

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'
MOTION FOR JUDICIAL NOTICE**

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

O'MELVENY & MEYERS LLP
*Jeffrey L. Fisher (256040)
2765 Sand Hill Road
Menlo Park, CA 94025
Telephone: 650.473.2633
Facsimile: 650.229.7520
jlfisher@omm.com

NIELSEN MERKSAMER
PARRINELLO GROSS & LEONI, LLP
Arthur G. Scotland (62705)
Sean P. Welch (227101)
Kurt R. Oneto (248301)
David J. Lazarus (304352)
1415 L Street, Suite 1200
Sacramento, CA 95814
Telephone: 916.446.6752
Facsimile: 916.446.6106
swelch@nmgovlaw.com

*Attorneys for Intervenors and Respondents Protect App-Based
Drivers and Services; Davis White; Keith Yandell*

**MOTION FOR JUDICIAL NOTICE
IN SUPPORT OF ANSWER BRIEF**

Pursuant to California Evidence Code sections 452 and 459, and California Rules of Court, rules 8.520(g) and 8.252(a), Intervenor-Respondents Protect App-Based Drivers and Services, Davis White, and Keith Yandell respectfully request that the Court take judicial notice of **Exhibit G**, an editorial in favor of the adoption of Proposition 23 (1918), which was published in the October 30, 1918 edition of the Sacramento Bee.*

This document qualifies for judicial notice under the Evidence Code and satisfies the requirements of California Rules of Court, rules 8.520(g) and 8.252(a), for the following reasons:

- A. *The exhibit is relevant.* Exhibit G shows that the purpose of article XIV § 4 of the California Constitution was to protect the constitutionality of workers' compensation laws in California, not to limit the initiative power.
- B. *The exhibit was presented to the trial court and Court of Appeal.* Intervenor sought judicial notice of Exhibit G before the trial court and Court of Appeal. The trial

* The lettering for Exhibit G refers to the exhibit as labeled in Intervenor's Request for Judicial Notice that was presented to the trial court. (See 4AA748–750.) Intervenor obtained a more legible copy of the editorial after the trial court proceedings and moved the Court of Appeal to judicially notice it. That version is attached here.

court erroneously denied Intervenors' request on hearsay concerns (Aug. 20, 2021 R.T. at 4–5), and the Court of Appeal denied it as unnecessary to its decision (Op. at 17, fn. 9). Notably, Appellants admitted that this document is the type properly subject to judicial notice when it was offered in the trial court. (4AA873.)


C. *The exhibit is subject to judicial notice.* Exhibit G provides information that is not reasonably subject to dispute and is capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. No one disputes that the statements were made, and they come from indisputably public sources.

D. *The exhibit does not relate to proceedings after the judgment.* Exhibit G does not relate to proceedings occurring after the judgment that is the subject of this appeal.

Because this motion for judicial notice meets all of the requirements for judicial notice, it should be granted.

Respectfully submitted,

DATED: December 11, 2023

By: 

Jeffrey L. Fisher

*Attorney for Intervenors and
Respondents Protect App-Based
Drivers and Services; Davis White;
Keith Yandell*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Intervenors-Respondents seek judicial notice of one document that is relevant to the sole issue on appeal: whether article XIV § 4 of the California Constitution limits the People's power to enact initiatives affecting workers' compensation.

Exhibit G discusses the purpose of article XIV § 4 and sheds light on how voters understood the amendment at the time of its enactment. The exhibit shows that article XIV § 4 was not intended to circumscribe the People's initiative power, undermining the trial court's conclusion and Justice Streeter's dissent in the Court of Appeal that the voters repealed their own power to enact laws affecting workers' compensation when they added article XIV § 4 to the Constitution.

