184 Cal.App.3d at pp. 1005–1006 & fn. 4.)

C. Proposition 22 Properly Amended Other Statutes, Not the Constitution Itself

Finally, SEIU asserts that the People should have enacted Proposition 22 as a constitutional amendment. (OBM at pp. 38, 42.) But the case SEIU cites, *People's Advocate, Inc. v. Superior Court* (1986) 181 Cal.App.3d 316, undercuts its argument.

The Court of Appeal in *People's Advocate* invalidated a law that was unconstitutional, no matter whether enacted by the Legislature or the People, because it sought to amend the Constitution. There, the initiative statute sought "to govern the *content* of future legislation by limiting the amount of monies appropriated for the support of the Legislature." (181 Cal.App.3d at p. 328.) The Court of Appeal applied the principle that "[t]he power of the electorate to enact legislation by use of the initiative process is circumscribed by the same limitations as the legislative powers resting in the legislative body concerned." (*Ibid.*, citation omitted.) Because the Legislature could not dictate the content of future bills, neither could the People.

The principle of *People's Advocate* supports Intervenors because, as SEIU itself admits, the Legislature itself could have enacted Proposition 22 as a bill. (OBM at p. 26.) The only effect Proposition 22 has on future bills is that the Legislature must seek voter consent to amend or repeal it, which is true of *every* statutory initiative and not an unconstitutional restriction on future Legislatures. (*People v. Superior Court (Pearson)* (2010)

48 Cal.4th 564, 568.) *People's Advocate* expressly distinguished two concepts that SEIU conflates: "the authority to amend a statute, however adopted" (the issue here) and "the power to say what content a future statute may have" (the issue in *People's Advocate*). (181 Cal.App.3d at p. 328.) Proposition 22 is a proper exercise of the People's authority to enact a law that the Legislature also could have enacted.

To be sure, an initiative that transferred authority over workers' compensation "in a global sense" from the Legislature to the Governor might require a constitutional amendment or revision. (*Kempton*, 40 Cal.4th at p. 1047.) But this case involves only "a permissible legislative decision" over whether to include app-based drivers in the workers' compensation system—a decision "effected by the other constitutionally empowered legislative authority, the electorate." (*Ibid.*) *Kempton* establishes that this sort of statutory initiative, which still allows the Legislature "to amend the initiative by statute" in a manner prescribed by article II § 10(c), "does not usurp the Legislature's plenary authority." (*Ibid.*) Simply put, an initiative need not amend the Constitution to function as a "*legislative battering ram*." (*Tuolumne*, 59 Cal.4th at p. 1035.)

If Proposition 22 requires a constitutional amendment, it is hard to see what would remain of the People's power to legislate on matters affecting workers' compensation. Proposition 22, after

all, does not even alter the workers' compensation system. The initiative simply changes the test for whether drivers are employees, and one downstream consequence of that change (among many) could be an effect on workers' compensation—namely, by virtue of article II, the Legislature could not return app-based drivers to the workers' compensation system without voter approval.

Ultimately, "'our state Constitution does not limit the subject matter of direct legislation proposed by initiative.'" (*Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 253.) And it would undo the People's reservation to themselves of ultimate legislative power to require that the People amend the Constitution every time they wish to enact a law with some downstream effect on workers' compensation. It would turn the Constitution into a codebook, rather than the fundamental charter of State government. Proposition 22 is a quintessential statute, providing detailed requirements governing (for example) the exact amount of "per-mile compensation for vehicle expenses" and the formula for adjusting it. (Bus. & Prof. Code, § 7453(d)(4)(B)(ii)–(iii).) It would make little sense to put any part of it in the Constitution—and because it does not conflict with the Constitution, there was no need for the People to do so.

CONCLUSION

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

DATED: December 11, 2023 O'MELVENY & MEYERS LLP

By: _____
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CERTIFICATE OF WORD COUNT

I certify, under rule 8.520(c)(1) of the California Rules of Court, that this answer brief contains 11,550 words, as counted by Microsoft Word, excluding the tables, this certificate, and the signature blocks.

DATED: December 11, 2023 O'MELVENY & MEYERS LLP

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EXHIBIT A -- Appendinx

to Intervenors-Respondents' Answer Brief
Castellanos v. State of California
California Supreme Court, Case No. S279622

Appendix

Instances when the Legislature passed a bill amending an initiative statute and submitted it to the voters for approval:

No.	Original Initiative	Legislature's Bill to Amend Initiative	Bill Presented to Voters for Approval	Results	Amended Statute
1	Prop. 16 (1922) Board of Chiropractic Examiners Initiative	Stats. 1949, ch. 500.	Prop. 7, Right of Blind People to Become Chiropractors Measure.	Approved by voters, Gen. Elec. (Nov. 7, 1950).	Added Bus. & Prof. Code, § 1000-8.
2	Prop. 36 (1914) San Francisco Building Bond Measure	Stats. 1949, ch. 293, p. 568–572.	Prop. 11, Withdrawal of Land Measure.	Approved by voters, Gen. Elec. (Nov. 7, 1950). *repealed 1955.	Added Gov. Code Land Title Law, §§ 48.1–48.9.
3	Prop. 16 (1922) Board of Chiropractic Examiners Initiative	Stats. 1951, ch. 1650.	Prop. 17, Board of Chiropractic Examiners.	Rejected by voters, Measure, Gen. Elec. (Nov. 4, 1952).	Proposed to amend the Chiropractic Initiative Act.
4	Prop. 36 (1914) San Francisco Building Bond Measure	Stats. 1954, 1st ex. sess., ch. 58, p. 331.	Prop. 7, Changes to the Land Time Law Measure.	Approved by voters, Gen. Elec. (Nov. 2, 1954).	Added Health & Safety Code, § 116.

				*repealed 1995.	
5	Prop. 1 (1920) Alien Land Law	Stats. 1955, ch. 1550, p. 2831.	Prop. 13, Repeal of Law Prohibiting Immigrants from Owning Real Estate Measure.	Approved by voters, Gen. Elec. (Nov. 6, 1956).	Repealed Alien Land Law.
6	Prop. 20 (1914) Prize Fights Initiative	Stats. 1957, ch. 1773.	Prop. 15, Allowing Boxing Exhibitions on Sundays and Memorial Day Measure.	Rejected by voters, Gen. Elec. (Nov. 4, 1958).	Proposed to repeal Pen. Code, § 413 ½.
7	Prop. 16 (1922) Board of Chiropractic Examiners Initiative	Stats. 1959, ch. 1768.	Prop. 7, State Board of Chiropractic Examiners Measure.	Approved by voters, Gen. Elec. (Nov. 8, 1960).	Amended Bus. & Prof. Code, § 1000-1; added *id.*, § 1000-12.5.
8	Prop. 12 (1949) Daylight Saving Time Initiative	Stats. 1961, ch. 759, p. 2015.	Prop. 6, Daylight Savings Time Measure.	Approved by voters, Primary Elec. (June 5, 1962).	Amended Daylight Saving Time Initiative Act.
9	Prop. 20 (1922) Osteopathic Initiatives Act	Stats. 1962, 1st ex. sess., ch. 48.	Prop. 22, Board of Osteopathic Examiners Measure.	Approved by voters, Gen. Elec. (Nov. 6, 1962).	Added Bus. & Prof. Code, §§ 3600-2–3600-4.
10	Prop. 7 (1924) Boxing and	Stats. 1966, 1st ex. sess., ch. 161	Prop. 11, Changes to the Boxing and	Approved by voters, Gen. Elec. (Nov. 8,	Amended Bus. & Prof. Code, § 18608.

	Wrestling Contests Initiative		Wrestling Initiative Act Measure.	1966). *repealed 1985.	
11	Prop. 16 (1922) Board of Chiropractic Examiners Initiative	Stats. 1970, ch. 643, p. 1260–1263.	Prop. 11, Procedures for the Board of Chiropractic Examiners Measure.	Approved by voters, Gen. Elec. (Nov. 3, 1970).	Amended Bus. & Prof. Code, §§ 1000-4, 1000-10.
12	Prop. 3 (1918) Loan Regulation Initiative	Stats. 1970, ch. 784, p. 1497–1498.	Prop. 19, Overcharging Interest Penalties Measure.	Approved by voters, Gen. Elec. (Nov. 3, 1970).	Amended Civ. Code, § 1916-3.
13	Prop. 16 (1922) Board of Chiropractic Examiners Initiative	Stats. 1976, ch. 263.	Prop. 15, Changes to the State Board of Chiropractic Examiners Measure.	Approved by voters, Gen. Elec. (Nov. 2, 1976).	Amended Bus. & Prof. Code, §§ 1000-1, 1000-3–1000-6.
14	Prop. 16 (1922) Board of Chiropractic Examiners Initiative	Stats. 1978, ch. 307.	Prop. 4, Accreditation of Chiropractic Schools Measure.	Approved by voters, Gen. Elec. (Nov. 7, 1978).	Amended and added Bus. & Prof. Code, §§ 1000-4–1000-5, 1000-10, 1000-20.
15	Prop. 7 (1978) Expand Death Penalty and Life Imprisonment for Murders Initiative	Stats. 1987, ch. 1006.	Prop. 67, Second Degree Murder of a Peace Officer Measure.	Approved by voters, Primary Elec. (June 7, 1988).	Amended Pen. Code, § 190.