The trial court denied judicial notice of this document based on inapplicable hearsay concerns, but the exhibit meets the standards of judicial notice, as sources of indisputable accuracy demonstrate that the relevant statements were made. Intervenors do not ask the Court to use the exhibit to resolve any factual disputes (there are none). The Court of Appeal denied Intervenors' request as unnecessary—but to the extent the Court decides to consider the history of article XIV § 4, this exhibit shows the voters enacted that provision to protect the constitutionality of workers' compensation laws in California, not

to limit their initiative power. The Court should therefore take judicial notice of the exhibit.

II. ARGUMENT

A. The exhibit qualifies for judicial notice.

Under Evidence Code section 459(a), the “reviewing court may take judicial notice of any matter specified in Section 452.” Section 452 provides that courts may take judicial notice of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Evid. Code, § 452, subd. (h).) Exhibit G meets these standards and is relevant to the issue on appeal.

Exhibit G is a 1918 article published in a reputable newspaper—the Sacramento Bee. Evidence Code section 452(h) allows courts to take judicial notice of newspaper articles, not for the truth of their content, but for the undisputed fact that they published certain information. (See *Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 807, fn. 5 [“Without assuming the truth of the assertions contained in the news articles, the fact that news articles discussing [certain] topics ... were published is not reasonably subject to dispute.”]; accord *McKelvey v. Boeing N. Am., Inc.* (1999) 74 Cal.App.4th 151, 162.)

Exhibit G provided voters with various arguments for why they should enact article XIV § 4 (then-labeled Proposition 23), including that the amendment would “make sure that the important departments of compensation, insurance and safety shall have full constitutional authority.” Intervenors offer this article not for its truth, but to demonstrate what was said to the public about the purpose of article XIV § 4 in advance of the 1918 election.

B. The trial court legally erred in failing to take judicial notice of Exhibit G on hearsay concerns.

The trial court declined to take judicial notice of Exhibit G, ruling that it constituted hearsay with no applicable exception. (See Aug. 20, 2021 R.T. at pp. 4–5.) Appellants never advanced this argument in the trial court or in the Court of Appeal. (See Pls. Opp. RJN at pp. 3–5; 4AA873–874.)

The trial court improperly applied the hearsay rules to the exhibit, which does not implicate hearsay concerns. That is because judicial notice of Exhibit G is being sought to establish the fact that certain statements were made, rather than for the truth of those statements. (See *Seelig*, 97 Cal.App.4th at 807, fn. 5; cf. *Mireskandari v. Gallagher* (2020) 59 Cal.App.5th 346, 360 [the hearsay rules “preclud[e] consideration of ... statements *for their truth* unless an independent hearsay exception exists,” italics added].) Thus, the exhibit does not constitute hearsay. (See Evid. Code, § 1200.)


C. The exhibit is helpful in adjudicating this case.

The Court of Appeal denied Intervenors' motion for judicial notice as unnecessary (Op. at p. 17), but the standard for granting judicial notice does not require that the exhibit be *necessary* to deciding the appeal. (See Evid. Code, § 452, subd. (h); *San Bernardino County v. Superior Court* (2015) 239 Cal. App. 4th 679, 686, fn. 6 [granting request for judicial notice where legislative materials were “proper subjects of judicial notice” even though “they [were] not necessary for [the Court’s] analysis”].) Rather, the Court has discretion to grant judicial notice of the exhibit. To the extent the Court consults the legislative history of article XIV § 4, Exhibit G is an important part of that history. It may assist the Court in determining whether article XIV § 4 of the California Constitution limits the People’s power to enact initiatives affecting workers’ compensation. Accordingly, the Court should grant judicial notice of this exhibit.

III. CONCLUSION

Intervenors respectfully request that the Court take judicial notice of Exhibit G.

DATED: December 11, 2023

By: 

Jeffrey L. Fisher

*Attorney for Intervenors and
Respondents Protect App-Based
Drivers and Services; Davis White;
Keith Yandell*

DECLARATION OF DAVID J. LAZARUS

I, DAVID J. LAZARUS, declare under penalty of perjury as follows:

1. I am an attorney at law duly admitted to practice law before the courts of the State of California and am one of the attorneys representing Intervenors-Respondents Protect App-Based Drivers and Services, Davis White, and Keith Yandell in connection with this action. I make this declaration in support of Intervenors' motion for judicial notice. I have personal knowledge of the facts set forth in this declaration, and if called as a witness, I could and would competently testify thereto.

2. Attached hereto as **Exhibit G** is a true and correct copy of an editorial in favor of the adoption of Proposition 23 (1918), published in the October 30, 1918 edition of the Sacramento Bee.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on this 11th day of December 2023 in San Rafael, California.

By:  _____

David J. Lazarus

[PROPOSED] ORDER

Good cause appearing, therefore,

IT IS HEREBY ORDERED that this Court will take
judicial notice of the following document:

Exhibit G: An editorial in favor of the adoption of
Proposition 23 (1918), which was published in the October
30, 1918 edition of the Sacramento Bee.

Dated: _____

Hon. Patricia Guerrero
Chief Justice of the
California Supreme Court

EXHIBIT G

to Intervenors-Respondents' Motion for Judicial Notice
Castellanos v. State of California
California Supreme Court, Case No. S279622

BUSINESS REGIME WANTED BY STATE

(Continued from Page One.)

◆ attention of the voters the fact ◆
◆ that the law is wrong, and I ◆
take it that The Bee's campaign for ◆
the writing in of the name of James ◆
Rolph, Jr., will have such a result ◆
that the next Legislature will cor- ◆
rect the law and make it operate ◆
in favor of the majority rather than ◆
against the majority. I will vote ◆
for Rolph."

SAN FRANCISCO FOR ROLPH.

Voters Declare Determination to Stand by Their Choice.

SAN FRANCISCO, October 30.—From San Francisco come the following who have lined up for the write-in campaign for James Rolph, Jr.

E. B. Gallagher, hardwareman, 1280 Valencia Street, says:

"If the people who stood by Mayor Rolph in the primary will take their little pencil to the booth November 5th and write in the name of James Rolph, Jr., it is assured he will be our Governor for the next term.

"I have known 'our Jim' for forty years, and know he would be the best Governor California ever had.

◆ "The People proved by their ◆
◆ votes in August that they wanted ◆
◆ him, and I sincerely hope they ◆
◆ will repeat. I will certainly urge ◆
◆ all my friends and those I meet ◆
◆ to write in our choice at the ◆
◆ final election."

INJUSTICE DONE ROLPH.

R. W. Burton, President of the Iron Trades Council, gives his view as follows:

"Mayor Rolph was certainly my choice in the primary election, and I have always been an admirer of the Mayor's policies and principles.

◆ "I must say that a great in- ◆
◆ justice was done him. ◆

◆ "I highly commend the atti- ◆
◆ tude of The Bee, and wish other ◆
◆ papers in favor of the Rolph ◆
◆ policy would get in line and ◆
◆ make it known to all through- ◆
◆ out the State that he can be ◆
◆ elected at the next election."

DECISION AN OUTRAGE.

Edward Rolkin, General Manager of the Argonaut Hotel, Fourth and Market Streets, said

Help To Sustain The Workmen's Compensation Law

One of the most genuinely progres- sive and humanitarian laws of Cali- fornia is the Workmen's Compensa- tion, Insurance and Safety Act.

Passed by the Legislature over five years ago, it has had a long and fair trial, and has given satisfaction to all classes concerned.

Its direct aim was to provide just compensation to workmen, women or girls injured by accident in the course of their employment, or for dependents in case of death from any such cause. In so doing it created liabilities on the part of employers, but at the same time had the effect of relieving them, in practice, from liability to suits for damages that had become common and harassing through the absence of any such law.

Likewise it saved employes and their dependents the cost and worry of legal proceedings to recover damages in case of accident at work, through negligence attributable to the employer.