16	Prop. 16 (1922) Board of Chiropractic Examiners Initiative	Stats. 1988, ch. 1094.	Prop. 113, Changes to Chiropractic Law Measure.	Approved by voters, Primary Elec. (June 5, 1990).	Amended Bus. & Prof. Code, §§ 1000-12, 1000-15.
17	Prop. 7 (1978) Expand Death Penalty and Life Imprisonment for Murders Initiative	Stats. 1989, ch. 1165.	Prop. 114, Reclassification of Peace Officers Covered by the Death Penalty Measure.	Approved by voters, Primary Elec. (June 5, 1990).	Amended Pen. Code, § 190.2.
18	Prop. 65 (1986) Safe Drinking Water and Toxic Enforcement Act	Stats. 1990, ch. 407.	Prop. 141, Prohibit Carcinogens Released Into Water Systems Initiative.	Rejected by voters, Gen. Elec. (Nov. 6, 1990).	Proposed to amend and add Health & Safety Code, §§ 25249.5–25249.6, 25249.11, 25249.15–25249.18.
19	Prop. 7 (1978) Expand Death Penalty and Life Imprisonment for Murders Initiative	Stats. 1993, ch. 609.	Prop. 179, Punishment for Murders Committed with Firearms from Vehicles Measure.	Approved by voters, Primary Elec. (June 7, 1994).	Amended Pen. Code, § 190.
20	Prop. 139 (1990), Prison Inmate Labor Initiative	Stats. 1995, ch. 440.	Prop. 194, Employed Prisoners Not Eligible for Unemployment	Approved by voters, Primary Elec. (March 26, 1996).	Added Pen. Code, § 2717.9.

			Benefits Upon Release Measure.		
21	Prop. 7 (1978), Expand Death Penalty and Life Imprisonment for Murders Initiative	Stats. 1995, ch. 477.	Prop. 195, Special Circumstances Punishable by the Death Penalty Measure.	Approved by voters, Primary Elec. (March 26, 1996).	Amended Pen. Code, § 190.2.
22	Prop. 7 (1978), Expand Death Penalty and Life Imprisonment for Murders Initiative	Stats. 1995, ch. 478.	Prop. 196, Death Penalty or Life Imprisonment for Drive-by Shooting Murders Measure.	Approved by voters, Primary Elec. (March 26, 1996).	Amended Pen. Code, § 190.2.
23	Prop. 117 (1990) Creation of the Habitat Conservation Fund Initiative	Stats. 1995, ch. 779.	Prop. 197, Repeal Protection Status of Mountain Lions Measure.	Rejected by voters, Primary Elec. (March 26, 1996).	Proposed to amend and add Fish & G. Code, §§ 2786–2787, 4800–4801, 4801.5, 4806; Wildlife Protection Act of 1990, § 8.
24	Prop. 7 (1978), Expand Death Penalty and Life Imprisonment for Murders Initiative	Stats. 1997, ch. 413.	Prop. 222, Sentencing for Second Degree Murder of Police Officers Measure.	Approved by voters, Primary Elec. (June 2, 1998).	Amended Pen. Code, § 190.
25	Prop. 7 (1978) Expand Death Penalty and Life	Stats. 1998, ch. 29.	Prop. 18, Special Circumstances in	Approved by voters, Primary Elec.	Amended Pen. Code, § 190.2.

	Imprisonment for Murders Initiative		Murder Trials Measure.	(March 7, 2000).	
26	Prop. 7 (1978) Expand Death Penalty and Life Imprisonment for Murders Initiative	Stats. 1998, ch. 760.	Prop. 19, Increased Criminal Punishment for Murder of Police Officer Measure.	Approved by voters, Primary Elec. (March 7, 2000).	Amended Pen. Code, § 190.
27	Prop. 37 (1984) Gambling Provisions Initiative	Stats. 1998, ch. 800, p. 5088–5090.	Prop. 20, Lottery Funds for Instructional Materials Measure.	Approved by voters, Primary Elec. (March 7, 2000).	Amended Gov. Code, § 8880.4.
28	Prop. 16 (1922) Board of Chiropractic Examiners Initiative	Stats. 2000, ch. 867.	Prop. 44, Chiropractic License Revocation for Insurance Fraud Measure.	Approved by voters, Primary Elec. (March 5, 2002).	Added Bus. & Prof. Code, §§ 1003–1004.
29	Prop. 10 (1998) Early Childhood Cigarette Tax Initiative	Stats. 2009, 3d ex. sess., ch. 11.	Prop. 1D, Redirect Tobacco Tax Revenue Funds to Health Programs for Children Measure.	Rejected by voters, Special Elec. (May 19, 2009).	Proposed to amend and add Health & Safety Code, §§ 130105, 130150; Rev. & T. Code, §§ 30131.4, 30131.45.
30	Prop. 63 (2004) Tax Increase on Income Above $1 Million	Stats. 2009, 3d ex. sess., ch. 15.	Prop 1E, Redirect Funds for Mental Health Programs Measure.	Rejected by voters, Special Elec.	Proposed to amend Welf. & Inst. Code, §§ 5891–5892.

	for Mental Health Services Initiative			(May 19, 2009).	
31	Prop. 12 (1949) Daylight Saving Time Initiative	Stats. 2018, ch. 60.	Prop. 7, Legislative Power to Change Daylight Saving Time Measure.	Approved by voters, Gen. Elec. (Nov. 6, 2018).	Added Gov. Code, § 6808.

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