It is now proposed to strengthen this excellent law by Senate Consti- tutional Amendment No. 20, whose marginal number on the November ballot is 23.

This proposed Amendment is fath- ered by the Industrial Accident Com- mission created by the original Act of 1913 for the purpose of adminis- tering the law.

In the words of Secretary H. L.

White of the Commission, the purpose of the Amendment is

to make sure that the important de- partments of compensation, insurance and safety shall have full constitu- tional authority.

Absolutely no additional power will be given the Commission by adoption of the Amendment.

The Supreme Court decided the Workmen's Compensation, Insurance and Safety Act constitutional, on an appeal from a compensation award, but no opinion has been given on the safety and insurance parts of the Act.

As both its safety and insurance features rightfully are within the reasonable and proper scope of the existing law, and are being worked out satisfactorily by the Commission, it assuredly is desirable to put them on a secure basis—beyond the reach of possible judicial nullification—by ratification at the polls of the pro- posed Amendment.

So now The People have opportu- nity themselves to validate the law, and to establish it out of danger from Courts or technical attacks by attorneys representing selfish inter- ests.

The magnitude of the matter may be judged from the fact that the State Compensation Insurance Fund amounts to \$2,500,000, and that the Commission does about that amount of insurance business yearly on be- half of the State.

Vote YES on ballot-number Twenty-three.



—Hundred and woole weaves and at a subst

—Plain me
—Novelty
—Crepe de
—Silk Pop

W

PROOF OF SERVICE

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

Intervenors-Respondents' Answer Brief

Intervenors-Respondents' Motion for Judicial Notice

on the parties for service as designated below:

By filing via TrueFiling: I filed and served such document(s) via TrueFiling, thus sending an electronic copy of the filing and effecting service.

By email: I caused such document(s) to be served via electronic mail on the parties in this action by transmitting true and correct copies to the following email addresses:

Rob Bonta

Attorney General Of California

Michael J. Mongan

Solicitor General

Janill L. Richards

Principal Deputy Solicitor General

Thomas S. Patterson

Senior Assistant Attorney General

Samuel T. Harbourt

Deputy Solicitor General

Anya M. Binsacca

Supervising Deputy Attorney General

Jose A. Zelidon-Zepeda

Deputy Attorney General

1515 Clay Street, 20th Floor

Oakland, Ca 94612

Janill.Richards@doj.ca.gov

Attorneys for Respondents State of California and Katie Hagen

Robin B. Johansen
Richard R. Rios
Deborah B. Caplan
Benjamin N. Gevercer
Olson Remcho, LLP
1901 Harrison Street, Suite 1550
Oakland, California 94612
rjohansen@olsonremcho.com

Stephen P. Berzon
Scott A. Kronland
Stacey M. Leyton
Juhyung Harold Lee
Robin Tholin
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, California 94108
skronland@altber.com

Nicole G. Berner
Steven K. Ury
Service Employees
International Union
1800 Massachusetts Avenue, NW
Washington, DC 20036
steven.ury@seiu.org
Attorneys for Petitioner Service Employees International Union

By First-Class Mail: By following ordinary business practices and placing for collection and mailing at 2350 Kerner Boulevard, Suite 250, San Rafael, California 94901, a true and correct copy of the document(s), enclosed in a sealed envelope; in the ordinary course of business, the document(s) would have been deposited for first-class delivery with the United States Postal Service the same day they were placed for deposit, with postage thereon fully prepaid.

The Hon. Frank Roesch
Alameda County Superior Court
Administration Building, Dept. 17
1221 Oak Street
Oakland, CA 94612

The Hon. Jorge E. Navarrete
Supreme Court Clerk and Executive Officer
350 McAllister Street
San Francisco, CA 94102-4797

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



Paula Scott

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **CASTELLANOS v. STATE OF CALIFORNIA (PROTECT APP-BASED DRIVERS AND SERVICES)**

Case Number: **S279622**

Lower Court Case Number: **A163655**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **swelch@nmgovlaw.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
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REQUEST FOR JUDICIAL NOTICE	Intervenors-Respondents' Request for Judicial Notice
PROOF OF SERVICE	Proof of Service

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Brendan Begley Weintraub Tobin Chediak Coleman Grodin 202563	bbegley@weintraub.com	e-Serve	12/11/2023 4:06:04 PM
Arthur Scotland Nielsen Merksamer Parrinello Gross Leoni LLP	ascotland@nmgovlaw.com	e-Serve	12/11/2023 4:06:04 PM
David Lazarus NIELSEN MERKSAMER PARRINELLO GROSS & LEONI 304352	dlazarus@nmgovlaw.com	e-Serve	12/11/2023 4:06:04 PM
Nicole Berner Service Employees International Union	nicole.berner@seiu.org	e-Serve	12/11/2023 4:06:04 PM
Andrew Lockard HEWGILL COBB & LOCKARD, APC 303900	contact@hcl-lawfirm.com	e-Serve	12/11/2023 4:06:04 PM
Kurt Oneto Nielsen Merksamer Parrinello Gross & Leoni LLP	kurt.oneto@gmail.com	e-Serve	12/11/2023 4:06:04 PM
Jeffrey L. Fisher O'Melveny & Myers LLP 256040	jlfisher@omm.com	e-Serve	12/11/2023 4:06:04 PM
Sean Welch Nielsen Merksamer Parrinello Gross & Leoni, LLP 227101	swelch@nmgovlaw.com	e-Serve	12/11/2023 4:06:04 PM
Ryan Guillen California State Legislature	Ryan.guillen@asm.ca.gov	e-Serve	12/11/2023 4:06:04 PM
Michael Reich University of California Berkeley	mreich@econ.berkeley.edu	e-Serve	12/11/2023 4:06:04 PM
Scott Kronland	skronland@altber.com	e-	12/11/2023

Altshuler Berzon LLP 171693		Serve	4:06:04 PM
Jean Perley Altshuler Berzon LLP	jperley@altber.com	e-Serve	12/11/2023 4:06:04 PM
Robin Johansen Olson Remcho LLP 79084	rjohansen@olsonremcho.com	e-Serve	12/11/2023 4:06:04 PM
Erwin Chemerinsky UC Berkeley School of Law 3122596	echemerinsky@berkeley.edu	e-Serve	12/11/2023 4:06:04 PM
David Rosenfeld Weinberg, Roger & Rosenfeld 058163	drosenfeld@unioncounsel.net	e-Serve	12/11/2023 4:06:04 PM
Janill Richards Office of the Attorney General 173817	janill.richards@doj.ca.gov	e-Serve	12/11/2023 4:06:04 PM
Molly Alarcon San Francisco City Attorney's Office 315244	Molly.Alarcon@sfcityatty.org	e-Serve	12/11/2023 4:06:04 PM
Samuel Harbourt Office of the Attorney General 313719	samuel.harbourt@doj.ca.gov	e-Serve	12/11/2023 4:06:04 PM
VEENA Dubal 249268	VDUBAL@GMAIL.COM	e-Serve	12/11/2023 4:06:04 PM
Julie Gutman Dickinson Bush Gottlieb, a Law Corporation 148267	JGD@bushgottlieb.com	e-Serve	12/11/2023 4:06:04 PM
George Warner Legal Aid at Work 320241	gwarner@legalaidatwork.org	e-Serve	12/11/2023 4:06:04 PM
Kenneth Trujillo-Jamiso Willenken LLP 280212	ktrujillo- jamison@willenken.com	e-Serve	12/11/2023 4:06:04 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

12/11/2023

Date

/s/David Lazarus

Signature

Welch, Sean (227101)

Last Name, First Name (PNum)

Nielsen Merksamer

